MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 21

The Montana Administrative Register (MAR), a twice-monthly publication, has three sections. The Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted. The Rule Section contains final rule notices which show any changes made since the proposal stage. All rule actions are effective the day after 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 Administrative Rules Bureau at (406) 444-2055.

Page Number

TABLE OF CONTENTS

NOTICE SECTION

ADMINISTRATION, Department of, Title 2

2-2-367 Notice of Proposed Repeal - Foreign Capital Depositories. No Public Hearing Contemplated. 2130-2132

COMMERCE, Department of, Title 8

8-94-51 Notice of Public Hearing on Proposed Adoption - Administration of the 2006-2007 Federal Community Development Block Grant (CDBG) Program. 2133-2135

EDUCATION, Title 10

10-6-114 (Superintendent of Public Instruction) Notice of Public Hearing on Proposed Amendment - School Controversies. 2136-2141

TRANSPORTATION, Department of, Title 18

18-110 Notice of Proposed Adoption and Amendment - Motor Carrier Services Regulations for Over Dimensional and Overweight Vehicles and Loads. No Public Hearing Contemplated. 2142-2150

18-114 Notice of Public Hearing on Proposed Adoption - Aeronautical Grant and Loan Program - Pavement Preservation Grant Program. 2151-2160

Page Number

LIVESTOCK, Department of, Title 32

32-5-174 Notice of Proposed Amendment - Quota, Utilization and Marketing of Montana Pooled Raw Milk. No Public Hearing Contemplated. 2161-2167

PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

37-358 Notice of Public Hearing on Proposed Adoption and Amendment - Child and Adult Care Food Program (CACFP). 2168-2197

REVENUE, Department of, Title 42

42-2-752 Notice of Public Hearing on Proposed Amendment and Repeal - General Department Rules - Penalty and Interest Rules. 2198-2210

SECRETARY OF STATE, Title 44

44-2-131 Notice of Public Hearing on Proposed Amendment, Transfer, Adoption, and Repeal - Administrative Rules of Montana - Montana Administrative Register - Rule Formatting - Incorporation by Reference - Fees. 2211-2237

44-2-132 Notice of Public Hearing on Proposed Amendment - Corporations - Profit and Nonprofit Fees - Limited Liability Company Fees. 2238-2240

RULE SECTION

ADMINISTRATION, Department of, Title 2

NEW (Public Employees' Retirement Board) When Salary Deferrals Under a Cafeteria Plan Should be Treated as Compensation. 2241-2247

JUSTICE, Department of, Title 23

AMD Credit Play Prohibited - Video Gambling Machine Permits - Requirements for Letters of Withdrawal - Video Gambling Machine Testing Fees. 2248-2250

LABOR AND INDUSTRY, Department of, Title 24

AMD (Board of Nursing) General Requirements for Medication Aide Training Programs and Instructors. 2251

AMD (Board of Nursing Home Administrators) Fee Schedule. 2252-2253

Page Number

LIVESTOCK, Department of, Title 32

AMD Fees Charged by the Department on the Volume on All Classes of Milk. 2254

NATURAL RESOURCES AND CONSERVATION, Department of, Title 36

AMD (State Board of Land Commissioners and the Department of Natural Resources and Conservation) Increase Royalty Rates for Oil and Gas Leases on State School Trust Lands from Current Rates to 16.67%. 2255-2256

PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

AMD Vocational Rehabilitation Program. 2257

Corrected Notice of Amendment - Minimum Standards for a Critical Access Hospital. 2258-2259

Corrected Notice of Amendment - Comprehensive School and Community Treatment Program (CSCT). 2260-2261

REVENUE, Department of, Title 42

AMD REP Personal, Industrial, and Centrally Assessed Property Taxes. 2262

INTERPRETATION SECTION

Before the Public Service Commission.

Declaratory Ruling.

In the Matter of the Application of Westech Energy Corporation for an Order Recognizing it as a Regulated Common Carrier. 2263-2270

SPECIAL NOTICE AND TABLE SECTION

Function of Administrative Rule Review Committee. 2271-2272

How to Use ARM and MAR. 2273

Accumulative Table. 2274-2284

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the proposed repeal of ARM 2.59.801, 2.59.802, 2.59.803, 2.59.804, 2.59.805, 2.59.806, 2.59.807 and 2.59.808 related to foreign capital depositories	)))))	NOTICE OF PROPOSED REPEAL NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On December 16, 2005, Department of Administration, Division of Banking and Financial Institutions, proposes to repeal the above-stated rules for Title 32, Chapter 8, MCA, relating to foreign capital depositories.

2. The Department of Administration, Division of Banking and Financial Institutions, 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 Division of Banking and Financial Institutions no later than 5:00 p.m. on December 1, 2005, to advise us of the nature of the accommodation that you need. Please contact Christopher Romano, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; telephone (406) 841-2928; TDD (406) 444-1421; facsimile (406) 841-2930; e-mail to cromano@mt.gov.

3. The Division of Banking and Financial Institutions proposes to repeal the following rules:

2.59.801 AUTHORITY, PURPOSE AND SCOPE: DEFINITIONS which can be found on page 2-6031 of the Administrative Rules of Montana.
AUTH: 32-8-107, MCA
IMP: 32-8-107, 32-8-201, 32-8-202, 32-8-203 and 32-8-205, MCA

2.59.802 ANNUAL REGULATION FEES which can be found on page 2-6032 of the Administrative Rules of Montana.
AUTH: 32-8-107, MCA
IMP: 32-8-205, MCA

2.59.803 EXAMINATIONS which can be found on page 2-6035 of the Administrative Rules of Montana.
AUTH: 32-8-301, MCA
IMP: 32-8-303, MCA

2.59.804 CRITERIA FOR KNOW-YOUR-CUSTOMER POLICY which can be found on page 2-6036 of the Administrative Rules of Montana.
AUTH: 32-8-301, MCA
IMP: 32-8-301, MCA

2.59.805 CRITERIA FOR ANTI-MONEY LAUNDERING COMPLIANCE which can be found on page 2-6037 of the Administrative Rules of Montana.
AUTH: 32-8-301, MCA
IMP: 32-8-301, 32-8-309, 32-8-314, and 32-8-501, MCA

2.59.806 QUARTERLY AND ANNUAL REPORTS which can be found on page 2-6038 of the Administrative Rules of Montana.
AUTH: 32-8-301, MCA
IMP: 32-8-308, MCA

2.59.807 SUSPICIOUS ACTIVITY REPORTS which can be found on page 2-6039 of the Administrative Rules of Montana.
AUTH: 32-8-301, MCA
IMP: 32-8-301 and 32-8-309, MCA

2.59.808 OTHER REPORTS REQUIRED which can be found on page 2-6040 of the Administrative Rules of Montana.
AUTH: 32-8-301, MCA
IMP: 32-8-301, 32-8-308 and 32-8-315, MCA

Reasonable Necessity: The Division of Banking and Financial Institutions is proposing to repeal all of these rules in Title 32, Chapter 8, MCA, because in the 2005 Regular Session, the Fifty-Ninth Legislature enacted House Bill 223, which repealed the Foreign Capital Depository Act. House Bill 223 eliminated the authority for and provisions governing the operation of a foreign capital depository. The bill passed and the statutes supporting these rules were repealed on October 1, 2005. Therefore, these rules are no longer applicable and should be repealed.

4. Concerned persons may present their data, views or arguments concerning the proposed action in writing to Mark Prichard, Legal Counsel, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; faxed to the office at (406) 841-2930; e-mailed to mprichard@mt.gov, and must be received no later than December 12, 2005.

5. If the Division receives requests for a public hearing on the proposed repeal from either 10% or 25, whichever is less, of those who are directly affected by the proposed repeal, from the appropriate administrative rule review committee of the legislature, from a governmental agency or subdivision or from an association having no 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 less than 25 persons based on zero licensees in this program.

6. An electronic copy of this Notice of Public Hearing on Proposed Repeal is available through the Department's

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

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

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

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 October 31, 2005.

BEFORE THE COMMUNITY DEVELOPMENT DIVISION
AND THE BUSINESS RESOURCES DIVISION
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed adoption of a new rule pertaining to the administration of the 2006-2007 Federal Community Development Block Grant (CDBG) Program	)	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION

TO: All Concerned Persons

1. On December 15, 2005, at 1:30 p.m., a public hearing will be held in Room 226 of the Park Avenue Building, 301 South Park Avenue, Helena, Montana, to consider the adoption of a new rule pertaining to the administration of the 2006-2007 Federal Community Development Block Grant (CDBG) Program.

2. The Department of Commerce 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 wish to request an accommodation, contact the Community Development Division no later than 5:00 p.m. on December 8, 2005, to advise the Division of the nature of the accommodation that you need. Please contact Gus Byrom, Community Development Division, 301 South Park Avenue, P.O. Box 200523, Helena, Montana 59620-0523; telephone (406) 841-2777; Montana Relay 1-800-253-4091; TDD (406) 841-2702; facsimile (406) 841-2771; e-mail to gbyrom@mt.gov.

3. The proposed new rule provides as follows:

<u>NEW RULE I INCORPORATION BY REFERENCE OF RULES FOR THE ADMINISTRATION OF THE 2006-2007 CDBG PROGRAM</u> (1) The department of commerce adopts and incorporates by reference each of the following, published by it as rules for the administration of the CDBG program:

(a) the Montana Community Development Block Grant Program 2007 Application Guidelines for Housing and Public Facilities Projects;

(b) the Montana Community Development Block Grant Program 2006 Application Guidelines for Housing and Public Facilities Planning Grants;

(c) the 2006 Application Guidelines for the Community Development Block Grant Economic Development Program;

(d) the Montana Community Development Block Grant Economic Development Program 2006 Application Guidelines for Planning Projects; and

(e) the Montana Community Development Block Grant Program 2006-2007 Grant Administration Manual.

(2) The materials 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 materials 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 2006-2007 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, housing, and public facility projects.

4. Concerned persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Community Development Division, 301 South Park Avenue, P.O. Box 200523, Helena, Montana, 59620-0523, by facsimile to (406)

841-2771; or to the Business Resources Division, 301 South Park Avenue, P.O. Box 200505, Helena, Montana 59620-0505, by facsimile (406) 841-2731, to be received no later than 5:00 p.m., December 22, 2005.

5. Gus Byrom has been designated to preside over and conduct this hearing.

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

7. The Community Development Division and Business Resources Division maintain a list of interested persons who wish to receive notices of rulemaking actions relating to the CDBG program. Persons who wish to have their name added to this list may make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all CDBG administrative rulemaking proceedings. The request may be mailed or delivered to the Community Development Division, 301 South Park Avenue, P.O. Box 200523, Helena, Montana 59620-0523 or by facsimile to (406) 841-2771, or to the Business Resources Division, 301 South Park Avenue, P.O. Box 200505, Helena, Montana 59620-0505 or by facsimile to (406) 841-2731 or by completing a request form at any rules hearing held by the agency.

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

COMMUNITY DEVELOPMENT DIVISION
BUSINESS RESOURCES DIVISION
DEPARTMENT OF COMMERCE

By: /s/ ANTHONY PREITE
ANTHONY PREITE, DIRECTOR
DEPARTMENT OF COMMERCE

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

Certified to the Secretary of State, October 31, 2005

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION
OF THE STATE OF MONTANA

In the matter of the proposed amendment of ARM 10.6.101, 10.6.103, 10.6.104, 10.6.105, 10.6.108, 10.6.119, 10.6.122, 10.6.123, 10.6.124 and 10.6.127 regarding school controversies	)	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On December 7, 2005 at 9:00 a.m. a public hearing will be held in the Superintendent's conference room of the OPI building at 1227 11th Avenue, Helena, Montana, to consider the amendment of the above-stated rules relating to school controversies.

2. The State Superintendent 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 State Superintendent's office no later than 5:00 p.m. on November 28, 2005, to advise us of the nature of the accommodation that you need. Please contact Beverly Marlow, Legal Division, P.O. Box 202501, Helena, MT 59620-2501, e-mail: bemarlow@mt.gov, telephone: (406) 444-3172, TDD number: (406) 444-0235, FAX: (406) 444-2893.

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

<u>10.6.101 SCOPE OF RULES</u> (1) remains the same.

(a) All matters ~~contested before~~ <u>appealed to</u> the county transportation committee shall be governed by these rules of controversy. It shall be the duty of the county superintendent, as chairperson of the county transportation committee, to ~~insure~~ <u>ensure</u> compliance. All references made <u>in this chapter</u> to the county superintendent as to the procedure on these school rules shall also include the county transportation committee where appropriate.

(b) ~~Due process hearings mandated by the Family and Education privacy Act will be governed by these rules.~~

~~(c)~~ All controversies arising under any other provision of ~~Montana law or federal law~~ <u>Title 20, MCA</u> for which a procedure for resolving controversies is not expressly prescribed shall be governed by these rules.

AUTH: Sec. 20-3-107, MCA
IMP: Sec. 20-3-107, MCA

<u>Statement of Reasonable Necessity:</u> The State Superintendent proposes to amend the rules in Title 10, Chapter 6 to clarify

and eliminate inconsistencies and confusion in the school controversy/appeals process. The language in (1)(b) and (c) has been eliminated as an extension of authority not authorized by 20-3-107, MCA.

10.6.103 INITIATING SCHOOL CONTROVERSY PROCEDURE PROCESS

(1) remains the same.

(2) A school controversy contested case shall be commenced by filing a notice of appeal with the county superintendent and the parties within 30 days after the final decision of the ~~governing authority~~ board of trustees of the school district is made. The date of filing shall be determined to be the date the notice is delivered to the county superintendent or, if mailed, the date the notice is deposited in the U.S. mail as evidenced by the postmark date. Notice of appeal shall be served on the parties by certified mail or personal delivery. Respondent shall file a written reply to the notice of appeal within 10 business days of receipt.

(3) remains the same.

AUTH: Sec. 20-3-107, MCA
IMP: Sec. 20-3-107, MCA

Statement of Reasonable Necessity: The State Superintendent proposes to amend this rule for the reasons set forth following ARM 10.6.101 above.

10.6.104 JURISDICTION (1) through (2) remain the same.

(3) The county superintendent may determine that he/she does not have jurisdiction or the power to act ~~and therefore render such determination and return such notice and order to the appealing party~~ over a particular matter. In this event, the county superintendent shall enter an order dismissing the appeal for lack of jurisdiction. The county superintendent, ~~upon~~ after making the determination ~~of proper jurisdiction and proper~~ that the matter is a contested case pursuant to the provisions of this chapter and that he/she has jurisdiction, shall hear the appeal and take testimony in order to determine the facts related to the contested case.

(4) remains the same.

AUTH: Sec. 20-3-107, MCA
IMP: Sec. 20-3-107, MCA

Statement of Reasonable Necessity: The State Superintendent proposes to amend this rule for the reasons set forth following ARM 10.6.101 above.

10.6.105 COMMENCEMENT OF ACTION/REQUIREMENTS OF THE NOTICE OF APPEAL (1) through (2) remain the same.

(3) The notice of appeal shall be signed by the petitioner and/or ~~his/her~~ the petitioner's representative.

(4) remains the same.

AUTH: Sec. 20-3-107, MCA
IMP: Sec. 20-3-107, MCA

Statement of Reasonable Necessity: The State Superintendent proposes to amend this rule for the reasons set forth following ARM 10.6.101 above.

10.6.108 COUNTY SUPERINTENDENT'S PREHEARING PROCEDURE - FORMULATING ISSUES (1) through (3) remain the same.

(4) ~~Individual privacy.~~ County superintendents shall ~~insure~~ ensure the privacy of matters before them as is required by law. Parents maintain the right to waive their right of confidentiality and privacy in the hearing and may request that the hearing be open to the public. The county superintendent shall also provide or allow an opportunity for the minor to be present at the hearing upon request of the parent or guardian.

(5) ~~Location of hearing.~~ The county superintendent shall conduct the hearing in a location stipulated to by all parties and the county superintendent. In the event of disagreement, the county superintendent will make the final determination.

AUTH: Sec. 20-3-107, MCA
IMP: Sec. 20-3-107, MCA

Statement of Reasonable Necessity: The State Superintendent proposes to amend this rule for the reasons set forth following ARM 10.6.101 above.

10.6.119 FINAL ORDER (1) remains the same.

(a) Findings of fact shall be based exclusively on the evidence and on matters officially noticed.

(b) through (2) remain the same.

(3) ~~County transportation committee.~~ In the case of an appeal to the county transportation committee, after hearing, the committee shall meet and vote in open session whether to grant or deny the appeal ~~or request for consideration~~. The members of the majority shall appoint one member to prepare findings of fact, conclusions of law and order which shall then be adopted at an open meeting of the transportation committee and signed by all members of the majority. Any member of the minority may put the reasons for his/her vote in writing, and this shall be made part of the record.

AUTH: Sec. 20-3-107, MCA
IMP: Sec. 20-3-107, MCA

Statement of Reasonable Necessity: The State Superintendent proposes to amend this rule for the reasons set forth following ARM 10.6.101 above.

10.6.122 APPELLATE PROCEDURE - NOTICE OF APPEAL - FILING

(1) An appeal shall be taken by filing a notice of appeal with the state superintendent of public instruction. The date of filing shall be the date of actual delivery to the office of the state superintendent. ~~and a~~ A copy of such notice of appeal shall be served on the ~~with~~ parties and the county superintendent. Failure of any party to take any step other than the timely filing of a notice of appeal does not affect the validity of the appeal but is grounds for such action as the state superintendent deems appropriate, which may include dismissal of the appeal.

AUTH: Sec. 20-3-107, MCA
IMP: Sec. 20-3-107, MCA

Statement of Reasonable Necessity: The State Superintendent proposes to amend this rule for the reasons set forth following ARM 10.6.101 above.

10.6.123 APPELLATE PROCEDURE - CONTENTS OF THE NOTICE OF APPEAL (1) through (1)(e) remain the same.

(f) the signature of the petitioner and/or ~~his/her~~ the petitioner's representative;

(g) remains the same.

AUTH: Sec. 20-3-107, MCA
IMP: Sec. 20-3-107, MCA

Statement of Reasonable Necessity: The State Superintendent proposes to amend this rule for the reasons set forth following ARM 10.6.101 above.

10.6.124 APPELLATE PROCEDURE - TRANSMISSION OF RECORD

(1) Upon receipt of a copy of the notice of appeal to the state superintendent of public instruction, the county superintendent shall transmit the record along with a certified docket listing the contents of the record. The record shall contain all items identified in ARM 10.6.118 including a ~~transcribed~~ transcript of the proceedings. Such records shall be transmitted to the state superintendent within 20 days ~~upon~~ following receipt of the notice of appeal ~~to the state superintendent~~ unless otherwise ordered by the state superintendent.

AUTH: Sec. 20-3-107, MCA
IMP: Sec. 20-3-107, MCA

Statement of Reasonable Necessity: The State Superintendent proposes to amend this rule for the reasons set forth following ARM 10.6.101 above.

10.6.127 APPELLATE PROCEDURE - TIME (1) remains the same.

(2) The decision of the superintendent of public

instruction shall be rendered within ~~90 days~~ a reasonable time after the case has been deemed submitted by the state superintendent. ~~Parties shall be notified by the state superintendent of cases requiring additional time who shall by affidavit attest to the additional time required.~~

AUTH: Sec. 20-3-107, MCA
IMP: Sec. 20-3-107, MCA

Statement of Reasonable Necessity: The State Superintendent proposes to amend this rule to provide more flexibility during times when it is not possible to meet the 90 day deadline. The Superintendent intends to render decisions within 90 days, however, this amendment will provide flexibility during such times as the legislative session when it may be impossible to meet the 90 day deadline.

4. Concerned persons may present their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted by mail to the Superintendent of Public Instruction, P.O. Box 202501, Helena, Montana 59620-2501, or by e-mail to opirules@mt.gov and must be received no later than 5:00 p.m. on December 8, 2005.

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

6. The State Superintendent of Public Instruction maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the State Superintendent. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding school controversies or other school related rulemaking actions. Such written request may be mailed or delivered to Legal Division, Office of Public Instruction, P.O. Box 202501, Helena, Montana 59620-2501, faxed to the office at (406) 444-2893, or may be made by completing a request form at any rules hearing held by the Superintendent of Public Instruction.

7. The bill sponsor requirements of 2-4-302, MCA, do not apply. The requirements of 20-1-501, MCA, have been fulfilled. Copies of these rules have been sent to all tribal governments in Montana.

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

/s/ Catherine K. Warhank
Catherine K. Warhank
Rule Reviewer

Certified to the Secretary of State October 31, 2005.

BEFORE THE DEPARTMENT OF TRANSPORTATION
OF THE STATE OF MONTANA

In the matter of proposed adoption of New Rules I, II, and III, and the amendment of ARM 18.8.101, 18.8.207, 18.8.415, 18.8.422, 18.8.431, 18.8.504, 18.8.508, 18.8.510A, 18.8.511A, and 18.8.517 concerning the Motor Carrier Services regulations for over dimensional and overweight vehicles and loads	)	NOTICE OF PROPOSED ADOPTION AND AMENDMENT NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On January 13, 2006, the Department of Transportation proposes to adopt and amend the above-stated rules.

2. The Department of Transportation 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 Dan Kiely in the Department no later than 5:00 p.m., December 1, 2005, to advise us of the nature of the accommodation you need. Please contact Motor Carrier Division, Department of Transportation, P.O. Box 4639, Helena, MT 59604-4639; telephone (406) 444-7638; TDD (406) 444-7696; fax (406) 444-9263; or e-mail mdtmcscontact@mt.gov.

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

NEW RULE I MAXIMUM ALLOWABLE WEIGHT ON THE NONINTERSTATE

(1) Maximum allowable weights allowed for vehicle combinations hauling divisible loads and operating on applicable noninterstate highways cannot exceed a gross vehicle weight and single, tandem or tridem axle weights as described in 23 CFR 658, appendix C, April 1, 2004 edition. Information pertaining to the US Code of Federal Regulation (CFR) may be obtained by contacting the Office of the Federal Register, 800 North Capitol Street, Northwest, Suite 700, Washington, DC 20001; phone (202) 741-6000.

(2) A department weight analysis of the highway infrastructure will determine the maximum gross weight and axle weights allowed on applicable noninterstate. The maximum gross weight and axle weights may be less than those allowed in 23 CFR 658, appendix C, April 1, 2004 edition.

(3) If periodic, subsequent analyses of any portion of the applicable noninterstate indicate unanticipated deterioration of the infrastructure, lower axle weights and gross weight may be required at the discretion of the department.

(4) Lower weights may be required during periods of seasonal deterioration as authorized in 61-10-108, MCA.

(5) Permits will be issued for the weights in 23 CFR 658, appendix C, April 1, 2004 edition, for the same permit types and under the same fee schedule that is provided in 61-10-125, MCA and subchapter 6 of this chapter.

(6) Sections (1) through (5) apply only to noninterstate highways specified in 61-10-107(1), MCA.

AUTH: 61-10-155, MCA
IMP: 61-10-107, 61-10-108, 61-10-121 and 61-10-125, MCA

REASON: The 59th Legislature enacted Chapter 342, which allows increased weights on a 10-mile section of Highway 93 near the US/Canadian border. Chapter 342 also requires the department to adopt rules that will implement the provisions of the legislation. The department will conduct a study to establish the higher weights that will be allowed and will implement a periodic review process to monitor the highway and structures for signs of deterioration that may result from the higher weights and what reduction in weight will be required to prevent further deterioration of the highway and structures. In no event will the allowable weights be in excess of those provided at 23 CFR 658, appendix C, April 1, 2004 edition. These provisions are necessary to protect the existing road and to enhance traffic safety.

NEW RULE II OVERWEIGHT TERM PERMITS (1) An excess axle weight term permit cannot be issued to a vehicle configuration for 25,000 pounds, 30,000 pounds, 35,000 pounds or 40,000 pounds until a vehicle weight analysis has been conducted by the department. The permit must be approved and issued by the MCS Helena office.

(2) A vehicle configuration that can be permitted only under a route analysis cannot be issued a term excess axle weight permit. The permit can be issued for a single trip only, for a route specified on the permit.

AUTH: 61-10-155, MCA
IMP: 61-10-121 and 61-10-125, MCA

REASON: The rule is necessary to explain the process for obtaining term overweight permits that is required in 61-10-125, MCA.

NEW RULE III VEHICLE WEIGHT ANALYSIS AND ROUTE ANALYSIS

(1) A vehicle weight analysis as defined in subchapter 6 of this chapter is issued for a specific vehicle configuration, axle spacings, axle weights and gross weight. The analysis is transferable only to an identical vehicle configuration. If there is any change in the vehicle configuration, axle spacings, axle weights or gross weight, the analysis is invalid and a new vehicle weight analysis must be requested by the permittee. When obtaining a permit for a

vehicle operated under a vehicle analysis, it is the responsibility of the permittee to provide a copy of the analysis for reference. The permittee must carry a copy of the vehicle weight analysis in the assigned vehicle and be able to produce it for inspection by an officer.

(2) A route analysis as defined in subchapter 6 of this chapter is a one-time-only approval for a specific vehicle configuration, axle spacings, axle weights, gross weight and route of travel. A route analysis must be requested each time there is a change of axle weights, vehicle configuration, or a new route of travel is required. Only the Helena MCS office is authorized to issue permits for a vehicle configuration operating under the conditions of a route analysis.

AUTH: 61-10-155, MCA
IMP: 61-10-121 and 61-10-125, MCA

REASON: The rule is necessary to explain the two different types of vehicle weight analyses, what information is required before an analysis can be issued and what types of overweight permits can be issued for each analysis type.

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

18.8.101 DEFINITIONS (1) through (13) remain the same.

(14) A vehicle weight analysis or weight analysis is an approval issued by the department for an overweight vehicle configuration to be issued an overweight permit under the requirements of 61-10-125, MCA, and subchapter 6 of ARM Title 18, chapter 8.

(15) A route analysis is a route-specific approval issued by the department for an overweight vehicle configuration to be issued an overweight permit under the requirements of 61-10-125, MCA, and subchapter 6 of ARM Title 18, chapter 8.

AUTH: 61-10-155, MCA
IMP: 61-3-711, 61-3-712, 61-3-713, 61-3-714, 61-3-715, 61-3-716, 61-3-717, 61-3-718, 61-3-719, 61-3-720, 61-3-721, 61-3-722, 61-3-723, 61-3-724, 61-3-725, 61-3-726, 61-3-727, 61-3-728, 61-3-729, 61-3-730, 61-3-731, 61-3-732, 61-3-733, 61-10-107, 61-10-121, and 61-10-125, MCA

REASON: Sections (14) and (15) define the types of weight analyses that are provided by the department to allow commercial motor carriers to meet requirements of, and to obtain, overweight permits as provided in 61-10-125, MCA. These terms are used in other places in the rules and it is necessary to define them.

18.8.207 PAYMENT OF FEES (1) Full registration fees for motor ~~V~~vehicles subject to staggered registration through the International Registration Plan (IRP) must be remitted ~~all~~

~~fees~~ at the time of registration. Fees may not be remitted quarterly, semi-annually or monthly.

(2) Full registration fees for semi-trailers and trailers subject to permanent registration through the IRP must be remitted at the time of registration.

(3) Semi-trailers and trailers may be registered through the IRP only if they are used in an interstate operation and the registered owner has one or more motor vehicles registered through the IRP.

(4) For purposes of this rule, the definitions of motor vehicle, semi-trailer and trailer are the same as the definitions in 61-1-101, MCA.

AUTH: 61-3-716, MCA
IMP: 61-3-721 and 61-3-729, MCA

REASON: The amendment is necessary to provide clarification to motor carriers who register motor vehicles and trailers under the International Registration Plan (IRP).

18.8.415 MONTHLY - QUARTERLY G.V.W. FEES (1) through (5) remain the same.

~~(6) Sixty day temporary window and temporary personalized plate window stickers do not include G.V.W. fees. G.V.W. fees must be paid prior to operation on the highway. Fees collected with the temporary stickers are subject to the additional $5.00 fee.~~

~~(7) Twenty day stickers issued by dealers and county treasurers do include G.V.W. fees.~~

AUTH: 61-10-155, MCA
IMP: 61-10-209, MCA

REASON: Sections (6) and (7) have been stricken because they are informational only. Only dealers and county treasurers issue temporary (registration) stickers.

18.8.422 TEMPORARY TRIP PERMITS (1) through (5)(b) remain the same.

(c) non-resident vehicles traveling on Montana trip permits are not required to purchase Montana license plates~~.~~;

(d) and (e) remain the same.

(f) two axle vehicles not exceeding 26,000 pounds licensed in an international registration plan jurisdiction unless required by a reciprocal agreement;

(g) vehicle or combination of vehicles not exceeding 26,000 pounds gross vehicle weight licensed in an ~~international registration plan~~ IRP jurisdiction unless required by a reciprocal agreement;

(h) and (6) remain the same.

(7) ~~Upon application to an M.C.S. enforcement officer or a highway patrol officer, a trip permit may be extended~~ The department of transportation, motor carrier services division

may authorize an extension of a trip permit up to 15 days for the following reasons:

(a) a delay due to mechanical breakdown~~, or hazardous conditions, or up to 15 days~~; ~~or~~

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

(b) hazardous conditions;

(c) any other circumstances beyond control of the permittee that result in a delay; or

(8) remains the same.

AUTH: 61-10-155, MCA
IMP: 61-10-211, 61-10-212, 61-10-213 and 61-10-214, MCA

REASON: Amendments are necessary to add the additional reasons for a permit extension.

18.8.431 MAXIMUM ALLOWABLE WEIGHT (1) The maximum allowable gross weight ~~allowed~~ for vehicle combinations hauling divisible loads is 131,060 pounds. Vehicles and vehicle combinations hauling divisible loads must comply with the federal bridge formula found in 61-10-107, MCA unless otherwise provided for in statute, federal regulations or department rules.

(2) The maximum allowable gross weight ~~allowed~~ for vehicle combinations hauling divisible loads and operating under the ~~Montana/Alberta memorandum of understanding (MOU) is 137,800 pounds. A copy of this MOU is available and can be reviewed at the Montana Department of Transportation's main office at 2701 Prospect, Helena, Montana~~ provisions of 23 CFR 658, appendix C, April 1, 2004 edition, is 137,800 pounds.

AUTH: 61-10-155, MCA
IMP: 61-10-107, MCA

REASON: Amendments are necessary for clarification and uniformity. Prior to the passage of Chapter 342 by the 59th Legislature, the maximum gross vehicle weight was determined by the bridge formula in 61-10-107, MCA. The one exception was the provision in 23 CFR 658, appendix C, April 1, 2004 edition, which lists specific requirements of the Montana-Alberta MOU. Chapter 342 allows increased weights on a 10-mile section of Highway 93 near the US/Canadian border and requires the department to adopt rules (see new rule I) that will implement the provisions of the legislation, including establishing maximum weights and a review process to assure the safety of the infrastructure at the greater weights.

18.8.504 DURATION OF PERMIT (1) through (1)(c) remain the same.

(2) Term permits issued on financial stationery or computer generated permits are valid from January 1 through December 31. Term permits issued on the apportioned registration (cab card) to Montana based vehicles licensed under the ~~International Registration Plan (~~IRP~~)~~, expire with

the registration and are valid only for a long combination vehicle but not a triples or 100 foot doubles combination as defined in statute. Term permits issued under regional permit agreements are valid for a maximum of one year and expire on a date determined by the rules of the agreement. A term permit may only be issued to a power unit which is properly licensed with Montana.

AUTH: 61-10-155, MCA
IMP: 61-10-101, 61-10-102, 61-10-103, 61-10-104, 61-10-106, 61-10-107, 61-10-108, 61-10-109, 61-10-110, 61-10-113, 61-10-121, 61-10-122, 61-10-123, 61-10-124, 61-10-125, 61-10-126, 61-10-127, 61-10-128, 61-10-129, 61-10-130, 61-10-141, 61-10-142, 61-10-143, 61-10-144, 61-10-145, 61-10-146, 61-10-147, and 61-10-148, MCA

REASON: The amendment provides clarification about the types of vehicle combinations that can be permitted on the registration cab card.

18.8.508 SELF-ISSUING PERMIT (1) Upon payment of fees, trip or term self-issuing special permits may be obtained from the Helena motor carrier services office for excess width, height, weight, and length provided the dimensions or weights do not require special approval, a vehicle weight analysis or a route analysis. These permits shall be completed for use as needed by the purchaser.

(2) and (3) remain the same.

AUTH: 61-10-155, MCA
IMP: 61-10-101, 61-10-102, 61-10-103, 61-10-104, 61-10-106, 61-10-107, 61-10-108, 61-10-109, 61-10-110, 61-10-113, 61-10-121, 61-10-122, 61-10-123, 61-10-124, 61-10-125, 61-10-126, 61-10-127, 61-10-128, 61-10-129, 61-10-130, 61-10-141, 61-10-142, 61-10-143, 61-10-144, 61-10-145, 61-10-146, 61-10-147, and 61-10-148, MCA

REASON: The amendment provides clarification about the types of permits that may be self-issued by a motor carrier.

18.8.510A REGULATIONS AND EQUIPMENT FOR FLAG VEHICLES

(1) remains the same.

~~(2) The flag vehicle preceding or following the property being transported shall be between 500 and 1,000 feet of the movement.~~

(3) through (5) remain the same but are renumbered (2) through (4).

AUTH: 61-10-155, MCA
IMP: 61-10-101, 61-10-102, 61-10-103, 61-10-104, 61-10-106, 61-10-107, 61-10-108, 61-10-109, 61-10-110, 61-10-113, 61-10-121, 61-10-122, 61-10-123, 61-10-124, 61-10-125, 61-10-126, 61-10-127, 61-10-128, 61-10-129, 61-10-130, 61-10-141,

61-10-142, 61-10-143, 61-10-144, 61-10-145, 61-10-146, 61-10-147, and 61-10-148, MCA

REASON: Section (2) pertains to the operation of flag vehicles, not the equipment that is required. The section was stricken, reworded for clarification and moved to another rule in this chapter.

18.8.511A WHEN FLAG VEHICLES ARE REQUIRED (1) Unless otherwise specified in statute or this chapter, ~~F~~flag vehicles are required for vehicles operating under special permit if one or more of the following conditions apply:

(a) through (2) remain the same.

(3) If a vehicle or load is not required to have a flag vehicle for interstate travel, and the permitted load is not subject to ARM 18.8.602, no flag vehicle is required for a radius of two miles of an interstate interchange.

(4) Flag vehicles must be within 1,000 feet of the permitted vehicle or load.

AUTH: 61-10-155, MCA
IMP: 61-10-101, 61-10-102, 61-10-103, 61-10-104, 61-10-106, 61-10-107, 61-10-108, 61-10-109, 61-10-110, 61-10-113, 61-10-121, 61-10-122, 61-10-123, 61-10-124, 61-10-125, 61-10-126, 61-10-127, 61-10-128, 61-10-129, 61-10-130, 61-10-141, 61-10-142, 61-10-143, 61-10-144, 61-10-145, 61-10-146, 61-10-147, and 61-10-148, MCA

REASON: The amendment provides clarification and eliminates apparently conflicting requirements contained in other rules. It has been suggested that flag vehicles should be required to be a substantial distance in front of the permitted vehicle. This suggestion is not being followed because of the loss in safety benefits if the flag vehicle is too far in front of the permitted vehicle.

18.8.517 SPECIAL VEHICLE COMBINATIONS (1) A "special vehicle combination" is a truck-trailer-trailer combination of vehicles or truck tractor-semitrailer-trailer-trailer combination of vehicles as defined in statute and in 23 CFR 658, appendix C, April 1, 2004 edition.

(2) through (11) remain the same.

(12) Every special vehicle combination operated under an oversize permit shall be covered by insurance of not less than ~~$750,000 public liability and $50,000 property damage~~ $1 million combined single limit bodily injury and property damage liability per occurrence unless a greater amount is required by state or federal law or regulations.

(13) through (20) remain the same.

AUTH: 61-10-129, MCA
IMP: 61-10-121 and 61-10-124, MCA

REASON: The amendment to (1) clarifies what type of vehicle combination qualifies as a "special vehicle combination" for purposes of this rule. The amendment to (12) is to assure uniformity with language in ARM 18.8.801.

5. Concerned persons may submit their data, views or arguments concerning the proposed actions in writing to Dan Kiely at the Montana Department of Transportation, 2701 Prospect Ave, P.O. Box 4639, Helena, MT 59604-4639; Fax: (406) 444-9263; or E-mail: mdtmcscontact@mt.gov. Any comments must be received no later than December 9, 2005.

6. If persons who are directly affected by the proposed actions wish to express their data, views and arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments they have to Dan Kiely at the Montana Department of Transportation, 2701 Prospect Ave, P.O. Box 4639, Helena, MT 59604-4639; Fax: (406) 444-9263; or e-mail: mdtmcscontact@mt.gov. A written request for hearing must be received no later than December 8, 2005.

7. If the agency receives requests for a public hearing on the proposed actions from either 10% or 25, whichever is less, of the persons who are 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 persons directly affected has been determined to be 2,300 based on 23,000 companies or individuals who have permit accounts.

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

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

DEPARTMENT OF TRANSPORTATION

/s/ James Currie
James Currie
Deputy Director

/s/ Lyle Manley
Lyle Manley, Attorney
Rules Reviewer

Certified to the Secretary of State, October 31, 2005.

BEFORE THE DEPARTMENT OF TRANSPORTATION
AERONAUTICS DIVISION, BOARD OF AERONAUTICS
STATE OF MONTANA

In the matter of the proposed adoption of new rules I through XIII on the aeronautical grant and loan program and the pavement preservation grant program	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION

TO: All Concerned Persons

1. On December 8, 2005, at 1:00 p.m., a public hearing will be held in the Auditorium of the Department of Transportation building, 2701 Prospect Ave., Helena, Montana to consider the adoption of the above-stated rules.

2. The Department of Transportation 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 Aeronautics Division no later than 5:00 p.m. on December 1, 2005, to advise the Division of the nature of the accommodation that you need. Please contact Sheila Pfeifer, Aeronautics Division, P.O. Box 200507, Helena, Montana, 59620-0507; telephone (406) 444-2506, TDD 1-800-335-7592; facsimile (406) 444-2519; e-mail to spfeifer@mt.gov.

3. The proposed new rules provide as follows:

NEW RULE I POLICY AND PURPOSE OF AERONAUTICAL GRANT AND LOAN PROGRAM (1) In the interest of fostering and promoting aviation and aeronautical purposes within Montana, the Montana department of transportation offers aeronautical grants and loans to eligible public sponsors as allowed in 67-1-301, MCA. The aeronautics division oversees and administers this program. The program may provide cost sharing grants and low interest loans for any aeronautically related project. The Montana aeronautics board, whose members are appointed by the governor's office, has sole authority on the annual awarding of grant and loan monies. A portion of general aviation and airline gas tax revenues generated within the state of Montana provides the principal funding for this program.

AUTH: 67-2-102, MCA
IMP: 67-1-301, 67-1-304, 67-1-306, and 67-1-307, MCA

REASON: This new rule is reasonably necessary because Title 67, Chapter 1, Part 3, MCA requires the board of aeronautics to establish procedures for the awarding of grants and loans. Section 67-1-301, MCA, provides for the collection of a 4-cents-a-gallon tax imposed on aviation fuel, under which percentages are disbursed by the department of

transportation aeronautics division and the governor-appointed board of aeronautics. The proposed rule provides a brief explanation of the existence of the program and explains the program in the context of the monies set aside for aeronautically related projects.

NEW RULE II DEFINITIONS (1) "Aeronautically related projects" means airport development or improvement projects, or projects which provide navigational aids, safety improvements, weather reporting services, and other aeronautical services for airports and landing fields and for the state's airways.

(2) "Grant" means an amount of money paid by the board from the aviation and airline gas tax state special revenue fund to an eligible recipient for aeronautically related projects, which does not require repayment of funds.

(3) "Loan" means an amount of money temporarily paid by the board from the aviation and airline gas tax state special revenue fund to an eligible recipient for aeronautically related projects, which requires repayment of the full amount at the interest rate and term set by the board.

(4) "Pavement preservation grant" means a grant awarded by the board with highest priority to primary commercial service airports for the specific purpose of maintaining and preserving those pavements utilized by air carrier operations.

(5) "Primary commercial service airport" means any airport that enplanes 10,000 or more scheduled passengers per year.

AUTH: 67-2-102, MCA
IMP: 67-1-301, MCA

REASON: The proposed new rule will provide definitions of words and phrases which are used throughout the rules, but which are not already defined in statute at 67-1-101, MCA. The definitions will aid applicants and the public in ascertaining whether they are eligible for an aeronautic project loan or grant and what types of aeronautic projects are eligible for the program.

NEW RULE III ELIGIBLE APPLICANTS (1) Any state agency, local government, municipality or airport authority within the state of Montana is eligible to submit an application for aeronautical grant or loan monies.

(a) Federal entities are ineligible for grant or loan monies.

(b) Private persons, private corporations, and private entities are ineligible for grant or loan monies.

AUTH: 67-2-102, MCA
IMP: 67-1-301, MCA

REASON: The proposed rule is reasonably necessary to establish eligibility requirements as set forth in 67-1-301,

MCA, and the definitions found at 67-1-101, MCA. "Municipality" and "airport authority" have the meanings already set forth in statute at 67-1-101, MCA. The proposed rule will also clarify that federal entities and private entities are not eligible, as the statute does not grant authority for loans or grants to those entities.

NEW RULE IV GENERAL TERMS AND CONDITIONS (1) All grant or loan monies awarded under this program must be utilized specifically for aviation or aeronautically related projects. The proposed projects will be detailed in an application submitted by a public sponsor, on a form provided by the board. The applicant is responsible for retaining and providing documentation to ensure all monies received under the program are spent as applied for within the application.

(2) Grants may be awarded for up to 50% of an applicant's share of total project cost when that same project is also receiving any assistance from federal sources.

(3) Grants may be awarded for up to 100% of an applicant's total project cost when that same project is not receiving any assistance from federal sources.

(4) Loans may be provided for up to and including 100% of an applicant's share of total project cost regardless of assistance from federal sources.

(5) Loans will be provided for a period of ten years and amortized using the fixed principal method. Interest repayment rates for loans are one half of federal prime lending rate of the first week of January of the preceding fiscal year for which the loan is provided. Interest will be compounded annually. Repayments are made annually and are due in full, or prorated as necessary, by the last day of February of each year. Successful applicants have the option of paying off their loans in full at any time after payment of award without additional interest or penalty.

(6) A recipient of a grant or loan must retain all records of transactions and disbursements of grant or loan monies for a period of three years after completion of the project for which the grant or loan was awarded. By accepting a grant or loan, a recipient agrees that upon reasonable notice, the state of Montana may audit the records supporting the acquisition and disbursement of the grant or loan monies.

AUTH: 67-2-102, MCA
IMP: 67-1-301, 67-1-304, 67-1-306, and 67-1-307, MCA

REASON: The proposed rule is reasonably necessary because 67-1-301, MCA, states the aeronautics board shall establish procedures for disbursements of the monies. Section 67-1-301, MCA, specifically authorizes the establishment by the board of interest rates. The proposed rule will comply with statutory mandates to establish procedures for awarding of grants or loans and establish interest rates charged on loans.

NEW RULE V APPLICATION PROCESS, FEES AND DEADLINES

(1) Official grant and loan applications will be sent to the manager of record of every eligible state airport no later than the last Friday in October. Grant or loan applicants shall submit applications to the Montana aeronautics division to be received or postmarked no later than the fourth Friday in November. These deadlines may be subject to change by the aeronautics division after official notification of any change in the deadline that is posted on the department of transportation's website and sent to the official manager of record of every eligible airport.

(2) Official grant and loan applications, any required supplemental information, or additional program guidelines and help may also be obtained by contacting the Montana aeronautics division. Applications and any required supplemental information must be submitted to the Montana Aeronautics Division, Airports/Airways Bureau, P.O. Box 200507, Helena, MT 59620-0507. The division may request additional information if warranted after initial application review.

(3) There is no fee for any part of the application or review process.

(4) After the application submission deadline, the aeronautics division will review, organize and disseminate all applications to the board. The applicant is solely responsible for any incomplete, improperly edited or erroneous information submitted as part of the application.

AUTH: 67-2-102, MCA
IMP: 67-1-301, 67-1-304, and 67-1-307, MCA

REASON: The proposed rule is reasonably necessary to set forth a formal application process and requirements. Due to frequent changes to federal rules that impact aeronautical projects, the official application and supplemental information required by sponsors may require changes or updates from year to year. The proposed rule therefore allows the aeronautics division and the board to provide an official application form, which can be updated with new changes or new information requirements as often as necessary. Although infrequent, application and submission deadlines may change due to changes in federal regulations which directly impact the timing of grant and loan applications. The proposed rule sets forth a procedure if deadlines must be changed in any given application period.

NEW RULE VI EVALUATION, REVIEW AND SELECTION (1) After the final submission deadline for applications, each board member will independently review each application prior to the board meeting.

(2) The board will hold an annual public grant and loan review meeting. Notice for the meeting will be in accordance with state law. The board may allow applicants, supporters or opponents to speak or provide for a presentation regarding

applications during the meeting. The board will review and discuss applications and vote on disbursement of grant and loan monies during the public meeting.

(3) Priorities shall be given to applications as follows:

(a) Projects which are specifically related to airports and airport development will be given highest priority when evaluating applications for aeronautically related projects.

(b) Projects located at primary commercial service airports will be given lower priority than other eligible airport projects when evaluating applications for aeronautically related projects due to primary commercial service airports' higher priority in receiving aeronautics pavement preservation monies granted under a separate administrative grant program outlined in [New Rule XII].

(4) The board may offer applicants amounts higher or lower than the amounts requested in the applications. The board may offer grants in place of loans and vice versa.

AUTH: 67-2-102, MCA
IMP: 67-1-301, 67-1-304, 67-1-306, and 67-1-307, MCA

REASON: The proposed rule is reasonably necessary to establish evaluation, review and selection procedures and priorities. The new rule will allow the applicants and the public to better understand and comply with board procedures in awarding grants and loans. The proposed rule will also outline board priorities in evaluating loan and grant applications for aeronautically related projects, with a comparison to offsetting priorities for the pavement preservation grant program outlined later in the administrative rules.

NEW RULE VII TERMS AND CONDITIONS OF SUCCESSFUL APPLICANTS (1) Successful applicants will receive approved monies after the start of the appropriate fiscal year for which the money was approved.

(2) All grant or loan offers will expire and all grant or loan payments must be disbursed by the end of the fiscal year for which they were approved, unless the Montana aeronautics board has approved an extension for the offer. All requests for extension shall be submitted to the Montana aeronautics division to be received or postmarked no later than the third Friday in May. This deadline may be subject to change by the aeronautics division after official notification of any change in deadlines is posted on the department of transportation's website and sent to all affected grant or loan offer recipients.

(3) Successful applicants who have been offered a grant or loan must submit the following documentation, or any combination as requested by the board in its grant or loan application approval, prior to receiving payment for approved grants or loans. Copies, examples, or official forms for the items below may be obtained from the aeronautics division.

(4) A grant for a non-federally aided project must include:

(a) signed approval of sponsor's attorney; and

(b) official notice to proceed.

(5) A loan for a non-federally aided project must include:

(a) signed approval of sponsor's attorney;

(b) signed loan repayment resolution; and

(c) official notice to proceed.

(6) A grant for a federally aided project must include:

(a) signed approval of sponsor's attorney; and

(b) copy of federal aid agreement.

(7) A loan for a federally aided project must include:

(a) signed approval of sponsor's attorney;

(b) signed loan repayment resolution; and

(c) copy of federal aid agreement.

(8) If an applicant fails to submit required documentation necessary for disbursement, or requests an extension for disbursement but does not receive disbursement within the fiscal year for which the grant or loan was awarded, grants and loans will revert back to the same special aeronautics grant or loan account in the state special revenue fund from which they were originally appropriated. The reverted funds may then be awarded in the future to any successful applicant.

(9) Grants and loans awarded by the board for a fiscal year, but not requested by the applicant within that fiscal year, will revert back to the same special aeronautics grant or loan account in the state special revenue fund from which they were originally appropriated to be used for future grant or loan awards to any applicant.

AUTH: 67-2-102, MCA
IMP: 67-1-301, 67-1-304, and 67-1-307, MCA

REASON: The proposed rule is reasonably necessary to establish requirements for payments and a procedure with timelines for sponsors to fulfill those requirements. The proposed new rule will ensure the board's loan and grant program is fair, accurate, and compliant with all state statutes.

NEW RULE VIII RECONSIDERATION OF BOARD DECISIONS

(1) All requests for reconsideration of board decisions regarding grants or loans must be:

(a) in writing;

(b) made by an applicant regarding that applicant's own application; and

(c) submitted to the aeronautics division no later than 30 days after the original grant or loan award by the board.

(2) The aeronautics division will distribute any request for reconsideration to the board. If a request for reconsideration is received, the board will schedule a meeting no later than 60 days after the deadline to submit a request

for reconsideration. The board's decision on reconsideration is the final agency decision on the application.

AUTH: 67-2-102, MCA
IMP: 67-1-301, 67-1-304, and 67-1-307, MCA

REASON: The proposed rule is reasonably necessary to afford applicants an opportunity to request a reconsideration of the board's award of a grant or loan. The proposed rule sets forth specific procedures for requests for reconsideration to allow applicants an opportunity to appeal the board's decision.

NEW RULE IX POLICY AND PURPOSE OF PAVEMENT PRESERVATION GRANTS (1) In the interest of fostering and promoting safe and efficient scheduled air transportation within Montana, the Montana department of transportation offers pavement preservation grants to eligible public sponsors as allowed in 67-1-301, MCA. The aeronautics division oversees and administers this program. The program provides grants for pavement preservation purposes to eligible airports. The Montana aeronautics board, whose members are appointed by the governor's office, has sole authority on the annual awarding of pavement preservation grant monies. A portion of airline gas tax revenues generated within the state of Montana provides the principal funding for this program.

AUTH: 67-2-102, MCA
IMP: 67-1-301 and 67-1-304, MCA

REASON: This new rule is reasonably necessary because Title 67, Chapter 1, Part 3, MCA requires the Board of Aeronautics to establish procedures for the awarding and categorizing of grants as pavement preservation grants. Section 67-1-301, MCA provides for the collection of a 4-cents-a-gallon tax imposed on aviation fuel, under which portions are disbursed by the department of transportation aeronautics division and the governor-appointed board of aeronautics. The proposed rule provides a brief explanation of the existence of the pavement preservation program and explains the program in the context of the monies set aside for pavement preservation projects.

NEW RULE X ELIGIBILITY FOR PAVEMENT PRESERVATION GRANTS (1) Any airport sponsor that has scheduled airline passenger service certified under 14 CFR, part 121 or part 135, March 29, 2005 edition, operating from a particular airport is eligible to receive pavement preservation grant monies. Copies of 14 CFR, parts 121 and 135 may be obtained from the Department of Transportation Aeronautics Division, PO Box 200507, Helena, MT 59620-0507.

AUTH: 67-2-102, MCA
IMP: 67-1-301 and 67-1-304, MCA

REASON: The proposed rule is reasonably necessary to inform airport applicants of their eligibility or ineligibility for pavement preservation grants under the Board's statutory authority to define and distribute pavement preservation grants.

NEW RULE XI AWARD OF PAVEMENT PRESERVATION GRANTS

(1) No application for pavement preservation grant monies is necessary. All eligible airport sponsors will automatically be notified of any offer made for a pavement preservation grant.

(2) There is no fee to be paid by an eligible airport for consideration for a pavement preservation grant.

(3) The board will hold an annual public aeronautics grant and loan review meeting. Notice of this meeting will be in accordance with state law. The board will make all decisions regarding all awards for pavement preservation grants at the annual grant and loan meeting.

(4) Due to their lower priority in receiving aeronautics grant and loan program monies under aeronautically related projects loan and grant program, the board will give primary commercial service airports higher priority for pavement preservation grants than other eligible airports. Unless special consideration is given to another eligible airport, the board will automatically offer all available pavement preservation grant monies to be divided evenly among all primary commercial service airports within the state.

(5) The board reserves the right to offer any amount it chooses that is available within the program budget, other than an equal share, to any eligible airport.

AUTH: 67-2-102, MCA
IMP: 67-1-301 and 67-1-304, MCA

REASON: The proposed new rule is reasonably necessary to establish procedures and priorities for pavement preservation grants. The new rule will allow eligible airports and the public to better understand board procedures in awarding pavement preservation grants. The proposed rule will also outline board priorities in evaluating pavement preservation grants, with a comparison to offsetting priorities for aeronautically related projects.

NEW RULE XII TERMS AND CONDITIONS OF PAVEMENT PRESERVATION GRANT RECIPIENTS (1) Successful pavement preservation grant recipients will receive approved monies after the beginning of the appropriate fiscal year for which the money was approved.

(2) All grant monies received under this program must be utilized specifically for pavement preservation projects that have a direct impact on pavements utilized by scheduled airline passenger service. The sponsor is responsible for retaining and providing documentation to ensure all monies

received under the program are spent on appropriate pavement preservation projects.

(3) Pavement preservation grants awarded by the board will revert to the special aeronautics pavement preservation account in the state special revenue fund for future pavement preservation grants if a recipient refuses payment for the fiscal year for which the grant or loan was awarded.

(4) A recipient of a pavement preservation grant must retain all records of transactions and disbursements of pavement preservation grant monies for a period of three years after completion of the project for which the monies were awarded. By accepting a pavement preservation grant, a recipient agrees that upon reasonable notice, the state of Montana may audit the records supporting the acquisition and disbursement of the pavement preservation grant monies.

AUTH: 67-2-102, MCA
IMP: 67-1-301 and 67-1-304, MCA

REASON: The proposed rule is reasonably necessary because it establishes requirements for pavement preservation grant payments and a procedure with timelines for sponsors to fulfill those requirements. This new rule is reasonably necessary because 67-1-301, MCA, states the aeronautics board shall establish procedures for disbursements of the monies including pavement preservation grant monies.

NEW RULE XIII RECONSIDERATION OF BOARD DECISIONS ON PAVEMENT PRESERVATION GRANTS (1) All requests for reconsideration of board decisions regarding pavement preservation grants must be:

(a) in writing;

(b) made by a recipient regarding that recipient's own pavement preservation grant; and

(c) submitted to the aeronautics division no later than 30 days after any board award of a pavement preservation grant.

(2) The aeronautics division will distribute any request for reconsideration to the board. If a request for reconsideration is received, the board will schedule a meeting no later than 60 days after the deadline to submit a request for reconsideration. The board's decision on reconsideration is the final agency decision on the grant.

AUTH: 67-2-102, MCA
IMP: 67-1-301 and 67-1-304, MCA

REASON: The proposed rule is reasonably necessary to afford applicants an opportunity to request reconsideration of the board's award of a pavement preservation grant. The proposed rule sets forth specific procedures for requests for reconsideration to allow recipients an opportunity to appeal the board's decision.

4. Concerned persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to Department of Transportation Aeronautics Division, P.O. Box 200507, Helena, MT 59620-0507; by facsimile to (406) 444-2519; or by e-mail to dalke@mt.gov to be received no later than 5:00 p.m., December 8, 2005.

5. Attorney Carol Grell Morris has been designated to preside over and conduct this hearing.

6. The Department of Transportation Aeronautics Division maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this Division. Persons who wish to have their name added to the list may make a written request, which includes the names and mailing addresses of the person to receive notices and specifies that the person wishes to receive notices regarding rules relating to the Aeronautics Division. This request may be mailed or delivered to the Aeronautics Division, P.O. Box 200507, Helena, MT 59620-0507, transmitted by facsimile to (406) 444-2519, or made by completing a request form at any rules hearing held by the Division.

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

BOARD OF AERONAUTICS
AERONAUTICS DIVISION
DEPT. OF TRANSPORTATION

By: /s/ Jim Currie
Deputy Director,
Dept. of Transportation

By: /s/ Tricia McKenna
Chair,
Board of Aeronautics

By: /s/ Lyle Manley
Rule Reviewer

Certified to the Secretary of State, October 31, 2005.

BEFORE THE BOARD OF MILK CONTROL
DEPARTMENT OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the proposed amendment of ARM 32.24.501, 32.24.502, 32.24.504, 32.24.505, 32.24.507, and 32.24.525 pertaining to quota, utilization and marketing of Montana pooled raw milk	)	NOTICE OF PROPOSED AMENDMENT NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On December 10, 2005, the department proposes to amend the above-stated rules.

2. The department of livestock will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the department of livestock no later than 5:00 p.m. on December 1, 2005 to advise us of the nature of the accommodation that you need. Please contact Marc Bridges, 301 N. Roberts Street - Room 308, PO Box 202001, Helena, MT 59620-2001; phone: (406)444-7323; TTD number: 1-800-253-4091; fax: (406)444-1929; e-mail: mbridges@mt.gov.

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

32.24.501 QUOTA DEFINITIONS The following definitions apply to ARM 32.24.502, 32.24.503~~, 32.24.504~~, 32.24.505 and 32.24.506 unless the context otherwise requires:

(1) remains the same but is renumbered (2).
(2) remains the same but is renumbered (5).
(3) remains the same but is renumbered (7).
(4) remains the same but is renumbered (8).
(5) remains the same but is renumbered (3).
(6) remains the same but is renumbered (9).
(7) remains the same but is renumbered (1).
(8) remains the same but is renumbered (4).

~~(9)~~ (6) "New eligible producer" is a~~n eligible~~ producer who:

(a) ~~has not ceased production of milk and disposed of any quota during the five year period preceding his re entry into the market;~~ produces milk within the state of Montana;

(b) ~~has not previously participated in the Montana quota system under these rules as a producer, as an immediate family member of a producer, as a general or limited partner of a partnership which was a producer, as a stockholder in a corporation which was a producer, or has otherwise not held any financial interest in any entity which was a producer; or~~ has not ceased production of milk and/or disposed of any quota

during the three-year period prior to re-entry into the market; and

(c) has ~~not been a licensed producer within the five-year period preceding re-entry into the market.~~ a contractual agreement with a Montana processor/handler and is licensed to produce milk.

AUTH: 81-23-302, MCA
IMP: 81-23-302, MCA

REASON: The proposed amendment to ARM 32.24.501 is reasonably necessary to change the time a producer has to wait to qualify as a "new eligible producer" from five years to three years. This proposed amendment will give producers a little more flexibility to go out and then come back and join the pool to qualify for the 20/30% quota price.

32.24.502 INITIAL DETERMINATION AND/OR LOSS OF QUOTA

(1) through (7) remain the same.

(8) An eligible producer who discontinues the delivery of milk must forfeit his entire quota effective at the end of the ~~61st~~ 90th day after his last delivery unless such quota is transferred prior to that time.

(9) remains the same.

AUTH: 81-23-302, MCA
IMP: 81-23-302, MCA

REASON: The proposed rule change to ARM 32.24.502 is reasonably necessary to give producers 30 more days to sell the producer's quota when the producer retires. Under the current rule language, a producer has only 60 days in which to sell the quota. In the past, some producers came close to the deadline. If a producer does not transfer the quota in that 60 day period, the producer can lose it. The proposed rule change will extend the deadline from 60 to 90 days, and will therefore be beneficial to the producers.

32.24.504 TRANSFER OF QUOTA (1) through (1)(e) remain the same.

~~(2) Intrafamily quota transfer is defined as a transfer of quota from an eligible producer to the eligible producer's immediate family, as defined in ARM 32.24.501, or from one nonprofit religious entity or corporation which is currently an eligible producer (such as a Hutterite colony) to a substantially similar and affiliated nonprofit religious entity, or to a closely held corporation controlled by the same family.~~

~~(3) Transfers which do not qualify as intrafamily or are not the result of a bona fide sale and purchase by a person in the market, including the herd, and production facilities (subject to the judgment of the producer committee that the purchaser will be substantially standing in the shoes of the~~

~~seller and continuing the production operation without interruption) shall only be made as follows:~~

~~(a) Ten percent of the quota to be transferred shall be forfeited and 90% issued to the transferee. All forfeited quota will be added to the amount of new quota available for issue on the next quota adjustment date.~~

~~(b) The transferor's quota shall be reduced by the full amount of any transfer plus forfeiture, if any.~~

~~(4) A partial transfer of quota is defined as a transfer of quota to an eligible producer who already holds or owns quota. A partial transfer of quota shall be effective only upon approval by the producer committee and shall be effective on the first day of the month following the date of transfer.~~

~~(5) An entire transfer of quota to a producer who does not hold quota shall be effective on the date of the transfer of the herd and milk production facility. In the event the transferor is not substantially standing in the shoes of the seller, then the transfer can only take effect on the first day of the month. In either case the request for transfer must be received by mail or in person in the bureau office 10 days prior to the date the transfer is to take effect.~~

~~(6) A herd is defined as a number equal to 50% of the milking string and dry string combined. (For these purposes, a dry string would mean cows that have completed 1 lactation.)~~

~~(7) Milk production facilities are the barn, milking equipment, and a minimum amount of property to maintain a dry lot operation (such as feeders, sheds, corrals, and lots).~~

~~(8) An eligible producer may retire and be exempt from the 10% penalty with a minimum of 15 continuous years in a dairy farm operation.~~

~~(a) Retirement of an eligible producer is a one time opportunity, and if an eligible producer retires and then re-enters the dairy business, this rule will not apply again.~~

~~(b) Upon approval by the producer committee to accept this retirement request, the producer will be allowed up to 6 months to sell his quota. However, if during this grace period the producer ceases production completely, then ARM 32.24.502 will apply.~~

~~(c) If at the end of the 6 month grace period the producer has not yet sold all his quota, and is still delivering milk to the processor, the producer committee will go back and assess a penalty on the amount of quota that had been transferred without penalty.~~

AUTH: 81-23-104, 81-23-302, MCA
IMP: 81-23-103, MCA

REASON: The proposed amendment to 32.24.504 is reasonably necessary to eliminate the 10% penalty on quota transfers. The amendment will initially repeal the 10% charged against a producer if they are not retiring or who is not selling to a family member. The Board is aware there are a number of producers that would sell quota, but do not want to transfer because they do not want to deal with the penalty. This

amendment will allow the producer more flexibility in transferring the producer's quota without being penalized. The Board will apply this amendment retroactive to September 19, 2005.

32.24.505 REASSIGNMENT OF QUOTA FROM THE UNASSIGNED QUOTA POOL AND READJUSTMENT OF QUOTA INTO THE STATEWIDE QUOTA SYSTEM (1) The quota accumulated in the unassigned quota pool will be re-assigned pro-rata to all eligible producers when the unassigned quota pool is equal to or greater than ~~2,000~~ 500 pounds.

(a) for application of (1) the administrator shall determine the total pounds of quota that has been forfeited and accumulated through March 31 either by initial determination (meaning when the quota system began), or loss of quota~~, or 10% penalties on transfer of quota~~.

(b) through (5) remain the same.

AUTH: 81-23-104, 81-23-302, MCA
IMP: 81-23-103, 81-23-302, MCA

REASON: The proposed rule change is reasonably necessary to decrease the 2,000 pound limit to 500 pounds, and remove the 10% penalty on transfer of quota. Under current rule language, there is a minimum of 2,000 pounds before the assigned pounds can be distributed. By removing the penalty, the result could be 1,000 remaining for a long period of time. But by simultaneously reducing the limit to 500 pounds, this problem would be alleviated. Also by removing the penalty, this will allow producers to transfer their quota to producers who are producing more milk without the risk of losing 10% of it.

32.24.507 REQUEST FOR REVIEW, HARDSHIP AND APPEALS

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

(c) he lost or might lose quota because justifiably or excusably off market for ~~30~~ 90 or more consecutive days;

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

~~(b) Hardship consideration may waive the rule on a quota transfer with 10% forfeiture or on continuing the production operation without interruption (ARM 32.24.504).~~

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

(3) through (11) remain the same.

AUTH: 81-23-104, 81-23-302, MCA
IMP: 81-23-103, 81-23-302, MCA

REASON: The proposed rule change is reasonably necessary to increase the time limit from 30 to 90 days for selling quota. The proposed rule change would also eliminate the 10% penalty clause currently found in the rule. These changes will be beneficial for the producers in that it will give them more time to sell quota in the event of an injury or other

circumstance where the producer could not readily get out and solicit a buyer.

32.24.525 PROCEDURES, PURCHASE PRICE AND TERMS

(1) through (2) remain the same.

(a) The price per hundredweight of the raw Montana milk shall be based on the ~~quota price as determined by the milk control bureau on a monthly basis as defined in ARM 32.24.511 which means the weighted average price for all quota milk testing 3.5% butterfat as computed for the month by the milk control bureau in accordance with the procedures specified in ARM 32.24.513.~~ usage by class of the purchasing pool handler for such milk. The listed prices for butterfat and skim by class for the month in which such surplus milk is shipped will be used to calculate its value.

(b) Since the ~~monthly Montana blended quota price isn't~~ usage is not known until the next month after the applicable sale(s) has taken place, ~~an estimated~~ the most recent month's quota price will be used. ~~which will be the quota price for the previous month.~~ Once the milk control bureau ~~announces the official quota price for that month~~ has calculated usage and pricing for the month in which the sale(s) took place, the bureau will adjust the raw milk pricing ~~computations from the previous month~~ to reflect the proper ~~quota~~ price ~~by either debiting or crediting the purchaser's accounts~~. This information will be provided to the selling and purchasing pool handlers, and it will be their responsibility to make the appropriate invoice and payment adjustments.

(c) through (3)(a) remain the same.

(b) The selling handler will fax invoices of the surplus milk sales to the purchasing handler and the milk control bureau. These invoices will include:

(i) ~~based on~~ weights and butterfat tests; ~~and~~ those weights and butterfat tests will be deemed accurate unless contested by the purchaser; and

(ii) butterfat and skim prices based on the most recently available quota price for each component.

~~(c)~~ (d) In turn, the milk control bureau will compile the invoices~~, apply the appropriate quota price~~ and record of payments, monitoring them for accuracy. In the event of an error, the bureau will immediately fax ~~a statement~~ this information to both purchasing and selling handlers. At the end of the month, once usage and actual pricing are known, the bureau will fax a statement to both the selling and purchasing handlers, reflecting the calculations outlined in (2)(b).

~~(d)~~ (c) The purchasing handler will then mail payment directly to the seller, with a copy of payment faxed to the milk control bureau~~, to be applied to the surplus milk billing statement prepared by the bureau~~.

(e) Per ARM 32.24.516(1), any freight costs incurred by the selling pool handler in shipment of this surplus milk may be deducted from that handler's pool account. It is the responsibility of the selling pool handler to provide this information to the milk control bureau no later than the

eighth business day of the month following shipment of such milk.

(4) and (5) remain the same.

~~(6) Nothing herein shall preclude pool handlers from voluntarily selling and purchasing surplus milk directly between themselves under any terms and conditions on which they agree in writing provided the transaction serves the purpose of applying surplus milk to class I or II usage.~~

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

AUTH: 81-23-104, MCA
IMP: 81-23-103, MCA

REASON: The proposed rule change is reasonably necessary to change the payment for purchased milk from the quota blend price to the usage price. At the time the current rule language was enacted, the Milk Control Bureau used blend instead of usage because it was a benefit to the farmers. However, economics have now changed, and the situation is reversed, so that it is more accurate now to use usage instead of quota blend prices. The proposed rule change will even the playing field so the selling plant or the purchasing plant will not have an advantage of buying the milk at less than what the selling plant paid for it.

4. Concerned persons may submit their data, views or arguments concerning the proposed amendment in writing to Marc Bridges, 301 N. Roberts Street - Room 308, PO Box 202001, Helena, MT 59620-2001, by faxing to (406)444-1929, or e-mailing to mbridges@mt.gov to be received no later than 5:00 p.m., December 8, 2005.

5. If persons who are directly affected by the proposed amendment wish to express their data, views or arguments orally or in writing at a public hearing, they must make a written request for a hearing and submit this request along with any written comments they have to the same address as above. A request for hearing must be received no later than 5:00 p.m., December 8, 2005.

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 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 10 based upon the current number of producers in the state.

7. An electronic copy of this Proposal Notice is available through the department's web site at www.liv.mt.gov.

8. The Montana department of livestock maintains a list of interested persons who wish to receive notice of rulemaking actions proposed by this department. Persons who wish to have their name added to the list shall make a written request, which includes the name and mailing address of the person to receive notices and specifies the area of interest that the person wishes to receive notices regarding. Such written request may be mailed or delivered to Marc Bridges, 301 N. Roberts Street - Room 308, PO Box 202001, Helena, MT 59620-2001, faxed to (406)444-1929, e-mailed to mbridges@mt.gov, or may be made by completing a request form at any rules hearing held by the department.

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

DEPARTMENT OF LIVESTOCK

/s/ Marc Bridges	/s/ Carol Grell Morris
Marc Bridges	Carol Grell Morris
Executive Officer	Rule Reviewer
Department of Livestock	

Certified to the Secretary of State October 31, 2005.

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

In the matter of the adoption of new rule I and the amendment of ARM 37.75.101, 37.75.102, 37.75.105, 37.75.108, 37.75.109, 37.75.201, 37.75.202, 37.75.205, 37.75.206, 37.75.209, 37.75.301, 37.75.302, 37.75.303, 37.75.401, 37.75.402, 37.75.501, 37.75.502, 37.75.601, 37.75.602, and 37.75.603 pertaining to child and adult care food program (CACFP)	)	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION AND AMENDMENT

TO: All Interested Persons

1. On November 30, 2005, at 1:30 p.m., a public hearing will be held in the auditorium of the Department of Public Health and Human Services Building, 111 N. Sanders, Helena, Montana to consider the proposed adoption amendment of the above-stated rules.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice or provide reasonable accommodations at the public hearing site. If you need to request an accommodation, contact the department no later than 5:00 p.m. on November 21, 2005, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970; Email dphhslegal@mt.gov.

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

RULE I CHILD AND ADULT CARE FOOD PROGRAM (CACFP): FEDERAL REGULATIONS ADOPTED BY REFERENCE (1) The CACFP program shall be administered in accordance with the requirements of federal law governing the child and adult care food program as set forth in Title 7 CFR part 226 (2005), which regulates all state child and adult care food programs. Title 7 CFR part 226 (2005) is adopted and incorporated as a part of these rules. A copy may be obtained from the Department of Public Health and Human Services, Human and Community Services Division, P.O. Box 202925, Helena, MT 59620-2925 or through the federal government website access at www.gpoaccess.gov/cfr/index.html.

AUTH: Sec. 52-2-704, MCA
IMP: Sec. 52-2-702 and 52-2-704, MCA

3. The rules as proposed to be amended provide as follows. Matter to be added is underlined. Matter to be deleted is interlined.

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

(1) "Active recruitment" means direct contact, initiated by a day care home sponsor~~ing organization~~, with a ~~day care home~~ provider that is currently participating in the child and adult care food program (CACFP)~~; with another sponsor~~, for the purpose of ~~soliciting~~ enticing ~~a~~ the provider to enroll with or switch to a different sponsor ~~any particular sponsoring organization~~. Examples of such direct contact considered to be active recruitment include but are not limited to a contact made in person, by phone call, through email, by fax, and through a mailing or through a newsletter that is invitational in content disseminated by a sponsor~~ing organization~~ to one or more providers ~~CACFP participants~~ that it does not sponsor.

~~(2) "Administrative funds" means USDA child and adult care food program (CACFP) grant funds distributed to qualifying non-profit sponsoring organizations contracting with the department to administer the CACFP.~~

(2) "Adult day care center" means an adult day care center as defined in 7 CFR 226.2.

(3) "Advanced payment" means funds made available to an ~~entity~~ institution for its CACFP costs prior to the month in which such costs will be incurred.

(4) "Adverse ~~administrative~~ action" means an action taken by the state CACFP in the administration of the CACFP having a negative impact~~, including the following:~~ on an institution.

~~(a) denial of the entity's application for participation;~~

~~(b) denial of an application submitted by a sponsoring organization of centers on behalf of a facility;~~

~~(c) termination or suspension of an entity from participation in CACFP;~~

~~(d) denial of an entity's application for start up funds;~~

~~(e) denial of an entity's application for advance payment;~~

~~(f) denial of all or part of an entity's claim for reimbursement, provided the claim was submitted in a timely manner;~~

~~(g) denial by the state agency to forward to food and nutrition services (FNS) an exception request by the entity for payment of a late claim or a request for an upward adjustment to a claim; or~~

~~(h) demand for the remittance of an overpayment against an entity.~~

(5) "Announced review ~~visit~~" means ~~a site visit~~ an on site review that occurs after forewarning.

(6) "Authorized capacity" means the number of children that a licensed or approved child care center or registered day care home is able to have in care at any one time including

overlap.

(7) "CACFP" means the child and adult care food program as designated in section 17 of the National School Lunch Act as amended (codified at 42 USC 1766).

(8) "Center" means a child care center, an adult day care center, or an outside-school-hours care center. "Center" may also mean an emergency shelter, special after school snacks center, head start center, or ~~a~~ proprietary center that enters into an agreement with the department to administer the CACFP in a specific area for a specific period of time.

(9) "Child care center" means any public or private nonprofit organization, or any proprietary center, licensed or approved to provide nonresidential child care services to enrolled children, primarily of preschool age, including but not limited to day care centers, settlement houses, neighborhood centers, head start centers, and organizations providing day care services for children with disabilities. Child care centers may participate in the CACFP as independent centers or under the auspices of a sponsor.

~~(9)~~ (10) "Combination food" means an entree with more than one CACFP required food component included in its ingredients.

~~(10)~~(11) "Corrective action plan" means a plan~~, approved by the department,~~ indicating the actions to be taken by an ~~entity~~ institution or provider for the purpose of correcting a deficiency or addressing a problem.

~~(11)~~(12) "Day care home" or "DCH" means a family or group day care home as those terms are defined in 52-2-703, MCA, and is an organized nonresidential child care program for children enrolled in a private home registered or approved as a family or group day care home, and participating in the CACFP through a sponsor.

~~(12)~~(13) "Department" means the department of public health and human services.

~~(13)~~(14) "Disciplinary action" means an action taken for the purpose of modifying behavior or correcting a situation or circumstance.

~~(14)~~(15) "Elementary school" means any school serving children in kindergarten through 8th grade.

(16) "Emergency shelter" means a public or private nonprofit organization whose primary purpose is to provide temporary shelter and food services to homeless families with children.

~~(15) "Entity" means a sponsoring organization or center.~~

~~(16)~~(17) "Institution" means a sponsor~~ing organization,~~ or child care center~~, outside school hours care center or adult day care center~~ which enters into an agreement with the department to assume final administrative and financial responsibility for CACFP operations.

~~(17)~~(18) "Licensing staff" means department personnel who enforce state laws and rules for the purpose of registering, licensing, and regulation of child care ~~providers~~.

(19) "Outside school hours care center" has the meaning cited in 7 CFR 226.2.

~~(18)~~(20) "Processed meats", for purposes of the CACFP,

means hot dogs, ~~corn dogs~~ salami, sausage, and food of this type, but does not include ground meats such as hamburger or cured meat such as ham.

~~(19)~~(21) "Program" means the child and adult care food program.

~~(20)~~(22) "Proprietary center" means a qualifying child care center participating in the CACFP as a for profit center ~~and is either~~ that is:

(a) a proprietary Title XIX or Title XX center with at least 25% of enrolled or authorized capacity, whichever is less, that is paid from a state-pooled funding source which includes federal Title XX funds; or

(b) a free and reduced price center with at least 25% of its enrollment or authorized capacity, whichever is less, that is in the free and reduced price reimbursement category.

~~(21)~~(23) "Provider" means ~~the persons~~ a person providing care in a family or group day care home.

~~(22)~~(24) "School attendance area" means the specific geographical area whose student population is served by a specific elementary school.

~~(23)~~(25) "Seriously deficient" ~~has the same meaning as "seriously deficient" in 7 CFR 226.2, the definitions pertaining to CACFP, which is hereby adopted and incorporated into this rule. A copy of 7 CFR 226.2 (2002) is available from the Department of Public Health and Human Services, Human and Community Services Division, 1400 Broadway, P.O. Box 202952, Helena, MT 59620-2952~~ means the status of an institution, center, or a day care home that has been determined to be seriously noncompliant in one or more aspects of its operation of the CACFP.

~~(24)~~(26) ~~"Sponsoring organization or sponsor"~~ "Sponsor" means an organization under contract with the department that assumes final administrative and financial responsibility for CACFP operations for facilities under its jurisdiction and ~~is responsible for the administration of the CACFP at various facilities~~ meets the definition of sponsoring organization in 7 CFR 226.2, the federal definitions pertaining to CACFP.

~~(25)~~(27) "Tiering" means categorizing the reimbursement rate for day care homes based on school designation, census block numbering area, and established criteria for income standards~~, school designation, and census block numbering area~~.

(28) "Title XIX" means Title XIX of the federal Social Security Act.

~~(26)~~(29) "Title XX" means Title XX of the federal Social Security Act.

~~(27)~~(30) "USDA" means the United States department of agriculture.

AUTH: Sec. 52-2-704, MCA
IMP: Sec. 52-2-702 and 52-2-704, MCA

37.75.102 CIVIL RIGHTS (1) The CACFP is a federal program and all participants must comply with Title VI of the Civil Rights Act of 1964. The full description of participant

responsibilities is set forth in the civil rights section of the CACFP Manual, and is adopted and incorporated by this reference. A copy of the CACFP manual's civil rights section is available from the Department of Public Health and Human Services, Human and Community Services Division, P.O. Box 202925, Helena, MT 59620-2925.

(2) The federal CACFP ~~is a federally funded program which~~ requires the inclusion of the USDA nondiscrimination ~~statement~~ and ~~an appropriate statement of~~ equal opportunity statements as set forth in (2)(a) to be used in all informational materials disseminated to the public. ~~The following complete nondiscrimination statement must be included in all informational materials disseminated to the public wherever possible:~~

(a) "In accordance with federal law and U.S. Department of Agriculture policy, this institution is prohibited from discriminating on the basis of race, color, national origin, sex, age, or disability.

To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, Room 326-W, Whitten Building, 1400 Independence Avenue SW, Washington, DC 20250-9410, or call (202) 720-5964 (voice and TDD). USDA is an equal opportunity provider and employer."

(3) If the material is too small to permit the full statement to be included (~~i.e.~~ e.g., brochures, coupons, electronic benefit cards, flyers, and other media of less than a page) the material ~~will~~ must, at a minimum, include USDA's short nondiscrimination statement, as follows: "THIS INSTITUTION IS AN EQUAL OPPORTUNITY PROVIDER AND EMPLOYER."

AUTH: Sec. 52-2-704, MCA
IMP: Sec. 52-2-702 and 52-2-704, MCA

37.75.105 HEAD START CATEGORICAL ELIGIBILITY ~~(1) A child enrolled in a head start organization that is participating in the CACFP as a day care center or sponsor of centers is categorically eligible for the CACFP if the child is enrolled in the head start program on the basis of a determination that the child is a member of a family that meets the low income criteria, including those children who are automatically eligible for a second year of head start based on low income.~~

(1) A head start institution that serves children whose families do not meet the low income criteria of head start for eligibility must use the Montana CACFP income eligibility form and income guidelines to determine the free, reduced, or paid reimbursement category for any such children.

(2) For CACFP documentation and eligibility purposes, the head start organization must maintain a list of head start participants eligible for free meal reimbursement. ~~may be listed with~~ The list must include a statement certifying that the ~~they are~~ participant is enrolled in head start on ~~an~~ the basis of head start income ~~eligible basis~~ eligibility. This list ~~is to~~ must be signed each month by a head start official authorized to act on behalf of ~~the organization~~ head start and must be

retained on site and be readily available, or must be made available during the time of a review.

~~(3) Children who participate in head start, but who are not determined to be income eligible for head start need to complete a CACFP income eligibility form in order to be considered for free or reduced price meals for CACFP.~~

~~(4) An alternative enrollment form may be used if the alternative enrollment form includes all of the information listed below provided the form has been approved by the state department: The information required by the alternative enrollment must include:~~

~~(a) name of child;~~

~~(b) adult signature and date of signature;~~

~~(c) social security number of signing adult;~~

~~(d) number of members in the household;~~

~~(e) monthly or annual household income; and~~

~~(f) determination of CACFP eligibility.~~

AUTH: Sec. 52-2-704, MCA
IMP: Sec. 52-2-702 and 52-2-704, MCA

37.75.108 ADVANCES (1) The department may, in its discretion, ~~decide whether to~~ advance a payment. The amount of any advance payment will be based on the historical payment data for the specific ~~entity~~ institution. Any and all advance payments ~~will~~ must be repaid to the department prior to the beginning of the next fiscal year.

AUTH: Sec. 52-2-704, MCA
IMP: Sec. 52-2-702 and 52-2-704, MCA

37.75.109 AUDIT GRANTS (1) An ~~entity~~ institution may be eligible to receive a grant from the department for the purpose of reimbursing ~~an entity~~ the institution for all or part of the CACFP portion of an audit. To qualify for a grant, an ~~entity~~ institution must meet the following minimum requirements:

(a) An audit must be a condition for participation or continued participation in the CACFP.

(b) The professional services of the auditor or auditors must be performed in accordance with all applicable state and federal laws, regulations, and policies relating to ~~purchasing and~~ procurement of professional services ~~acquisition~~.

(c) Prior to beginning an audit, the ~~entity~~ institution must submit to the department for approval:

(i) a completed request for reimbursement of audit expenses;

(ii) a signed copy of the audit proposal, including the proposed audit cost, the resume of the on site auditor or auditors, and certification that the audit will include tests of the CACFP in accordance with the current federal office of management and budget (OMB) circular A-133 and the USDA OMB supplement for the catalog of federal domestic assistance (CFDA) 10.558, child and adult care food program, dated March 2002; and

~~(iii) a completed copy of a federal debarment and~~

~~suspension certificate, signed by the auditor engaged to perform the audit; and~~

~~(iv)~~ (iii) evidence the supervising auditor is a certified public accountant.

(d) Prior to beginning the audit, the ~~entity~~ institution must:

(i) provide a copy of the current state CACFP audit policy to the auditor engaged to perform the audit; and

(ii) obtain written approval for the audit from the department~~;~~.

(e) The audit must be completed no later than nine months after the end of the fiscal year being audited.

(2) If an audit grant is awarded, the ~~entity~~ institution must submit to the department within 30 days following completion of the audit:

(a) two copies of the audit (including management letters referenced in the audit report);

(b) a copy of the final invoice from the auditor, documenting the cost of an OMB circular A-133 audit; ~~and~~

(c) a time log documenting actual direct costs of auditing the program; and

(d) an invoice on the institution's letterhead requesting reimbursement of the CACFP portion of the audit expense.

(3) The department may authorize a grant for up to the actual direct cost of auditing the program.

AUTH: Sec. 52-2-704, MCA
IMP: Sec. 52-2-702 and 52-2-704, MCA

37.75.201 DAY CARE HOME ~~SPONSORING ORGANIZATIONS~~ SPONSORS SERVICE AREAS (1) The Montana CACFP sets geographical boundaries of operation for sponsors. Boundaries are set based on financial viability and need for services. Geographical boundaries follow county lines.

(2) In any area of the state where at least two day care home sponsors are currently available to all program participants, additional sponsor applications ~~are not available~~ will not be accepted.

(3) If a provider would be more efficiently served by a sponsor in an adjacent service area, the service areas may be adjusted if this arrangement is by mutual consent between the affected sponsors, and prior written approval is obtained from the department after the department confirms that the provider would be more efficiently served by the adjacent service area sponsor.

(4) A prospective new sponsor must demonstrate to the department the need for the services to be provided by submitting a list of registered and operating day care home providers who are not presently served by a sponsor in the proposed geographical area. The department will then determine whether the existing sponsors are capable of providing CACFP services to the new providers on the list.

(5) An institution interested in becoming a day care home sponsor must be either a governmental or private nonprofit

organization.

(6) Prior to completing an application, preliminary documentation must be submitted to and approved by the Montana CACFP that includes:

(a) a written request to become a sponsor with the name, physical address, and telephone number of the organization;

(b) articles of incorporation as a tax-exempt organization, in accordance with state law;

(c) documentation from the internal revenue service that the organization is a private nonprofit corporation, tax-exempt under the Internal Revenue Code of 1986;

(d) a statement that the institution has a board of directors;

(e) an organizational flowchart stating which personnel will administer the CACFP;

(f) certification that neither the organization nor any of its principals have ever been disqualified from participation in any publicly funded program or been convicted in the last seven years of any activity that indicated a lack of business integrity, including, but not limited to, fraud, embezzlement, theft, forgery, or bribery;

(g) documentation of financial viability that demonstrates the ability to withstand temporary interruptions in program payments and pay expenses that are not funded through the CACFP;

(h) documentation of administrative capability that reflects adequate staff to operate and administer the program, including the supervision and monitoring of participating facilities; and

(i) documentation of program accountability that includes financial management, recordkeeping, claim processing, and training systems that will be used.

~~(4)~~(7) ~~An~~ The application to become ~~for~~ a new sponsor ~~sponsorship of family day care homes~~ must include~~s~~ the following:

(a) written acknowledgment of receipt of the criteria for ~~family day care home (FDCH) organizations~~ sponsors;

(b) ~~an FDCH~~ a written sponsor proposal; and

(c) an oral presentation.

~~(5) In order to be eligible to participate in the Montana CACFP FDCH, a prospective sponsor must demonstrate:~~

~~(a) need for the services to be performed;~~

~~(b) the service area to be served under the new sponsor's plan; and~~

~~(c) financial capability, accountability, and viability as well as capability in program operations.~~

~~(6)~~(8) A prospective sponsor must complete the written proposal, orientation training, oral presentation, and Montana CACFP training and ~~have been~~ be approved for each requirement before ~~becoming a sponsoring organization~~ the institution will be allowed to become a sponsor. ~~The prospective sponsor must be a non profit organization maintaining a tax exempt status with the internal revenue service.~~

~~(7) The prospective sponsor must submit a list of potential registered and operating day care providers who are~~

~~not presently served by a FDCH sponsor in the planned area of operation in order to demonstrate need for the services to be provided.~~

~~(8) A sponsor may provide assistance to a day care home that has identified licensing or registration deficiencies, provided prior approval is obtained from the department.~~

(9) In the event that a sponsor~~ing organization~~ discontinues or ~~becomes~~ is terminated and disqualified from ~~continued~~ participation in the CACFP, the department ~~shall provide the day care homes being served by the terminating sponsorship with a list of alternate sponsoring organizations available in the service area. The day care homes will be permitted 30 days to select a new sponsoring organization. If a day care home fails to select a new sponsor within 30 days, the department shall assign a new sponsor to be selected on a random basis from among those qualified in the service area~~ may facilitate moving providers to existing sponsors that are able to demonstrate the capability to serve the providers of the discontinuing or terminated sponsor. The department will notify all providers and sponsors in the event that a sponsor discontinues or is terminated from CACFP participation. If the department determines that the existing sponsors in a service area are unable to serve the providers, the department may facilitate moving providers to existing sponsors outside of the existing sponsor's service area.

AUTH: Sec. 52-2-704, MCA
IMP: Sec. 52-2-702 and 52-2-704, MCA

37.75.202 TIERING CHANGES (1) A sponsor ~~shall~~ may only claim meals for purposes of reimbursement for ~~the~~ its sponsored day care homes ~~under its sponsorship~~ once per month for any one tier category ~~of tiering~~.

(2) A change in tier status resulting from new data, such as census, income information or elementary school information distributed ~~for sponsor~~ to sponsors for use in evaluating tier status ~~evaluation~~, is effective statewide the first day of the month during which the income information, census, or elementary school information is available to the sponsor~~ing organization~~.

(3) A day care home may submit a request for a tier change evaluation to its sponsor~~ing organization~~. If approved, the change will be effective as noted below:

(a) changes based on elementary school attendance area or census block are effective on the first of the month during which the evaluation request is received, except as provided in (3)(c);

(b) changes based on income fluctuations or relocation of the provider are effective on the first day of the month that the evaluation request is documented and verified; and

(c) a change made as a result of an investigation or to correct a tiering error will be retroactive to the date of the error.

AUTH: Sec. 52-2-704, MCA

IMP: Sec. 52-2-702 and 52-2-704, MCA

37.75.205 PROVIDER ENROLLMENT (1) A new provider must have a current, valid registration to provide child care in order to participate in the CACFP. An existing provider may be working toward renewal of its registration and participate in the CACFP if assurance is obtained from licensing staff that they are approved and the registration is forthcoming.

~~(1)~~ (2) ~~A~~ Each sponsor ~~shall complete~~ must do the following when enrolling a new day care home for participation in the CACFP:

(a) unless (3) applies, obtain licensing verification in the form of:

(i) a current, valid copy of the provider's registration to provide child care;

(ii) written documentation from licensing staff indicating the provider has submitted all required information and has been approved for registration;

(iii) a screen print from the child care under the big sky system (CCUBS), showing that the provider is registered and the effective date of the registration; or

(iv) a screen print from the virtual pavilion showing that the provider is registered and the effective dates of the registration; and

~~(a)~~(b) ~~obtaining~~ obtain written preapproval for participating from the Montana CACFP ~~pre approval~~ prior to performing a pre-approval visit, and ~~performing~~ perform a pre-approval visit at the day care home prior to allowing the day care home to participate ~~beginning participation~~ in the CACFP. During the pre-approval visit, the sponsor must:

(i) ~~determine that the home is operating as a day care home;~~ discuss CACFP benefits and verify that the proposed food service does not exceed the capability of the day care home;

(ii) train the provider regarding CACFP ~~requirements~~ duties and responsibilities; and

(iii) discuss record keeping and documentation requirements, including but not limited to ~~posted~~ posting menus, meals to be served, and attendance records.~~; and~~

~~(iv) discuss CACFP procedure, including record retention procedures, and provide training to ensure CACFP compliance.~~

~~(b) at the time of the pre approval visit, obtain either:~~

~~(i) a copy of the registration certificate indicating the home is currently registered to provide day care services; or~~

~~(ii) written documentation from licensing staff indicating the provider has submitted all required information and has been approved for registration; or~~

~~(iii) documentation from licensing staff that a need exists for the use of administrative assistance from a CACFP sponsor which may be used to remedy registration deficiencies.~~

~~(2)~~(3) If a registered day care home is approved by the sponsor during the pre-approval visit, ~~an application and CACFP agreement~~ the CACFP sponsor/provider agreement must ~~may~~ be completed, reviewed, and signed by the provider and the sponsor's representative. The effective date to begin CACFP

participation is the date the ~~application and agreement~~ CACFP sponsor/provider agreement is ~~are~~ signed by ~~the authorized signatories for~~ both the provider and the sponsor's representative. ~~sponsor and the day care home. If the day care home has not yet received a registration certificate from licensing staff, but has been approved by licensing, a screen print from the child care licensing system may be used as interim license verification. The screen print must show proof of registration and the effective date of the registration for the day care home to begin participation in the CACFP.~~

~~(3)~~(4) If the location where care is provided by ~~of~~ a day care home changes:

(a) the provider must notify the sponsor, and the provider may continue CACFP participation without interruption, provided:

(i) the sponsor performs a ~~sponsor~~ pre-approval visit at the new address ~~is conducted~~ within 10 business days following the provider's first day of operation at the new location~~,~~;

(ii) the new site is determined acceptable for CACFP participation~~,~~; and

(iii) the new site is approved for child care by licensing staff ~~for the provision of child care~~;

(b) ~~a new CACFP agreement must be signed by both the sponsor and provider and dated on the date of the pre approval visit if the standards in (3)(a) are met at that time;~~ a Day Care Home Change in Information form must be completed and submitted to the sponsor; and

(c) the ~~tiering~~ tier status of the home must be redetermined.

~~(4)~~(5) If a sponsor misdates any document in order to manipulate or circumvent a rule, the sponsor~~'s CACFP contract may be terminated~~ will be placed under corrective action.

~~(5)~~(6) A sponsor ~~shall~~ must not submit a claim for a ~~day care home which~~ provider who is not registered ~~or approved~~ or in compliance with (2)(a).

~~(6)~~(7) ~~Day care home~~ A provider~~s~~ must retain on file for the current and preceding three federal fiscal years copies of ~~the following information~~:

(a) ~~copies of the signed application and agreement~~ the signed applications and agreements; and

(b) the notification of reasons and procedures for termination.~~; and~~

~~(c) pre approval visit forms.~~

(8) A provider must retain the following information on file and have it readily available at the time of a review for the entire time the provider participates in the CACFP:

(a) a copy of the preapproval visit forms; and

(b) a copy of the current CACFP sponsor/provider agreement.

~~(7)~~(9) If a provider moves or changes its ~~their~~ legal name, a new ~~application~~ sponsor/provider agreement must be ~~filled out~~ completed and marked "CHANGE". ~~The change must be identified as a change of status.~~

~~(a)~~(10) If only meal times are changed, a Meal Time Change form ~~attachment is to~~ must be completed and ~~sent in~~ submitted to

the sponsor with the current month's claim. Each Meal Time Change form becomes a part of the sponsor/provider agreement and is effective upon the date of receipt.

AUTH: Sec. 52-2-704, MCA
IMP: Sec. 52-2-702 and 52-2-704, MCA

37.75.206 RECRUITMENT (1) Day care home (DCH) sponsors are encouraged to recruit DCH providers to participate in the CACFP that are not currently participating and that have not participated in the CACFP through any sponsor within the last 30 days.

~~(1)~~ (2) A DCH sponsor~~ing organization~~ may not ~~engage in active recruitment of a day care home if that home~~ recruit a provider ~~is~~ that is participating in the CACFP under a current CACFP sponsor/provider agreement with any other DCH sponsor~~ing organization~~.

~~(2) A sponsoring organization may seek to enroll a day care provider that is not currently participating in the CACFP, or has not participated under an agreement for at least 30 days.~~

(3) A sponsor that the Montana CACFP determines has engaged in active recruitment ~~If it is determined that a sponsoring organization has engaged in active recruitment,~~ as defined in ARM 37.75.101~~, the recruiting sponsoring organization~~ will be subject to disciplinary action.

(4) Disciplinary action will ~~may~~ include the following:

(a) Upon first violation, the Montana CACFP will issue a letter of warning to the sponsor stating that a recruiting ~~contract~~ violation has occurred~~;~~, and the sponsor is required to complete a corrective action plan.

(b) Upon a second violation, the Montana CACFP will issue notice to the sponsor ~~a letter~~ warning that a second ~~contract~~ recruiting violation has occurred and ~~indicating~~ indicate that the sponsor~~ing organization~~ must complete a corrective action plan ~~is considered seriously deficient,~~; and~~:~~

~~(i) the sponsor will be required to submit a corrective action plan; and~~

~~(ii)~~(i) ~~t~~The sponsor will be restricted to recruiting only new providers who are not currently participating in the CACFP ~~under a current agreement with any other sponsoring organization~~; and

(ii) The sponsor may not accept any DCH providers that are changing sponsors or enroll a provider if the provider has participated in the CACFP within the preceding six months.

(c) If more than two violations occur, the department will issue written notice to the sponsor~~ing organization~~ that a recruiting violation has occurred, written notice that it is seriously deficient and that, if the serious deficiency is not fully and permanently corrected, an intent to terminate will be issued ~~the department intends to terminate the CACFP contract~~. The number of DCH providers served by the sponsor will be capped for a minimum of one year, and the sponsor will not be allowed to enroll any new providers or providers changing sponsors without specific prior written approval from the Montana CACFP.

(5) Simultaneous active recruitment of multiple providers will be treated as a single violation.

(6) A disciplinary action for active recruitment will remain in effect through each three year contract renewal period. At the inception of a new contract renewal period, the violation cycle will start over, with the exception that, if a third recruiting violation occurs, the minimum one year cap on enrollment may continue into the following contract period. An example is:

(a) the original contract period is effective October 1, 2005 through September 30, 2008;

(b) the third recruiting violation occurs on June 30, 2008; and

(c) enrollment is capped from June 30, 2008 through June 30, 2009, extending into the following contract renewal period.

(7) When a third recruiting violation occurs and enrollment is capped for one year for a period which spans two contract terms, the violation will count as the third violation in the previous contract term and will not count as the first violation in the new contract term.

AUTH: Sec. 52-2-704, MCA
IMP: Sec. 52-2-702 and 52-2-704, MCA

37.75.209 ~~CHANGING~~ SPONSOR~~ING ORGANIZATION~~ CHANGE BY PROVIDER (1) A ~~day care~~ provider may be enrolled with only one CACFP sponsor~~ing organization~~ at a time while participating in the CACFP.

(2) Each sponsor~~ing organization~~ must ~~provide~~ supply a copy of this rule to all ~~participating~~ providers upon their enrollment in the CACFP.

(3) Except as provided in (5), a participating day care home may change ~~sponsoring organizations~~ its CACFP sponsor according to these guidelines:

(a) ~~a~~ A provider may change from one sponsor~~ing organizations~~ to another sponsor one time per year, the change to be effective the first day of the month following the notice provided in (3)(b). One time per year means once during ~~the one year period beginning on the date the provider last switched sponsoring organizations~~ any 12 month period.

(b) ~~to~~ To change ~~sponsoring organizations~~ sponsors, a provider must notify ~~their~~ its current sponsor~~ing organization~~ in writing of ~~their~~ its intention to change ~~sponsoring organization~~ to another sponsor on or before the fifth working day of the month prior to the month in which the change to a new ~~sponsoring organization~~ sponsor is to be effective. The current sponsor must submit a copy of the written notification to the department.

(4) A provider who fails to give timely notification to ~~their~~ its sponsor~~ing organization~~, as required by (3)(b), will continue to be under the current sponsor until the first day of the ~~next later~~ following month.

(5) ~~Any provider who is subject to and~~ If a provider's current sponsor has requested information from the provider, is

otherwise investigating the provider, or has notified the provider that ~~of~~ corrective action ~~by their current sponsoring organization~~ is necessary, the provider may not change ~~sponsoring organization~~ sponsors until the provider has been restored to good standing for a minimum of one calendar month.

(6) A sponsor~~ing organization~~ is not obligated to sponsor any particular provider.

AUTH: Sec. 52-2-704, MCA
IMP: Sec. 52-2-702 and 52-2-704, MCA

37.75.301 MENU EVALUATION (1) CACFP ~~participants~~ institutions and providers must ensure that all meals and snacks claimed for reimbursement meet all federal and state minimum standards in accordance with 7 CFR 226.20.

(2) ~~Menu evaluations must be performed at least annually for the purpose of improving the nutritional content of meals served in day care facilities.~~ Each DCH ~~Sponsoring organizations~~ sponsor must annually evaluate the menus ~~shall perform menu evaluations~~ of each day care home participating in the CACFP through their sponsorship. The menu evaluation shall include a review of menus served over the course of at least one month.

(3) All ~~entities~~ institutions must monitor, verify, document, and ensure that only meals and snacks that meet federal regulations and state minimum standards are claimed for reimbursement.

AUTH: Sec. 52-2-704, MCA
IMP: Sec. 52-2-702 and 52-2-704, MCA

37.75.302 INFANT MEAL REIMBURSEMENT (1) All meal components required by the USDA infant meal pattern contained in 7 CFR 226.20~~, which is adopted and incorporated into this rule,~~ must be supplied by the ~~child care~~ provider or center, with the exception of breast milk, for a meal to be eligible for reimbursement. ~~A copy of 7 CFR 226.20 (2002) is available from the Department of Public Health and Human Services, Human and Community Services Division, 1400 Broadway, P.O. Box 202952, Helena, MT 59620-2952.~~

(2) Except as provided in (6), meals containing breast milk served to infants may be claimed for reimbursement. Other required or optional meal components must be supplied by the ~~child care~~ provider or center. If the parent supplies any meal component other than breast milk, the meal may not be claimed for reimbursement.

(3) Meals containing only breast milk do not qualify for reimbursement if feeding is performed naturally by the mother.

(4) Except as provided in (6), infant formula must be supplied by the ~~child care~~ provider or center for the meal to be eligible for reimbursement. If parents provide infant formula, meals cannot be claimed.

(5) Except as provided in (6), a ~~child care~~ provider or center must ~~provide~~ supply an infant with iron fortified formula

or soy based formula if recommended by the infant's parent or the infant's health care provider.

(6) If an infant requires a specialty formula such as nutramigen, pregestimil, alimentum, and lofenalac that is much more expensive or difficult to obtain than a regular infant formula, the provider or center may request that the parent pay the difference between a regular priced formula and the much higher priced formula. If the parents supply the specific formula, in lieu of receipt of cash, the provider or center may credit the parents for the value of the formula the provider or the center would have supplied. A written agreement signed by both the provider or center and the parents indicating how specialty formulas are to be provided must be kept and must be available for review by CACFP staff and auditors.

(7) Whole milk is not allowed as a meal component for an infant who is 12 months or less of age.

AUTH: Sec. 52-2-704, MCA
IMP: Sec. 52-2-702 and 52-2-704, MCA

37.75.303 COMBINATION FOODS (1) Each day care center ~~or~~ and day care home shall list components of combination foods on menus as required by the Montana CACFP. Combination foods include, but are not limited to, the following:

(a) chili (ground turkey/beans);

(b) chicken casserole (chicken/rice/broccoli); and

(c) tacos (soft tortilla/ground beef/cheese/lettuce, and tomato). The provider or center is responsible for ensuring that combination foods provide adequate amounts of the required meal components for the age group being served.

AUTH: Sec. 52-2-704, MCA
IMP: Sec. 52-2-702 and 52-2-704, MCA

37.75.401 SPONSOR AND FACILITY TRAINING AND TRAINING RECORDS (1) A center must provide annual staff training on CACFP requirements, including those related to nutrition education, meal services, and food safety.

(2) Each ~~entity~~ institution must provide free training to each ~~day care home provider or center~~ facility it sponsors under the CACFP. Initial training for each ~~provider or center~~ facility must occur before any meal or snack is served for which CACFP reimbursement is claimed.

(3) Training sessions must be provided at least annually for each ~~day care provider or sponsored center~~ facility.

(4) An ~~entity~~ institution must document each training session by keeping on file:

(a) an agenda which lists the date, time, topic, and location of the training; ~~of each training session and the topic or topics discussed;~~

(b) the names of the training facilitator or facilitators ~~and their qualifications~~; and

~~(c) the anticipated educational outcomes for each training session; and~~

~~(d)~~ (c) a sign in sheet ~~roster labeled with the course name and subject matter,~~ signed by each training session participant.

(5) The following individuals must attend at least five hours per federal fiscal year of CACFP training provided by the department:

(a) ~~the CACFP program director from each type of independent center;~~ one of the center's cooks; and

(b) ~~one cook or nutrition coordinator from each independent center;~~ the administrator, director, or nutrition coordinator.

~~(c) the CACFP program director from each sponsoring organization sponsoring a child care center;~~

~~(d) one cook or nutrition coordinator from each sponsoring organization sponsoring child care centers; and~~

~~(e) at least one other staff person from each center sponsored.~~

(6) Each sponsor of day care homes must provide, free of charge, a minimum of ~~five~~ four hours of training to the ~~day care home~~ providers it sponsors concerning CACFP requirements, including those relating to nutrition education, meal service, and food safety. Two hours of the required training must cover CACFP administrative and regulatory issues. The training to be provided by the sponsor must be submitted to the department in a written training plan and must be approved by the department as part of its annual renewal packet and whenever the training content or method of providing the training changes. Sponsors shall provide the approved training frequently enough and in convenient locations so that ~~day care home~~ providers have a reasonable opportunity to participate in the training.

(7) Each sponsor must retain on site all information relating to training provided by that sponsor for a period of at least the three prior federal fiscal years, plus the current federal fiscal year.

AUTH: Sec. 52-2-704, MCA
IMP: Sec. 52-2-702 and 52-2-704, MCA

37.75.402 MILK ~~PRODUCTION~~ PURCHASE RECORDS (1) All reviews of centers performed by department staff and auditors under department contract will evaluate the milk purchase quantity documentation and compare it to the meals claimed that require a milk volume component.

(2) Notwithstanding any other applicable rule, if enough milk is not purchased and documented to meet the minimum meal component milk volume requirement, a corresponding meal reimbursement disallowance shall be made~~.~~ in accordance with the ~~The~~ milk volume requirements of 7 CFR 226.20. ~~are adopted and incorporated into this rule by reference. Copies of 7 CFR 226.20 (2002) are available from the Department of Public Health and Human Services, Human and Community Services Division, 1400 Broadway, P.O. Box 202952, Helena, MT 59620-2952.~~

AUTH: Sec. 52-2-704, MCA

IMP: Sec. 52-2-702 and 52-2-704, MCA

37.75.501 REVIEWS OF DAY CARE HOME ~~SPONSORING ORGANIZATIONS~~ SPONSORS (1) The department will conduct at least one review of each day care home sponsor~~ing organization~~ during each period consisting of two federal fiscal years ~~(FFY)~~ for sponsors ~~sponsoring organizations~~ with 100 or more homes. The department will conduct at least one review of each day care home sponsor~~ing organization~~ during each period consisting of three ~~FFYs~~ federal fiscal years for a sponsor~~ing organizations~~ with ~~less~~ fewer than 100 homes.

(2) The sponsor~~ing organization~~ must ensure that all program records are available during any review. Program records include but are not limited to:

(a) documentation to substantiate that the procedures outlined in the ~~sponsoring organization's~~ sponsor's current management plan have been and are being followed; and

(b) documentation of claims processed and fiscal activity for the three preceding federal fiscal years ~~FFYs~~, plus the current federal fiscal years ~~FFY~~.

~~(3) During the review of a sponsoring organization~~:

~~(a) if the sponsoring organization is found to be deficient and corrective action is required, the administrative portion of claims payments for that sponsoring organization may be withheld until the department verifies that the required corrective action is complete, up to a maximum of 45 days beyond the date of claim submission; and~~

~~(b) any request for income eligibility forms or any additional information requested by the department in a corrective action letter must be provided to the department within 30 days after the sponsoring organization receives the corrective action letter. All misclassified provider income eligibility forms must be corrected back to the date they were signed, or, in the case of tiering, correction must be made back to the date of the determination or the date first claimed.~~

AUTH: Sec. 52-2-704, MCA
IMP: Sec. 52-2-702 and 52-2-704, MCA

37.75.502 REVIEWS OF CENTERS AND SPONSORS OF CENTERS

(1) The department will conduct a minimum of one announced or unannounced ~~visit~~ review of each center or sponsor of centers in each three year period.

(2) ~~Information that must be available at the time of the visit includes but is not limited to the following:~~ Each institution must provide all CACFP records to the CACFP review team when the CACFP performs an announced or unannounced review. Records that must be on site and made available to the CACFP during a review include but are not limited to:

(a) monthly attendance records and sign in/out sheets;

(b) food receipts, by month of purchase;

(c) food service labor documentation;

(d) menu plan and food production records~~, including written evidence of specific food quantities prepared~~;

(e) completed income eligibility forms;
(f) menus;
(g) milk receipts, by month of purchase;
(h) monthly financial reports; ~~and~~
(i) staff training records~~.~~;
(j) records of facility training performed by the sponsor;
(k) monitoring procedures if a sponsor of centers;
(l) monitor training records if a sponsor of centers;
(m) a copy of the center's license, if the facility or institution is required to be licensed; and
(n) a copy of the health and fire inspection if the center is self-certified.
(3) During an on site review, the CACFP will verify that:
(a) the center is conducting a nonprofit food service;
(b) for profit institutions are eligible to claim reimbursement for meals served;
(c) meals offered and provided to CACFP participants are documented on menu plan and food production records that meet minimum food component and portion size requirements;
(d) completed CACFP income eligibility forms are on site or made available to the CACFP during a review to document that the center is claiming the correct rate of reimbursement for the meals being claimed; and
(e) records are satisfactorily completed to demonstrate which children and meals are claimed each day by each center or sponsored facility.

~~(3) If the center is found to be deficient and corrective action is required, claims payment may be withheld up to 45 days while the department verifies that the required corrective action is complete.~~

~~(4) If milk purchases are less than 100% of the required amount as set forth in 7 CFR 226.20, the department may require the center to provide receipts to the department documenting the milk purchases for the subsequent three months. Claims will be adjusted proportionately if less than 100% of the required amount is documented. Continued shortages of milk may extend this documentation and adjustment process. In addition, the department may pursue other legal remedies.~~

~~(5) Meal record deficiencies in meal production records shall result in corresponding meal reimbursement disallowances. If records are incomplete or missing, the department may require the center to provide additional months of production records to the department with the submission of the center's future claims. If documentation is not supplied in accordance with the requests, payment shall not be made and claims will be returned as incomplete. If meal records are not available on site at the time of the review, meals will be disallowed. In addition, the department may pursue other legal remedies.~~

~~(6) Income eligibility forms that are corrected in response to a corrective action plan must be copied and submitted to the department with all related claims. Failure to attach corrected income eligibility forms may result in the claim being returned unpaid as incomplete.~~

~~(7) A visit to a child care center may be conducted by the~~

~~department's CACFP staff approximately 90 days after the child care center's enrollment date. The purpose of the 90 day visit is primarily educational and is intended to ensure that the organization has established the appropriate files and procedures for successful CACFP operation.~~

~~(8) Each full month may be subject to review.~~

(4) If a center or sponsor of centers submits a claim for reimbursement for any month, and does not have complete records on site during a review or make records available to the CACFP during a review, the following actions may be taken:

(a) meal reimbursement for the corresponding claim month may be disallowed;

(b) the amount of reimbursement for disallowed meals, as stated in a notice of overclaim from the CACFP, must be paid back to the CACFP;

(c) the meal disallowance total, as stated in a notice of action from the CACFP, is subject to an administrative review (appeal); and

(d) records that are not on site or made available during a review will not be considered by the CACFP when establishing the dollar amount for disallowed meals. An exception may be requested in writing by the institution and must be approved in writing by the CACFP.

(5) When meals are disallowed and an overclaim notice is received by an institution, the institution may request an exception to have records reviewed that were not on site or made available to the CACFP at the time of a review. The request must be submitted to the CACFP within 15 days of receipt of an overclaim notice.

(6) The CACFP will notify the institution of its decision to grant or deny an exception within 15 days of receipt of the request for an exception.

(a) All misclassified income eligibility forms must be corrected back to the date of the signature of the adult household member on the forms. ~~A provider shall provide all income eligibility forms not available on site at the time of a review pursuant to a corrective action plan.~~

(7) Exceptions may be granted only for extreme circumstances, such as the accidental destruction of records, and solely at the discretion of the CACFP.

(8) Reimbursement for claims submitted after the date of review may be delayed up to 45 days from receipt of a complete and valid claim if the institution owes money to the CACFP.

(9) Additional corrective actions may be required as a result of missing records. The CACFP may request copies of various records for random months throughout the year to demonstrate compliance with those items as stated in (2), (3), and (4).

AUTH: Sec. 52-2-704, MCA
IMP: Sec. 52-2-702 and 52-2-704, MCA

37.75.601 ADMINISTRATIVE REVIEWS (APPEALS) AND FAIR HEARINGS (1) Except as provided in ~~(2)~~(3), an ~~entity~~

institution may appeal an adverse administrative action through the department's office of fair hearings pursuant to the procedures provided in ARM Title 37, chapter 5. Adverse administrative actions include:

(a) denial of the institution's application for participation;

(b) denial of an application submitted by a sponsor of centers on behalf of a facility;

(c) termination or suspension of an institution from participation in CACFP;

(d) denial of an institution's application for start up funds;

(e) denial of an institution's application for advance payment;

(f) denial of all or part of an institution's claim for reimbursement, provided the claim was submitted in a timely manner;

(g) denial by the state agency to forward to food and nutrition services (FNS) of the USDA an exception request by the institution for payment of a late claim or a request for an upward adjustment to a claim; or

(h) demand for the remittance of an overpayment against an institution.

(2) An ~~entity~~ institution must file a written request for an administrative review (appeal) within 15 calendar days of receiving notification of an adverse administrative action by providing the written request to the Department of Public Health and Human Services, Quality Assurance Division, Office of Fair Hearings, 2401 Colonial Drive, P.O. Box 202953, Helena MT 59620-2953.

~~(2)~~(3) A day care home may only participate in the CACFP through a sponsor~~ing organization~~. A participating day care home may appeal through the department's office of fair hearings when there is a determination to terminate the home's participation in the CACFP. All other adverse administrative actions taken against a day care home must be reviewed through the ~~sponsoring organization's~~ sponsor's internal review process.

~~(3)~~(4) Decisions made by ~~food and nutrition services of the USDA~~ FNS pertaining to requests for exceptions to the claims submission deadlines are not subject to appeal through the state's administrative review (appeal) process.

AUTH: Sec. 52-2-704, MCA
IMP: Sec. 52-2-702 and 52-2-704, MCA

37.75.602 CORRECTIVE ACTION PLAN (1) An ~~entity~~ institution receiving notice that it is ~~seriously deficient, or~~ deficient in some aspect of the CACFP~~,~~ shall submit to the department a corrective action plan to correct the deficiency~~,~~. The plan must be postmarked within 30 days of receipt of the deficiency notice provided by the department, or within such other timeframe as is set forth in the deficiency notice. Any ~~entity~~ institution that fails to submit a timely corrective action plan will be determined to be seriously deficient, or if

the original notice stated the ~~entity~~ institution was seriously deficient, the ~~entity~~ institution may be subject to termination in accordance with the provisions set forth in 7 CFR 226.6.

(2) All corrective action plans are subject to review and approval by the department. If a corrective action plan is rejected by the department, a revised corrective action plan that addresses the deficiencies in the original plan must be submitted to the department no later than 15 calendar days from the date of receipt of the notice of rejection of the original plan. Any ~~entity~~ institution that fails to submit an amended corrective action plan within 15 calendar days of the receipt of the notice from the department shall be determined seriously deficient, and ~~may~~ will be subject to termination from the program.

~~(3) The department adopts and incorporates by reference 7 CFR 226.6 (2002), which specifies the administrative responsibilities, including those when a serious deficiency exists, of a state agency administering the CACFP. A copy of 7 CFR 226.6 (2002) may be obtained from the Department of Public Health and Human Services, Human and Community Services Division, 1400 Broadway, P.O. Box 202952, Helena, MT 59620-2952.~~

AUTH: Sec. 52-2-704, MCA
IMP: Sec. 52-2-702 and 52-2-704, MCA

37.75.603 TERMINATION AND REENROLLMENT OF A DAY CARE HOME PROVIDER (1) When a sponsor~~ing organization~~ terminates a day care home provider for ~~being seriously deficient~~ cause, the sponsor~~ing organization shall~~ must send to the department a copy of the termination letter that is sent to the provider. Upon receipt of this notification, the terminated provider's name will be added to the state list of terminated providers, sent to all ~~sponsoring organizations~~ day care home sponsors, and included on the national disqualified list.

(2) If a terminated provider wants to return to program participation, the provider must~~:~~

~~(a)~~ demonstrate to the satisfaction of the Montana CACFP that they have fully and permanently ~~correct~~ corrected the serious deficiency~~;~~.

~~(b) provide proof that the provider is no longer listed on either the state or national disqualified list; and~~

~~(c) contact the terminating sponsor and request re-enrollment.~~

~~(3) If the sponsor does re enroll a provider who has been terminated for one or more serious deficiencies, the sponsor shall complete the following:~~

~~(a) notify the state CACFP of the re enrollment in writing;~~

~~(b) visit the home at least twice per month for the first three months;~~

~~(c) complete a parent survey at least once in the first three months;~~

~~(d) during the second three months of re enrollment, the~~

~~sponsor must visit the home at least once a month; and~~

~~(c) complete a parent survey at least once in the second three months.~~

~~(4)~~(3) An ~~entity~~ institution or provider terminating operations with the CACFP while under corrective action will still be placed on the national disqualified list as well as the state disqualified list.

AUTH: Sec. 52-2-704, MCA
IMP: Sec. 52-2-702 and 52-2-704, MCA

4. ARM 37.75.101

The proposed definition changes are reasonable and necessary for the following reasons:

Changes to the definition of "active recruitment" are necessary to make the definition easier to understand. The addition of the definition of newsletter that is invitational in content is necessary to specify the information that may be published in a contractor's newsletter. Not making this change leaves the definition vague.

The definition of "administrative funds" is removed because it is clearly explained in the federal regulations and is not used in the content of the Administrative Rules of Montana.

A definition for "adult day care" was added because it is a type of center that may participate in the CACFP. It is necessary because the other types of day care centers that may participate in CACFP are identified in the definitions.

The definition of "adverse administrative action" is changed to be consistent with the federal regulation, eliminating the word "administrative". This change is necessary to avoid confusion between the language in the federal regulation governing the CACFP and the Administrative Rules of Montana.

The language that states what is considered to be an adverse action is moved to ARM 37.75.601 where the topic is addressed. The change is necessary to have a clear definition and keep only definitions in the definition section of the rule. Placing the examples of an adverse action in the proper rule is necessary to provide complete information in the section where the topic is addressed. Not making this change makes ARM 37.75.601 incomplete.

The definition for "announced visit" is changed to "announced review" to convey what actually takes place. The term "visit" does not encompass training and compliance issues. The term "review" is understood by the majority of CACFP participants and more accurately reflects the events that occur, which is the review of documentation.

The change to the definition of "center" is necessary to remain consistent with the federal regulations. Removing the words "in a specific area for a specific period of time" is necessary because not all centers have an agreement with the department.

The definition of "child care center" is included to remain consistent with the federal regulations. The revision provides information about what type of institution may participate in the CACFP. The definition for child care center is added and necessary because it is referred to throughout the CACFP rule and is not currently defined.

The definition of "corrective action plan" is changed removing the words "approved by the department". This change is necessary because the definition as stated is incorrect. A corrective action plan is not approved by the department until it has been performed by the contractor.

The definition of "day care home" is revised to include "DCH" as the acronym for day care home, and to include the language from the federal regulation definition. The change is necessary to explain thoroughly what a day care home is and avoid confusion.

A definition for "emergency shelter" was added because it is a type of center that could participate in the CACFP. It is necessary because the other types of day care centers are identified in the definitions.

The definition of "institution" was changed to show that term refers to centers or sponsors that are under contract with the department to administer the CACFP.

The definition for "licensing staff" is changed to state that licensing staff is also responsible for registering child care contractors. Not changing the definition omits the portion of the definition that makes contractors aware that licensing staff is also responsible for child care registrations.

A definition for "outside school hours care center" was added because it is a type of center that could participate in the CACFP. It is necessary because the other types of day care centers are identified in the definitions.

The definition for "seriously deficient" was changed to provide the meaning of the term rather than reference federal regulations.

The definition for "sponsoring organization" has been changed to include a more thorough and substantive definition.

<u>ARM 37.75.102 Civil Rights</u>

Adding the manual section on civil rights to section (1) is reasonable and necessary to specify the correct manual section

to locate the civil rights information.

The changes to subsections (2)(a) and (b) are necessary to include the requirement that equal opportunity be part of the nondiscrimination statement. The changes are necessary because the content is all one quote, and it is incorrect as currently stated.

ARM 37.75.105 Head Start Categorical Eligibility

The changes to section (1) of this rule are reasonable and necessary to convey the state requirement that data be collected uniformly throughout the state by using the state's Income Eligibility form. Without this change, there is a significant margin for error in determining CACFP reimbursement classifications because the Head Start income eligibility considerations are not the same as the income guidelines for the CACFP.

ARM 37.75.105(2) includes the requirement that records be readily available during the time of a review. Not including this requirement could be costly to the state and to the Head Start due to postage, copying, and staff time costs.

ARM 37.75.105(3) and (4) are proposed to be deleted. This change is reasonable and necessary because the majority of the language was taken from the federal regulation 7 CFR 226. The federal regulation clearly explains the Head Start requirements and placing it in the ARM is redundant.

ARM 37.75.109 Audit Grants

The change to subsection (1)(b) is reasonable and necessary to refer to the correct terminology of "procure" rather than "purchasing" or "acquisition", thereby alerting contractors that they must meet the procurement requirements of the CACFP and the state of Montana.

The requirement for the debarment certificate in subsection (1)(c)(iii) is removed. The change is reasonable and necessary because the debarment form has been abolished and is no longer in use. A method has been developed to check for debarment or suspension information through the internet.

The addition of subsection (1)(d) is reasonable and necessary to specify the final documentation necessary for correct reimbursement of audit funds. Not including this change leaves the full documentation requirement incomplete.

ARM 37.75.201 Day Care Home Sponsors Service Area

The change to section (2) is necessary to clarify that applications are available, but will not be accepted if two sponsors already are serving an existing county and need cannot

be established. Not changing the rule could create work for an institution desiring to become a day care home sponsor in completing an application when it will not be accepted.

The change to section (3) is necessary to let day care home sponsors know that the department must confirm that a provider would be more efficiently served by a sponsor in an adjacent service area.

The wording of sections (4) through (8) was changed to make the requirements easier to understand.

The change allowing the department to assign day care homes to sponsors in section (9) is necessary in the event that a day care home sponsor is unable to accept all of the day care homes from a discontinuing or terminated sponsor.

ARM 37.75.202 Tiering Changes

The changes in this rule are reasonable and necessary to state clearly the correct use of the information received by day care home sponsors. The change is reasonable and necessary to use the same language and terms of reference throughout the rule, making it easier to understand. Not including this change leaves the rule incomplete, unclear, and incorrect.

ARM 37.75.205 Provider Enrollment

Section (1) was changed to state clearly that a new provider must have current registration before beginning participation in the CACFP, and to clarify that a renewing provider may be in the renewal process and still participate in the CACFP if assurance is obtained from state licensing staff that the registration is being renewed.

The change to subsection (2)(a)(iv) is necessary to correctly identify all documents that show proof of valid registration. Excluding the document from the "virtual pavilion" allows for errors to occur, and can result in delays in processing because the sponsor is unaware that this form of documentation is acceptable.

The change to section (3) is necessary because the forms mentioned in the rule are no longer in use by the department. The sponsor/provider agreement replaces the application and reasons for termination.

Subsection (4)(b) is amended because the department has revised the forms used by the providers, and this rule requirement sets forth the correct information.

This rule is changed to comply with federal regulation, which prohibits termination without the opportunity for the sponsor to take corrective action. Not making this change conveys

incorrect information.

The change to section (7) is necessary to list and name the documents that must be retained in accordance with the federal regulations of three federal fiscal years plus the current federal fiscal year.

The addition of section (8) is necessary to specify which information is considered permanent documentation that must always be available. Having this information readily available saves time for the state review team and for the sponsor's monitors.

Changes to section (9) are necessary so that a single form can be completed instead of a five page agreement when a provider moves or has a name change. This change reduces the paperwork required and makes it easier for both day care home sponsors and providers to meet program requirements.

Changes to section (10) are necessary to assure that the meal time change form becomes part of the sponsor/provider agreement. As part of the sponsor/provider agreement, the rights and responsibilities of the provider and of the sponsor apply.

37.75.206 Recruitment

Changes to subsections (4)(a), (b), and (c) are reasonable and necessary to comply with the federal requirements, 7 CFR 226, governing the CACFP.

Changes to sections (6) and (7) are reasonable and necessary because the existing language no longer applies.

37.75.209 Changing Sponsoring Organization

Subsection (3)(b) changes are reasonable and necessary to keep the department informed as is required by federal regulation.

The proposed amendments to section (5) are reasonable and necessary to assure that a provider that is not performing in compliance with CACFP requirements may not switch sponsors to avoid corrective action or potential termination. Not including this language could potentially damage the integrity of the CACFP.

The proposed changes to section (6) are reasonable and necessary to assure the awareness that the final decision to switch sponsors lies with the Montana CACFP. Not including the language could cause disputes among sponsors and be disruptive to the CACFP.

37.75.301 Menu Evaluation

The change to section (1) is reasonable and necessary to

correctly assign responsibility for ensuring minimum federal requirements are met by sponsors in performance of menu evaluations. Not including this change implies that participants (children and adult participants, as defined by 7 CFR 226.2) are responsible to ensure minimum menu standards are met.

The changes to section (2) are reasonable and necessary to state more simply the responsibility of sponsors in regard to menu evaluations and to use the same term of reference throughout the rule.

37.75.302 Infant Meal Reimbursement

The changes to sections (1) through (5) are reasonable and necessary to include changes in the federal regulations for provider and/or center infant meal reimbursement. Not including these changes leaves the rule incorrect, incomplete, and allows for errors and incorrect claiming procedures by providers and centers.

37.75.401 Sponsor and Facility Training and Training Records

The caption of this rule is changed to specify to whom the rule applies. This is necessary to make it easier for contractors to locate the information in the administrative rule.

Section (2) is changed to use the same terminology as the federal regulation governing the CACFP. The words "day care home provider" or "center" are replaced with facility. The change is necessary to avoid confusion in terminology between the federal and state guidance.

Subsection (4)(b) is changed to eliminate the need for documentation of a training facilitator's qualifications. The CACFP does not require specific qualifications for a facilitator to provide training. The change is necessary to correct the rule.

Subsection (4)(c) is deleted. The CACFP does not require documentation of the anticipated educational outcomes of training beyond the requirements otherwise stated in section (3). Not changing the rule leaves the rule incorrect.

Subsection (4)(d) is simplified, removing the requirement that a roster labeled with the course name and outcome be kept as documentation. The course name or title will be included on the agenda as stated in subsection (3)(a). Not changing the rule leaves a requirement for additional information that the CACFP does not need.

Subsections (5)(a) through (e) have been replaced. The federal regulation governing the CACFP requires a sponsor to train the staff of its sponsored facilities. The CACFP believes that

attendance at training offered by the Montana CACFP by two of the staff members at each institution is sufficient to learn the material and provide the required training to their staff. Making this change can reduce the expense incurred by the contractor in having staff attend training offered by the department. Not making this change could make attendance at training offered by the department unnecessarily costly to attend by institutions.

Section (6) is changed to reduce the number of hours, from five hours to four hours, that a day care home provider must participate in training offered by their sponsor. The CACFP believes that four hours is sufficient time to training day care home providers on CACFP requirements and nutrition. The change is necessary to make it easier for day care home providers to obtain the required training. Not making this change can make it more difficult for day care home providers to obtain the required training.

37.75.402 Milk Purchase Records

The hearing was changed to accurately refer to the subject. Not changing the rule leaves language that refers to something that does not exist.

37.75.501 Reviews of Day Care Home Sponsors

Subsections (3)(a), (b), and (c) were removed entirely. This change is necessary because the topics addressed are clearly defined in the federal regulation. The federal regulation does not allow claims for reimbursement to be held pending verification of corrective action. Not changing the rule leaves the rule incorrect.

37.75.502 Reviews of Centers and Sponsors of Centers

ARM 37.75.502 was changed entirely to provide specific courses of action to be taken by the CACFP and the institutions, to make the rule more clear, and to convey more directly the intent of the rule.

Section (2) was changed to specify that records must be made available to reviewers at the time of the review, and to limit the possibility of records being created after the fact.

Subsections (2)(j) through (n) were added to the rule to make institutions aware of information about records they are required to have on site pursuant to federal regulation, 7 CFR 226, and thereby increase their ability to comply with the regulation.

Subsections (3)(a) through (e) were changed to explain to institutions what the CACFP will look for during an on site review of an institution in determining its compliance with

CACFP requirements.

Section (4) was changed to make institutions aware that meals may be disallowed and money would have to be repaid to the CACFP if records are not available as stated in section (2), and to inform them of the potential consequences of not retaining and providing such records.

Section (5) was added to provide institutions an opportunity to request an exception for not having records on site or available and to set forth to institutions the kind of circumstances in which an institution might be excepted from having such records available as otherwise required.

Section (6) was added to state the amount of time the CACFP may take to respond to a request for an exception from an institution.

Section (7) was added to provide examples of reasons an exception may be granted thereby reducing the time and expense to institutions and the CACFP in preparing and reviewing requests for exception that would not justify the granting of an exception.

Section (8) was added to inform institutions that their claim may be held for up to 45 days if the amount of money owed to the program is being determined. In this manner, the state can take the money due from the current claim without having to request a check. This is necessary to help assure the CACFP is repaid for any money owed to the program, and is the most cost effective method to collect payment.

Section (9) was added to increase the awareness that additional records may be randomly requested when an institution has been under corrective action, thereby ensuring CACFP's capability to safeguard CACFP integrity and prevent potential fraud within the program.

37.75.601 Administrative Reviews (Appeals) and Fair Hearings

The word administrative has been removed throughout the rule. An institution can appeal any adverse action. Removing the word makes the statements correct. Not removing this word implies that only adverse administrative actions can be appealed by the institutions, which is not the case.

Section (5) has been added to include the ARM governing fair Hearings of the CACFP into the CACFP rules. The word "appeal" is included with references with "administrative reviews" to provide a more full sense of the meaning of the rule.

37.75.602 Corrective Action Plan

The changes are reasonable and necessary to allow a range of

time for the return of the Corrective Action Plan. Not including the change could result in allowing a 30 day response period to a corrective action that may require greater urgency and faster response times.

The changes are reasonable and necessary to state the exact time frame that amended corrective action plan response period begins. Not including this change would leave the referenced period too vaguely defined.

37.75.603 Termination and Reenrollment of a Day Care Home Provider

Changes to ARM 37.75.603 are necessary because the federal regulation governing the CACFP changed. Not changing the rule leaves the information contradictory to federal regulation and incorrect.

5. Interested persons may submit their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to Gwen Knight, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 202951, Helena, MT 59620-2951, no later than 5:00 p.m. on December 8, 2005. Data, views or arguments may also be submitted by facsimile (406)444-1970 or by electronic mail via the Internet to dphhslegal@mt.gov. The Department also maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. For placement on the mailing list, please write the person at the address above.

6. The Office of Legal Affairs, Department of Public Health and Human Services has been designated to preside over and conduct the hearing.

Dawn Sliva
Rule Reviewer

Joan Miles
Director, Public Health and Human Services

Certified to the Secretary of State October 31, 2005.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the proposed amendment of ARM 42.2.304, 42.2.306, 42.2.501, 42.2.504, 42.2.505, 42.2.510, 42.2.511, 42.2.613, 42.2.621, 42.15.314, 42.15.315, 42.15.320, 42.23.605 and repeal of ARM 42.2.326, 42.2.327, 42.31.510 and 42.31.705 relating to general department rules and penalty and interest rules	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT AND REPEAL

TO: All Concerned Persons

1. On November 30, 2005, 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 amendment and repeal of the above-stated rules relating to general department rules and penalty and interest rules as they apply to personal income and corporation license taxes.

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

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Revenue no later than 5:00 p.m., November 21, 2005, 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:

<u>42.2.304 DEFINITIONS</u> The terms used by the department are, in great part, defined in Titles 15, 16, 39, and 72, MCA. In addition to these statutory definitions, the following definitions apply to ARM Title 42, unless context of a particular chapter or rule provides otherwise:

(1) remains the same.

<u>(2) "Ancestor" means a lineal ancestor and a collateral ancestor if related by blood. Sections 72-11-102, 72-11-103, and 72-11-104, MCA, describe how kinship and degrees of kinship are determined.</u>

(2) through (11) remain the same but are renumbered (3) through (12).

(13) "Deficiency assessment" means an amount greater than the amount disclosed on a return or report filed with the department.

(12) remains the same but is renumbered (14).

(15) "Dependent" means any individual listed in 15-30-113, MCA, as amended, over one-half of whose support for the calendar year in which the taxable year of the taxpayer begins was received from the taxpayer. In determining whether or not an individual received for a given calendar year over one-half of his support from the taxpayer, there shall be taken into account the amount of support received from the taxpayer as compared to the entire amount of support the individual received from all sources, including support which the individual himself supplied.

(16) "Descendant" means a lineal descendant and a collateral descendant related by blood. Sections 72-11-102, 72-11-103, and 72-11-104, MCA, describe how kinship and degrees of kinship are determined.

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

~~(14)~~(19) "Domiciled" means having a residence in the state of Montana as stated in 1-1-215, MCA.

~~(15)~~(18) "Disregarded entity" means a business entity that is disregarded as an entity separate from its owner(s) for federal income tax purposes. The term includes a limited liability company with one owner, a qualified subchapter S subsidiary not treated as a separate corporation, and a partnership, syndicate, group, pool, joint venture, or other unincorporated organization electing under IRC 761 to be excluded from application of partnership tax rules. A corporation is not a disregarded entity by virtue of being included in a federal consolidated return.

(16) through (22) remain the same but are renumbered (20) through (26).

(27) "Immediate family member" means any individual who is a lineal descendant of the taxpayer and also includes their spouse. Stepchildren are considered lineal descendents if that relationship was created before the child's eighteenth birthday.

(23) through (30) remain the same but are renumbered (28) through (35).

~~(31)~~(36) "Noncontiguous parcels of land" means land acreage in the same ownership that meets one of the two following standards:

(a) acreages that do not touch, but are each an integral part of the operation of a bona fide agricultural operation; or

(b) acreages that would meet the definition of contiguous contained in ~~(8)~~(10) were the acreages not separated by one or more of the following features only:

(i) roads and highways;

(ii) navigable rivers and streams;

(iii) local taxing authority boundaries;

(iv) railroad lines; or

(v) federal or state land that is leased from the

federal or state government by a taxpayer whose land ownership is contiguous to the federal or state land.

(32) through (50) remain the same but are renumbered (37) through (55).

(56) "Statement of account" means the first notice provided to the taxpayer that a debt is owing to the state of Montana.

(57) "Support" includes food, shelter, clothing, medical and dental care, education, and the like. Generally, the amount of an item of support will be the amount of expense incurred by the one furnishing such item. However, if the item of support furnished is in the form of property or lodging, it will be necessary to measure the amount of such item in terms of its fair market value.

(51) through (53) remain the same but are renumbered (58) through (60).

AUTH: 15-1-201, 15-30-305, 15-31-501, 16-1-303, 16-10-104, and 16-11-103, MCA

IMP: 15-1-102, 15-1-601, 15-30-101, 15-30-105, 15-30-131, 15-30-1101, 15-30-1102, 15-30-1111, 15-30-1112, 15-30-1113, 15-30-1121, and 15-31-101, and Title 15, chapter 31, part 3, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.2.304 to add general terms used by the department in other chapters of Title 42 and to correct a clerical error to an internal reference in (31).

42.2.306 PENALTY AND INTEREST (1) Unless otherwise provided by law, for all taxes, fees and other assessments imposed under Titles 15~~,~~ and 16~~, and 39~~, MCA, and administered by the department, penalty and interest attaches ~~if the tax that is deficient is not paid within 10 days of notice of the final determination. Thereafter, interest is calculated on the amount of tax at the rate of 12% per year, accrued at 1% per month or fraction of a month, on the unpaid tax~~ as ~~stated~~ outlined in 15-1-216, MCA.

(2) ~~In the instance of a deficiency, the penalty is calculated at the rate of 1.5% per month or fraction thereof on the unpaid tax. The penalty may not exceed 18% of the tax due.~~

~~(3) Additional penalties and interest may be assessed according to the provisions of 15-1-216 and 16-11-205, MCA~~.

~~(4)~~ Exclusions to this rule are provided in 15-1-216, MCA.

AUTH: 15-1-201, 15-1-216, 16-10-104, 16-11-103, and 39-51-301, MCA

IMP: 15-1-206, 15-1-207, 15-1-216, 15-1-701, 15-1-708, 16-1-409, 16-1-411, 16-11-143, and 16-11-203~~, and 39-51-301~~, MCA

REASONABLE NECESSITY: The department proposes to amend ARM

42.2.306 to reflect changes to the law as the result of House Bill 592 enacted by the 59th legislature and to eliminate references to Title 39, which the department no longer administers. The 56th legislature established uniform provisions for the assessment of penalty and interest for delinquent taxes and fees under Title 15 and 16, MCA. Section 15-1-216, MCA, is the statute that details the uniform penalty and interest provisions. Senate Bill 271 of the 58th legislature transferred the responsibility of collecting unemployment insurance to the Department of Labor and Industry. Therefore, the reference to Title 39, MCA, should be eliminated.

42.2.501 APPLICATION OF PARTIAL PAYMENTS (1) through (3) remain the same.

(4) Payments not directed by the customer will be applied pro rata among the accounts being collected by the department. For example, if 30% of the total debt is ~~unemployment insurance~~ coal severance tax, 40% is withholding, and 30% is income tax, and a partial payment is received, application of the payment will be applied pro rata according to the schedule shown in (1) until all debt is satisfied.

(5) remains the same.

AUTH: 2-4-201, 15-1-201, 15-30-305, 15-31-501, 15-35-122, and 15-53-155, MCA

IMP: 2-4-201, 15-1-206, 15-1-216, 15-30-304, 15-30-321, 15-30-323, 15-31-111, 15-31-502, 15-31-506, 15-31-510, 15-31-522, 15-31-543, 15-31-545, 15-35-105, 15-35-121, 15-37-108, 15-38-107, 15-38-110, 15-53-145, and 15-59-106, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.2.501 to eliminate references to unemployment insurance, which the department no longer administers.

Senate Bill 271 of the 58th legislature transferred the responsibility of collecting unemployment insurance to the Department of Labor and Industry. Therefore, the reference to unemployment insurance should be eliminated.

42.2.504 PENALTIES (1) Applicable late filing penalties and late pay penalties must be calculated as set forth in 15-1-216, MCA.

(2) The penalty for purposely failing to file a return or to pay the tax by the due date is set forth in 15-1-216, MCA.

(3) ~~If a deficiency in tax is not paid within 60 days from the date of mailing notice thereof to the taxpayer or if a deficiency in tax is due to negligence on the part of the taxpayer, the penalties set forth in 15-1-216, MCA, apply.~~

~~(4)~~ A taxpayer who files, renders, or signs a false or fraudulent return or statement, or who supplies the department with false or fraudulent information, is subject to the additional civil and criminal penalties described in 15-30-321, MCA.

AUTH: 15-30-305, MCA
IMP: 15-1-216, 15-30-321, and 15-30-323 MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.2.504 to reflect changes to the law as the result of the enactment of House Bill 592 enacted by the 59th legislature. Section 5 of House Bill 592 eliminated the 60-day period for payment of tax after mailing of the notice. Penalty and interest are assessed pursuant to 15-1-216, MCA.

42.2.505 INTEREST ON UNPAID TAX (1) remains the same.

(2) A taxpayer must file an amended Montana return within 90 days after filing an amended federal return or receiving notice that their taxable income was changed or corrected by the IRS, or other competent authority, as required by 15-30-304, MCA. ~~If this occurs, the department will waive interest on any additional tax attributable to the federal amendment from the date the department receives the amended Montana return and the department notifies the taxpayer of the increased tax.~~

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

AUTH: 15-30-305, MCA
IMP: 15-30-142, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.2.505 to reflect changes to the law in House Bill 592 enacted by the 59th legislature. The 56th legislature established uniform provisions for the assessment of penalty and interest for delinquent taxes and fees under Title 15 and 16, MCA. These uniform provisions are outlined in 15-1-216, MCA.

42.2.510 REVIEW OF STATEMENT OF ACCOUNT NOTICES

(1) This rule applies to all department actions where a statement of account (SOA) or deficiency assessment is issued ~~except the review of certain tax issues that involve unemployment benefit claims pursuant to 15-30-257, MCA~~. ~~Statement of accounts~~ A statement of account does not include centrally assessed appraisal reports and centrally assessed assessment notices which are covered by ARM 42.2.511.

(2) The department will provide notification to the customer by mailing the SOA as defined in ARM 42.2.613, to the customer as prescribed in 15-1-211, MCA. Information provided on the SOA shall advise the customer of the requirement to file a request for informal review form ~~(AB-26)~~ APLS101F or a written objection to the SOA with the department within 30 days from the date of the SOA; and that failure to file a written objection within the 30 days shall be deemed an admission that the customer agrees the debt stated in the SOA is due and owing.

(a) through (d) remain the same.

(3) The customer must submit, to the department, an

oObjection to the SOA ~~will be provided to the department~~ within 30 days of the date on the SOA. If the objection is sent by the U.S. postal service or by any other generally accepted delivery service, the objection must be postmarked within 30 days of the date of the SOA. If it is sent by electronic mail, it must be sent within 30 days of the date of the SOA. Failure to respond within the 30 days shall be deemed an admission that the customer concurs that they owe the debt stated in the SOA.

(a) Objections may be submitted using the ~~AB 26~~ APLS101F or by a detailed letter stating the issues and amount of tax disputed.

(b) Electronic objections will be accepted. The e-mail address, ~~soaobjection.state.mt.us~~ soaobjections@mt.gov is provided on the SOA in the appeal rights section of the SOA.

(4) A mutual extension may be granted if both parties agree. ~~The parties may extend the time periods in this rule after the initial objection has been filed by completing an extension form (DOR form 577) which is available on the department's internet homepage.~~

(5) The department shall review the objection and determine whether the department agrees or disagrees with the customer's objections. The department shall mail written notice to the customer advising the customer of the department's determination within 30 days after receipt of the objection.

(a) If the department concurs with the customer, the matter is resolved by withdrawing or revising the SOA.

(b) If the department disagrees with the customer, it shall explain the reasons for the disagreement, notify the customer of the dispute resolution procedures and provide a copy of notice of referral form ~~(CVR 1)~~ (APLS102F). The department shall also notify the customer that the customer must submit a ~~CVR 1~~ APLS102F or detailed letter to the department within 15 days of the date on the notice of determination from the department, and that the customer will forfeit the right to a hearing if the customer fails to submit the ~~CVR 1~~ APLS102F or detailed letter within the 15-day period.

(6) Appeals shall be submitted to the office of dispute resolution if the customer decides to appeal the department decision, as required in 15-1-211, MCA. This may be done by completing the ~~CVR 1~~ APLS102F, or by providing a detailed letter and submitting either document to the department within 15 days of the date of the notice of determination from the department. Appeals should be sent to the Department of Revenue, Office of Dispute Resolution, P.O. Box 7701, Helena, Montana 59604.

(a) through (10) remain the same.

AUTH: 15-1-201, ~~and~~ 15-1-211, 15-1-701, 15-31-501, 15-35-122, and 15-36-322, MCA

IMP: 15-1-211, 15-1-406, 15-8-601, 15-23-102, 15-23-107, 15-30-142, 15-30-257, ~~and 39-51-1109,~~ 15-31-503, 15-37-109,

15-37-114, 15-38-108, and 15-39-110, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.2.510 to reflect changes in the law as enacted by House Bill 592 enacted by the 59th legislature and to eliminate references to unemployment insurance, which the department no longer administers. The department further amends the rule to change the title of the objections and appeals forms. Authority and implementing cites are being added that reflect laws that this rule supports. The reference to 39-51-1109, MCA, is being deleted because that law applies to the unemployment insurance tax that is not longer administered by the department.

42.2.511 REVIEW OF CENTRALLY ASSESSED PROPERTY APPRAISALS (1) through (4) remain the same.

(5) The department shall review the objection and determine whether the department agrees or disagrees with the customer's objections. The department shall mail written notice to the customer advising the customer of the department's determination within 15 days after receipt of the objection.

(a) If the department concurs with the customer, the matter is resolved by revising the appraisal report and issuing a final assessment notice.

(b) If the department disagrees with the customer, it shall explain the reasons for the disagreement by issuing a revised appraisal report, notify the customer of the dispute resolution procedures and provide a copy of ~~a CVR 1~~ form APLS101F. The department shall also notify the customer that the customer must submit ~~a CVR 1~~ form APLS101F or detailed letter to the department within 15 days of the date on the revised appraisal report, and that the customer will forfeit the right to a hearing if the customer fails to submit the ~~CVR 1~~ form APLS101F or detailed letter within the 15-day period. Appeals should be sent to the Department of Revenue, Office of Dispute Resolution, P.O. Box 7701, Helena, Montana 59604.

(6) If the customer decides to appeal the department's decision, the customer shall:

(a) within 15 days of the date of the revised appraisal report forward the matter to the office of dispute resolution (ODR), as required in 15-1-211, MCA, by completing the ~~CVR 1,~~ form APLS102F, or by providing a detailed letter and submitting either document to the department; or

(b) upon mutual agreement of the parties file an appeal with the state tax appeal board.

(7) through (10) remain the same.

AUTH: 15-1-201, 15-1-211, and 15-23-108, MCA

IMP: 15-1-211, 15-1-406, 15-8-601, 15-23-102, and 15-23-107, MCA

REASONABLE NECESSITY: The department proposes to amend ARM

42.2.511 to reflect the change to the title of the forms needed to request a review or appeal of an assessment.

42.2.613 DEFINITIONS The following definitions apply to rules found in this sub-chapter.

(1) through (4) remain the same.

~~(5) "DOR form 577" means the extension form used to request an extension of the dates referred to in ARM 42.2.622 which is available on the department's internet homepage, http://www.state.mt.us/revenue.~~

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

~~(7)~~(6) "Hearing" means a proceeding with specified issues of fact or law to be heard before a finder of fact, from which a decision is rendered. ~~The decision rendered by the finder of fact shall be considered the final agency decision in all matters not involving the Montana Administrative Procedure Act. The director as required by the Montana Administrative Procedure Act shall issue final agency decisions in liquor licensing matters.~~

(8) through (12) remain the same but are renumbered (7) through (11).

~~(13)~~(12) "Notice of referral to the office of dispute resolution form ~~(CVR 1)~~ APLS102F" is a form used by the department and customer to refer a disputed matter to the office of dispute resolution. This form is available on the department's internet homepage as stated in (1).

(14) through (16) remain the same but are renumbered (13) through (15).

~~(17)~~(16) "Request for informal review form ~~(AB 26)~~ APLS101F" is a form used by the department and the customer to record changes, appeals and issues pertaining to a particular customer. This form is available on the department's internet homepage, http://www.~~state.~~mt.~~us/revenue~~gov. It may be used by the customer to notify the department of a dispute concerning an amount shown on a property assessment notice or statement of account (SOA) for those items described in ~~(19)~~(18).

(18) and (19) remain the same but are renumbered (17) and (18).

~~(20)~~(19) "Written objections" include objections submitted through electronic media or delivered by the U.S. postal service, or any other generally accepted delivery service. For matters before ODR, electronic media filings must be supplemented with a hard copy document.

AUTH: 15-1-201 and 15-1-211, MCA

IMP: 15-1-211, 15-1-406, 15-23-102, 15-23-107, and 15-30-257~~, and 39-51-1109~~, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.2.613 to change the form names and the website address that customers must use to obtain these forms. The rule is further amended to delete unnecessary language in the definition of "hearing" that does not directly apply to that term.

42.2.621 FINAL AGENCY DECISION AND APPEAL ~~OF AN AGENCY DECISION~~ (1) The hearing examiner shall submit a proposed agency decision to the director for consideration. The final agency decision shall be issued by the director of revenue.

(2) If a person or other entity receives an adverse agency decision in a tax dispute, they shall have 30 days to submit an appeal from such decision to the state tax appeal board.

~~(2)~~(3) If no decision is rendered by the end of the 180-day period specified in 15-1-211, MCA, and ARM 42.2.616, the department shall issue a determination to the taxpayer. The determination shall inform them that the 180-day term has run without a decision and that they are therefore entitled to carry their appeal forward. The person or other entity shall then have 30 days to file a complaint with the appropriate reviewing authority.

AUTH: 15-1-201 and 15-1-211, MCA
IMP: 15-1-211, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.2.621 to clarify that final agency decisions will be issued by the Director of Revenue.

42.15.314 CHANGES IN FEDERAL TAXABLE INCOME (1) and (2) remain the same.

(3) Interest and penalty ~~is~~ are assessed on any unpaid tax under the original return from the prescribed due date of the original return until the department receives ~~an amended Montana income tax return. The department will waive interest from the date the department receives the amended return until it sends the taxpayer a statement of increased liability~~ payment.

AUTH: 15-30-305, MCA
IMP: 15-1-216, 15-30-145, 15-30-146 and 15-30-304, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.15.314 to reflect changes in the law as the result of the enactment of House Bill 592, which was enacted by the 59th legislature. Section 1 of House Bill 592 specifically eliminated the language in 15-1-206, MCA, which allowed for the abatement of interest from the date the department was notified of federal changes until notice of additional tax was sent to the taxpayer. The word "penalty" was added to (3) for further clarification.

42.15.315 ORIGINAL AND AMENDED RETURNS (1) 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 ~~and late pay penalties~~ penalty on the original return.

(7) remains the same.

(8) ~~A late pay penalty will not be assessed on an amended return, adjustment from an audit, or correction for which the original return was filed and paid on or before the due date, including extensions~~. ~~If any additional balance due is not paid within 60 days of the department's notice, as provided in 15-30-142, MCA, the late pay penalty required in 15-1-216, MCA, will apply.~~

~~(9) In the case of a net operating loss carry back, no change will be made to the calculation of the late file and late pay penalty, and the underpayment interest on the original return.~~

~~(10)~~ If required by 15-1-216 and 15-30-321, MCA, interest will be calculated on the original return. If an amendment is made to the original return, interest will be calculated as required under 15-30-149 or 15-30-142, MCA, as of the due date in (1).

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

AUTH: 15-30-305, MCA
IMP: 15-1-216, 15-30-142, 15-30-149, 15-30-241, and 15-30-321, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.15.315 to reflect changes in the law as the result of the enactment of House Bill 592 enacted by the 59th legislature. Section 5 of House Bill 592 eliminated the 60-day notice for payment of tax after mailing of the notice. Section 2 and 3 of the bill states that penalty applies regardless if extensions of time to file have been granted.

42.15.320 DEFICIENCY NOTICES AND PAYMENTS (1) As soon as practical after a return is filed, the department will examine the return and verify the amount of tax. If the department determines that the tax liability is greater than the amount previously paid, it will mail notice of the additional tax ~~accrued interest to the taxpayer. If the additional tax and accrued interest are paid within 60 days after the date of the notice, the underpayment penalty provided in 15-1-216, MCA, will not be imposed~~ plus penalty and interest as outlined in 15-1-216, MCA.

(2) remains the same.

AUTH: 15-30-305, MCA
IMP: 15-30-142 and 15-30-144, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.15.320 to reflect changes in the law as the result of the enactment of House Bill 592 enacted by the 59th legislature. Section 5 of House Bill 592 eliminated the 60-day notice for payment of tax after mailing of the notice.

42.23.605 PENALTY AND INTEREST (1) Whenever a deficiency assessment is made by the department pursuant to

15-31-503, MCA, based on the original return, the tax becomes final as provided in 15-31-503, MCA, and the payment for the deficiency is due within 30 days as stated on the notice of deficiency assessment. If the payment is not made by the end of this period, the taxpayer is subject to imposition of a penalty ~~of 1.5% per month, not to exceed 18% of the tax due,~~ as provided in 15-1-216, MCA.

(2) Amended returns will not change the calculation of the late file ~~and late pay~~ penalties on the original return for tax years beginning before January 1, 2001.

(3) ~~For tax years beginning on or after January 1, 2001, the late file and~~ l~~L~~ate 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.

(4) In the case of a net operating loss carry-back, no change will be made ~~to the calculation of the late file and late pay penalty, and~~ to the underpayment interest penalty on the original return.

(5) ~~A late pay penalty will not be assessed on an amended return, adjustment from an audit, or correction for which the original return was filed and paid on or before the due date, including extensions. If any additional balance due is not paid within 60 days of the department's notice, the late pay penalty required in 15-1-216, MCA, will apply.~~

~~(6)~~ A penalty assessment may be appealed by the taxpayer under the provisions of ARM 42.2.613 through 42.2.621.

AUTH: 15-31-501, MCA
IMP: 15-1-216, 15-1-222, 15-31-502, 15-31-503, and 15-31-510, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.23.605 to reflect changes in the law as a result of the enactment of House Bill 592 enacted by the 59th legislature. Sections 2 and 3 of House Bill 592 changed the interest and penalty rates assessed by the department. These new rates are detailed in 15-1-216, MCA. Section 2 and 3 also require late pay penalties to be assessed on amended returns. Section 5 of the bill eliminated the 60-day notice for payment of tax after mailing of the notice. The word "penalty" was added to (4) for further clarification

4. The Department proposes to repeal the following rules:

42.2.326 RULEMAKING which can be found on page 42-231 of the Administrative Rules of Montana.

AUTH: 15-1-201, 16-1-303, 16-10-104, and 16-11-103, MCA
IMP: Title 2, chapter 3, part 1, MCA

REASONABLE NECESSITY: The department is proposing to repeal ARM 42.2.326 because the requirements of this rule are found

in Title 1, MCA, and the rule is no longer necessary.

42.2.327 OTHER MEASURES which can be found on page 42-231 of the Administrative Rules of Montana.

AUTH: 15-1-201, 16-1-303, 16-10-104, and 16-11-103, MCA
IMP: Title 2, chapter 3, part 1, MCA

REASONABLE NECESSITY: The department is proposing to repeal ARM 42.2.327 because the requirements of this rule are found in Title 2, MCA, and the rule is no longer necessary.

42.31.510 PENALTY AND INTEREST which can be found on page 42-3152 of the Administrative Rules of Montana.

AUTH: 15-53-155, MCA
IMP: 15-1-216, 15-53-145 and 15-43-147, MCA

REASONABLE NECESSITY: The department is proposing to repeal ARM 42.31.510 because ARM 42.2.306 addresses the uniform penalty and interest provisions. Therefore, this rule is no longer necessary.

42.31.705 LATE FILING PENALTIES which can be found on page 42-3163 of the Administrative Rules of Montana.

AUTH: 16-11-402, MCA
IMP: 15-1-216 and 16-11-402, MCA

REASONABLE NECESSITY: The department is proposing to repeal ARM 42.31.705 because changes to the law by House Bill 592 which was enacted by the 59th legislature now outline the applicable rates for late filing and the current rules is no longer necessary.

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

Cleo Anderson
Department of Revenue
Director's Office
P.O. Box 7701
Helena, Montana 59604-7701
and must be received no later than December 8, 2005.

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

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

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

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

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

/s/ Cleo Anderson	/s/ Dan R. Bucks
CLEO ANDERSON	DAN R. BUCKS
Rule Reviewer	Director of Revenue

Certified to Secretary of State October 31, 2005

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the proposed amendment of ARM 1.2.102, 1.2.202, 1.2.204, 1.2.205, 1.2.206, 1.2.210, 1.2.211, 1.2.212, 1.2.214, 1.2.216, 1.2.217, 1.2.218, 1.2.219, 1.2.401, 1.2.402, 1.2.404, 1.2.411, 1.2.422, 1.2.423, and 1.2.519, the amendment and transfer of ARM 1.2.321, 1.2.322, 1.2.412, and 1.2.421, the adoption of New Rules I through III, and the repeal of ARM 1.2.301 regarding the Administrative Rules of Montana, Montana Administrative Register, rule formatting, incorporation by reference, fees	)	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT, TRANSFER, ADOPTION, AND REPEAL

TO: All Concerned Persons

1. On December 1, 2005, a public hearing will be held at 10:00 a.m. in Room 172, State Capitol Building, Helena, Montana, to consider the proposed amendment, transfer, adoption, and repeal 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 November 22, 2005, to advise us of the nature of the accommodation that you need. Please contact Jean Branscum, Secretary of State's Office, P.O. Box 202801, Helena, MT 59620-2801; telephone (406) 444-5596; FAX (406) 444-3976; e-mail jabranscum@mt.gov.

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

1.2.102 OFFICIAL VERSION OF THE ADMINISTRATIVE RULES OF MONTANA (1) remains the same.

(2) Changes to the ARM must first be published in the Register (refer to subchapter 4).

(3) Finalized rule changes do not appear in the ARM until the quarter following their adoption. The text of the ARM must be read together with any rule changes made in the current and previous quarters of the Register to ensure the complete and correct language of the rule is being read.

(4) If there is a discrepancy between the rule text in the ARM and the text of the Register proposal and adoption

notices, the text of the Register notices prevails as the correct text.

AUTH: 2-4-306, 2-4-311, 2-4-312, 2-15-401, 2-15-404, MCA
IMP: 2-4-306, 2-4-311, 2-4-312, MCA

1.2.202 ~~NEW~~ ARRANGEMENT OF THE ADMINISTRATIVE RULES OF MONTANA (1) All titles are organized as follows:

(a) title page;

(b) title table of contents containing chapter names and beginning page numbers for each;

(c) chapters containing rule text;

(d) a cross reference table;

(e) for some titles, a repealed rule table; and

(f) for some titles, old-to-new and new-to-old tables.

~~(1) Title 1 contains the general provisions which include the format instructions, the attorney general's model rules and the Montana Administrative Procedure Act. The remaining titles are assigned to the executive departments of state government which are or may in the future be subject to the provisions of the Act. They were originally assigned in alphabetical sequence of the departments beginning with number 2 and omitting every other number for future growth.~~

(2) ~~Chapters:~~ Titles are divided into chapters.

~~(a) The first chapter under~~ Chapter 1 of every title ~~is assigned to~~ contains the department's organizational rule and organizational charts. Chapter 2 ~~is assigned to~~ contains the department's overall procedural rules. ~~Thereafter, a department begins the numbering of its~~ Subsequent chapter~~s~~ ~~with~~ number~~s~~ ~~3, 4, etc., running~~ run consecutively ~~and reserving~~ with reserved chapter numbers in areas where ~~future growth is~~ additional rules are anticipated.

~~(i)~~ (a) Reserved chapter number~~(s)~~ are indicated in the title's chapter table of contents. A page is placed in the ARM ~~in the location that the~~ where a reserved chapter~~(s)~~ falls.

(b) Beginning with chapter 3, the chapters are organized topically so that rules ~~fall in~~ follow a logical sequence. ~~with substantially r~~Related rules are placed in chapter groups ~~that follow each other~~.

~~(c)~~ Chapters that contain rules common to the entire department are listed first, ~~i.e.,~~ such as centralized services division.

~~(d) Divisions that have rule administering authority are assigned chapter groups so that substantially related rules are listed together.~~

~~(e) A bureau may be assigned chapter(s) with its rules organized in subchapters according to related subject matter. In some instances, a bureau is not assigned a chapter, rather, its rules are placed in a subchapter under the division's chapter.~~

~~(f) Chapters are not assigned below a bureau level unless there is a particularly large group of rules being administered by a unit within a bureau. In this instance, a~~

~~chapter is assigned to a unit, however, it is recommended that the group of rules be placed in a subchapter of the bureau's or division's chapter.~~

~~(g)~~ (c) Chapters are assigned to autonomous agencies ~~who~~ that are attached to a department for administrative purposes only. They may be alphabetized and listed after the department's assigned chapters.

~~(3) Subchapters:~~

~~(a)~~ (4) Other than in ~~C~~chapter 1, ~~chapters are broken down into~~ subchapters are the second division of titles.~~,~~ Subchapters are organized topically and ~~which are~~ placed in a logical sequence. ~~holding substantially related rules. They are given names according to subject matter areas.~~ There may be up to 99 subchapters in one chapter.

(b) In the case of autonomous agencies, the first and second subchapters contain the agency's organizational rule and ~~overall~~ procedural rules, respectively.

~~(c)~~ (a) ~~A department begins the numbering of its s~~Subchapter~~s with~~ numbers ~~1, 2, 3, etc.,~~ run~~ning~~ consecutively, ~~and reserving~~ with reserved subchapter numbers in areas where ~~future growth is~~ additional rules are anticipated.

(i) Reserved subchapter numbers are ~~indicated~~ shown in the chapter's table of contents and also where they fall in the body of the chapter.

~~(4)~~ (5) ~~An individual~~ Each rule is identified ~~by~~ using a three-part numbering system (see ARM 1.2.212).

~~(5)~~ (6) Each rule is broken down into ~~paragraphs~~ sections and subsections which ~~generally~~ cover a single idea.

(a) Each ~~paragraph~~ section and subsection ~~should~~ must be ~~designated~~ identified with a single numerical or alphabetical earmark.

(7) Title names reflect their respective department names. Individual departments assign chapter and subchapter names according to subject matter.

AUTH: 2-4-306, 2-4-311, 2-15-401, MCA
IMP: 2-4-306, 2-4-311, MCA

1.2.204 ~~ARM CONTENT POSITIONS~~ ARRANGEMENT OF TITLE CONTENT (1) ~~The total contents of ARM appear in order as follows:~~

~~(a) Found only in~~ Only Title 1 contains these elements, following the title page~~, is~~:

(a) "How to Use the Administrative Rules of Montana and the Montana Administrative Register"~~,~~;

(b) followed by a chapter table of contents of all chapters found in Title 1 through Title ~~46,~~ 44; and

(c) the preface to the ARM.

(2) ~~Other than the items listed above a~~All titles contain the following ~~items.~~:

(a) ~~The~~ a title page, ~~lists~~ identifying the name of the department and its title number~~,~~;

(b) a table of contents, indicating the number, name, and beginning page number of each chapter in that title~~.~~;

~~(b)~~ (c) ~~C~~chapter 1, ~~is reserved for~~ containing only the department's organizational rule and charts. ~~Since this chapter contains only one rule, there is no~~ Chapter 1 does not contain a table of contents or subchapters; ~~listed. It begins with the rule number, catchphrase, language of the rule and ends with the history of the rule.~~

~~(c)~~ (d) ~~Chapter 2 and remaining chapters contain subchapters. The first page of each new~~ subsequent chapters, beginning with ~~contains~~ a ~~subchapter~~ table of contents indicating:

(i) the subchapter numbers and names; and

(ii) the rule number and the catchphrase of each rule in each subchapter~~.~~;

~~(i) Subchapter table of contents should start on an odd numbered page with the actual text of the subchapter also starting on an odd numbered page.~~

~~(d)~~ (e) a ~~C~~cross reference table ~~follows~~ following the last chapter in ~~the~~ each title ~~and indicates~~, indicating the MCA authority and ~~implementing authority~~ implemented citations for the corresponding ~~ARM~~ rule~~s~~ numbers;~~.~~ ~~The MCA citation numbers are listed in ascending order.~~

~~(e)~~ (f) a ~~R~~repealed rule table ~~follows~~ following the cross reference table ~~and indicates~~, including the repealed rules that were removed during recodification and the effective date of repeal. Some titles also contain repealed rule tables specific to department reorganization by the legislature;

~~(f)~~ (g) following the repealed rules table, an ~~O~~old-to-new numbering table ~~follows the repealed rule table and indicates~~ indicating the old rule numbers in ascending order assigned before recodification in 1980 and the new three-part rule number assigned ~~during~~ as a result of recodification~~.~~; and

~~(g)~~ (h) a ~~N~~new-to-old numbering table ~~follows~~ following the old-to-new numbering table ~~and indicates~~ listing the new rule numbers in ascending order and ~~the~~ corresponding rule numbers ~~assigned~~ before recodification.

AUTH: 2-4-201, 2-4-306, 2-4-311, 2-15-401, MCA
IMP: 2-4-306, 2-4-311, MCA

1.2.205 RULE TYPES AND ~~THEIR~~ LOCATIONS (1) There are two ways to categorize ~~categories of~~ rules: by subject matter and by duration. ~~types. The first category defines the type of rule in terms of its subject matter. Rules are organizational, procedural, or substantive.~~

(2) Subject matter types are organizational, procedural, and substantive.

(a) Organizational rules ~~are those which~~ describe the structure of the department and the divisions of function. ~~There is only one~~ Each department has a single organizational rule, found ~~for each department which is always stated~~ in

~~C~~chapter 1 under each title. ~~However, if any~~ An agency ~~has been assigned~~ attached to a department for administrative purposes only~~, then the board will~~ may have its own organizational rule~~, stated in its first subchapter~~. ~~Where a board's organization has been delineated in the departmental organizational rule at the board's request, such is indicated by reference.~~

(b) Procedural rules ~~are of various types including~~ include, but are not limited to, the following~~. There are the~~:

(i) procedures covered in the attorney general's model rules (rulemaking, contested cases, declaratory rulings)~~.~~;

(ii) ~~There are~~ guidelines for public participation; and

(iii) guidelines for the formulation of environmental impact statements.

(iv) ~~These~~ Procedural rules ~~are always stated under~~ appear in ~~C~~chapter 2 of each title and apply to~~. Such rules are controlling for~~ all units of a department, except agencies ~~assigned~~ attached for administrative purposes. ~~Because of the autonomy of these agencies, they may state their procedural rules in their second subchapter.~~ An agency attached to a department for administrative purposes only may have its own procedural rules.

(c) ~~The s~~Substantive rules are: ~~all those rules which are not organizational or procedural and which come under the definition of rule as set down by the Montana Administrative Procedure Act.~~

(i) rules that implement statutes and carry the force of law; or

(ii) rules that provide an interpretation of statutes and are advisory only. (See 2-4-102, MCA.)

~~(2)~~ (3) The second category defines rules by ~~their~~ duration~~. That is, all rules are~~: temporary, permanent, or emergency.

(a) Temporary rules are:

(i) proposed and adopted to implement a statute that is effective prior to October 1 of the year of enactment;

(ii) subject to the temporary rule provision of ~~the Montana Administrative Procedure Act~~ 2-4-303, MCA;

(iii) effective immediately upon filing a notice of adoption with the secretary of state (2-4-306, MCA), or at a stated date following publication in the ~~r~~Register, and are effective until October 1 of the year of adoption; and

(iv) designated as ~~such~~ temporary in the ~~r~~Register.

(b) Emergency rules address an imminent peril to the public health, safety, or welfare and are:

(i) ~~adopted~~ subject to the emergency rule provisions of ~~the Montana Administrative Procedure Act~~ 2-4-303, MCA;

(ii) effective immediately upon filing with the secretary of state, or at a stated date following publication in the ~~r~~Register; ~~and~~

(iii) automatically expire 120 days after their effective date;

~~(iii)~~ (iv) designated as ~~such~~ an emergency rule in the ~~r~~Register; and

(v) may be adopted with limited or no prior public notice.

(c) Permanent rules are rules that:

(i) are adopted under standard rulemaking procedures; and

(ii) remain in effect until repealed ~~which have been adopted subject to the provisions of the Montana Administrative Procedure Act~~.

~~(d) All initial and subsequent rules are permanent until and unless they are repealed.~~

AUTH: 2-4-201, 2-4-306, 2-4-311, 2-15-401, MCA
IMP: 2-4-303, 2-4-306, 2-4-311, MCA

1.2.206 ~~LOCATION OF RULE CHANGES~~ ARM PAGE UPDATES

(1) Changes to the rules may include amendments to existing rules, the addition of new rules, transfer of existing rules, or repeal of rules. When changes are made to ~~ARM~~ the rules, ~~then the existing page which is affected by the change is redone to accommodate the change and the~~ the affected pages of the ARM are replaced quarterly to include the changes. These new pages are referred to as replacement pages. ~~is inserted in lieu of the old page. These changes appear as follows:~~ All replacement pages show the quarterly publication date in the footer.

(a) New titles, chapters, subchapters, and rules are placed in ~~the appropriate place of~~ numerical order in their respective table of contents.

(b) ~~The text of n~~New rules ~~appears within the body of the chapter in which the rule is included at the appropriate place of its interposition and falling between the two rules which appeared in sequence on the page before it was changed~~ are placed in numerical order in the appropriate place in ARM.

(c) ~~An amendatory rule takes the same number as the rule it has amended. It occupies the same place as it did before its amendment. Only the amended form of the rule appears in ARM as updated by the amendment.~~ The text of an amended rule replaces the existing rule in the ARM.

(d) When a rule is repealed, the following information is printed in the ARM where the language of the rule formerly appeared: ~~.~~

(i) ~~T~~the rule number~~,~~;

(ii) the catchphrase, followed by ~~the statement (IS HEREBY~~ (REPEALED); and

(iii) the complete history note ~~adding the rule section page number in the Montana Administrative Register where the rule was repealed and the effective date of repeal~~.

(e) All rule actions are reflected in a history note to the rule (see ARM 1.2.217).

(2) If there is a discrepancy between the rule text in the ARM and the text in the Register proposal and adoption

notices, the text of the Register notices prevails as the correct text.

~~(2) Where an existing page has been redone to accommodate a rule change, then the page number for that page is the same as that which appeared on the superseded page. Where the nature of the change requires more than one replacement page, then the additional pages are indicated as such by the page number of the superseded page followed by a decimal and an Arabic numeral beginning with 1, and continuing in page number order for each additional page. All changed or new pages have a publication date of the replacement page issue. When an agency is preparing a replacement page, it should check with the secretary of state's office for the date of the next issue of replacement pages for this item. This date appears at the bottom of each replacement page between ADMINISTRATIVE RULES OF MONTANA and the page number. Where a repealed rule has eliminated a page or pages, the numbers of the eliminated pages are removed, but can be reused later if needed.~~

~~(3) The secretary of state's office suggests that subscribers maintain a system for preserving superseded pages in an orderly fashion. If such pages are not available, they may be found in the permanent records of the office of the secretary of state by reference to the rule number and effective date of the rule in question.~~

AUTH: 2-4-201, 2-4-306, 2-4-311, 2-15-401, MCA
IMP: 2-4-306, 2-4-311, MCA

1.2.210 ADOPTION OF AN AGENCY RULE BY INCORPORATION BY REFERENCE (1) ~~All agencies adopting~~ Agencies may adopt by reference any of those documents or types of rules specified in 2-4-307, MCA, ~~shall utilize~~ using the following form in the ~~Administrative Rules of Montana~~ ARM or ~~the Montana Administrative~~ Register when adopting by reference.

(a) The (department) ~~hereby~~ adopts and incorporates by reference (citation to incorporated material), (edition date), which sets forth (substance of ~~rule~~ material). A copy of the (citation to federal agency rule, model code, rule of any agency of this state or other similar publication) may be obtained from (department or agency name and address).

~~(2) The above form is placed in each rule that adopts by reference. The form is placed where it logically falls in the language of the rule.~~

~~(3) Only a notice of incorporation by reference of later amendments of a federal regulation, as specified in 2-4-307, MCA, is published in the Montana Administrative Register. The format for the notice is set down in the attorney general's sample forms. The notice shall state an effective date of such incorporation.~~

~~(4) No further notice of adoption or replacement page is required. However, to help the user determine the date of the latest incorporation by reference, it is suggested that the agency furnish a replacement page to the Administrative Rules~~

~~of Montana. An amendment notation in the history of a rule will lead the user back to the page where the notice is published in the Montana Administrative Register.~~

~~(5) Upon request of the secretary of state, a copy of the omitted material must be filed with the secretary of state.~~

AUTH: 2-4-306, 2-15-401, MCA
IMP: 2-4-307, MCA

1.2.211 MODEL RULES: LOCATION AND INCORPORATION BY REFERENCE (1) The attorney general of the state of Montana has developed model organization and procedural rules, ~~which have been~~ recommended to the departments. These model rules are stated in their entirety under chapter 3 of this title.

(2) ~~Where a department has adopted the model rules for its own procedural rules, such is indicated under the department's procedural rules section in subchapter 1 of its chapter 2.~~ When a department adopts the model rules, this must be included in its procedural rules. The department must note and explain any variation it makes to a model rule.

~~(2) If the department chooses to adopt the attorney general's rules verbatim then such rules need not be stated verbatim. Rather, this type of adoption may be noted simply by stating in the first rule under chapter 2, that "The (department) hereby adopts and incorporates by reference (citation to model rules) ARM ___ through ARM ___ which sets forth the attorney general's model procedural rules. A copy of the model rules may be obtained from (agency's name and address).~~

~~(3) However, it is contemplated that a particular law may require a variation from the procedural rules set down by the model rules. If such is the case, then such variation should be noted and explained in the form of a subsection to the model procedural rule from which it varies.~~

~~(4) And as mentioned above, if the department adopts the attorney general's procedural rules, but with slight variations, then this can be noted by stating, in a rule under chapter 2, subchapter 1, that "The (department) hereby adopts and incorporates by reference (citation to model rules) ARM ___ through ARM ___ which sets forth the attorney general's model rules with the following exceptions thereto: The attorney general's model rule ARM ___ is modified in that...(In this regard be sure and clearly state which model rule is being modified and state the law which requires the modification.) A copy of the model rules may be obtained from the (department's name and address).~~

AUTH: 2-4-202, 2-4-307, 2-15-401, MCA
IMP: 2-4-202, MCA

1.2.212 ~~NEW~~ RULE NUMBERING METHOD FOR THE ADMINISTRATIVE RULES OF MONTANA (1) ~~The Administrative Rules of Montana have been recodified and rules are given shorter, simpler~~

~~numbers. A~~ In the ARM, rules have a three-part numerical identifier, ~~is used~~ with each part separated by a decimal point~~s~~. ~~Ex: 44.2.101.~~

(a) For example, in rule number 44.122.1101:

(i) ~~The~~ the first part, "44", is the title number assigned to the department ~~under which the rule is located.~~;

(ii) ~~The~~ the second part, "122", is the chapter number ~~under which the rule is located.~~; and

(iii) ~~The~~ the first one or two digits in the third part, "11", represents the subchapter number ~~under which the rule is located. The~~ and the last two digits, "01", represent the individual rule number.

44.122.1101
44 = title number
122 = chapter number
11 = subchapter number
01 = individual rule number

(b) The entire number is referred to as the rule number.

(2) In some instances, a department may find it necessary to reserve chapters, subchapters, or rule numbers. This is shown in the appropriate location within the text.

~~(2) Since the first two parts of the rule number are self explanatory, the following example will explain how the third part of the rule identifier is set up.~~

~~(3) The first one or two digits of part 3 of the identifier represent the subchapter under which the rule is located.~~

~~Example: 44.2.101 First subchapter in chapter 2~~
~~44.2.9901 Last possible subchapter in chapter 2~~
~~101 Digit "1" is the subchapter. The subchapter numbers may run consecutively and if necessary, numbers reserved for future growth. Reserved subchapter numbers are indicated in the chapter's table of contents and in the area where the subchapters will fall in ARM.~~
~~There may be from 1 to 99 subchapters in one chapter. If there are more than 99 subchapters in one chapter, a new chapter is assigned in that area.~~
~~9901 Digits "99" represent the last possible subchapter in a chapter.~~

~~(a) The last two digits of part 3 of the identifier represent the individual rule number.~~

~~Example: 44.2.101 Digits "01" represent the first rule in a subchapter. "0" must be placed before digits 1 through 9 so that there will always be 2 digits represented. Rule numbers may run consecutively, and if necessary, rule numbers reserved for future growth. Reserved rule numbers are indicated in the chapter's table of contents~~

~~and in the area where the rules fall in ARM. There may be from 1 to 99 rules in one subchapter. If there are more than 99 rules in one subchapter, a new subchapter would be assigned in that area.~~

~~1~~99 ~~Digits "99" represent the last possible rule in a subchapter.~~

~~Example: 44.1.101 "44"represents the title~~
~~"2"represents the chapter~~
~~"1"represents the first subchapter in chapter 2~~
~~"01"represents the first rule in subchapter 1\~~

~~Example: 44.2.9999 "44"represents the title~~
~~"2"represents the chapter~~
~~"99"represents the last possible subchapter number in chapter 2~~
~~"99"represents the last possible rule in subchapter 99~~

~~(b) A department's organizational rule is:~~
~~(title).1.101~~
~~first rule number~~
~~first subchapter~~
~~chapter~~

~~(c) A department's procedural rules begin:~~
~~(title).2.101~~
~~first rule number~~
~~first subchapter~~
~~chapter~~

~~(4) If it is necessary to add a new rule number between two existing rules, and there is no rule number reserved in that area, the new rule will be numbered by adding an alphabetical letter to the preceding existing rule number. Example: 1.2.222A, 1.2.222B, 1.2.222C, etc. If future growth is anticipated in a certain area, then rule numbers should be reserved. Example: 1.2.222A reserved, or 1.2.222C through 1.2.222J reserved. Place the reserved statement where the rule will fall in the body of the rule and on the table of contents page.~~

AUTH: 2-4-306, 2-15-401, 2-15-401, MCA
IMP: 2-4-306, MCA

1.2.214 CATCHPHRASES (1) The catchphrase is a short phrase which ~~summarily describes~~ summarizes the contents of a ~~particular~~ rule. The catchphrase is ~~found~~ included on the table of contents and ~~it~~ directly precedes the ~~statement~~ text of the rule itself. ~~It is used as a quick reference for ascertaining the subject matter.~~

AUTH: 2-4-306, 2-15-401, MCA
IMP: 2-4-306, MCA

1.2.216 OUTLINE FORM (1) ~~A rule is more readily referred to and more easily amended if broken down into sections and subsections. Each paragraph should be given a section or subsection designation using the following outline order.~~ Each rule is set out in outline form for ease of reading. The following levels are used:

(a) sections are: (1), (2), (3);

(b) subsections are: (a), (b), (c); (i), (ii), (iii); (A), (B), (C); and (I), (II), (III).

AUTH: 2-4-306, 2-15-401, MCA
IMP: 2-4-306, MCA

1.2.217 RULE HISTORY NOTES (1) Following the text of each rule ~~there~~ is a ~~notation which indicates the legislative~~ note that shows the history of ~~that~~ the rule. For all actions taken on a rule after July 25, 1977, the following elements are included in the order shown:

(a) the MCA citations giving authority for the rule;

(b) the MCA citations implemented (IMP) by the rule;

(c) the action type ~~Action taken on a rule is~~ indicated by the following abbreviations:

~~(a)~~(i) NEW — denotes a new rule;

~~(b)~~(ii) AMD — denotes an amendment to a rule;

~~(c)~~(iii) REP — denotes a rule is repealed;

~~(d)~~(iv) TRANS — denotes a rule is transferred by legislative action or transferred to a different location within a title;

~~(e)~~(v) EMERG — denotes emergency action; and

~~(f)~~(vi) TEMP — denotes temporary rule before becoming a permanent rule~~.~~;

(d) the year and page number of the Register in which the adoption notice was published; and

(e) the date the rule action became effective.

(2) The information in the history note traces the development of a rule and its changes. Each adoption notice refers to the Register page number and issue date of the corresponding proposal notice. A review of all notices published regarding a rule action explains the progression of rule changes.

(3) Action taken on a rule before July 25, 1977, is indicated only by the abbreviation of the action and the effective date of action.

~~(2) A history will contain the following:~~

~~(a) MCA statutory authority citation;~~

~~(b) session law or MCA citation being implemented, IMP;~~

~~(c) All action taken on a rule before July 25, 1977, is indicated by the abbreviation of the action and the effective date of action.~~

~~(d) All action taken on a rule after July 25, 1977, is indicated by the abbreviation of the action, the page number of the rule section of the Montana Administrative Register on which the rule appeared and the effective date of the action.~~

~~(e) follow punctuation shown below:~~

~~Example: For a new rule included in ARM after 12/31/72: (History: Sec. 46-2-303 MCA; IMP, Sec. 46-2-308 MCA; NEW, Eff. 7/17/76; AMD, 1978 MAR p. 717, Eff. 8/14/78; AMD, 1980 MAR p. 713, Eff. 4/26/80.)~~

~~(3) Chapter 420, L. 1989 (House Bill 610) amended 5-4-402, MCA by removing the provision that no grant of rulemaking authority is effective as such to implement new agency duties required or authorized by law after October 1, 1983, unless the law to be implemented is accompanied by language extending the rulemaking authority to the law to be implemented. Amendments made to 2-4-305, MCA by Chapter 420, L. 1989 remove the requirement that the rule history cite the session laws extending the rulemaking authority to the law being implemented.~~

~~(a) Since Chapter 420, L. 1989 has an immediate effective and retroactive applicability date, authority extension citations are no longer necessary. Existing authority extension notations will be removed at replacement page time as pages are being reprinted, i.e., amending a rule, or adding a new rule, on any page.~~

~~(4) Transferred rules are rules which have either been transferred, as part of a change in statutory authority, from one agency to another, or been moved from one location in the agency's title to another. In either case, the action does not require notice or opportunity for hearing, as long as there is no substantive change in the text of a transferred rule.~~

~~(a) The history note of the department that is transferring the rule will indicate the full history, where the rule is being transferred, the legislative action directing the action, and the date of directing action.~~

~~Example: (History: Sec. 46-2-114 MCA; IMP, Sec. 46-2-116 MCA; NEW, 1981 MAR p. 116, Eff. 3/16/81; AMD, 1981 MAR p. 2223, Eff. 10/10/81; TRANS, to Dept. of Health, Ch. 274, L. 1983, Eff. 10/1/83.)~~

~~(b) The history note of the department where the rule is transferred will indicate the full history, the department that transferred the rule, the legislative action directing the action, and the date of directing action.~~

~~Example: (History: Sec. 46-2-114 MCA; IMP, Sec. 46-2-116 MCA; NEW, 1981 MAR p. 115, Eff. 3/16/81; AMD, 1981 MAR p. 2223, Eff. 10/10/81; TRANS, from Dept. of Livestock, Ch. 274, L. 1983, Eff. 10/1/83.)~~

~~(c) The history note of the rule that is being transferred within a title will indicate the full history, the new rule number, and the effective date of the transfer.~~

~~Example: (History: Sec. 46-2-114 MCA; IMP, Sec. 46-21-111 MCA; NEW, 1981 MAR p. 116, Eff. 3/16/81; TRANS, to ARM 46.22.116, Eff. 6/30/83.)~~

~~(d) The history note of the rule that was transferred within a title will indicate the full history, the previous rule number and the effective date of transfer.~~

~~Example: (History: Sec. 46-2-114 MCA; IMP, Sec. 2-4-303, 2-4-306, 46-21-111 MCA; NEW, 1981 MAR p. 116, Eff. 3/16/81; TRANS, from ARM 46.3.130, Eff. 6/30/83.)~~

~~(5) Where the rule change is made pursuant to the emergency rule provision of the Montana Administrative Procedure Act, the history would contain the already existing history if the rule is being amended or repealed, adding the emergency information, i.e., EMERG, AMD, or EMERG, REP, followed by the effective date. The effective date is the date rule became a permanent rule and not the date it was filed as an emergency rule.~~

~~Example: (History: Sec. 46-2-114 MCA; IMP, Sec. 46-2-117 MCA; Eff. 12/31/72; AMD, 1978 MAR p. 117, Eff. 7/13/78; EMERG, AMD, 1978 MAR p. 516, Eff. 8/16/78.)~~

~~If it were an emergency new rule the history would read:~~

~~Example: (History: Sec. 2-4-306 MCA; IMP, Sec. 2-4-309 MCA; EMERG, NEW, 1978 MAR p. 717, Eff. 10/30/78.)~~

~~(6) Where the rule change is made pursuant to the temporary rule provision of the Montana Administrative Procedure Act, the history would contain a temporary note only if a permanent rule is adopted. Temporary notation would contain the rule section page number in the Montana Administrative Register where the rule was adopted and the effective date, which is the date the rule became a permanent rule and not the date it was filed as a temporary rule.~~

~~Example: (History: Sec. 46-2-114 MCA; IMP, Sec. 46-2-117 MCA; TEMP, NEW, 1987 MAR p. 1923, Eff. 11/9/87.)~~

~~(7) Section 2-4-308, MCA, effective 10/1/83, requires the publication of a statement in the rule history note at the end of each adjective or interpretive rule that such a rule is advisory only but may be a correct interpretation of the law.~~

~~(a) The statement must be inserted in the history note of any rule newly adopted, or amended, after October 1, 1983. It must also be included in the notice section of the register at the time a rule or rule amendment is proposed for adoption.~~

~~(b) The statement may also be inserted in history notes existing in the Administrative Rules of Montana at replacement page time as pages are being reprinted, i.e., amending a rule, or adding a new rule, on any page.~~

~~Example: (History: This rule is advisory only, but may be a correct interpretation of the law, Sec. 2-4-308 MCA, Eff. 10/1/83; Sec. 46-2-303 MCA; IMP, Sec. 46-2-308 MCA; Eff. 12/31/72; AMD, 1984 MAR p. 713, Eff. 3/16/84.)~~

AUTH: 2-4-201, 2-4-306, 2-4-311, 2-15-401, MCA
IMP: 2-4-303, 2-4-306, 2-4-311, MCA

1.2.218 PAGE NUMBERING SYSTEM (1) Every page of the ARM ~~has a page number~~ is numbered, except reserved chapter pages. Each title has its own number. ~~s which are preceded by the title number under which the page falls. The~~ Each page number begins with the title number followed by sequential numbers. For example, the first page for the department of

livestock would be numbered 32-1, the second page 32-2, the ~~fifty fifth~~ 55th page 32-55, etc.

(2) If a block of page numbers is reserved, the last printed page before the reserved ~~numbers~~ pages has the wording "NEXT PAGE IS ___". ~~This indicates the page number of the first printed page following the reserved numbers. In this way, all pages in ARM are accounted for.~~

~~(3) If there is a need to add supplemental pages the following system should be used:~~

~~(a) When supplemental pages are needed then the supplemental pages will take the same page number with the addition of a decimal point and the number 1, 2, 3, etc., example: 46 74.1, 46 74.2, 46 74.3 and so on.~~

(3) If a block of page numbers has been removed through repeal or amendment of rules, the last printed page before the removed pages has the wording "NEXT PAGE IS ___".

AUTH: 2-4-201, 2-4-306, 2-4-311, 2-15-401, MCA
IMP: 2-4-306, 2-4-311, MCA

1.2.219 TABLE OF CONTENTS ~~AND CROSS REFERENCE TABLE~~

~~(1) Where a new rule has been adopted, or an existing rule amended or repealed by agency action, the agency must submit a new replacement page reflecting any changes that should be included in the title chapter table of contents, chapter table of contents or cross reference table. Any new rule will always require a new subchapter table of contents and cross reference table page with the new information inserted in the proper place. These pages must be submitted along with the new, amended or repealed rule for publication as replacement pages.~~

~~(2) If a rule is amended, there is no need to submit the new pages listed above, unless there has been a change in the catchphrase or a new citation to the MCA which should be included in the cross reference table.~~

~~(3) The pages are described as follows:~~

~~(a)~~(1) Each title has a table of contents ~~page contains~~ listing all chapters found in the title, indicating chapter number, name, and beginning page number. Reserved chapters are also noted on the table of contents.

~~(b)~~(2) Each chapter has a table of contents ~~contains~~ listing subchapter names and numbers~~,~~ and ~~a listing of~~ each rule number and catchphrase. Reserved subchapters and rules are also noted on the chapter table of contents.

(3) Table of contents pages are updated quarterly to coincide with changes made to the corresponding rules.

~~(c) cross reference table gives a quick indication of where the sections from the Montana Code Annotated may be found, interpreted, summarized or implemented, in each department's rules. This table will include the MCA sections which are authority for a corresponding ARM rule and the MCA sections which have a corresponding ARM rule which interprets or implements the MCA section.~~

AUTH: 2-4-201, 2-4-306, 2-4-311, 2-15-401, MCA
IMP: 2-4-306, 2-4-311, MCA

1.2.401 PROCEDURES FOR FILING ~~OF THE INITIAL RULES, NEW RULES AND RULES AMENDING OR REPEALING PRIOR RULES~~ PROPOSED RULE CHANGES (1) Section 2-4-305, MCA, ~~of the Montana Administrative Procedure Act~~ sets ~~down certain~~ required procedures for adopting and making changes to ~~the initial~~ rules. ~~and for making changes thereto. And since the secretary of state is charged with the responsibility of recording these changes, the purpose of this rule is to explain the format which the secretary of state requires each department to follow in its preparing and filing of the initial, new and amended rules and in the repeal of prior rules. Again, the purpose is to facilitate the insertion of the initial rules and subsequent changes thereto, into the Administrative Rules of Montana.~~

~~(2) It is important to note that the procedures for adopting and filing the initial rules are different from the procedures for making rule changes after December 31, 1972. That is, section 2-4-305 MCA, regarding notice and hearing requirements for adopting and amending rules, applies only to those rules adopted or amended subsequent to the effective date of the Act...12/31/72. The time before December 31, 1972 was in effect a grace period wherein all rules adopted were exempt from the notice of adoption and hearing requirements. All of the rules adopted therein make up the initial code, and such rules became effective on December 31, 1972.~~

~~(a) If at some future date a grace period may be provided for a newly included agency under the MAPA within which to file their initial rules without going through the notice procedure and assuming that a new deadline will be set for filing initial rules, the newly created agency shall use the same procedures, following the same instructions, for such initial filing as were used by the initially included agencies. Such a grace period was given to the departments of administration and institutions, and the superintendent of public instruction in 1977.~~

~~(3)~~(2) The following procedures shall be adhered to for all ~~those~~ rules ~~which will be~~ adopted by the departments. ~~after December 31, 1972:~~

(a) As ~~has been~~ explained in the Montana Administrative Procedure Act (MAPA) and in the attorney general's model rules, the departments and agencies assigned thereto for administrative purposes must give public notice of their intention to adopt, amend, or repeal any rule ~~after the deadline for submitting initial rules~~. The contents of the notices are as prescribed by ~~the~~ MAPA and the attorney general's model rules. The forms for the notices will be as set down in the attorney general's model rules. All notices ~~will be signed in the position designated by the model notice forms. Each form will~~ must be signed by the head of the department ~~(~~or by the chair~~man~~person of the governing board~~)~~ (see ARM 1.2.519). ~~In the case of a notice issued by an~~

~~agency assigned for administrative purposes, the head of that agency (or chairman of the governing board) will sign. If the department head or the chairman of the governing board is unable to sign, a letter must be filed with the secretary of state authorizing who may sign for them. A stamped signature must not be used. The department head or chairman of the governing board's signature must be signed by the authorized person with the authorized person's signature listed below.~~

(b) The secretary of state is required to publish the ~~r~~Register at least once a month, ~~however, since July 1978,~~ but publishes the ~~r~~Register twice a month ~~is published on a twice-monthly basis~~. An agency must submit its notices according to the submission schedule deadline set by the secretary of state. If a notice is submitted after the submission deadline, it will not be published until the next publication date. It should be noted that ~~the~~ MAPA requires that agency action may not be taken until at least 30 days after the notice is published in the ~~r~~Register.

(4) The form numbers for notices of action regarding rule changes ~~subsequent to December 31, 1972, will~~ must be stated as MAR Notice No. ___. ~~The notice numbers will be continued as they have proved to be beneficial both to the secretary of state's office and the agency. The first blank is to be filled with the title number for the department and the second blank with the appropriate number of the notice. A~~ Each department ~~will need to~~ sets ~~up~~ its own numbering system for notices using its title number as the first part of the MAR Notice No., followed by sequential numbers.

~~(5)~~(a) There ~~will be~~ is no separate numbering sequence according to the type of notice issued.

~~(6)~~(5) When ~~the~~ an adoption notice ~~procedure results~~ is filed for publication, ~~in the adoption, amendment or repeal of a rule, then such action~~ it must be certified and transmitted to the secretary of state ~~for filing and publication. This will be accomplished~~ accompanied by an administrative order (see ARM 1.2.404).

AUTH: 2-4-306, 2-4-312, 2-15-401, MCA
IMP: 2-4-306, 2-4-312, MCA

1.2.402 PREPARATION OF RULE CHANGES FOR INSERTION IN ARM

(1) The ARM has been set up as a loose-leaf service to provide a convenient method of updating. Rule changes are made on a quarterly basis and appropriately placed ~~in the appropriate place using the following procedures~~ by following instructions prescribed by the secretary of state.

~~(a) Refer to the existing page to which the new, amending, repealing or transferred rule(s) will be added. The determination as to the proper page is made by interpolating the rule with the existing rules. The assignment of the rule numbers to additional rules has been discussed in ARM 1.2.202 and 1.2.212.~~

~~(b) If the additional rule is a new rule or rules transferred to the agency from another agency, then the page~~

~~upon which that rule will be typed will be retyped down through the existing rule which immediately precedes the rule to be added. Then immediately following, type in the new rule exactly in the form that the initial rules were done (i.e. rule number, catchphrase, text and history note). Then following the new rule, begin typing the rule which had been next on the old page before the addition of the new rule, and continue typing until you have completed what had been on the old page. The new page will take the same page number as the old page. In most cases, the addition of a rule would extend the old page so the text of the old page would not all fit on the new page. In this case, another sheet(s) of paper will be used but only so far as to finish what had been on the old page before it had been added to. This second page will take the same page number as the prior page, only such page number will be followed by a decimal point and the number 1. When supplemental pages are needed then the supplemental pages will take the same page number with the addition of a decimal point and the number 1, 2, 3, etc. if there are no reserved pages to work with, example: 46 74.1, 46 74.2, 46 74.3 and so on.~~

~~(c)~~(2) ~~The placement of the p~~Page numbers and rule numbers ~~will~~ always fall on the outside of the page. Headings are determined by listing the department name on an even-numbered page and the chapter name on an odd-numbered page and by checking the previous existing pages. An even-numbered page has the first rule number that appears on that page, while an odd-numbered page has the last rule number on the page.

~~(2) When the remainder of the old page to which the new rule has been added has been completed in this fashion, then the typing should stop on that supplemental page even though the entire page may not have been used. Even though the typing may end in the middle of a rule, or middle of a sentence, the continuation will be found on the next page which originally followed the old page on which the change was inserted.~~

~~(3) The same page extension procedure should be followed when a rule is amended. In the case of an amendment, only the amended form of the rule will be typed. This should be placed in the same location as was the rule before it was amended. Note that the rule number will remain the same. If the amendment necessitates a new catchphrase, then the amended catchphrase replaces the old.~~

~~(4) To retype pages assume that you are going to make a change on existing page 59. And assume that such page contains a continuation of rule 607 from the preceding page and also contains the beginning of the next rule which was 611. Then assume you are going to add a new rule which has been assigned the number 609. This would mean that 609 would have to be typed in between the end of 607 and the beginning of 611. To accomplish this you would take a new sheet of paper and retype what was on page 59, i.e., the continuation of 607. Then at the end of 607 on the new sheet you would double space, change reserved rule notation from rules 608 through 610 reserved, to~~

~~rule 608 reserved, begin typing new 609 with the rule number, catchphrase and text and continue typing until you have completed the rule. At that point, double space, add reserved rule note, rule 610 reserved, and retype as much of 611 (the rule which had followed 607 on the old page 59) as appeared on old page 59. This new sheet will also be page numbered 59. Note that where you cannot type in 609 and the part of 611 which had appeared on old page 59 on the first new sheet, then you will have to go to another sheet or sheets. These supplemental sheets will be page numbered 59.1, 59.2 etc. if there are no reserved pages to work with.~~

~~(a) When the part of 611 is completed as far as it went on old page 59, then stop typing, even though you may end in the middle of a sentence. The continuation of 611 will appear on page 60 which is already in ARM.~~

~~(5) The above example applies also in amending a part of a rule on any given page. However, if for example 611 begins on page 59 and finishes on page 60, and 621 begins immediately thereafter on page 60, and if there is an amendment to 611, then retype 59 down through 611 and continue typing to the point where the amendment begins and use any supplemental page 59's as necessary. If the amendment removes any part of 611 on old page 60, then prepare a new page 60. To do this, simply omit that part of 611 on the top of new page 60 and retype as much of 621 as had been on page 60 beginning at the eighth line from the top of the new page 60. This will mean that even though you will not reach the bottom of the new page 60, you should stop typing, because the continuation of 621 will appear on existing page 61 which need not be changed.~~

~~(6) The above procedures should be used to prepare a rule which repeals an existing rule. For example, assume that existing page 59 contains the beginning of 611, and that 611 is to be repealed entirely. You would retype old page 59 down to the place where 611 had begun, then type in the rule number for 611 and the catchphrase, following with the phrase in upper case and underlined (IS HEREBY REPEALED) and the history. You will then stop typing on the new page even though you have not used the full new page. Then, assuming that 611 before its repeal had finished on, for example, old page 60 and 621 had begun on old page 60, you will have to retype page 60, omitting on the new sheet that portion of 611 which had appeared on old page 60. To do this, you will prepare the new page 60 by moving that part of 621 which had appeared on old page 60, to the top of the new page 60 and type down as much as had appeared on old page 60. At that point, stop, even though the whole page is not used up. Then the continuation of 621 will appear on existing page 61.~~

~~(a)~~(3) A repealed rule number and catchphrase ~~will always~~ remain in ARM with the full history in its original location~~; therefore the number cannot be re-used~~. A repealed rule number cannot be reused. The repeal must also be noted on the chapter table of contents by (REPEALED) after the catchphrase of a rule.

~~(7) Where a particular agency has adopted rules, but subsequent legislative enactment has transferred such rules to another agency, for administrative purposes, then the transferring agency will so indicate in the appropriate place in their section of ARM (i.e. the page on which the transferred rule(s) began). Here, the same page preparation process will be used as was used for preparing a repealing rule.~~

~~(a)~~(4) ~~A statement should be placed where rules were originally located. The~~ For transferred rules, the rule number, catchphrase, and full history note appear~~s~~ in the ~~old~~ original location with the addition of the transfer information in the history note. The transfer ~~should~~ must also be noted ~~in~~ on the chapter table of contents by ~~the word TRANSFERRED~~ (TRANSFERRED) after the catchphrase of a rule.

AUTH: 2-4-201, 2-4-306, 2-4-311, 2-15-401, MCA
IMP: 2-4-306, 2-4-311, MCA

1.2.404 ADMINISTRATIVE ORDER (1) When the notice of proposed action results in the adoption, amendment, or repeal of a rule, the action must be certified and transmitted to the secretary of state for filing and publication. An administrative order must be filed with each adoption notice. This certifies and confirms the agency's action. ~~This will be accomplished by an administrative order.~~ Replacement pages ~~will~~ do not need an administrative order. ~~Orders will not be numbered but may be cited, if necessary, by date.~~

(2) The administrative order ~~will~~ must be signed by the head of the department where the department has an elected official or an executive appointment by the governor, or by the chair~~man~~person of the board where the department is headed by a multi-member board. In the case of rules submitted by an agency assigned to a department for administrative purposes only, then such rules will be signed by the head of that agency or chair~~man~~person of the governing board.

(3) Emergency or temporary and permanent rules may not be intermingled on the same order.

AUTH: 2-4-306, 2-15-401, MCA
IMP: 2-4-303, 2-4-306, MCA

1.2.411 UPDATING PROCEDURES (1) ~~As ARM 1.2.206 indicates, rule changes to the initial rules will be accomplished by exchanging new pages for the pages on which the change took place. The Administrative Rules of Montana has been set up as a loose leaf service to accommodate this method of revision.~~

~~(2)~~ Changes to ~~Administrative Rules of Montana~~ the ARM must first be published in the ~~Montana Administrative~~ Register which is explained in ARM 1.2.422. The secretary of state has the responsibility for distributing replacement pages containing the rule changes.

~~(3)~~(2) Accompanying the replacement pages which are distributed quarterly to subscribers to the ARM ~~on a three month basis or more frequently if necessary, will be~~ are instructions ~~which indicate~~ indicating where the pages are to be inserted and which existing pages have been superseded and ~~should~~ must be removed.

AUTH: 2-4-201, 2-4-306, 2-15-401, MCA
IMP: 2-4-306, MCA

1.2.422 MONTANA ADMINISTRATIVE REGISTER (1) The Administrative Rules of Montana are ~~kept current by a publication known as the Montana Administrative Register~~ adopted through a public notice process of publishing a proposal notice and a subsequent adoption notice. The Register is published twice a month. Existing rules are amended and repealed through the same process.

(2) The ~~Montana Administrative~~ Register is comprised of four sections:

(a) ~~The first is~~ the notice section ~~wherein the department or agency has given~~ contains agency notice of ~~intended~~ proposed administrative rulemaking action;

(b) ~~The second,~~ the rule section~~,~~ contains the results of the proposed action ~~wherein a rule has been adopted, amended or repealed~~ indicating the adoption, amendment, transfer, or repeal of a rule;

(c) ~~The third is~~ the interpretation section ~~containing~~ contains attorney general opinions and agency declaratory rulings;

(d) ~~The fourth section is~~ the special notice and table section contains:~~. This section includes~~

(i) functions of the administrative rule review committee~~,~~;

(ii) instructions on how to use the ~~Administrative Rules of Montana and Montana Administrative Register~~ ARM and Register;~~, and~~

(iii) an accumulative table of ~~past~~ rulemaking actions~~.~~ during the past six months; and

(iv) ~~In~~ in each even-numbered issue of the ~~r~~Register, vacancies on and appointments to boards and councils ~~are published~~.

~~(3) The register will always be maintained in a volume separate from the Administrative Rules of Montana.~~

AUTH: 2-4-306, 2-4-312, 2-15-401, MCA
IMP: 2-4-306, 2-4-312, MCA

1.2.423 AGENCY FILING FEES (1) ~~Beginning July 1, 2001, all agencies will be required to~~ Each agency shall pay a $~~40.00~~ 50.00 per page filing fee for all pages ~~submitted for printing~~ the agency has printed in the ~~Montana Administrative~~ Register. The secretary of state ~~will~~ bills on a per-issue basis for all pages ~~submitted~~ printed.

AUTH: ~~2-4-306,~~ 2-4-313, 2-15-405, MCA
IMP: ~~2-4-306,~~ 2-4-313, 2-15-405, MCA

Statement of Reasonable Necessity: The agency filing fee impacts agencies with legislative authority to promulgate rules. The additional amount that will be collected through the agency filing fees is approximately $23,820. The fees proposed will not fully cover the actual costs, but will help to defray a portion of the cost of publishing, printing and mailing of the ARM and Register.

1.2.519 BASIC FORMAT ~~INSTRUCTIONS~~ REQUIREMENTS (1) The following ~~instructions~~ requirements apply to all material submitted for publication in the ~~Montana Administrative~~ Register and the ~~Administrative Rules of Montana~~ ARM. ~~Refer to the sample forms following the text of this rule for information pertaining to specific areas.~~

(a) ~~paper - white, bond, 8 1/2 x 11 inches,~~ Material must be submitted electronically in Word 2000, or more recent version.

(b) ~~type - 10 letters per inch, standard or courier type, black ribbon,~~ All text must be in Arial 12 point font.

(c) ~~Type on one side of the sheet only.~~ Documents must be left justified.

(d) ~~margins - left margin 1 1/2 inches wide, right margin 3/4 inch wide. Refer to sample forms for top and bottom margins.~~ Margins must be set as follows:

(i) top and bottom margin at .5 inches;

(ii) left margin at 1.5 inches; and

(iii) right margin at .75 inches.

(e) ~~spacing - Single space between paragraphs of a rule and double space between rules.~~ Spacing in documents must be as follows:

(i) single space paragraphs and rules;

(ii) a blank line must be between all paragraphs and rules;

(iii) a blank line must be above and below all AUTH and IMP citations; and

(iv) each paragraph, section, and subsection number (earmark) must have two spaces before the text begins.

(f) ~~indentation -~~ Each paragraph, rule number, section, and subsection must be tabbed in ~~is indented 5~~ five spaces.

(g) ~~outline form used (1)(2)(3); (a)(b)(c); (i)(ii)(iii); (A)(B)(C); (I)(II)(III). Spacing after paragraph designation depends on how far the breakdown goes in the rule. Normally there are 2 spaces after the paragraph designation before beginning the text of a rule. If the rule is broken down to (viii) then there should be 5 spaces so that the paragraphs of the rule will be lined up evenly.~~ For section and subsection earmarking requirements, see ARM 1.2.216.

(h) ~~capitalization - Capitalize as little as possible, lower case is easier to read.~~ For capitalization, hyphenation, punctuation, and grammar requirements, refer to the Gregg Reference Manual, tenth edition, which is incorporated by

reference. The Gregg Reference Manual, tenth edition, is available from McGraw-Hill/Irwin, 1221 Avenue of the Americas, New York, NY, 10020;

~~(i) Capitalize the first word in a sentence. The first word in a subsection following a colon must be capitalized if the items express a complete thought.~~

~~(ii) Capitalize months and days of the week.~~

~~(iii) Capitalize "Montana" in "state of Montana" but not "state". Capitalize "County" but not "city" in the name of a county or city.~~

~~(iv) Capitalize names of specific persons or places, specific regions, geographic names.~~

~~(v) Capitalize names of historic events and holidays.~~

~~(vi) Capitalize references to statute compilation, and a particular act Montana Administrative Procedure Act.~~

~~(vii) Capitalize names of races, citizens and languages.~~

~~(viii) Capitalize words pertaining to deity.~~

~~(ix) Do not capitalize official titles, titles of state, county, or municipal officers, agencies or institutions.~~

(i) ~~rule numbers~~ Use a Roman numeral in the propose~~d~~al notice for a new rule, and indicate the ~~assigned~~ permanent ARM number in the notice of adoption of the rule. Example: (Rule I - 2.2.333)

(j) Underline the rule number and catchphrase of a rule. The catchphrase is typed in capital letters.

(k) All charts and illustrations must fit into format margins.

(l) Notices and administrative orders must be signed by the head of the department or the chair~~man~~person of the governing board. The head of the agency or the chair~~man~~person of the governing board will sign for an agency that is assigned to a department for administrative purposes only. ~~A stamped (facsimile) signature is not acceptable.~~ A letter must be filed with the secretary of state indicating signatory authority in the absence of the ~~above~~ department head or chairperson. For the purposes of electronic filing of documents, the secretary of state will accept as signatures:

(i) ~~digitized signatures;~~

~~(ii) digital signatures; or~~

~~(iii)~~ typed names on documents ~~that have been taken from the directory created for rule submission~~ preceded by /s/. ~~This directory will have limited access, and only those authorized and with verifiable signatory authority will be accepted.~~ The typed name must represent a signed copy on file in the submitting agency's records.

(m) The rule reviewer must sign each proposal and adoption notice published in the ~~Montana Administrative~~ Register, indicating that he or she has reviewed and approved the rules as required by 2-4-110, MCA. ~~A stamped (facsimile) signature is not acceptable.~~ A letter must be filed with the secretary of state and administrative ~~code~~ rule review committee indicating rule reviewer appointment. For the purposes of electronic filing of documents, the secretary of state will accept as signatures:

(i) ~~digitized signatures;~~

~~(ii) digital signatures; or~~

~~(iii)~~ typed names on documents ~~that have been taken from the directory created for rule submission~~ preceded by /s/. ~~This directory will have limited access, and only those authorized and with verifiable signatory authority will be accepted.~~ The typed name must represent a signed copy on file in the submitting agency's records.

~~(n) Sample forms 1 through 11 pertaining to the typing format for a proposed notice, notice of adoption, emergency or temporary rule, title chapter table of contents, reserved chapter page, first page of chapter, odd numbered page, even numbered page, cross reference page and an administrative order are incorporated in this rule.~~

Sample forms 1 through 11 are proposed for repeal.

AUTH: 2-4-201, 2-4-306, 2-15-401, MCA
IMP: 2-4-110, 2-4-303, 2-4-306, MCA

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

1.2.321 (1.2.225) OLD TO NEW NUMBERING TABLE (1) The old-to-new numbering table indicates the old ARM rule number assigned to a rule before ARM recodification in 1980 and the new three-part number assigned to that rule after ARM recodification.

AUTH: 2-4-306, 2-4-311, 2-15-401, MCA
IMP: 2-4-306, 2-4-311, MCA

1.2.322 (1.2.226) NEW TO OLD NUMBERING TABLE (1) This table indicates the ~~new~~ three-part rule number assigned to a rule in the ~~Administrative Rules of Montana (~~ARM~~)~~ in ascending order, and the old rule number ~~which was assigned to the rule before~~ prior to recodification in 1980.

AUTH: 2-4-306, 2-4-311, 2-15-401, MCA
IMP: 2-4-306, 2-4-311, MCA

1.2.412 (1.2.229) ~~HOW TO CITE~~ CITING THE ADMINISTRATIVE RULES OF MONTANA (1) When referring to a rule from the ~~Administrative Rules of Montana~~ ARM, the rule ~~shall~~ must be ~~properly~~ referred to by ARM and its full number. For example, this rule ~~on how to cite a rule would be referred to~~ is cited as ARM 1.2.~~412~~229.

AUTH: 2-4-201, 2-4-306, 2-15-401, MCA
IMP: 2-4-306, MCA

1.2.421 (1.2.104) ~~SUBSCRIPTION TO THE~~ ADMINISTRATIVE RULES BUREAU FEES ~~OF MONTANA AND MONTANA ADMINISTRATIVE REGISTER COST~~ (1) and (2) remain the same.

(3) The cost for the Register is as follows:

(a) per calendar year (24 issues)..... $325.00

(b) per issue..... $13.50

~~(3)~~ (4) The costs for the ~~Administrative Rules of Montana~~ ARM ~~and the Montana Administrative Register~~ are as follows:

(a) initial purchase of ARM ~~Administrative Rules of Montana $350.00;~~..... $500.00

(b) ~~Four~~ quarterly issues of updates to ~~the Administrative Rules of Montana $250.00~~ ARM, per calendar year~~;~~..... $300.00

~~(c) Montana Administrative Register $300.00 per calendar year;~~

~~(d)~~(c) ~~P~~partial year subscriptions will be prorated.

~~(4) Extra~~ (5) Individual title charges are as follows:

(a) ~~I~~initial purchase of single-part title~~, $50.00~~ $60.00

(b) ~~except for~~ initial purchase of multi-part titles ~~which may be purchased for $125.00 a title;~~..... $60.00 for the first part, plus $40.00 for each additional part

~~(b)~~ (c) ~~Updates to extra titles are $50.00 per calendar year per title.~~ quarterly updates to individual titles, per calendar year..... $60.00

(6) The following miscellaneous fees are charged by the ARM Bureau:

(a) lapsed subscription fee for ARM (maximum of two years prior, per year)..... $100.00

(b) copy or fax fee..... $1.00 per page/$5.00 minimum

(c) replacement binder for ARM..... $5.00

(7) The ARM Bureau does not charge other state agencies for copies or faxes.

~~(5)~~(8) All purchase and subscription fees must be paid in advance and are not refundable.

(9) To purchase any rules publication, contact the ARM Bureau at PO Box 202801, Helena MT 59620-2801, by phone (406) 444-2055, or email mt-rules@lists.mt.gov.

AUTH: 2-4-306, 2-4-311, 2-4-312, 2-4-313, 2-15-405, MCA
IMP: 2-4-306, 2-4-311, 2-4-312, 2-4-313, 2-15-405, MCA

Statement of Reasonable Necessity: The Secretary of State proposes this amendment to establish fees that reflect the actual costs incurred by the Administrative Rules Bureau to provide these services. The additional amount that will be collected through fees associated with the initial purchase or copies of the ARM or Register will be approximately $1,087 and will affect approximately 37 customers. The additional amount that will be collected through subscription fees will be approximately $10,670, and will affect approximately 509 customers.

5. The proposed new rules provide as follows:

NEW RULE I INTERNET AVAILABILITY (1) Both the ARM and Register are available on the internet at the secretary of state's website at http://sos.mt.gov/css/ARM/Contents.asp.

(2) The printed versions of both publications remain the official versions.

(3) Although the secretary of state's office strives to keep the electronic versions of both the ARM and Register accurate and current, use only the printed version for legal purposes.

AUTH: 2-4-311, 2-4-312, 2-4-313, 2-15-401, MCA
IMP: 2-4-311, 2-4-312, 2-4-313, MCA

NEW RULE II RETENTION OF OBSOLETE ARM PAGES (1) The secretary of state's office suggests that subscribers maintain an orderly system for preserving obsolete pages. All obsolete pages are available in the permanent records of the office of the secretary of state.

AUTH: 2-4-313, 2-15-401, MCA
IMP: 2-4-313, MCA

NEW RULE III CROSS REFERENCE TABLE (1) Each title contains a cross reference table of the MCA citations to ARM rules. This table lists the MCA sections used as authority for a rule and the MCA sections which a rule implements or interprets.

(2) Cross reference table pages are updated quarterly to coincide with changes made to the corresponding rules.

AUTH: 2-4-201, 2-4-306, 2-4-311, 2-15-401, MCA
IMP: 2-4-306, 2-4-311, MCA

6. The rule proposed for repeal is as follows:

1.2.301 RECODIFICATION OF THE ADMINISTRATIVE RULES OF MONTANA (ARM) found on ARM page 1-25.

AUTH: 2-4-301, 2-4-305, 2-15-306, MCA
IMP: 2-4-306, MCA

Statement of Reasonable Necessity: The Secretary of State is proposing revisions to ARM Title 1 for the purposes of enhancing readability, reflecting current practices, and establishing fees commensurate with actual costs.

Most of the proposed revisions fall into one of the following categories:

1) General revisions to rules related to the organization of ARM;

2) Revisions related to the state government procedures for preparing and filing rule proposals, rule adoptions, and replacement pages with the Secretary of State; and

3) Revisions related to fees charged for services provided by the ARM Bureau of the Secretary of State’s Office.

The proposed amendments, transfers, and adoptions related to the organization of ARM include changes to make the rules more helpful and understandable to the reader, and are substantively similar to existing rules. The changes are made in response to recommendations made to the Secretary of State by the Title 1 work group, a group of state agency personnel involved in rulemaking.

The proposed revisions clarify the steps agencies must follow to prepare and file rules for publication in the Register and ARM and correct existing rules to reflect current practice. It is reasonably necessary to adopt rules related to the preparation and filing procedures because agencies must be aware of the Secretary of State's format and style requirements for submission.

The proposed amendments related to fees charged are necessary to cover the actual costs incurred to provide these services. It is the intent of the legislature that the Secretary of State's Office collects fees that are commensurate with the overall costs of the office. The changes proposed set fees that are more closely aligned to the actual costs incurred to provide the services by the Administrative Rules Bureau.

7. Concerned persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to Jean Branscum, Secretary of State's Office, P.O. Box 202801, Helena, Montana 59620-2801, or by e-mailing jabranscum@mt.gov, and must be received no later than December 8, 2005.

8. H. Elwood English, Secretary of State's Office, P.O. Box 202801, Helena, Montana 59620-2801, has been designated to preside over and conduct the hearing.

9. 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 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. Such written request may be mailed or delivered to the Secretary of State's Office, Administrative Rules Bureau, 1236 Sixth Avenue, P.O. Box 202801, Helena, MT 59620-2801, faxed to the office at (406) 444-3976, or may be made by completing a request form at any rules hearing held by the Secretary of State's Office.

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

/s/ Brad Johnson	/s/ H. Elwood English
BRAD JOHNSON	H. ELWOOD ENGLISH
Secretary of State	Rule Reviewer

Dated this 31st day of October 2005.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the proposed amendment of ARM 44.5.114 Corporations - Profit and Nonprofit Fees, and 44.5.115 Limited Liability Company Fees	)	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On December 5, 2005, a public hearing will be held at 1:00 p.m. in the Secretary of State's Office Conference Room, Room 260, of the State Capitol, 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 November 25, 2005, to advise us of the nature of the accommodation that you need. Please contact H. Elwood English, Secretary of State's Office, P.O. Box 202801, Helena, MT 59620-2801; telephone (406) 444-5375; FAX (406) 444-4196; or e-mail eenglish@mt.gov.

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

<u>44.5.114 CORPORATIONS - PROFIT AND NONPROFIT FEES</u>

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

~~(f) annual report filed on line prior to April 15th 10.00~~

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

~~(h) annual report filed on line after April 15th 25.00~~

(i) through (l) remain the same but are renumbered (g) through (j).

AUTH: 2-15-405, 35-1-1307, 35-2-1107, MCA
IMP: 35-1-216, 35-1-217, 35-2-119, MCA

<u>REASON</u>: The Secretary of State proposes this amendment in order to clarify the fees for filing annual report via electronic filing. The cumulative amount of fees collected at the increased amount will be approximately $71,000, affecting approximately 14,200 customers next year. The Secretary of State proposes the amendments to clarify the articles of incorporation certificate services available online. The fee change reflects the actual cost of processing annual reports including printing, filing, compliance checking, and data entering.

44.5.115 LIMITED LIABILITY COMPANY FEES (1) through (3)(d) remain the same.

~~(e) annual report filed on line before April 15th 10.00~~

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

~~(g) annual report filed on line after April 15th 25.00~~

(h) through (j) remain the same but are renumbered (f) through (h).

AUTH: 2-15-405, 35-8-211, MCA
IMP: 35-8-208, MCA

REASON: The Secretary of State proposes this amendment in order to clarify the fees for filing annual report via electronic filing. The cumulative amount of fees collected at the increased amount will be approximately $39,000, affecting approximately 7,800 customers next year. The Secretary of State proposes the amendments to clarify the articles of organization certificate services available online. The fee change reflects the actual cost of processing annual reports including printing, filing, compliance checking, and data entering.

4. Concerned persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to H. Elwood English, Secretary of State's Office, P.O. Box 202801, Helena, MT 59620-2801, or by e-mailing eenglish@mt.gov, and must be received no later than December 8, 2005.

5. H. Elwood English, at the address above, has been designated to preside over and conduct the hearing.

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 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 a combination thereof. Such written request may be mailed or delivered to the Secretary of State's Office, Administrative Rules Bureau, 1236 Sixth Avenue, P.O. Box 202801, Helena, MT 59620-2801, faxed to the office at (406) 444-3976, e-mailed to jabranscum@mt.gov, or may be made by completing a request form at any rules hearing held by the Secretary of State's Office.

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

/s/ Brad Johnson
Brad Johnson
Secretary of State

/s/ H. Elwood English
H. Elwood English
Rule Reviewer
Secretary of State

Dated this 31st day of October 2005.

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

In the matter of the adoption of New Rule I through New Rule VII regarding when salary deferrals under a cafeteria plan should be treated as compensation	NOTICE OF ADOPTION

TO: All Concerned Persons

1. On September 8, 2005, the Board published MAR Notice No. 2-2-363 regarding the proposed adoption of the above-stated rules at page 1626 of the 2005 Montana Administrative Register, Issue Number 17.

2. The Board has adopted new RULE I, ARM 2.43.901; new RULE II, ARM 2.43.902; new RULE III, ARM 2.43.905; and new RULE VI, ARM 2.43.911 exactly as proposed.

3. The Board has adopted new RULE IV, ARM 2.43.909; new RULE V, ARM 2.43.910, and new RULE VII, ARM 2.43.914 with the following changes, stricken matter interlined, new matter underlined:

RULE IV [2.43.909] PROCEDURES - COMPENSATION MUST BE TREATED CONSISTENTLY (1) If an employer increases a member's compensation to ~~To~~ account for health, dental, vision, life or disability costs, the amount of the increase can be included in compensation for retirement system purposes only if the employer ~~must include~~ includes that ~~increase~~ amount, to the extent required by applicable federal and state law, in its calculation of the member's compensation for all purposes, including, but not limited to:

(a) through (i) remain as proposed.

(2) If the employer does not ~~include such an increase for all such purposes~~ comply with (1), the board will not consider the ~~increase~~ amount as an elective contribution under a cafeteria plan that would be includible in gross income but for IRC section 125, and will not include the increase as compensation for purposes of PERS, JRS, HPORS, SRS, GWPORS, MPORS, and FURS.

(3) If the board has any reason to doubt that ~~the increase is being considered for all such purposes~~ the employer is complying with (1), the board has the right to obtain documentation up to and including an audit of any participating employer to ensure compliance with (1). If compliance with (1) cannot be verified by the board, the participating employer's 125 plan contribution will not be considered compensation for retirement system purposes.

AUTH: 19-2-403, MCA

IMP: 19-2-1001, 19-2-1005, 19-2-1010, 19-3-108, 19-5-101, 19-6-101, 19-7-101, 19-8-101, 19-9-104, and 19-13-104, MCA

RULE V [2.43.910] PROCEDURES - PLANS THAT OFFER A CHOICE AMONG NONTAXABLE BENEFITS ONLY ~~ARE NOT CAFETERIA PLANS~~ (1) If an employer has a plan or program under which it contributes on behalf of its employees a certain dollar amount, which can be used by the employee to purchase optional nontaxable benefits, but there is no ability for the employee to receive the employer contribution in cash or other taxable benefit, the board will not consider the employer contribution an elective contribution under a cafeteria plan that would be includible in gross income but for IRC section 125, and will not include the employer contribution as compensation for purposes of PERS, JRS, HPORS, SRS, GWPORS, MPORS, and FURS.

AUTH: 19-2-403, MCA
IMP: 19-2-1001, 19-2-1005, 19-2-1010, 19-3-108, 19-5-101, 19-6-101, 19-7-101, 19-8-101, 19-9-104, and 19-13-104, MCA

RULE VII [2.43.914] IMPLEMENTATION AND COMPLIANCE

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

(c) ~~This is a recurring, annual requirement for each affected employer.~~ Once compliance has been demonstrated, the employer must verify on an annual basis that its IRC section 125 plan document and election form have not changed. If either document does change, the new document or election form must be submitted to the board.

(2) and (3) remain as proposed.

AUTH: 19-2-403, MCA
IMP: 19-2-1001, 19-2-1005, 19-2-1010, 19-3-108, 19-5-101, 19-6-101, 19-7-101, 19-8-101, 19-9-104, and 19-13-104, MCA

4. The following comments were received and appear with the Board's responses:

COMMENT #1: Two comments were received regarding proposed Rule VII and whether employers with bona fide IRC Section 125 cafeteria plans should have to submit the approved plan every year. If the agency forgets to do so, it will be "punished" for an oversight rather than for non-compliance. The Board's efforts should be directed toward agencies that are not in compliance with the Board's requirements. A complying agency should be required to submit its plan document only when the terms of the plan change.

RESPONSE: The Board agrees and believes the same logic applies to both a bona fide IRC Section 125 cafeteria plan and that plan's yearly election form. If the election form is amended during the plan year, a copy of the new form must be submitted to the Board as soon as possible. Rule VII is amended accordingly.

COMMENT #2: A comment was received stating that the Board should, on an annual basis, place a message on its website reminding agencies already in compliance that they must verify that they are still operating under the same IRC Section 125 cafeteria plan.

RESPONSE: The Board agrees with the proposed concept of notification. Consideration will be given to placing individual employer notification messages on MPERA's Web Reporting System during the employer's IRC Section 125 cafeteria plan election window. Alternate means of notification will be necessary for employers who do not use the web reporting system. The same process will apply to election forms that have previously been found to be in compliance.

COMMENT #3: A licensed insurance consultant retained by local government entities for general assistance and support to health benefit plans requested the Board to respond to two hypothetical scenarios with respect to proposed Rule IV.

Scenario #1: John Doe, a county employee has a base salary of $30,000 per year. He elects to participate in the county's health plan and chooses to pay his portion of the premium ($3,600) pre-tax through the county sponsored IRC Section 125 plan. Pursuant to federal regulation, the county reports taxable earnings of $26,400 for FICA, Medicare and federal income tax purposes. Assume all other requirements of the Board's policy are met. Question: What amount is to be reported to MPERA for retirement purposes - $30,000 or $26,400?

Scenario #2: Same facts as scenario #1 except John is given $6,000 per year in cafeteria plan credits (in addition to his regular salary of $28,600) that he uses to pay his full insurance costs of $5,000 and to make a contribution of $1,000 to his flexible spending account. He has the option to take some or all of the $6,000 in taxable wages in lieu of insurance and/or flex spending. Pursuant to federal regulations, the county reports taxable earnings of $28,600 for FICA, Medicare and federal income tax purposes. Question: What amount is to be reported to the MPERA for retirement purposes - $34,000, $28,600 or some other amount?

RESPONSE: The Board agrees that responses to the offered scenarios will assist in better understanding the Board's proposed rules. Any analysis must include consideration of whether the expenditures were legitimate IRC Section 125 plan choices and whether all other requirements of the Board's policy and rules are met. For example, it is essential that these same salary amounts be considered compensation for all other delineated purposes, including the Fair Labor Standards Act (FLSA) and when calculating overtime. On that basis, the response to Scenario #1 is $30,000, the employee’s "base salary", from which the employee has directed contributions to the Section 125 plan as a salary deferral. On that basis also,

the response to Scenario #2 is $28,600, the "regular salary" of the employee, which does not include employer provided benefits.

COMMENT #4: A local government contracting agency questioned whether the "compensation" referenced in the proposed rules is "taxable wages" or "gross wages".

RESPONSE: Neither "taxable wages" nor "gross wages" accurately describes the referenced term "compensation." "Taxable wages" and "gross wages" are income tax related terms. The Board is attempting to clarify the definition of "compensation" for retirement system purposes. The statutory definitions of "compensation" for each affected retirement system apply.

COMMENT #5: Two comments noted that a cafeteria plan with an election between pretax and post-tax payment, even if the employer contribution may not be taken as cash, is still a cafeteria plan under IRC Section 125.

RESPONSE: The Board agrees and has amended Rule V accordingly.

COMMENT #6: An employee benefits firm appeared at the hearing and provided the following written comment. The "Example of Nontaxable Benefit Only Plan" contained in Paragraph III.B.2 on p. 3 of the Board's policy is incorrect. A 403(b) plan is not part of a 125 cafeteria plan.

RESPONSE: The Board agrees that a 403(b) plan is not part of a 125 cafeteria plan. The example was intended to provide examples of alternative benefits to cash, not to imply that a 403(b) plan is part of a 125 cafeteria plan. The example will be amended accordingly.

COMMENT #7: The same person commented regarding Example III.C.6.a. on page 5 of the Board's policy, stating that it is inaccurate for 3 reasons: (1) the employee has the choice to direct a portion of his or her wages into the cafeteria plan or to elect to receive the entire amount of wages in cash; (2) if the $6,000 exceeds the cost of the health insurance, the employee can elect other benefits; and (3) if the premium exceeds the $6,000, the employee can redirect other compensation into the plan.

RESPONSE: The Board disagrees. The comment assumes facts that are not included in the example. The example addresses treatment of the entire $6,000 per year contribution. The example does not: (1) permit the employee to direct only a portion of that amount into the cafeteria plan; (2) address the situation where the $6,000 exceeds the cost of the premium; and (3) address the situation where the premium exceeds the $6,000. However that example, example III.C.6.b., and proposed rule V will be amended to clarify that they address the status of

contributions to 125 plans, not the validity of the 125 plans themselves.

COMMENT #8: The same person commented regarding Example III.C.8.b. on page 6 of the Board's policy, objecting to use of the term "valid mandatory election of pretax payment" because an employer cannot mandate participation in a cafeteria plan.

RESPONSE: The Board disagrees. An employer can mandate participation in a cafeteria plan as long as the employer does not also mandate participation in the underlying health plan. The example addresses an employee who is not required to participate in the employer's health plan, but chooses to do so anyway. The premiums must then be paid on a pretax basis under the cafeteria plan. This option is permitted. The title is correct.

COMMENT #9: Two local government employers offered several comments and requests for clarification. The first request for clarification related to Proposed Rule IV(1) terminology, particularly the use of the terms "costs" and "increase".

RESPONSE: The Board agrees that the language of Proposed Rule IV(1) could be made clearer and has amended RULE IV accordingly.

COMMENT #10: The second requested clarification from the two local government employers concerned the Proposed Rule IV treatment of compensation when such compensation was not required to be treated as compensation under federal law.

RESPONSE: The Board agrees with the comment that impact of Proposed Rule IV, including subsections (a) through (i) of Proposed Rule IV(1), is limited by the phrase "to the extent required by applicable federal and state law," which is contained in that subsection. The Board has amended Proposed Rule IV(2) to better reflect that the amount referenced need only be treated as compensation according to the terms of Proposed Rule IV(1).

COMMENT #11: The two local government employers also suggested the rule might unnecessarily and inappropriately duplicate federal law. The employers specifically questioned the Board making determinations of who was an employee and who was an independent contractor.

RESPONSE: Although the comment suggests the rule may not be necessary or appropriate, the Board notes that the rule is necessary to utilize existing standards from other legal contexts to clarify the definition of compensation for retirement system administration purposes, which is clearly within the Board’s authority. As to the specific question, the Board, as the retirement plan administrator, currently is authorized to make determinations of who is an employee and who

is an independent contractor for retirement plan coverage purposes.

COMMENT #12: The two local government employers also expressed concern that the Board is locking itself into the standards of current federal tax law, which may change. The employers suggest the Board simply demand compliance with IRC Section 125 and related regulations.

RESPONSE: Proposed Rule VI(3) effectively does simply demand compliance with IRC Section 125 and related regulations. Providing less sophisticated employers with the specific guidelines contained in the rules will help ensure compliance with the necessary standards. If and when federal tax law changes such that any part of the proposed rules is in conflict with federal tax law, the Board can amend the rule.

COMMENT #13: The two local government employers noted that they could not find on the MPERA (Montana Public Employee Retirement Administration) website the Board policy referenced in the rule notice, which they would have found useful.

RESPONSE: The link to the referenced Board policy was contained on the MPERA website homepage during the comment period and currently. The Board policy is located online at http://www.mpera.mt.gov/docs/CafeteriaPlans.pdf

COMMENT #14: The two local government employers expressed confusion regarding the terms "affirmative election", "mandatory election", and "waiver" in Proposed Rule VI(7),(8) and (9).

RESPONSE: An "affirmative election" is one kind of election. As the rule describes, with an affirmative election an employee is permitted to elect, on an annual basis, whether to purchase qualified benefits under the plan, which can include a choice between a pretax and post-tax contribution. A "mandatory election" is another kind of election. As the rule describes, with a mandatory election, if an employee chooses a certain benefit, the employee must pay for it on a pretax basis. As the rule notes, the employer cannot mandate both that the employee choose the benefit and that the employee pay for the benefit on a pretax basis under the cafeteria plan. Further explanation by example is contained in Board Admin 03, available online at http://www.mpera.mt.gov/docs/CafeteriaPlans.pdf. Finally, the specific guidance requested as to the meaning of a "waiver" is provided in the language of Proposed Rule VI(9). No further clarification is necessary.

/s/ Carole Carey
Carole Carey, President
Public Employees' Retirement Board

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

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

Certified to the Secretary of State on October 31, 2005.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 23.16.202, 23.16.1822, and 23.16.1918, concerning credit play prohibited, video gambling machine permits, requirements for letters of withdrawal, and video gambling machine testing fees	)	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On September 22, 2005, the Department of Justice published MAR Notice No. 23-16-171 regarding the public hearing on the proposed amendment of the above-stated rules at page 1735, 2005 Montana Administrative Register, Issue Number 18.

2. The Department has amended ARM 23.16.202 as proposed.

3. The Department has amended ARM 23.16.1822 and 23.16.1918 with the following changes, stricken matter interlined, new matter underlined:

23.16.1822 PERMIT NOT TRANSFERABLE (1) through (5) remain as proposed.

(6) A completed Letter of Withdrawal (LOW) must be submitted to the department when a permitted machine is removed from play and the premises prior to the renewal deadline of each year, June 30. The LOW must be submitted no later than 10 days from the date the machine is removed from play. A LOW form is available upon request from the department. The LOW is not complete unless it is dated and signed by the licensee, and contains all of the information and attachments required by the department. Except as provided in (8), ~~The~~ the provisions of this rule do not apply to a machine temporarily removed from play for repair service.

(7) through (7)(d) remain as proposed.

(8) ~~A LOW is also required if a permitted machine is removed from play 30 days or more for service or repair. If a machine is removed from play for service or repair in the final month of the permit renewal period, June, and the licensee decides not to repair or renew the machine at the same location, a LOW is also required.~~ A LOW must be submitted for machines removed from play for service when the operator determines that it will not be placed back into play during the permit year and will not be renewed at its current location.

(9) remains as proposed.

AUTH: 23-5-115, ~~23-5-605,~~ 23-5-621, MCA
IMP: 23-5-603, ~~23-5-605,~~ 23-5-611, 23-5-612, 23-5-621, 23-5-637, MCA

23.16.1918 VIDEO GAMBLING MACHINES TESTING FEES
(1) through (3) remain as proposed.

AUTH: 23-5-115, ~~23-5-605,~~ MCA
IMP: 23-5-631, MCA

4. A public hearing was held on October 13, 2005. Comments were received from Rich Miller and Rhonda Carpenter Wiggers.

5. The following comments were received and appear with the Department's responses:

Comment 1: Rhonda Carpenter Wiggers, representing the Montana Coin Machine Operators Association (MCMOA), objected to the proposed amendments to ARM 23.16.1822(8), which required Letters of Withdrawal (LOWs) to be filed for machines removed from play for service for more than 30 days. Wiggers stated that it is not unusual for machine service to take more than 30 days, especially in rural or remote areas of Montana. Wiggers believed the LOW requirement would result in excessive paperwork with limited value for the Division. Wiggers suggested the Division eliminate or limit the requirement for LOWs when a machine is removed from play for service. Rich Miller, representing the Gaming Industry Association (GIA), agreed with Wiggers' comments. Rick Ask, Operations Bureau Chief for the Gambling Control Division, explained that, based on similar comments made at the September 23, 2005 Gaming Advisory Council meeting, the Division was reconsidering the rule proposal. Ask discussed with those present a proposed modification which would require LOWs be filed for machines taken out of play for service only when the operator decides the machine will not be put back in play during the permit period and not renewed at the location. Industry representatives thought the proposal would work.

Response 1: The Department agrees with the stated concerns of the industry representatives. Changes have been made to exempt from the LOW requirements machines taken out of play for service except when an operator decides not to put the machine back in play during the permit period and not renew the permit at the same location.

Note: ARM 23.16.1822(8) was originally proposed as new language and was inadvertently not underlined in the proposed amendment notice. The new language is now being stricken and changed. The Division also should have interlined repealed statutes that were referred to in the implementation and authority cites in ARM 23.16.1822 and 23.16.1918 as shown above.

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

/s/ Jon Ellingson
JON ELLINGSON
Rule Reviewer

Certified to the Secretary of State October 31, 2005.

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

In the matter of the amendment of ARM 8.32.427 general requirements for medication aide training programs and instructors	))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On September 8, 2005 the Board of Nursing published MAR Notice No. 8-32-68 regarding the public hearing on the proposed amendment of the above-stated rule relating to general requirements for medication aide training for programs and instructors at page 1652 of the 2005 Montana Administrative Register, issue no. 17.

2. A public hearing on the notice of proposed amendment on the above-stated rule was held on September 29, 2005. No comments or testimony were received.

3. The Board amends ARM 8.32.427 exactly as proposed.

BOARD OF NURSING
KAREN POLLINGTON, RN, CHAIRPERSON

/s/ KEITH KELLY
Keith Kelly, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

/s/ MARK CADWALLADER
Mark Cadwallader
Alternative Rule Reviewer

Certified to the Secretary of State October 31, 2005

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

In the matter of the amendment) NOTICE OF AMENDMENT
of ARM 24.162.420, fee schedule)

TO: All Concerned Persons

1. On August 11, 2005, the Board of Nursing Home Administrators published MAR Notice No. 24-162-37 regarding the public hearing on the proposed amendment of the above-state rule relating to fee schedule at page 1490 of the 2005 Montana Administrative Register, issue number 15.

2. The hearing was held on September 6, 2005. One written comment was received.

3. The Department has thoroughly considered the comment received. A summary of the comment received and the Board's response are as follows:

COMMENT: Mr. Ron Balas commented that the proposed rate increase for the active renewal was exorbitant, in excess of 30%. The reason offered by the Board for the increase is the restructuring within the Department of Labor. He suggested that the Department and the Board of Nursing Home Administrators should have allowed comment prior to restructuring and nursing home administrators should have been given an opportunity to understand the value of restructuring and its added costs. To his knowledge there is no additional service provided by the Board. He feels that perhaps the restructuring should not have taken place if funds were not available, otherwise at this point comments seem perfunctory.

RESPONSE: The Board acknowledges and thanks Mr. Balas for his comment. In 2001, the Legislature mandated that the Board be attached for administrative purposes to the Department of Labor and Industry. As noted in the statement of reasonable necessity, the accounting allocations for the Board's costs have been restructured to track the actual time spent by Department staff in handling the Board's business. That accounting change was made by the Department in response to criticisms by some Boards of the cost allocations that had been historically used to calculate each Board's share of administrative costs. Similar concerns were independently voiced by the Legislative Audit Division, and the Department's decision to implement the accounting changes kept the Department from being "written up" by the legislative auditors. The Board respectfully notes that it and the Department, as part of the executive branch of government, have an obligation to be responsive to the concerns of the legislative branch. Section 37-1-134, MCA, requires that the Board's fees must be commensurate with costs. One portion of

the fee increase is due to the more accurate and fair allocation of costs to the Board and its licensees. Another portion of the increase is attributable to normal increase in the cost of salaries, utilities, computer technology, and such.

The Board also notes that the Department of Labor and Industry has a duty to establish uniform processes for licensing and related functions for all of the various occupations regulated by professional and occupational licensing boards. As explained in the statement of reasonable necessity, those functions occur at various levels within the portion of the Department that the Board is attached to. The Board notes that the staffers who perform those various functions for the Board are employees of the Department, and are assigned and managed by the Department. Although the Board cannot speak for the Department, it is aware that state law has historically never required executive branch agencies to obtain public comment on matters of internal organization and operation. The Board will, however, make sure that the Department's management is aware of the commenter's concerns.

4. The Board has amended ARM 24.162.420 exactly as proposed.

BOARD OF NURSING HOME ADMINISTRATORS
DEBORAH WILSON, CHAIRPERSON

/s/ KEITH KELLY
Keith Kelly, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

/s/ MARK CADWALLADER
Mark Cadwallader
Alternate Rule Reviewer

Certified by the Secretary of State October 31, 2005

BEFORE THE BOARD OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 32.23.301 pertaining to fees charged by the department on the volume on all classes of milk	))))	NOTICE OF AMENDMENT

To: All Concerned Persons

1. On September 22, 2005 the department of livestock published MAR Notice No. 32-5-173 regarding the proposed amendment of ARM 32.23.301, pertaining to fees charged by the department on the volume on all classes of milk at page 1743 of the 2005 Montana Administrative Register, Issue Number 18.

2. The department of livestock has amended ARM 32.23.301 exactly as proposed.

3. No comments or testimony were received.

DEPARTMENT OF LIVESTOCK

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

By: /s/ Carol Grell Morris
Rule Reviewer

Certified to the Secretary of State October 31, 2005.

BEFORE THE STATE BOARD OF LAND COMMISSIONERS AND THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION OF THE STATE OF MONTANA

In the matter of the amendment of ARM 36.25.210, increase royalty rates for oil and gas leases on state school trust lands from current rates to 16.67%	)	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On September 8, 2005, the Department of Natural Resources and Conservation published MAR Notice No. 36-22-109 regarding the proposed amendment of ARM 36.25.210 concerning royalty rate increases for oil and gas leases on state school trust lands at page 1654 of the 2005 Montana Administrative Register, Issue No. 17.

2. The Department has amended ARM 36.25.210 exactly as proposed.

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

COMMENT 1: A written statement opposing the increase was received from the Montana Petroleum Association (MPA) of Helena, Montana, who went on objection for the record. They argued for a split rate, with a higher rate for producing areas and a lower rate for non-producing areas.

RESPONSE: A royalty rate is a percentage of the value of production, and therefore, applies only to producing areas. The holding cost for a non-producing lease is the same regardless of the amount of mineral owner and overriding royalties.

COMMENT 2: A written statement opposing the increase was received from the Northern Alliance of Independent Producers (NAIP) of Bismarck, North Dakota. They argued that increasing the royalty rate is an additional cost that may cause investors to reconsider exploration in the state, and decrease state revenue. They also argued that Montana's low rates help to promote a stable tax and royalty structure, and an increased rate would discourage domestic oil and gas production.

RESPONSE: According to the Montana Constitution, Article X, Section 11(2) and 77-3-432, MCA, the Land Board is required to receive full market value for the disposition of any interest in school trust lands, which includes the issuance of oil and gas leases. The Department's review found that leases with royalty rates of 16.67% are being taken and developed by

industry in Montana as well as Wyoming and North Dakota. An increased royalty rate to the school trust could curtail the amount of override that lessees and third parties carve from state leases. School trust acreage is only 5-10% of the total mineral acreage and production in Montana, and the rates on existing leases are unaffected. Even if 25% of production from state school trust leases were to eventually come from new leases, the total increase in industry royalty payments would be on the order of 0.08%. Amendment of the state oil and gas lease royalty rate is authorized by 77-3-402, MCA. The amendment of this rule is also consistent with the State's constitutional and statutory duties to obtain the full market value of oil and gas leases for the affected trust beneficiary. The setting of the oil and gas royalty at a 16.67% rate is reasonably necessary and proper to effectuate the purpose of the State's trust duties.

/s/ Tommy H. Butler
TOMMY H. BUTLER
RULE REVIEWER

/s/ Mary Sexton
MARY SEXTON, DIRECTOR
NATURAL RESOURCES AND CONSERVATION

Certified to the Secretary of State October 31, 2005.

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

In the matter of the amendment of ARM 37.30.102, 37.30.405, 37.30.706, 37.30.730, 37.30.1030, and 37.30.1401 pertaining to the vocational rehabilitation program	)	NOTICE OF AMENDMENT

TO: All Interested Persons

1. On August 25, 2005, the Department of Public Health and Human Services published MAR Notice No. 37-355 pertaining to the public hearing on the proposed amendment of the above-stated rules relating to the vocational rehabilitation program at page 1577 of the 2005 Montana Administrative Register, issue number 16.

2. The Department has amended ARM 37.30.102, 37.30.405, 37.30.706, 37.30.730, 37.30.1030, and 37.30.1401 as proposed.

3. No comments or testimony were received.

Dawn Sliva
Rule Reviewer

Joan Miles
Director, Public Health and Human Services

Certified to the Secretary of State October 31, 2005.

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

In the matter of the amendment of ARM 37.106.704 pertaining to minimum standards for a critical access hospital	))))	CORRECTED NOTICE OF AMENDMENT

TO: All Interested Persons

1. On May 26, 2005, the Department of Public Health and Human Services published MAR Notice No. 37-348 regarding the proposed amendment of the above-stated rule at page 804 of the 2005 Montana Administrative Register, issue number 10, and on July 14, 2005 published notice of the amendment on page 1295 of the 2005 Montana Administrative Register, issue number 13.

2. This corrected notice is being filed to correct an error in ARM 37.106.704. The correction is shown in paragraph 3 below.

3. The rule is corrected as follows:

37.106.704 MINIMUM STANDARDS FOR A CRITICAL ACCESS HOSPITAL (CAH) (1) through (3)(d) remain as adopted.

(4) A critical access hospital shall provide emergency services meeting the emergency needs of patients in accordance with acceptable standards of practice, including the following standards:

(a) through (c) remain as adopted.

(d) A practitioner is on duty or on call and physically available at the facility within one hour at all times, unless the procedures described in ~~(3)~~(4)(e) are adopted and implemented.

(d)(i) through (6) remain as adopted.

AUTH: Sec. 50-5-233, MCA
IMP: Sec. 50-5-233, MCA

4. The Department is making a correction in ARM 37.106.704(4)(d).

In ARM 37.106.704(4)(d), the numbers "(3)(e)" should have been changed to read "(4)(e)" since (3) had been renumbered to (4) in the proposal notice.

The proposal notice in paragraph 4 read "This rule will be applied retroactively to February 23, 2005 to implement the effective date of the legislation implementing this rule change." In the adoption notice in paragraph 4, it was erroneously stated, "This rule will be applied retroactively to July 1, 2005." It should have read "This rule will be applied

retroactively to February 23, 2005."

5. Replacement pages for the corrected notice of adoption and amendment were submitted to the Secretary of State on September 30, 2005.

6. All other rule changes adopted and amended remain the same.

Dawn Sliva
Rule Reviewer

Joan Miles
Director, Public Health and Human Services

Certified to the Secretary of State October 31, 2005.

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

In the matter of the adoption of Rules I through VII and the amendment of ARM 37.86.2207, 37.86.2224, 37.88.101, 37.106.1902, 37.106.1906 and 37.106.1919 pertaining to comprehensive school and community treatment program (CSCT)	)	CORRECTED NOTICE OF AMENDMENT

TO: All Interested Persons

1. On July 28, 2005, the Department of Public Health and Human Services published MAR Notice No. 37-354 regarding the proposed adoption and amendment of the above-stated rules at page 1374 of the 2005 Montana Administrative Register, issue number 14, and on September 22, 2005 published notice of the adoption and amendment on page 1787 of the 2005 Montana Administrative Register, issue number 18.

2. This corrected notice is being filed to correct an error in ARM 37.106.1902. The correction is shown in paragraph 3 below.

3. The rule is corrected as follows:

37.106.1902 MENTAL HEALTH CENTER: DEFINITIONS In addition to the definitions in 50-5-101, MCA, the following definitions apply to this subchapter:

(1) through (12) remain as adopted.

~~(14)~~ (13) "Individualized education program" (IEP) means a written plan developed and implemented for each student with a disability in accordance with 34 CFR 300.341 through 300.350 as revised as of July 1, 1995. The department adopts and incorporates by reference 34 CFR 300.341 through 300.350. A copy of the regulations may be obtained from the Department of Public Health and Human Services, Quality Assurance Division, 2401 Colonial Drive, P.O. Box 202953, Helena, MT 59620-2953.

(14) through (31) remain as adopted.

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

4. The Department is correcting a typographical error that resulted in incorrect numbering in the proposal notice.

In ARM 37.106.1902, there was a typographical error in the proposal notice. Section (12) was struck out and renumbered to (14) in the proposal notice but should have been renumbered to (13), and erroneously shown to still be (14) in the notice of

adoption. This also affected the final line of the rule where the numbers that read "(13) through (29) remain the same but are renumbered (15) through 31)" should have read "(13) through (29) remain the same but are renumbered (14) through (31)".

5. Replacement pages for the corrected notice of adoption and amendment were submitted to the Secretary of State on September 30, 2005.

6. All other rule changes adopted and amended remain the same.

Dawn Sliva
Rule Reviewer

Joan Miles
Director, Public Health and Human Services

Certified to the Secretary of State October 31, 2005.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 42.21.113; 42.21.138; 42.21.131; 42.21.137; 42.21.138; 42.21.139; 42.21.140; 42.21.151; 42.21.153; 42.21.155; and 42.22.1311; and repeal of ARM 42.21.115 relating to personal, industrial, and centrally assessed property taxes	NOTICE OF AMENDMENT AND REPEAL

TO: All Concerned Persons

1. On September 22, 2005, the department published MAR Notice No. 42-2-749 regarding the proposed amendment and repeal of the above-stated rules relating to personal, industrial, and centrally assessed property taxes at page 1748 of the 2005 Montana Administrative Register, issue no. 18.

2. A public hearing was held on October 17, 2005, to consider the proposed amendments and repeal. No one appeared at the hearing to testify and no written comments were received.

3. Therefore, the department amends ARM 42.21.113, 42.21.123, 42.21.131, 42.21.137, 42.21.138, 42.21.139, 42.21.140, 42.21.151, 42.21.153, 42.21.155, and 42.22.1311 and repeals ARM 42.21.115 as proposed.

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

/s/ Cleo Anderson	/s/ Dan R. Bucks
CLEO ANDERSON	DAN R. BUCKS
Rule Reviewer	Director of Revenue

Certified to Secretary of State October 31, 2005

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

In the Matter of the Application of Westech Energy Corporation for an Order Recognizing it as as a Regulated Common Carrier	))))))	Utility Division Docket No. D2004.12.195 DECLARATORY RULING

DECLARATORY RULING

Introduction

1. On December 10, 2004, Westech Energy Corporation (Westech) filed before the Public Service Commission (Commission) an application for an order recognizing it as a regulated common carrier, or in the alternative for an order recognizing Westech's consent to regulation as a common carrier (Application).

2. On February 16, 2005, the Commission issued a Notice of Application and Intervention Deadline (NAID) establishing March 7, 2005 as the deadline to intervene or comment. The NAID was served on the parties to the docket and the Montana Consumer Counsel and published in the Stillwater County News. No individual or entity filed a petition to intervene or comments.

3. On April 19, 2005, Westech filed a Motion to Convert Application to a Petition for Declaratory Ruling. On May 10, 2005, the Commission granted Westech's motion.

4. Pursuant to § 2-4-501, MCA, and ARM 38.2.101 and 1.3.226 through 1.3.229, the Commission exercises jurisdiction to make declaratory rulings as to the applicability of any statutory provision or any rule or order of the Commission.

Facts Presented

5. Westech represents that it "proposes to build a natural gas transportation pipeline from the Dean Dome Field, an existing oil and gas field near Dean, Montana, to an interconnection with NorthWestern Energy Corporation's[1] major natural gas transportation pipeline just northeast of Absarokee, Montana." Application at 1.

6. Westech states that its "intent is to use the proposed pipeline to facilitate the production of stranded gas reserves throughout a large part of Stillwater County." Application at 1.

7. Westech describes its intentions as follows:

[1] The Commission is not aware of any entity named NorthWestern Energy Corporation. NorthWestern Energy is a division of NorthWestern Corporation. For purposes of this ruling the Commission assumes that Westech means NorthWestern Energy's pipeline.

> We plan to utilize the proposed pipeline to provide non-discriminatory access to all producers who want to transport their natural gas. Our interconnect with NorthWestern Energy will allow us, and all other producers who share our line, to market natural gas to anyone in the state. We also anticipate the possibility of providing another source of natural gas to the local retail market through future extensions of our pipeline.

Application at 1.

Question Presented

8. Does crude petroleum or the products thereof include natural gas for purposes of § 69-13-101, MCA?

Applicable Law

9. Section 69-13-101(1), MCA, provides:

> The following are hereby declared to be common carriers and subject to the provisions of this chapter: every person, firm, corporation, limited partnership, joint-stock association, or association of any kind whatsoever:
>
> (a) owning, operating, or managing any pipeline or any part of any pipeline within the state for the transportation of crude petroleum, coal, or the products thereof to or for the public for hire or engaging in the business of transporting crude petroleum, coal, or the products thereof by pipeline;
>
> (b) owning, operating, or managing any pipeline or any part of any pipeline for the transportation of crude petroleum, coal, or the products thereof to or for the public for hire, which pipeline is constructed or maintained upon, along, over, or under any public road or highway;
>
> (c) owning, operating, or managing any pipeline or any part of any pipeline for the transportation of crude petroleum, coal, or the products thereof to or for the public for hire, which pipeline is or may be constructed, operated, or maintained across, upon, along, over, or under the right-of-way of any railroad, corporation, or other common carrier required by law to transport crude petroleum, coal, or the products thereof as a common carrier;
>
> (d) owning, operating, or managing or participating in ownership, operation, or management, under lease, contract of purchase, agreement to buy or sell, or other agreement or arrangement of any kind whatsoever, any pipeline or

any part of any pipeline for the transportation from any oil field, coal mine or field, or place of production within the state to any distributing, refining, or marketing center or reshipping point thereof, within this state, of crude petroleum, coal, or the products thereof, bought of others; or

(e) made a common carrier by or under the terms of contract with or in pursuance of the law of the United States.

10. Section 69-13-102(1) provides:

It is declared that the operation of these pipelines, to which this chapter applies, for the transportation of crude petroleum, coal, or the products thereof, in connection with the purchase or purchase and sale of such crude petroleum, coal, or the products thereof, is a business in mode of the conduct of which the public is interested and as such is subject to regulation by law. The business of purchasing or of purchasing and selling crude petroleum, coal, or the products thereof, using in connection with such business a pipeline of the class subject to this chapter to transport the crude petroleum, coal, or the products thereof so bought or sold shall not be conducted unless such pipeline so used in connection with such business is a common carrier within the purview of this law and subject to the jurisdiction herein conferred upon the commission.

11. Section 69-13-103(2), MCA, provides:

Any person, firm, limited partnership, joint-stock association, or corporation may acquire the right to construct pipelines and such incidental telephone and telegraph lines along, across, or over any public road or highway in this state by filing with the commission acceptance of the provisions of this law, expressly agreeing in writing that in consideration of the right so acquired, it shall be and become a common carrier pipeline, subject to the duties and obligations conferred or imposed in this chapter. In the exercise of the privileges herein conferred, such pipelines shall compensate the county for any damage done to such public road in the laying of pipelines or telegraph or telephone lines along or across the same. Nothing herein shall be construed to grant any pipeline company the right to use any public street or alley in any incorporated city or town except by express permission from the city or governing authority thereof.

Analysis

Does crude petroleum or the products thereof include natural gas for purposes of § 69-13-101, MCA?

12. The Commission has not previously ruled on whether crude petroleum or the products thereof includes natural gas for purposes of Title 69, Chapter 13, MCA. Currently, no natural gas pipeline companies are regulated by the Commission as common carriers.

13. The Commission has not been confronted with this issue due to the manner in which the natural gas industry has developed. In many cases pipelines were interstate in nature and federal law preempted state regulation. In other situations, intrastate pipelines were owned and operated by a public utility and the pipeline was regulated under Title 69, Chapter 3, MCA. In regulating these intrastate pipelines, the Commission enabled the pipeline companies to claim "Hinshaw pipeline" status and avoid federal regulation.[2] See, e.g., In the Matter of the Application of the Montana Power Company for Authority to Establish New Rates Required to Implement its Gas Transportation Plan, Docket No. 90.1.1, Order 5474c (September 26, 1991).

14. On the federal level, the Federal Energy Regulatory Commission (FERC) regulates both oil and natural gas pipelines. However, the source of regulatory authority and the scope of regulation are different for each type of pipeline. Natural gas pipelines are regulated under the Natural Gas Act; oil pipelines are regulated under the Interstate Commerce Act. See SFPP, L.P., 93 F.E.R.C. ¶ 63,023, ¶ 65,090 (2000); Lakehead Pipe Line Co., 65 F.E.R.C. ¶ 63,021, ¶ 65,124 (1993). Oil pipelines are common carriers. Natural gas pipelines, after restructuring and open access, have obligations similar to those of common carriers. Regulation of oil pipelines preceded by many decades regulation of natural gas pipelines.

15. The dichotomy of these regulatory schemes is somewhat artificial. Oil pipelines can be converted to natural gas pipelines and natural gas pipelines can be converted to oil pipelines. Compare River Co. v. Texas Eastern Transmission Corp., No. Civ. 93-209, 1954 U.S. Dist. LEXIS 3724, 1954 Trade Cas. (CCH) ¶ 67,840 (D.N.Y., 1954) (conversion of pipeline from transportation of natural gas to transportation of petroleum products) with Granite State Gas Transmission, Inc., 40 F.E.R.C. ¶ 61,165 (1987) (lease and conversion of oil pipeline to transportation of natural gas).

16. The original source of Chapter 13 of Title 69 is Ch. 8, Laws of Montana 1921, Extraordinary Session (1921 Act). Initially, only pipeline transporters of crude petroleum were

[2] Pursuant to § 1(c) of the Natural Gas Act (15 U.S.C. § 717(c)) a Hinshaw pipeline is one within the boundaries of a state the natural gas from which is consumed in the state and the rates and service of which are regulated by a state commission.

common carriers. See §1, Ch.8, Laws of Montana 1921, Extraordinary Session. The legislature did not define crude petroleum. In a portion of the 1921 Act the legislature limited certain of the Commission's authority to oil.[3] This limitation would not have been necessary if the legislature intended crude petroleum to be synonymous with oil.

17. In 1955 the legislature extended the scope of the statute to include transportation of petroleum products. See Ch. 190, Laws of Montana 1955. However, the title of the act demonstrates that the legislature intended the act to apply to oil (An Act to Amend Chapter 2, of Title 8, and Particularly Sections 8-201, 8-202, 8-204, 8-205, 8-206, and 8-207 of the Revised Code of Montana of 1947, All Relating to Pipe Line Carriers of Oil . . .). The amendments that were adopted were in Senate Bill 73. The legislative history of the Senate Bill 73 is sparse. Nothing in either the House Journal or the Senate Journal explains the purpose of the amendments. The minutes of the Senate Committee on Oils and Leases for January 28, 1955 provide, "Senate Bill 73 was also discussed, and upon motion of Sen. Robins, which was seconded by Sen. Taylor, the committee unanimously agreed that it 'do pass'." The minutes of the House Committee on Oil and Gas for February 25, 1955 provide, "Senator Rex Hibbs appeared before the committee and explained Senate Bill No. 73. Discussion was had. Fulton made the motion that it be concurred in. It was seconded by Judeman. The motion was carried." Nothing in the amendment addressed the definition of crude petroleum.

18. In 1982, the Commission approved Roughrider Pipeline Company's (Roughrider) acceptance of jurisdiction under § 69-13-101, et seq., MCA. See U-82.07.20.00-OP, Commission Files. Roughrider represented that its pipeline would be used to transport "wet natural gas" produced in association with crude oil. See U-82.05.21.00-OP, Commission Files, attachment. Roughrider cited Phillips Pipe Line Co. v. United States, 40 F. Supp. 981 (Ct. Cl. 1941), for the proposition that wet natural gas is a constituent of crude petroleum.

19. In Phillips Pipe Line Co. the court interpreted the Revenue Act of 1932 which imposed a tax on transportation by pipeline of crude petroleum and the liquid products thereof. 40 F. Supp. at 986. The court reasoned that natural gasoline and straight-run gasoline were essentially the same product, that the tax applied to straight-run gasoline and that a natural construction of the revenue act required the application of the tax to natural gasoline. 40 F. Supp. at 988. The court placed substantial emphasis on language in the act that was changed during the legislative process. The bill originally provided for a tax on the transportation of oil by

[3] Section 5 of the 1921 Act provided, in pertinent part, "The [Commission] is also empowered and required to make rules for the ascertainment of the amount of water and other foreign matter in oil tendered for transportation." §5, Ch. 8, Laws of Montana 1921, Extraordinary Session (codified at § 3852, Revised Code of Montana of 1935 and §8-205, Revised Code of Montana of 1947).

pipeline. Id. The Senate committee changed the language to provide for a tax on the transportation by pipeline of crude petroleum and the liquid products thereof. Id. The Committee Report explained that the change made transportation of gasoline as well as crude oil taxable. Id. The Conference Report also explained that the change in wording made the tax applicable to crude petroleum and its liquid products instead of to oil only. Id. The court held that natural gasoline was a liquid product of crude petroleum for purposes of the Revenue Act of 1932. 40 F. Supp at 988. The court stated:

> There are many chemical names for the different types of gas and liquid hydrocarbons. Crude petroleum contains all of them in greater or less degree.
> In the following chart we have indicated some of them:[4]

[4] The chart has been re-formatted to fit the software used in preparing this order.

Crude Petroleum		Methane	Essentially natural gas at normal temperatures and pressures
		Ethane	
		Propane	
	Constituents of straight-run gasoline	Butanes	Constituents of natural gasoline
		Pentanes	
		Hexanes	
		Heptanes	
		Octanes	
		Nonanes	
		Decanes, etc.	

40 F. Supp. at 987. The court rejected the argument that crude petroleum was synonymous with oil stating, "there would be no term applicable to petroleum in its natural state with all its original ingredients." Id.

20. In General Petroleum Corp. of Cal. v. United States, the court reached a similar result. 24 F. Supp. 285, 289 (S.D. Cal. 1938). The court wrote, "In view of the state of the law at the time of the enactment and its avowed purpose, I am of opinion that the Congress intended to designate by the words 'crude petroleum' all the hydrocarbon substances - whether in liquid, solid or gaseous form coming out of an oil well . . . ." Id.

21. A comparable result was reached in Standard Oil of Cal. v. United States, 39 F. Supp. 180 (N.D. Cal. 1941). The court opined, " . . .natural gasoline, which is derived from wet natural gas, is a product of petroleum . . . ." 39 F. Supp. at 182.

22. For purposes of Chapter 13 of Title 69, MCA, crude petroleum includes natural gas. Natural gas is a part of, not a product of, crude petroleum. A natural gas pipeline is declared to be a common carrier by § 69-13-101, MCA.

Declaratory Ruling

On the petition of Westech Energy Corporation for a declaratory ruling, the Commission rules that Westech's proposed natural gas pipeline, if built, would be a common carrier pipeline as defined by § 69-13-101, MCA, and that Westech Energy Corporation would be subject to the jurisdiction of the Commission.

Done and dated this 23rd day of August, 2005 by a vote of 3 to 2.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

/s/ Greg Jergeson
GREG JERGESON, Chairman

/s/ Brad Molnar
BRAD MOLNAR, Vice Chairman (dissenting)

/s/ Doug Mood
DOUG MOOD, Commissioner

/s/ Robert H. Raney
ROBERT H. RANEY, Commissioner (dissenting)

/s/ Thomas J. Schneider
THOMAS J. SCHNEIDER, Commissioner

ATTEST:

Connie Jones
Commission Secretary

(SEAL)

NOTICE OF FUNCTION OF ADMINISTRATIVE RULE REVIEW COMMITTEE

Interim Committees and the Environmental Quality Council

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

Economic Affairs Interim Committee:

< Department of Agriculture;

< Department of Commerce;

< Department of Labor and Industry;

< Department of Livestock;

< Office of the State Auditor and Insurance Commissioner; and

< Office of Economic Development.

Education and Local Government Interim Committee:

< State Board of Education;

< Board of Public Education;

< Board of Regents of Higher Education; and

< Office of Public Instruction.

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

< Department of Public Health and Human Services.

Law and Justice Interim Committee:

< Department of Corrections; and

< Department of Justice.

Energy and Telecommunications Interim Committee:

< Department of Public Service Regulation.

Revenue and Transportation Interim Committee:

< Department of Revenue; and

< Department of Transportation.

State Administration, and Veterans' Affairs Interim Committee:

< Department of Administration;

< Department of Military Affairs; and

< Office of the Secretary of State.

Environmental Quality Council:

< Department of Environmental Quality;

< Department of Fish, Wildlife, and Parks; and

< Department of Natural Resources and Conservation.

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

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

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

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

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

Use of the Administrative Rules of Montana (ARM):

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

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through June 30, 2005. This table includes those rules adopted during the period July 1, 2005 through September 30, 2005 and any proposed rule action that was pending during the past six-month period. (A notice of adoption must be published within six months of the published notice of the proposed rule.) This table does not, however, include the contents of this issue of the Montana Administrative Register (MAR).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through June 30, 2005, 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 2004 and 2005 Montana Administrative Registers.

To aid the user, the Accumulative Table includes rulemaking actions of such entities as boards and commissions listed separately under their appropriate title number.

GENERAL PROVISIONS, Title 1

1.2.419 and other rule - Scheduled Dates for the 2006 Montana Administrative Register - Submission Dates for Replacement Pages, p. 1903

ADMINISTRATION, Department of, Title 2

I-X Definitions - Licensing and Application Requirements - Ownership Change - Examination of Title Lenders - Duration of Loans - Extensions - Reports - Schedule of Charges - Employees' Character and Fitness - Procedural Rules for Hearing and Discovery Proposed for Adoption under the Montana Title Loan Act, p. 1125, 1334, 1839

I-X State of Montana Voluntary Employees' Beneficiary Association (VEBA), p. 2779, 643, 911

2.5.201 and other rules - State Procurement of Supplies and Services - Disposition and Disposal of Surplus Property, p. 1316, 1709, 1906

2.21.410 and other rules - Military Leave, p. 767, 1506

2.21.501 and other rules - Jury Duty - Witness Leave, p. 1633

2.21.701 and other rules - Leave of Absence without Pay, p. 141, 372

2.21.1001 and other rules - Parental Leave, p. 286, 571

2.59.1701 and other rule - Definitions - License Renewal of Mortgage Brokers and Loan Originators, p. 2959, 320

(Public Employees' Retirement Board)
I-III Implementation of Detention Officer Transfer to Sheriffs' Retirement System, p. 1329, 1670
I-III Implementation of Detention Officer Transfer to Sheriffs' Retirement System, p. 725, 1021
I-VII When Salary Deferrals Under a Cafeteria Plan Should be Treated as Compensation, p. 1626
2.43.441 and other rule - Transfer of Funds for Certain Service Purchases, p. 400, 913
2.43.1002 Investment Policy Statement for the Defined Contribution Retirement Plan, p. 1461, 1907
2.43.1801 and other rule - Plan Document and Investment Policy Statement for the 457 Deferred Compensation Plan, p. 1458, 1908

(State Compensation Insurance Fund)
2.55.320 Classifications of Employments, p. 1944

AGRICULTURE, Department of, Title 4

I-III Cherry Research and Marketing Development Program, p. 771, 1279
4.13.1001A and other rule - State Grain Lab Fee Schedule, p. 775, 1280

(Montana Agriculture Development Council)
4.16.303 and other rules - Agricultural Marketing Development Program, p. 1532, 1909

STATE AUDITOR, Title 6

I-XII Insurance Standards for Safeguarding Personal Information, p. 2435, 426
I-XV Small Business Health Insurance Purchasing Pool - Premium Assistance and Premium Incentive Payments - Tax Credits, p. 1464, 1771
6.6.504 and other rules - Medicare Supplements, p. 1131, 1537, 1672, 1910
6.6.6811 and other rules - Captive Insurance Companies, p. 861
6.6.8301 Updating References to the NCCI Basic Manual for New Classifications for Various Industries, p. 1947
6.6.8501 and other rules - Viatical Settlement Agreements, p. 1636

COMMERCE, Department of, Title 8

I Submission and Review of Applications to the Treasure State Endowment Program (TSEP), p. 1539, 2052
I Administration of the 2005-2006 Federal Community Development Block Grant (CDBG) Program, p. 1, 572
I-XVI Award of Grants and Loans under the Big Sky Economic Development Program, p. 1711

8.94.3801 and other rule - Administration of Grants Awarded by the 2005 Legislature - Treasure State Endowment Program (TSEP), p. 1954
8.119.101 Tourism Advisory Council, p. 404, 813

(Grant Review Committee)
14.4.101 and other rules - Award of Training Grants by the Grant Review Committee, p. 1471, 1915

EDUCATION, Title 10

(Superintendent of Public Instruction)
10.16.3010 Special Education, p. 1641, 2056

(Board of Public Education)
10.55.909 and other rule - Student Discipline Records - Student Records, p. 194, 575, 1390
10.57.102 and other rules - Educator Licensure, p. 407, 916
10.58.103 Review of Professional Educator Preparation Program, p. 289, 576

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

(Fish, Wildlife, and Parks Commission)
I No Wake Zone on Georgetown Lake, p. 1644
I Notice of Adoption of a Temporary Emergency Rule - Closing the Clark Fork River from the Petty Creek Fishing Access Site to the Tarkio Fishing Access Site, p. 1586, 1916
I-VII Exotic Wildlife, p. 358, 814
I-X Aerial Herding Permits, p. 991, 1775
I-XVI Blackfoot River Special Recreation Permit Program, p. 4, 430
12.5.201 Removing the Peregrine Falcon from the State Endangered Species List, p. 1841
12.9.211 Abandonment of Teton-Spring Creek Bird Preserve, p. 1646
12.11.202 and other rules - Beaverhead and Big Hole Rivers, p. 144, 737, 917, 1391, 1507
12.11.3985 No Wake Zone on Seeley Lake, p. 2874, 373

ENVIRONMENTAL QUALITY, Department of, Title 17

17.53.102 and other rules - Hazardous Waste - Authorization of the Hazardous Waste Program, p. 14, 442
17.56.101 and other rules - Underground Storage Tanks - Installation of Underground Storage Tanks, p. 2877, 443

(Board of Environmental Review)
I Solid Waste - State Solid Waste Management and Resource Recovery Plan, p. 2016

17.8.102 and other rules - Air Quality - Incorporation by Reference of Current Federal Regulations and Other Materials into Air Quality Rules, p. 291, 959
17.8.335 Air Quality - Maintenance of Air Pollution Control Equipment for Existing Aluminum Plants, p. 2456, 321
17.8.504 and other rules - Air Quality Permit Application, Operation and Open Burning Fees, p. 997, 2058
17.8.743 Air Quality - Montana Air Quality Permits - When Required - Oil and Gas Well Facilities, p. 1479
17.8.759 Air Quality - Review of Permit Applications, p. 1476
17.24.116 Application Requirements for Operating Permit, p. 1649
17.30.670 and other rules - Water Quality - Nondegradation Requirements for Electrical Conductivity (EC) and Sodium Adsorption Ratio (SAR) - Definitions for Technology-based Effluent Limitations - Minimum Technology-based Controls - Treatment Requirements for the Coal Bed Methane Industry, p. 1844
17.30.1303 and other rules - Water Quality - Concentrated Animal Feeding Operations (CAFOs) - Adoption of Department Circular DEQ 9 (Montana Technical Standards for CAFOs), p. 2962, 864, 1995
17.38.106 Public Water Supply - Fees for Review of Public Water and Sewage System Plans and Specifications, p. 2983, 577

(Board of Environmental Review and the Department of Environmental Quality)
17.30.502 and other rules - Water Quality - Subdivisions - CECRA - Underground Storage Tanks - Department Circular WQB-7 - Outstanding Resource Waters, p. 1957
17.36.345 and other rules - Public Water and Sewage System Requirements and Subdivisions - Adoption by Reference, Plans for Public Water Supply or Wastewater System - Fees - Treatment Requirements - Disinfection, p. 2002

TRANSPORTATION, Department of, Title 18

18.8.1101 Movement of Houses, Buildings, Extremely Heavy Machinery, and Other Large and Unusual Objects, p. 1002, 1589
18.9.401 and other rule - Eligibility for Gasohol Motor Fuel Tax Reduction - Tax Reduction on Certain Oxygenated Gasoline Passed by the 59th Legislature in SB 293, Ch. 452, p. 1719
23.5.101 and other rules - Transfer from the Department of Justice - Motor Carrier Safety Assistance Program, p. 2059

CORRECTIONS, Department of, Title 20

I-VIII Establishment of a Residential Methamphetamine Treatment Center, p. 1337, 1917, 2060
20.9.601 and other rules - Licensure of Youth Detention Facilities, p. 1722
20.27.101 and other rule - Siting and Construction Standards, p. 778, 1393

JUSTICE, Department of, Title 23

I Creating a Separate Endorsement and Qualification for Commercial Drivers Who Operate School Buses, p. 780, 1394
I-V Administration of the Address Confidentiality Program, p. 1731
I-V Credit Counseling Services, p. 1485
I-V Operation of the Criminal Intelligence Information Section - Access of Participating Law Enforcement Agencies to Information Maintained by the Criminal Intelligence Information Section, p. 304, 740
I-VI Operation of the Identity Theft Passport Program, p. 1541, 2061
I-VI Administration of the Forensic Rape Examination Payment Program, p. 1545, 2063
I-VII Regulation of Retail Establishment Selling Ephedrine or Pseudoephedrine, p. 1343, 1488, 1782
23.16.102 and other rules - Effective Date for Forms Relating to Gambling Operator Licenses, Sports Tab Game Seller Licenses, Distributor's Licenses, Route Operator's Licenses, Manufacturer's Licenses, and Manufacturer of Illegal Gambling Devices Licenses, p. 1860
23.16.103 and other rules - Effective Date for Forms Relating to Investigation of Applicants, Disclosure from Noninstitutional Lender, Dealer Licenses, and Gambling Operator Licenses, p. 2018
23.16.202 and other rules - Credit Play Prohibited - Video Gambling Machine Permits - Requirements for Letters of Withdrawal - Video Gambling Machine Testing Fees, p. 1735
23.16.209 and other rules - Bonus Games - Definitions - Display of Antique Slot Machines - Elimination of the Video Gambling Machine Permit Fee Surcharge - General Specifications and Software Specifications for Video Gambling Machines - Addition of Testing to Purposes for Which Illegal Video Gambling Devices May Be Imported or Exported by a Video Gambling Machine Manufacturer - Allowable Winning Patterns for Bingo - Permit Surcharge Which was Eliminated, p. 784, 1281, 1509
23.16.1823 Permit Fee Restrictions, p. 602, 964

LABOR AND INDUSTRY, Department of, Title 24

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

8.15.101 and other rules - Transfer from the Department of Commerce - Construction Blasters - Hoisting and Crane Operators - Boiler Engineers, p. 581
8.15.302 and other rules - Boilers - Terminology - Licensure - Examinations - Responsibility of Licensees - Training, p. 2492, 583
8.77.101 and other rules - Weights and Measures, p. 2997, 445
24.17.127 Prevailing Wage Rates for Public Works Projects - Building Construction Services - Heavy and Highway Construction Services, p. 1347, 2064
24.29.1409 Travel Expense Reimbursement for Workers' Compensation Medical Services, p. 1350
24.29.1409 Travel Expense Reimbursement for Workers' Compensation Medical Services, p. 520, 1395
24.29.4301 and other rules - Workers' Compensation Reporting Database, p. 1570
24.30.102 Occupational Safety Matters in Public Sector Employment, p. 1355
24.35.111 and other rules - Independent Contractor Exemption Certificates, p. 874, 1511
24.35.121 and other rule - Fee for Independent Contractor Exemption Certificates - Fee for Construction Contractor Registration, p. 525
24.301.138 and other rules - Building Codes, p. 2021

(Board of Alternative Health Care)
24.111.301 and other rules - Definitions - Naturopathic Physician Natural Substance Formulary List - Direct-entry Midwife Apprenticeship Requirements - Required Reports, p. 2786, 745

(Board of Architects)
24.114.403 and other rule - Business Entity Practice - Fee Abatement, p. 889, 2077

(Crane and Hoisting Operating Engineers Program)
24.135.501 and other rules - Hoisting Operators License Requirements - Crane Hoisting Operators License Requirements - Mine Hoisting Operators License Requirements - Fee Schedule - Renewals - National Commission Certification - Failed Examinations - Applications - Citations and Fines, p. 1871

(Board of Dentistry)
24.138.301 and other rules - Definitions - Initial Licensure of Dentists by Examination - Initial Licensure of Dental Hygienists by Examination - Dentist Licensure by Credentials - Dental Hygienist Licensure by Credentials - Denturist Examination - Denturist

Application Requirements - Definition of Continuing Education - Requirements and Restrictions - Requirements for Continuing Education in Anesthesia, p. 796, 1396

(State Electrical Board)
24.141.401 and other rules - Board Meetings - Apprentice Registration - Fee Schedule - Temporary Practice Permits - Examinations, p. 1219
24.141.403 Licensee Responsibilities, p. 317, 1397
24.141.405 and other rule - Fee Schedule - Master Electrician Qualifications, p. 2349, 325

(Board of Funeral Service)
24.147.1101 and other rule - Crematory Facility Regulation - Designation as Crematory Operator or Technician, p. 197, 650

(Board of Landscape Architects)
24.153.403 Fee Schedule, p. 365, 750

(Board of Medical Examiners)
I & II Medical Assistants - Fee Abatement, p. 1882

(Board of Nursing)
8.32.305 and other rules - Educational Requirements and Other Qualifications Applicable to Advanced Practice Registered Nursing - Clinical Nurse Specialist Practice - Application for Initial Approval - Special Reports - Initial Application Requirements for Prescriptive Authority - Special Limitations Related to the Prescribing of Controlled Substances, p. 311, 742
8.32.402 and other rules - Licensure by Examination - Reexamination-Registered Nurse - Reexamination-Practical Nurse - Conduct of Nurses, p. 516, 1686
8.32.403 and other rules - Reexamination - Registered Nurse - Reexamination - Practical Nurse - Licensure by Endorsement - Temporary Practice Permit - Abatement of Fees - Foreign Educated Applicants - Licensure for Foreign Nurses, p. 866, 1687
8.32.427 General Requirements for Medication Aide Training Programs and Instructors, p. 1652
8.32.1701 and other rules - Delegation, p. 30, 1022, 1291

(Board of Nursing Home Administrators)
8.34.101 and other rules - Transfer from the Department of Commerce, p. 375
8.34.415 and other rule - Renewals - Continuing Education, p. 2138, 377
24.162.420 Fee Schedule, p. 1490

(Board of Occupational Therapy Practice)
24.165.301 and other rules - Modalities - Medications - Definitions - Approval to Use Modalities - Permission to Use Electrical or Sound Physical Agents, p. 2505, 447

(Board of Optometry)
24.168.401 Fees, p. 200, 651

(Board of Outfitters)
8.39.501 and other rules - Outfitter Licensing and Operations, p. 1549

(Board of Physical Therapy Examiners)
8.42.101 and other rules - Transfer from the Department of Commerce, p. 380

(Board of Plumbers)
24.180.607 and other rule - Temporary Practice Permits - Continuing Education Requirements, p. 893

(Board of Private Alternative Adolescent Residential or Outdoor Programs)
I-VI Private Alternative Adolescent Residential or Outdoor Programs, p. 1886

(Board of Private Security Patrol Officers and Investigators)
8.50.423 and other rules - Private Security Patrol Officers and Investigators - Fee Schedule - Firearms Training Course Curriculum and Standards, p. 605, 1926

(Board of Professional Engineers and Professional Land Surveyors)
8.94.3001 and other rules - Transfer from the Department of Commerce - Uniform Standards for Monumentation, Certificates of Survey and Final Subdivision Plats, p. 966
24.183.1001 Form of Corner Records, p. 530, 1783

(Board of Psychologists)
24.189.601 and other rule - Application Procedures - Licensees from Other States or Canadian Jurisdictions, p. 729, 1294
24.189.2107 and other rule - Continuing Education Implementation - Fee Abatement, p. 1739

(Board of Public Accountants)
8.54.410 and other rules - Fees - Amount of Required Experience - Continuing Education Matters - Special Practice Permits for Nonresident Certified Public Accountants, p. 1864

(Board of Radiologic Technologists)
8.56.602C and other rules - Permit Examinations - Radiologist Assistants - Scope of Practice - Supervision - Code of Ethics, p. 2682, 649
24.204.401 and other rules - Fee Schedule - Permit Fees - Abatement of Renewal Fees - Radiologic Technologists Applications - Replacement Licenses and Permits - Permits-Practice Limitations - Permit Examinations - Radiologist Assistants - Scope of Practice - Supervision - Adoption of a Code of Ethics, p. 1226

(Board of Real Estate Appraisers)
24.207.402 Adoption of USPAP by Reference, p. 42, 652
24.207.502 Application Requirements, p. 369
24.207.517 and other rule - Trainee and Mentor Requirements, p. 622, 1400

(Board of Respiratory Care Practitioners)
24.213.301 and other rules - Definitions - Application for Licensure - Temporary Permit - Examination - Institutional Guidelines Concerning Education and Certification and Authorization to Perform Pulmonary Function Testing and Spirometry, p. 2352, 453

(Board of Sanitarians)
24.216.402 and other rule - Fee Schedule - Minimum Standards for Licensure, p. 2994, 382

(Board of Social Work Examiners and Professional Counselors)
24.219.301 Defining Pastoral Counseling, p. 535

(Board of Veterinary Medicine)
8.64.101 and other rules - Transfer from the Department of Commerce, p. 323

LIEUTENANT GOVERNOR, Office of the, Title 30

30.2.201 and other rules - Centennial Grants - Centennial Sanctioning, p. 1358

LIVESTOCK, Department of, Title 32

32.2.403 Diagnostic Lab Fees, p. 1493, 1785
32.18.202 and other rule - Sheep Permits, p. 1007, 1517
32.23.301 Fees Charged by the Department on the Volume on All Classes of Milk, p. 1743

(Board of Horse Racing)
32.28.501 and other rules - Horse Racing, p. 45, 383

MILITARY AFFAIRS, Department of, Title 34

I-VI Reimbursement for Life Insurance Premiums Paid by Montana Reserve Component Service Members Serving

Outside Montana in a Contingency Operation, p. 1362, 1691

NATURAL RESOURCES AND CONSERVATION, Department of, Title 36

36.19.106 Reclamation and Development Grants Program, p. 1746
36.23.102 and other rule - Tax Increment Revenue Bonds under the Water Pollution Control State Revolving Fund Act, p. 210, 457
36.24.102 and other rule - Tax Increment Revenue Bonds under the Drinking Water State Revolving Fund Act, p. 203, 458

(State Board of Land Commissioners and the Department of Natural Resources and Conservation)
36.25.210 Increase Royalty Rates for Oil and Gas Leases on State School Trust Lands from Current Rates to 16.67%, p. 1654

(Board of Oil and Gas Conservation)
36.22.1242 Privilege and License Tax Rates for Oil and Gas, p. 538, 1045

PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

I-IV Montana Clean Indoor Air Act, p. 1665, 2079
37.30.102 and other rules - Vocational Rehabilitation Program, p. 1577
37.40.302 and other rules - Nursing Facility Reimbursement, p. 630, 1046
37.40.311 Medicaid Payments to Nursing Facilities, p. 411, 969, 1401
37.70.305 and other rules - Low Income Energy Assistance Program (LIEAP), p. 1657, 2078
37.70.311 and other rules - Low Income Energy Assistance Program (LIEAP), p. 1366, 1786
37.78.102 and other rule - Temporary Assistance for Needy Families (TANF) - Medical Assistance - Purpose and Incorporation of Policy Manuals, p. 898, 1591
37.80.101 and other rules - Child Care Subsidy - Legally Unregistered Provider - Child Care Provider Merit Pay - Star Quality Tiered Reimbursement Programs, p. 217, 1057
37.85.212 Resource Based Relative Value Scale (RBRVS), p. 625, 974
37.85.414 and other rules - Medicaid Provider Requirements, p. 2690, 459
37.86.805 and other rules - Medicaid Reimbursement Rates for Ambulance Services, Hearing Aids and Durable Medical Equipment, p. 53, 385
37.86.1004 and other rule - Medicaid Dental Reimbursement and Coverage, p. 733, 1073
37.86.2207 and other rules - Comprehensive School and Community Treatment Program (CSCT), p. 1374, 1787

37.86.3607 and other rules - Case Management Services for Persons with Developmental Disabilities, Reimbursement, p. 1010
37.86.4401 and other rules - Reimbursement of Rural Health Clinics and Federally Qualified Health Centers, p. 60, 975, 1402
37.104.101 and other rules - Emergency Medical Services, p. 1238
37.106.704 Minimum Standards for a Critical Access Hospital, p. 804, 1295
37.108.219 and other rule - Managed Care Quality Assurance, p. 807, 1296
37.114.701 and other rules - School Immunization Requirements, p. 541, 1074

PUBLIC SERVICE REGULATION, Department of, Title 38

I Utility Implementation of Rate Changes and Billing Practices, p. 421
I Eligible Telecommunications Carriers and Lifeline/ Link-Up, p. 423, 820
I-VII Energy Utility Service Standards, p. 416, 1404
I-XIX Eligible Telecommunications Carriers, p. 2697, 653
38.5.2202 and other rule - Pipeline Safety, p. 2795, 386
38.5.3301 and other rules - Telecommunications Service Standards, p. 2518, 568

REVENUE, Department of, Title 42

42.15.112 and other rules - Personal Income Taxes, p. 2213, 3147, 1592
42.18.109 and other rules - Montana Reappraisal Plans for 2003 and 2009, p. 1891
42.18.118 and other rules - Industrial Property, p. 2798, 667
42.20.106 and other rules - Property Taxes, p. 1016, 1594
42.21.113 and other rules - Personal, Industrial, and Centrally Assessed Property Taxes, p. 1748
42.25.1801 and other rules - Oil, Gas, and Coal Natural Resources, p. 1896

SECRETARY OF STATE, Title 44

1.2.419 and other rule - Scheduled Dates for the 2006 Montana Administrative Register - Submission Dates for Replacement Pages, p. 1903

(Commissioner of Political Practices)
I Lobbying and Regulation of Lobbying - Payment Threshold, p. 158, 387
44.10.331 Limitations on Receipts from Political Committees to Legislative Candidates, p. 1583, 2094