MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 17

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 The notice section contains state agencies' proposed new, amended or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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

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**BEFORE THE BOARD OF CRIME CONTROL
OF THE STATE OF MONTANA**

In the matter of the adoption of NEW RULE I authorizing establishing the minimum qualifications for commercial vehicle inspectors and NEW RULE II establishing the requirements for a commercial vehicle inspector basic certificate	)))))))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION

TO: All Concerned Persons

1. On October 2, 2002, at 1:30 p.m. a public hearing will be held in the Auditorium of the Scott Hart Building, in Helena, Montana, to consider the adoption of new Rules I and II.

2. The Board of Crime Control will make reasonable accommodations for persons with disabilities who wish to participate in this hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Justice no later than 5:00 p.m. on September 25, 2002, to advise us of the nature of the accommodation that you need. Please contact Ali Sheppard, Department of Justice, Office of the Attorney General, P.O. Box 201401, Helena, MT 59620-1401; (406) 444-2026; FAX (406) 444-3549.

3. The proposed new rules provide as follows:

RULE I MINIMUM QUALIFICATIONS FOR COMMERCIAL VEHICLE INSPECTORS (1) Any person employed in the state of Montana to work as a commercial vehicle inspector, after the effective date of this rule, must meet or exceed these minimum standards:

(a) be a citizen of the United States;

(b) be at least 18 years of age;

(c) be fingerprinted and a search made of the local and national fingerprint files to disclose any criminal record;

(d) not have been convicted of a crime for which the applicant could have been imprisoned in a federal or state penitentiary;

(e) be of good moral character, as determined by a thorough background investigation;

(f) be a high school graduate or have passed the general education development test and have been issued an equivalency certificate by the superintendent of pubic instruction or by an appropriate issuing agency of another state or of the federal government;

(g) be examined by a licensed physician, who is not the applicant's personal physician, appointed by the employing authority to determine if the applicant is free from any

mental or physical condition that might adversely affect performance by the applicant of the duties of a commercial vehicle inspector;

(h) successfully complete an oral examination conducted by the appointing authority or its designated representative to demonstrate the possession of communication skills, temperament, motivation, and other characteristics necessary to accomplish the duties and functions of a commercial vehicle inspector; and

(i) possess or be eligible for a valid Montana driver's license.

(2) The term commercial vehicle inspector is defined in 44-4-302, MCA.

(3) Notice of appointment or termination shall be in accordance with ARM 23.14.504.

(4) Any commercial vehicle inspector who fails to meet these minimum qualifications or who fails to obtain a commercial vehicle basic certificate, forfeits the position, authority, and arrest powers accorded a commercial vehicle inspector of this state pursuant to 7-32-303(5)(a), MCA.

AUTH: 44-4-301, MCA
IMP: 7-32-303, 44-4-301, 44-4-302, MCA

RULE II REQUIREMENTS FOR COMMERCIAL VEHICLE INSPECTOR BASIC CERTIFICATE (1) A commercial vehicle inspector must meet the following requirements in order to qualify for a commercial vehicle basic certificate:

(a) meet or exceed the minimum employment standards established for commercial vehicle inspectors;

(b) complete, within the first six months of initial employment, a motor carrier basic service course certified by the POST advisory council or equivalent training as determined by the POST advisory council;

(c) complete, within one year of initial employment, a federal motor carrier service training program certified by the POST advisory council; and

(d) complete at least one continuous year of probationary employment with the same employing agency.

(2) Upon application to the POST advisory council, a commercial vehicle inspector who has successfully satisfied the requirements of (1) will be issued a basic certificate certifying that the applicant has met the requirements to qualify as a commercial vehicle inspector in this state.

(3) Commercial vehicle inspectors employed before the effective date of this rule, must, within 24 months of the effective date of this rule, complete the educational requirements set forth in (1)(b) and (c) or submit evidence of having completed an equivalent course as determined by the POST advisory council. Inspectors who fail to complete the educational requirements will forfeit the position, authority, and arrest powers accorded a commercial vehicle inspector of this state.

AUTH: 44-4-301, MCA
IMP: 7-32-303, 44-4-301, 44-4-302, MCA

4. In 1999, the legislature amended 44-4-301, MCA to allow the Montana Board of Crime Control to establish minimum qualifying standards for commercial vehicle inspectors. These rules clearly set forth the minimum qualifications necessary and establish the requirements for a basic certificate. The rules are consistent with the requirements established by the Montana Board of Crime Control for other law enforcement entities in the state and will serve to provide a basic standard with which all commercial vehicle inspectors must comply.

5. Concerned persons may submit their data, views, or arguments concerning the proposed adoption either orally or in writing at the hearing. Written data, views or arguments may also be submitted to Ali Sheppard, Assistant Attorney General, Office of the Attorney General, P.O. Box 201401, Helena, MT 59620-1401, to be received no later than October 10, 2002.

6. Ali Sheppard, Assistant Attorney General, Office of the Attorney General, P.O. Box 201401, Helena, MT 59620-1401, has been designated to preside over and conduct the hearing.

7. The Board of Crime Control 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. Such written request may be mailed or delivered to the Office of the Attorney General, Attn: Interested Party List, P.O. Box 201401, Helena, MT 59620-1401, faxed to the office at (406) 444-3549, e-mailed to asheppard@state.mt.us, or may be made by completing a request form at any rules hearing held by the Department.

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

By: /s/ Jim Oppedahl
JIM OPPEDAHL, Director
Board of Crime Control

/s/ Ali Sheppard
ALI SHEPPARD, Rule Reviewer

Certified to the Secretary of State August 30, 2002.

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

In the matter of the adoption of new rules I through IV pertaining to safety devices in long term care facilities	))))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION

TO: All Interested Persons

1. On October 2, 2002, 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 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 September 25, 2002, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970; Email dphhslegal@state.mt.us.

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

RULE I DEFINITIONS The following definitions, in addition to those contained in 50-5-1202, MCA, apply to this chapter:

(1) "Assistive device" means any device that, without restricting an individual's movement, is used to maximize the independence and the maintenance of health of an individual who is limited by physical injury or illness, psychosocial dysfunction, mental illness, developmental or learning disability, the aging process, cognitive impairment or an adverse environmental condition.

(2) "Licensed health care professional" means a physician, a physician assistant-certified, a nurse practitioner or a registered nurse licensed in the state of Montana.

(3) "Medical symptom", as defined in 50-5-1202, MCA, means an indication of a physical or psychological condition or of a physical or psychological need expressed by the patient. For example, a concern for the resident's physical safety by any person listed in 50-5-1201(1), MCA, or a resident's fear of falling may constitute a medical symptom.

(4) "Postural support" means an appliance or device used to achieve proper body position and balance, to improve a resident's mobility and independent functioning, or to position rather than restrict movement, including, but not limited to, preventing a resident from falling out of a bed or chair.

(5) "Restraint" means any method (chemical or physical) of restricting a person's freedom of movement that prevents them from independent and purposeful functioning. This includes seclusion, controlling physical activity, or restricting normal access to the resident's body that is not a usual and customary part of a medical diagnostic or treatment procedure to which the resident or the authorized representative has consented.

(6) "Safety devices", as defined in 50-5-1202, MCA, means side rails, tray tables, seat belts and other similar devices. The department interprets that definition to mean that a safety device is used to maximize the independence and the maintenance of health and safety of an individual by reducing the risk of falls and injuries associated with the resident's medical symptom.

AUTH: Sec. 50-5-103, 50-5-226, 50-5-227 and 50-5-1205, MCA
IMP: Sec. 50-5-103, 50-5-226, 50-5-227, 50-5-1202 and 50-5-1203, MCA

RULE II USE OF RESTRAINTS, SAFETY DEVICES, ASSISTIVE DEVICES, AND POSTURAL SUPPORTS (1) The application or use of a restraint, safety device or postural support is prohibited except to treat a resident's medical symptoms and may not be imposed for purposes of coercion, retaliation, discipline or staff convenience.

(2) A restraint may be a safety device when requested by the resident or the resident's authorized representative or physician to reduce the risk of falls and injuries associated with a resident's medical symptoms and used in accordance with 50-5-1201, MCA.

(3) To the extent that a resident needs emergency care, restraints may be used for brief periods:

(a) to permit medical treatment to proceed unless the health care facility has been notified that the resident has previously made a valid refusal of the treatment in question; or

(b) if a resident's unanticipated violent or aggressive behavior places the resident or others in imminent danger, in which case the resident does not have the right to refuse the use of restraints. In this situation:

(i) the use of restraints is a measure of last resort to protect the safety of the resident or others and may be used only if the facility determines and documents that less restrictive means have failed;

(ii) the size, gender, physical, medical and psychological condition of the resident must be considered prior to the use of a restraint;

(iii) a licensed nurse shall contact a resident's physician for restraint orders within one hour of application of a restraint;

(iv) the licensed nurse shall document in the resident's clinical record the circumstances requiring the restraints and the duration; and

(v) restraints must be removed as soon as the need for emergency care has ceased and the resident's safety and the safety of others can be assured.

(4) In accordance with the Montana Long-Term Care Residents' Bill of Rights, the resident or authorized representative is allowed to exercise decision-making rights in all aspects of the resident's health care or other medical regimens, with the exception of the circumstances described in (3)(b).

(5) Bed rails that extend the entire length of the bed or two quarter rails used in combination with one another are considered restraints and are prohibited from use as a safety or assistive device; however, a bed rail that extends from the head to half the length of the bed and used primarily as a safety or assistive device is allowed.

(6) Physician-prescribed orthopedic devices used for support of a weakened body part or correction of body parts are considered postural supports and are permissible.

(7) Under no circumstances may postural supports include tying or depriving or limiting the use of a resident's hands or feet.

(8) Whenever a restraint, safety device, or postural support is used that restricts or prevents a resident from independent and purposeful functioning, the resident must be provided the opportunity for exercise and elimination needs at least every two hours, or more often as needed, except when a resident is sleeping.

(9) All methods of restraint, safety devices, assistive devices and postural supports must be fastened or applied in a manner that permits rapid removal by the staff in the event of fire or other emergency.

AUTH: Sec. 50-5-103, 50-5-226, 50-5-227 and 50-5-1205, MCA
IMP: Sec. 50-5-103, 50-5-226, 50-5-227, 50-5-1201, 50-5-1202 and 50-5-1204, MCA

RULE III DOCUMENTATION IN RESIDENT'S MEDICAL RECORDS

(1) Prior to the use of a restraint or safety device, the following items must be included in the resident's record:

(a) a consent form signed by the resident or authorized representative that includes documentation that:

(i) the resident or the resident's authorized representative was given a written explanation of the alternatives and any known risks associated with the use of the restraint or safety device;

(ii) cites any pre-existing condition that may place a patient at risk of injury; and

(b) written authorization from the resident's primary physician that specifies the type of circumstances and duration under which the restraint or safety device is to be used.

(2) When a restraint or safety device is used, the following items must be documented in the resident's record:

(a) frequency of monitoring in accordance with accepted standards of practice;

(b) assessment and provision of treatment if necessary for skin care, circulation and range of motion;

(c) any unusual occurrences or problems; and

(d) the quarterly re-evaluation of the resident's need for

continued use of a restraint or safety device.

(3) During a quarterly re-evaluation:

(a) an effort must be made to use the least restrictive restraint or safety device and to restore each individual to a maximum possible level of independence;

(b) a thorough assessment of possible causes for the medical symptoms that made use of the restraint or safety device must be made; and

(c) if a restraint or safety device is already being used as part of a care plan, it must not be removed abruptly without planning for alternative safety measures.

AUTH: Sec. 50-5-103, 50-5-226, 50-5-227 and 50-5-1205, MCA
IMP: Sec. 50-5-103, 50-5-226, 50-5-227, 50-5-1201, 50-5-1203 and 50-5-1204, MCA

RULE IV STAFF TRAINING (1) Restraints, safety devices or postural supports may only be applied by staff who have received training in their use, as specified below and appropriate to the services provided by the facility.

(2) Staff training shall include, at a minimum, information and demonstration in:

(a) the proper techniques for applying and monitoring restraints, safety devices or postural supports;

(b) skin care appropriate to prevent redness, breakdown and decubiti;

(c) active and passive assisted range of motion to prevent joint contractures;

(d) assessment of blood circulation to prevent obstruction of blood flow and promote adequate circulation to all extremities;

(e) turning and positioning to prevent skin breakdown and keep the lungs clear;

(f) potential risk for residents to become injured or asphyxiated because the resident is entangled in a bed rail or caught between the bed rail and mattress if the mattress or mattress pad is ill-fitted or is out of position;

(g) provision of sufficient bed clothing and covering to maintain a normal body temperature;

(h) provision of additional attention to meet the physical, mental, emotional and social needs of the resident; and

(i) techniques to identify environmental factors that may trigger a resident's need for a restraint or safety device and to determine possible alternatives to their use.

(3) Training described in (2) of this rule must meet the following criteria:

(a) training must be provided by a licensed health professional; and

(b) a written description of the content of this training, a notation of the person, agency, organization or institution providing the training, the names of staff receiving the training, and the date of training must be maintained by the facility for two years.

(4) Refresher training for all direct care staff caring

for restrained residents and applying restraints, safety devices or postural supports must be provided at least annually or more often as needed. The facility must:

(a) ensure that the refresher training encompasses the techniques described in (2) of this rule; and

(b) for two years after each training session, maintain a record of the refresher training and a description of the content of the training.

AUTH: Sec. 50-5-103, 50-5-226, 50-5-227 and 50-5-1205, MCA
IMP: Sec. 50-5-103, 50-5-226, 50-5-227, 50-5-1204 and 50-5-1205, MCA

3. The foregoing rules are necessary for the following reasons:

The definitions contained in Rule I are necessary to explain the meaning of the terms used in the accompanying rules that are not already defined in the relevant statutes and to clarify the meaning of "medical symptom" and "safety devices", which were defined by statute. They also are necessary to distinguish safety devices from other closely related constraints, i.e., assistive devices, restraints and postural supports. Failing to do so would lead to confusion about their import. A definition of "assistive device" was needed because it was used in 50-5-1203, MCA, but not defined.

Rule II sets forth with greater specificity the requirements of when safety devices can be used as distinguished from restraints, assistive devices and postural supports. These provisions recognize and protect residents' rights and ensure that when used, the utilization of safety devices and other restraints is safe and appropriate. This rule is needed to ensure there is a process in place to ensure safety and appropriateness and that there is evidence of medical necessity for the use of safety and other restraining devices in a long term care facility.

Rule III is necessary in order to ensure that the resident's record contains notations of the medical symptoms necessitating the use of restraint or safety devices and the documentation that the statutorily required informed consent has occurred. Failure to make such specific record keeping requirements would make it difficult to determine if the statutory requirements for informed consent and documentation of the need for and risks of use of safety devices have properly occurred. Standards for the quarterly evaluations the law requires are also necessary in order to ensure that restraining devices continue to be used appropriately and only so long as they are needed.

Rule IV is necessary in order to ensure the proper use of restraints and safety devices by direct care staff by specifying the training they must have prior to utilizing restraints, prescribing follow-up training and ensuring the quality of the training itself. Restraints or safety devices, if used

improperly, can pose a serious health and safety risk to residents and can actually contribute to fall related injuries and death. It is important that such devices are used for the purpose they are intended, to address the resident's medical needs and to ensure that any restraints or safety devices are used safely and properly.

4. Interested persons may submit their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to Kathy Munson, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 202951, Helena, MT 59620-2951, no later than 5:00 p.m. on October 10, 2002. Data, views or arguments may also be submitted by facsimile (406)444-1970 or by electronic mail via the Internet to dphhslegal@state.mt.us. The Department also maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. For placement on the mailing list, please write the person at the address above.

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

Dawn Sliva
Rule Reviewer

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

Certified to the Secretary of State August 30, 2002.

**BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA**

In the matter of the proposed adoption of New Rules I and II; amendment of ARM 42.20.101, 42.20.102, 42.20.103, 42.20.105, 42.20.106, 42.20.107, 42.20.108, 42.20.109, 42.20.201, 42.20.203, 42.20.204, 42.20.205, 42.20.301, 42.20.302, 42.20.303, 42.20.305, 42.20.432, 42.20.454, 42.20.455; and repeal of ARM 42.20.104 and 42.20.136 relating to valuation of real property	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION, AMENDMENT, AND REPEAL

TO: All Concerned Persons

1. On October 8, 2002, at 9:00 a.m., a public hearing will be held in the Fourth Floor Conference Room of the Sam W. Mitchell Building, at Helena, Montana, to consider the adoption of New Rules I and II; amendment of ARM 42.20.101, 42.20.102, 42.20.103, 42.20.105, 42.20.106, 42.20.107, 42.20.108, 42.20.109, 42.20.201, 42.20.203, 42.20.204, 42.20.205, 42.20.301, 42.20.302, 42.20.303, 42.20.305, 42.20.432, 42.20.454, and 42.20.455; and repeal of ARM 42.20.104 and 42.20.136 relating to valuation of real property.

Individuals planning to attend the hearing shall enter the building through the east doors of the Sam W. Mitchell Building, 125 North Roberts, Room 455, Helena, Montana.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Revenue not later than 5:00 p.m., September 25, 2002, 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 5805, Helena, Montana 59604-5805; telephone (406) 444-2855; fax (406) 444-3696; or e-mail canderson@state.mt.us.

3. The proposed new rules do not replace or modify any section currently found in the Administrative Rules of Montana. The proposed new rules provide as follows:

NEW RULE I TAX EXEMPTION AND REDUCTION FOR THE REMODELING, RECONSTRUCTION, OR EXPANSION OF CERTAIN COMMERCIAL PROPERTY

(1) The property owner of record or the property owner's agent must make application to the appropriate governing body to be eligible for tax exemption and tax reduction for remodeling, reconstruction, or expansion of existing commercial buildings or structures which are available pursuant to 15-24-1502, MCA. Application will be made on a form available from

the county commissioners of the affected county or, if the construction will occur within an incorporated city or town, on a form available from the city commission or the local governing body. The application to the affected governing body must be made prior to completion of a building permit or prior to commencement of construction. Failure to make application prior to completion of a building permit or prior to commencement of construction will result in the waiver of all construction period tax exemptions. Additionally, all subsequent tax reductions, if approved, will be calculated as of the date the building permit was completed, or as of the date construction began, whichever is earlier.

(2) Applications from the local governing body must be received by the department for review before April 1 of the tax year for which the benefits are sought. The department will perform a field evaluation and provide information to advise the local governing body whether the remodeling, reconstruction, or expansion of the existing building or structure increases the taxable value of that structure or building by at least 5%.

(3) The local governing body shall review the application and information from the department to determine whether to approve or to deny the application. A copy of the processed application form reflecting the governing body's decision shall be mailed to the local department office in the county in which the property is located.

(4) The department shall provide application forms (AB-56A) to all local governing bodies. The applicant shall provide the following information on the application form:

(a) property owner's name;

(b) description of property;

(c) location of property;

(d) legal description of property;

(e) mailing address for the owner of property including:

(i) city;

(ii) state; and

(iii) zip code;

(f) taxable value increase due to remodeling;

(g) assessment/tax computation;

(h) date received by department office;

(i) starting date for the remodeling, reconstruction, or expansion;

(j) owner's signature; and

(k) approval or denial of application by governing body.

(5) The computation of tax benefits will be dependent upon the approval of the application by all affected governing bodies.

(6) For projects which are entirely, physically located outside the boundaries of incorporated cities or towns, the governing body of the affected county has sole authority to approve the tax benefits for the project.

(7) If the project is entirely, physically located within an incorporated city or town, both the governing body of the affected county and the governing body of the incorporated city or town must approve the application by resolution before all

available tax benefits may be extended to the project. If the city approves the application and the county rejects the application, the tax benefits will apply only to the number of mills levied and assessed by the incorporated city or town. The number of mills levied and assessed by the county governing body will not be affected, nor will any tax benefits be extended by the county to the project.

(8) Except as provided in (1), only an additional value created after an application has been filed may be considered for tax benefits according to this rule.

AUTH: Sec. 15-1-201, MCA
IMP: Sec. 15-24-1502, MCA

REASONABLE NECESSITY: The department is proposing to adopt New Rule I to clarify the process for obtaining a tax exemption for remodeling or expanding commercial property. House bill 351 from the 2001 legislative session enacted 15-24-1502, MCA, and this rule implements that law. The law has retroactive applicability for tax years beginning after December 31, 2000. The department outlines in the rule the process that must be followed in order for an applicant to be considered for a tax exemption for certain commercial property. The department will provide application forms to the local governing bodies. The forms must be completed and returned to the local governing body for review and approval or rejection.

NEW RULE II NOTIFICATION OF CLASSIFICATION AND APPRAISAL TO OWNERS OF MULTIPLE UNDIVIDED OWNERSHIPS (1) If the owners of a parcel of real property held in multiple undivided ownership designated more than one recipient of the notice of assessment, or did not supply the department with the name and mailing address of a designated recipient, the department will designate the owner whose surname appears first, alphabetically, on the current tax record.

AUTH: 15-1-201, MCA
IMP: 15-7-138, MCA

REASONABLE NECESSITY: The department is proposing to adopt New Rule II to address how notification regarding tax issues will occur for property with multiple undivided ownerships. This rule clarifies 15-7-138, MCA, which was enacted by HB 381, from the 2001 legislative session.

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

42.20.101 CITY AND TOWN LOTS AND IMPROVEMENTS (1) The assessment of city and town lots and the assessment of rural and urban improvements shall be at market value as determined by an appraisal using one or more of the three accepted approaches to determine value:

(a) the cost approach, where the 2002 Montana Appraisal Manual and ~~Marshall Valuation Service~~ national cost service manuals are used;

(b) the sales comparison approach; and

(c) the income approach.

(2) Said appraisals shall ~~have been~~ be made in the same manner as provided in 15-7-101 through 15-7-104, MCA, and 15-8-112~~(1)~~, MCA.

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

AUTH: Sec. 15-1-201, MCA

IMP: Sec. 15-7-103, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.20.101 to provide the three approaches the department uses when determining an appraisal for city and town lots and improvements.

42.20.102 APPLICATIONS FOR PROPERTY TAX EXEMPTIONS

(1) The property owner of record or ~~his~~ the property owner's agent must make application through the ~~Property Assessment Division, Department of Revenue, Mitchell Building, Helena, Montana 59620,~~ department in order to obtain a property tax exemption. An application must be filed on a form available from the ~~division~~ local department office before March 1 of the year for which the exemption is sought or within 30 days of receiving an assessment notice, whichever is later. Applications postmarked after March 1 or more than 30 days of receiving the assessment notice, whichever is later, will be considered for the following tax year only, unless the department determines any of the following conditions are met:

(a) the taxpayer is notified after March 1 by ~~assessment list or~~ AB-34 (Removal of Property Tax Exemption Letter) that the property will be placed on the tax roll. The taxpayer shall have 30 days after receipt of the notice to submit an application for exemption~~,~~; ~~or~~

(b) the local ~~appraisal or assessment~~ department office refuses to accept an application a taxpayer or organization is attempting to submit before March 1~~,~~; ~~or~~

(c) the local ~~appraisal or assessment~~ department office gives the applicant incorrect application information~~,~~; or

(d) the applicant was unable to apply for the current year due to hospitalization, physical illness, infirmity, or mental illness. These impediments must be demonstrated to have existed at significant levels from January 1 of the current year to the time of application. ~~Telephone extensions and written e~~Extensions will be granted through July 1, or up to 30 days after the last general mailing of real property assessment notices has occurred in that county, ~~of~~ for the current year for those impediments.

(2) The following documents must accompany the application:

(a) ~~A~~articles of incorporation (if incorporated);

(b) ~~Federal~~ internal revenue service tax-exempt status letter (501 determination letter);

(c) ~~D~~deed or security agreement which is evidence of ownership (for real property only);

(d) ~~T~~title of motor vehicle or mobile home or letter of

explanation if title is not applicable which is evidence of ownership (for personal property only);

(e) ~~L~~letter explaining how the organization or society qualifies for property tax exemption and the specific use of the property; and

(f) ~~P~~photograph of the property.

(3) Upon receipt of the application and supporting documents, ~~T~~the local department office ~~will review the application and the supporting documents and~~ will perform a field evaluation. The department's specified agent will approve or deny the application. The applicant~~, the county assessor, and the county appraiser~~ and the local department office will be advised, in writing, of the decision.

(4) If the property is owned by a governmental entity (such as city, county or state), the federal government (unless Congress has passed legislation allowing the state to tax property owned by a federal entity), nonprofit irrigation districts organized under Montana law, municipal corporations, public libraries, or rural fire districts and other entities providing fire protection under Title 7, chapter 33, MCA, ~~T~~the department ~~of revenue~~ will employ the following exemption criteria for real property when considering exemption claims based upon 15-6-201~~(1)(a)~~, MCA:

(a) The properties will be tax-exempt as of the purchase date ~~which~~ that is reflected on the deed or security agreement~~.~~ and;

(b) If a property is tax-exempt as of January 1 of the current tax year and is sold to a non-qualifying purchaser after January 1 of the current tax year, it becomes taxable upon the transfer of the property. The tax is prorated according to 15-16-203, MCA.

(5) The department ~~of revenue~~ will employ the following exemption criteria for real properties when considering exemption claims based upon 15-6-201~~(1)(b), (c), (d), (e), (g), (m), (o), or (q);~~ 15-6-203~~;~~ and 15-6-209, MCA.

(a) Real property purchased by a qualifying exemption applicant after January 1 of the current tax year will become exempt on ~~January 1 of the following tax year~~ the date of acquisition as evidenced by the deed and realty transfer certificate, if an application (if one is required for the exemption) is filed by ~~March 1 of the following~~ the application deadline for that tax year and the property meets statutory requirements.

AUTH: Sec. 15-1-201, MCA

IMP: Sec. ~~15-6-211~~ 15-6-201, 15-6-203, 15-6-209, and 15-7-102, MCA

REASONABLE NECESSITY: Most of the amendments to ARM 42.20.102 are housekeeping. The amendments shown in (1) regarding expanding the application deadlines are being added to clarify the circumstances under which an application may be filed beyond a typical March 1st deadline. The amendments in (3) are housekeeping for clarification purposes only. The new text for (4) is necessary to explain how exemptions will be treated for

certain federal, local, and nonprofit entities. The amendments to (5) clarify the circumstances under which an exemption may be granted for qualifying properties acquired after January 1st. These amendments help bring the rule into compliance with the practice of the department.

42.20.103 TAX BENEFITS FOR THE REMODELING, RECONSTRUCTION, OR EXPANSION OF EXISTING BUILDINGS OR STRUCTURES

(1) The property owner of record or ~~his~~ the property owner's agent must make application to the appropriate governing body in order to be eligible for tax benefits for remodeling, reconstruction, or expansion of existing buildings or structures which are available pursuant to 15-24-1501, MCA. Application will be made on a form available from the county commissioners of the affected county~~,~~ or, if the construction will occur within an incorporated city or town, on a form available from the city commission or the local governing body. The application to the affected governing body must be made prior to completion of a building permit or prior to commencement of construction. Failure to make application prior to completion of a building permit or prior to commencement of construction will result in the waiver of all construction period tax benefits. Additionally, all subsequent tax benefits, if approved, will be calculated as of the date the building permit was completed or as of the date construction began, whichever is earlier. ~~The local governing body must review the application and it must decide whether to approve or to deny the application. A copy of the processed application form, reflecting the governing body's decision, must be mailed to the Property Assessment Division, Department of Revenue, Mitchell Building, Montana 59620, before April 1 of the tax year for which the benefits are sought.~~

(2) ~~The department will~~ Applications from the local governing body must be received by the department for review before April 1 of the tax year for which the benefits are sought. ~~t~~The department ~~application and it~~ will perform a field evaluation~~. The department will~~ and provide information to advise the local governing body whether the remodeling, reconstruction, or expansion of the existing building or structure increases the taxable value of that structure or building by at least ~~2½~~ 2.5%. ~~If the taxable value does not increase by at least 2½ %, the application will be automatically denied. In that event, the local governing body and the applicant will be so advised in writing.~~

(3) The local governing body shall review the application and information from the department to determine whether to approve or to deny the application. A copy of the processed application form reflecting the governing body's decision shall be sent to the local department office in the county in which the property is located.

~~(3)~~ (4) Sufficient quantities of application forms (AB-56) will be provided to all local governing bodies by the ~~Property Assessment Division, Department of Revenue, Mitchell Building, Helena, Montana 59620~~ department. Additional application forms

will be made available upon request. The application form shall require the submission of the following information by the applicant:

(a) ~~P~~property owner's name;

(b) ~~D~~description of property;

(c) ~~L~~location of property;

(d) ~~L~~legal description of property;

(e) ~~M~~mailing address of owner of property, including:

(i) city;

(ii) state; and

(iii) zip code;

(f) ~~City, state, zip code information;~~

~~(g) Indicated~~ taxable value increase due to remodeling;

~~(h)~~(g) ~~A~~assessment/tax computation;

~~(i)~~(h) ~~Indication of~~ date received by ~~appraisal~~ department office;

~~(j)~~(i) starting ~~D~~date of the remodeling, reconstruction, or expansion ~~was started~~;

~~(k)~~(j) ~~O~~owner's signature ~~block~~; and

~~(l)~~(k) ~~Indication of~~ approval or denial of application by governing body.

~~(4)~~(5) ~~"Construction period" means a period of time that commences with the issuance of a building permit and which concludes when the county appraiser determines that the structure is substantially completed. If more than one building permit is issued, the date on the earliest building permit issued will constitute the commencement of the construction period. In those cases where building permits are not issued, the commencement of the construction period is that time determined by the county appraiser to be the start of construction. That determination will coincide with the date the contract is let, the date the application is approved by the governing body, or when site work begins, whichever occurs first.~~ For purposes of determining the eligibility for tax benefits, the construction period for a specific project may not exceed 12 months with the following exception. If it is determined to the satisfaction of all affected local governing bodies that the construction period for a specific project will exceed 12 months, an extension may be granted, at the time of application, by approval of all affected local governing bodies. The length of the extension granted must be indicated on the application form.

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

~~(6)~~(7) For projects ~~which~~ that are entirely, physically located outside the boundaries of incorporated cities or towns, the governing body of the affected county has sole authority to approve the tax benefits for the project. If approved, the tax benefits will apply only to the number of mills levied and assessed for high school district and elementary school district purposes and to the number of mills levied and assessed by the county governing body. The tax benefits do not apply to statewide levies.

~~(7)~~(8) If the project is entirely, physically located within an incorporated city or town, both the governing body of

the affected county and the governing body of the incorporated city or town must approve the application by resolution before all available tax benefits may be extended to the project. If the city approves the application and the county rejects the application, the tax benefits will apply only to the number of mills levied and assessed for high school district and elementary school district purposes within the incorporated city or town and to the number of mills levied and assessed by the incorporated city or town. The number of mills levied and assessed by the county governing body will not be affected nor will any tax benefits be extended by the county to the project.

(8) remains the same, but is renumbered (9).

~~(9) Existing county, municipal, and local governing body resolutions must be reconsidered by the appropriate governing bodies to include the expanded provisions of reconstruction.~~

(10) Except as provided ~~under~~ in (1), only additional value created after an application has been filed may be considered for tax benefits according to this rule.

AUTH: Sec. 15-1-201, MCA
IMP: Sec. 15-24-1501, MCA

REASONABLE NECESSITY: The department is proposing to delete the text shown in (1) because it misrepresents the order of the steps to be followed in processing an application. The additional language for (2) is necessary to explain that applications must be received prior to April 1 for the tax year in order to be considered. The other amendments to this section are housekeeping only. The text found in new (3) is necessary to show the correct order of the steps to be followed in reviewing an application for certain commercial buildings. Subsection (4) is amended to reflect the same language as found in New Rule I. The text found in (5) has been moved to ARM 42.20.106, the definition rule for this sub-chapter. The remaining amendments are housekeeping only.

42.20.105 CONDOMINIUMS (1) It is the intention of the department ~~of revenue~~ to employ an appraisal methodology for condominiums which is consistent with 15-8-111, MCA.

(2) The department ~~of revenue~~ will employ the following appraisal and assessment methodology for the appraisal of condominiums, except for time-share condominiums.

(a) The entire condominium project will be appraised using accepted appraisal techniques or methods and, as appropriate, the cost replacement manuals identified in ~~ARM 42.19.101~~ rule.

(b) remains the same.

(3) The department ~~of revenue~~ will employ the following appraisal and assessment methodology for the appraisal of time-share condominiums.

(a) The entire condominium project will be appraised using accepted appraisal techniques or methods and, as appropriate, the cost replacement manuals identified in ~~ARM 42.19.101~~ rule.

(b) Any units in a condominium project which are not owned and operated as time-share condominium units will be valued pursuant to the methodology set forth in ~~paragraph~~ (2)(b).

(c) The total appraised value for all time-share condominium units comprising a condominium project will be calculated and assessed to the owner of record (time-share association). Thereafter, it will be incumbent upon the association to allocate its total tax liability among the various parties having interest in the time-share condominiums.

AUTH: Sec. 15-1-201, MCA
IMP: Sec. 15-7-103, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.20.105 for housekeeping purposes only.

42.20.106 DEFINITIONS ~~OF USE~~ ~~(1) When a property tax exemption depends on the use of a building, the exemption may be granted if, in addition to compliance with ARM 42.20.102:~~

~~(a) the foundation of the building has been completed by January 1 of the tax year; and~~

~~(b) the applicant supplies an affidavit to the department specifying the intended tax exempt use of the property and that the property will be placed in that use during the tax year.~~

~~(2) The property tax exemption will be reviewed as of January 1 of the next year to determine if the property was placed in the intended use. If it was not placed in the intended use, the department of revenue will rescind the exemption and tax the property for the previous tax year~~. The following definitions apply to this sub-chapter:

(1) "Breaks in the chain of title" means that the grantor (seller) on the realty transfer certificate (RTC) is not the same as the owner of record reflected on the most recent property tax record.

(2) "Comparable properties" means properties that have similar utility, use, function, and are of a similar type as the subject property. Comparable properties must be influenced by the same set of economic trends, and physical, economic, governmental, and social factors as the subject property. Comparable properties must have the potential of a similar, if not identical, use as the subject property. For any property that does not fit into this definition, the department will rely on the definition of comparable property contained in 15-1-101, MCA.

(a) Within the definition of comparable property in (1), the following types of property are considered comparable:

(i) Single-family residences with ancillary improvements are comparable to other single-family residences with ancillary improvements.

(ii) Duplexes are comparable only to other duplexes; triplexes are comparable only to other triplexes; fourplexes are comparable only to other fourplexes.

(iii) Mobile homes are comparable to mobile homes.

(iv) Residential city and town lots are comparable to other residential city and town lots.

(v) Commercial city and town lots are comparable to other commercial city and town lots.

(vi) Residential tract land is comparable to other

residential tract land.

(vii) Commercial tract land is comparable to other commercial tract land.

(viii) Improvements necessary to the function of a bona fide farm, ranch, or stock operation are comparable to other improvements necessary to the function of a bona fide farm, ranch, or stock operation.

(ix) One-acre sites beneath farm improvements are comparable to other one-acre sites beneath farm improvements and residential tract land.

(x) Owner occupied condominiums of a similar number of units are comparable to other owner occupied condominiums of a similar number of units.

(xi) Condominiums owned and operated for income-producing purposes can only be compared to other condominiums held for the same purpose and which have a similar number of units.

(xii) Industrial improvements are comparable only to other industrial improvements.

(xiii) Industrial land is comparable only to other industrial land.

(3) "Construction period" means a period of time that commences with the issuance of a building permit and which concludes when the county appraiser determines that the structure is substantially completed. If more than one building permit is issued, the date on the earliest building permit issued will constitute the commencement of the construction period. In those cases where building permits are not issued, the commencement of the construction period is that time determined by the department to be the start of construction. That determination will coincide with the date the contract is let, the date the application is approved by the governing body, or when site work begins, whichever occurs first.

(4) "Residence" includes all conventionally constructed homes, as well as all mobile homes and manufactured housing.

(5) "Single-family residence with ancillary improvements" means:

(a) A structure originally constructed or converted for use and occupancy by a single family unit and whose primary use is currently one of occupancy by a single family unit.

(b) All supportive structures integral to the use of a single-family residence such as attached garages, sheds, and site improvements.

AUTH: Sec. 15-1-201, MCA

IMP: Sec. ~~15-6-201, 15-6-203 and 15-6-209~~ 15-1-101, 15-7-304, 15-7-306, and 15-24-1501, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.20.106 to correct the format for definition rules. The text found in old (1) is not applicable. The definitions shown in (1) through (5) are necessary to define terms that are used in this sub-chapter.

42.20.107 VALUATION METHODS FOR COMMERCIAL PROPERTIES

(1) remains the same.

(2) If the department is not able to develop an income model with a valid capitalization rate based on the stratified direct market analysis ~~method~~, the band-of-investment method, or another accepted method, or is not able to collect sound income and expense data, the final value chosen for ad valorem tax purposes will be based on the cost approach or, if appropriate, the market approach to value. The final valuation is that which most accurately estimates market value.

AUTH: Sec. 15-1-201, MCA
IMP: Sec. 15-7-111, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.20.107 to show that another acceptable method may be considered when determining valuation of property.

42.20.108 INCOME APPROACH (1) The income approach is based on the theory that the market value of income-producing property is related to the amount, duration, and certainty of its income-producing capacity. The formula used by the department to estimate the market value of income-producing property through application of the income approach to value is V = I/R where:

(a) "V" is the value of the property to be determined by the department;

(b) "I" is the typical property net income which shall reflect market rents, not investment value income or other rents, for the type of properties being appraised; and

(c) "R" is the capitalization rate determined by the department as provided in ARM 42.20.109.

(2) ~~The following procedures apply when valuing commercial property using the income approach:~~

~~(a) Typical property net income "I" shall reflect market rents not investment value income or other rents.~~

~~(b)~~ Market rent is the rent that is justified for the property based on an analysis of comparable rental properties, and upon past, present, and projected future rent of the subject property. It is not necessarily contract rent, which is the rent actually paid by a tenant.

~~(c)~~(3) The department will periodically request gross rental income and expense information from commercial property owners. Standard forms, developed by the department, will be used to collect the information statewide. ~~Copies of those forms may be obtained by contacting the Department of Revenue, Property Assessment Division, Mitchell Building, Helena, Montana 59620.~~

~~(d)~~ Additional methods of obtaining income and expenses information may consist of personal ~~contacts~~ or telephone contacts with owners, tenants, renters or lessees, knowledgeable lending institution officials, real estate brokers, fee appraisers, or any other sources the appraiser deems appropriate including summarized data from recognized firms who collect income and expense information, and appeal or court actions.

~~(e)~~(4) The department will review and analyze all annual rental income and expense data collected. As necessary, that

data will be adjusted to reflect average conditions and management before entering the data into the computer assisted mass appraisal system. The process must result in defensible estimates of potential gross rents, effective gross incomes, normal operating expenses, and normal net operating incomes.

~~(f)~~ (5) The department will follow established procedures for validating commercial sales information for the development of income models. Only valid sales will be used for the income and expense module of the computer assisted mass appraisal system.

~~(3)~~ (6) The department will use generally accepted procedures as outlined by the ~~I~~international ~~A~~association of ~~A~~assessing ~~O~~officers in their text titled "Property Assessment and Appraisal Administration" when determining normal net operating income. The following is an example of the format ~~which~~ that will be used:

(a) potential gross rent

(i) ~~less~~ - vacancy and collection allowance

(ii) ~~plus~~ + miscellaneous income

(iii) ~~equals~~ = effective gross income

(iv) ~~less~~ - normal operating expenses

(v) ~~equals~~ = normal net operating income.

(b) Normal and allowable expenses include:

(i) the cost~~s~~ of property insurance;

(ii) heat, water, and other utilities;

(iii) normal repairs and maintenance;

(iv) reserves for replacement of items whose economic life will expire before that of the structure itself;

(v) management; and

(vi) other miscellaneous items necessary to operate and maintain the property.

(c) Items ~~which~~ that are not allowable expenses are~~:~~

(i) depreciation charges~~,~~;

(ii) debt service~~,~~;

(iii) property taxes; and

(iv) business expenses other than those associated with the property being appraised.

(d) remains the same.

~~(4)(a)~~ (7) Depending on data availability, the department may develop income models for various income use groups. ~~Income models which may be developed in each commercial neighborhood are~~ (a) Use groups may be, but are not restricted to:

(i) through (xx) remain the same.

(b) remains the same.

(c) The department may analyze the following information in addition to other appropriate information to ensure economic and demographic homogeneity:

(i) through (vi) remain the same.

(vii) Proximity to employment/business center~~s~~; and

(viii) remains the same.

(d) remains the same.

AUTH: Sec. 15-1-201, MCA

IMP: Sec. 15-7-111, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.20.108 for housekeeping purposes only.

42.20.109 CAPITALIZATION RATES (1) remains the same.

(2) ~~(a)~~ If there are insufficient sales to implement the provisions of ~~ARM 42.20.109~~ (1), the department will consider using a yield capitalization rate. The rate shall include a return of investment (recapture), a return on investment (discount), and an effective tax rate. The discount is developed using a band-of-investment method for types of commercial property. The band-of-investment method considers the interest rate that financial institutions lend on mortgages and the expected rate of return an average investor expects to receive on the~~ir~~ equity. This method considers the actual mortgage rates and terms prevailing for individual types of property.

~~(b)~~ (3) A straight-line recapture rate and effective tax rate will be added to the discount rate to determine the yield capitalization rate.

AUTH: Sec. 15-1-201, MCA
IMP: Sec. 15-7-111, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.20.109 for housekeeping purposes only.

42.20.201 INTENT (1) remains the same.

(2) It is not the intent of the Act to apply sales information obtained to each sold parcel. Instead, sales of similar properties are grouped so that the market indicator of value will reflect current trends, and sales ~~which~~ that are uncharacteristically high or low will have an offsetting effect.

AUTH: Sec. 15-7-306, MCA
IMP: ~~Title 15, chapter 7, part 3,~~ Sec. 15-7-304, 15-7-305, 15-7-307, and 15-7-308, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.20.201 for housekeeping purposes only.

42.20.203 EXEMPTIONS FROM DISCLOSING SALE PRICE

(1) Certain types of property are exempt from the Realty Transfer Act provisions which require the disclosure of sales information. Agricultural land ~~which~~ that will continue in an agricultural use is exempt from the sales disclosure provisions of the Act because the department ~~of revenue~~ is required by law to assess agricultural land on the basis of its productive ability rather than its market value. The other exempt transfers are sales ~~which~~ that are not arm's-length transactions or involve sales to a government entity. Since these transactions are not reliable indicators of market value, the sales information is not useable for assessment purposes.

AUTH: Sec. 15-7-306, MCA
IMP: Sec. 15-7-307, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM

42.20.203 to clarify that agricultural land sales are exempt from the disclosure provisions of the act and for other minor housekeeping purposes.

42.20.204 CHANGE OF ASSESSMENT ROLL (1) The department shall not ~~make any~~ change ~~in the person~~ to whom real property is assessed unless properly notified by means of an accurately prepared realty transfer certificate (RTC). Property assessments will continue to be made in the name of the previous owner until an ~~realty transfer certificate~~ RTC has been completed and filed in the manner prescribed by law.

(2) In order to effect~~uate~~ changes in the property tax record, ~~even exempt~~ all transfers, including exempt transfers, must be filed with a certificate, giving the names of the parties to the transfer, a description of the property~~,~~ and, if applicable, the reason for exemption from the provisions relating to sales information.

AUTH: Sec. 15-7-306, MCA
IMP: Sec. 15-7-304, 15-7-305, and 15-7-307, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.20.204 to provide an abbreviation for the term "realty transfer certificates" and to provide that the rule applies to all transfers, including exempt transfers.

42.20.205 ACCURACY OF REALTY TRANSFER CERTIFICATE

(1) The name of the grantor (seller) reflected on the ~~realty transfer certificate (~~RTC~~)~~ must be identical to the name of grantor (seller) reflected on the accompanying deed.

(2) The name of the grantee (buyer) reflected on the ~~realty transfer certificate~~ RTC must be identical to the name of the grantee (buyer) reflected on the deed.

(3) ~~"Breaks in the chain of title" mean that the grantor (seller) on the realty transfer certificate is not the same individual as the owner of record reflected on the most recent property tax record.~~ Breaks in the chain of title must be corrected. Until the break in the chain of title is corrected through the filing of reliable information, the property will be carried on the property tax record in the name of the previous owner, in care of the new owner (grantee). ~~Realty transfer certificates~~ RTCs that bridge the break in the chain of title must be filed. After the ~~realty transfer certificate(s)~~ RTC(s) ~~are~~ is filed, which bridges the break in title, the new owner's name (grantee) will be placed on the property tax roll in place of the previous owner's name. Name identification and name abbreviation inaccuracies in ~~items~~ (1) and (2) may be corrected through the submission of an affidavit available at the department ~~of revenue~~.

~~(4)~~ If, in the judgment of the ~~county appraiser~~ local department office, there is sufficient evidence to suggest the ~~realty transfer certificate~~ RTC is inaccurately completed or that a transaction is not exempt from reporting sales information, the department ~~of revenue~~ will return the ~~realty transfer certificate~~ RTC to the filer. The inaccurate

information will be identified and the filer will be required to correct the inaccuracy and to resubmit the ~~realty transfer certificate~~ RTC.

AUTH: Sec. 15-1-201, MCA
IMP: Sec. 15-7-304 and 15-7-306, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.20.205 for housekeeping purposes and to move the definition contained within this rule to ARM 42.20.106.

42.20.301 APPLICATION FOR CLASSIFICATION AS NONPRODUCTIVE, PATENTED MINING CLAIM (1) The property owner of record or ~~his~~ the property owner's agent must make application to the department ~~of revenue, property assessment division, in order~~ to secure classification of ~~his~~ the owner's land as a nonproductive, patented mining claim. ~~In order t~~To be considered for the current tax year, an application must be filed on a form available from the ~~county appraisal/assessment office before March 1 or 15~~ department by the first Monday in June or 30 days after receiving a notice of classification and appraisal from the department ~~of revenue~~, whichever is later. The form must be filed with the ~~county appraisal office~~ department.

(2) The ~~county appraiser~~ department will review the application and may conduct a field evaluation. The ~~county appraiser~~ department will approve or deny the application and will return a copy of the form to the property owner or ~~his~~ the owner's agent. ~~A copy of the form will be provided to the county assessor.~~

(3) remains the same.

AUTH: Sec. 15-1-201, MCA
IMP: Sec. 15-6-101, ~~15-6-148, 15-6-153~~ 15-6-133, and 15-8-111, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.20.301 for housekeeping purposes and to comply with the AB-26 filing requirement. The amendments correct the department locations and the applicable implementing citations for the rule.

42.20.302 DEFINITIONS ~~OF TERMS~~ The following definitions apply to this sub-chapter:

~~(1)~~(2) "Nonproductive land" means non-fertile land that is incapable of producing animals or plant matter in commercially salable quantities.

~~(2)~~(4) "Patented" means land purchased from the federal government for the sole purpose of developing a mining operation.

~~(3)~~(5) "Incorporated city or town" means any municipality or county area in which the government body has complied with all incorporation provisions outlined in Title 7, MCA.

~~(4)~~(3) "Owner" means that the applicant and owner of record are the same individual, corporation, or partnership.

~~(5)~~(1) "Has a separate and independent value for such

other purposes" means the land has a demonstrated capacity for recreation, commercial, industrial, or agricultural/timber use. That capacity is demonstrated by one of the following criteria:

(a) the filing of a certificate of survey that creates a division of the mining claim~~,~~; ~~or~~

(b) ongoing or contemplated (as evidenced by a timber sale) timber harvest within one mile of the mining claim~~,~~; ~~or~~

(c) the growth of agricultural commodities on or adjacent to the mining claim~~,~~; ~~or~~

(d) the construction of a recreational structure such as a summer home within one mile of the mining claim~~,~~; ~~or~~

(e) the construction of a commercial structure or the operation of a commercial operation such as a hunting guide or outfitter within one mile of the mining claim~~,~~; or

(f) the lease of any portion of the surface area for a recreational, commercial, residential, industrial, or agricultural use.

(6) The requirements of ~~subsections (5)~~(1)~~(b) and (d) above~~ may be waived when the topography of the property is so severe that it precludes development for any purpose other than mining.

(7) remains the same.

AUTH: Sec. 15-1-201, MCA

IMP: Sec. 15-6-101, ~~15-6-148, 15-6-153~~ 15-6-133, and 15-8-111, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.20.302 for housekeeping purposes only.

42.20.303 CRITERIA FOR VALUATION AS MINING CLAIM (1) An applicant for mining claim classification must prove the parcel, which is the subject of the application, meets the following criteria:

(a) is nonproductive;

(b) is patented;

(c) has not been depleted of mineral deposits;

(d) is outside the limits of an incorporated city or town, or in the case of a county-municipal consolidation, outside the limits of the municipalities prior to the date of consolidation;

(e) has no separate and independent value other than as a mining claim; and

(f) is being held by the owner for the sole purpose of developing the mineral interests on the property.

(2) The applicant for class ~~3~~ three property tax treatment is required to demonstrate ~~that he is the owner~~ ownership of the patented mining claim for which classification is sought. If, on the date of application, the applicant is presently carried on the tax rolls of the county as the owner of the mining claim, the department will presume that the applicant is the record owner of the mining claim.

(3) If, on the date of application, the applicant is not carried as the ~~record~~ owner of record of the mining claim on the tax rolls of the county, the applicant will be required to fulfill criteria set forth in ~~subsection~~ (4)(a), (b), and (c)

~~below~~.

(4) Proof of the criteria set forth in ~~subsection~~ (1) ~~above~~ must consist of the following:

(a) submission of a copy of the United States patent issued in the name of the owner of record or a written certificate from the bureau of land management certifying the ownership of the patented mining claim;

(b) submission of a copy of the ~~realty transfer certificate~~ RTC, if provided for by law as of the date of patent issuance, completed by the owner of record or ~~his~~ the owner's representative or agent;

(c) submission of copies of the most recent deeds or security agreements evidencing ownership and a copy of the last assessment on the patented mining claim; and

(d) submission of a completed application on a form provided free-of-charge by the department ~~of revenue~~.

(5) In the event that class ~~3~~ three property tax treatment is sought for a patented mining claim which is owned by multiple parties, the criteria set forth in ~~subsections~~ (2) and (3) ~~above~~ must be fulfilled by a majority of the parties or entities currently paying the taxes on the patented mining claim or by the single party or entity paying taxes on the ~~patented mining~~ claim.

(6) If the department ~~of revenue~~ denies the application for class ~~3~~ three property tax treatment, and if the applicant/taxpayer disagrees with the department's ~~of revenue's~~ determination, the taxpayer shall be entitled to exercise the rights set forth in 15-7-102, MCA.

AUTH: Sec. 15-1-201, MCA

IMP: Sec. 15-6-101, 15-6-133, ~~15-6-148, 15-6-153,~~ and 15-8-111, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.20.303 for housekeeping purposes and to correct the implementing citations.

42.20.305 VALUATION OF ACREAGE BENEATH IMPROVEMENTS ON ELIGIBLE MINING CLAIMS (1) For all mining claims that have improvements ~~located upon~~ on them, the land that is beneath all the improvements and the land that is necessary for the use of those improvements shall not receive classification and valuation as class ~~3~~ three property. A market value determination shall be made for the acreage that is beneath the improvements and for the acreage necessary for the use of those improvements.

(2) The acreage defined in ~~subsection~~ (1) ~~above~~ shall be appraised according to market value consistent with that of comparable land.

(a) In no case will the market value of mining claim acreage be lower than the lowest market value assigned to improved tracts within the county.

(b) No specific site improvement values for water systems and septic systems will be added to the land values determined according to ~~subsection~~ (2)(a) ~~above~~.

(3) All mining claim acreages determined according to ~~subsection~~ (1) and (2) ~~above~~ shall be classified and valued as class ~~4~~ four property.

AUTH: Sec. 15-1-201, MCA

IMP: Sec. 15-6-101, 15-6-133, ~~15-6-148, 15-6-153,~~ and 15-8-111, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.20.305 for housekeeping purposes and to correct the implementing citations.

42.20.432 PROCEDURE FOR VALIDATING SALES INFORMATION

(1) The department shall compile sales information from ~~realty transfer certificates~~ RTCs. The department shall review sales evidenced by an ~~realty transfer certificate~~ RTC to determine whether a sale was a valid, arm's-length transaction. For the purposes of this rule, "valid, arm's-length transaction" means a sale of real estate not affected by unreasonable or unusual personal influence or control, as defined in literature prepared by the international association of assessing officers.

(2) Unless there is convincing evidence to the contrary, the following sales transactions shall be considered non-arm's-length transactions:

(a) and (b) remain the same.

(c) a sale that is recorded to confirm, correct, modify, or supplement a previously recorded instrument;

(d) through (l) remain the same.

(m) a sale of tax-exempt property; and

(n) remains the same.

(3) The department may verify sales information by submitting to the parties participating in a sale transaction the sale verification form. Completion of the sales verification form may be accomplished during on-site discussions with the buyer or seller, or through telephone conversation or written correspondence with the buyer or seller, or their representatives. Additionally, the department may secure information from the lending institution involved in the sale for purposes of verifying the terms and conditions of the sale.

AUTH: Sec. 15-1-201, MCA

IMP: Sec. 15-7-111, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.20.432 for housekeeping purposes only.

42.20.454 CONSIDERATION OF SALES PRICE AS AN INDICATION OF MARKET VALUE (1) When considering any objection to the appraisal of property, the department may consider the actual selling price of the property as evidence of the market value of the property. For the actual selling price to be considered, a taxpayer or ~~his/her~~ the taxpayer's agent must meet the following requirements:

(a) ~~Must m~~Make application on a property adjustment form (AB-26) to the local department ~~of revenue, appraisal~~ office, ~~located~~ in the county where the property is situated;

(b) ~~In order to be considered, t~~The property adjustment form (AB-26) must be filed within 30 days after receipt of a valuation notice or before the first Monday in June, whichever is later;

~~(c) The sale must be adjusted by the county appraiser to account for changes in market conditions that may have occurred between the time of sale and the base year valuation date;~~

~~(d)~~ (c) The sale must be substantiated by an accurately completed and filed ~~realty transfer certificate~~ RTC;

~~(e)~~ (d) ~~Must c~~Complete and sign a sales verification form including sales price;

~~(f)~~ (e) ~~Must p~~Provide a signed affidavit completed by at least one party or person who is not a participating party (buyer or seller) in the transaction that identifies the conditions, terms, and sale~~s~~ price of the property;

~~(g)~~ (f) ~~Must p~~Provide an executed buy/sell agreement as supporting documentation;

~~(h)~~ (g) ~~Must p~~Provide two comparable sales of similar property in the same general geographic area to where the taxpayer's property is situated. The department will use its sales records to identify the sale~~s~~ prices and determine if the sales were valid, arm's-length sales. Taxpayers will be permitted to examine the sales information for the comparable property if they agree to keep the information confidential; and

~~(i)~~ (h) The actual selling price of the property and the comparable sales must be adjusted by the ~~county appraiser~~ department to a value that is consistent with the base year adopted by the department in its administrative rules, Title 42, chapter 18.

(2) For the actual selling price to be considered, the department ~~of revenue~~ must:

(a) ~~A~~analyze and maintain the information and requirements in (1)(a) through ~~(i)~~ (h) as a part of the file supporting the value placed on the property for tax purposes;

(b) ~~V~~verify the subject sale as a valid arm's-length transaction as defined in 15-8-111, MCA; ~~and~~

(c) ~~V~~verify the comparable sales as valid arm's-length transactions as defined in 15-8-111, MCA~~.~~; and

(d) adjust the sale to account for changes in market conditions that may have occurred between the time of sale and the base year valuation date.

(3) After making a determination regarding use of the adjusted selling price as an indication of market value for tax purposes, the department ~~of revenue~~ must return the form (AB-26) to the taxpayer stating clearly the reasons for accepting or rejecting the application and, if appropriate, what adjustments were made to the actual selling price and why those adjustments were made.

(a) If the appraised value is adjusted by the ~~county appraiser~~ department, the adjusted value becomes the value for assessment and taxation purposes until such time as changing circumstances with respect to the property requires a new valuation and assessment.

(4) When a tax appeal board decision indicates that the

adjusted selling price is market value for the property under appeal, and the department files no further appeal within the time prescribed by law, the adjusted selling price shall become the value for assessment and taxation purposes until such time as changing circumstances with respect to the property requires a new valuation and assessment.

AUTH: Sec. 15-1-201, MCA
IMP: Sec. 15-7-102, 15-7-111, and 15-8-111, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.20.454 to clarify that it is the responsibility of the department to adjust the sale to account for changes in market conditions not the taxpayer or taxpayer's agent. Other minor amendments are for housekeeping purposes only.

42.20.455 CONSIDERATION OF INDEPENDENT APPRAISALS AS AN INDICATION OF MARKET VALUE (1) When considering any objection to the appraisal of property, the department may consider independent appraisals of the property as evidence of the market value of the property. For an independent appraisal to be considered, the taxpayer or ~~his/her~~ the taxpayer's agent must meet the following requirements:

(a) ~~Must s~~Submit a signed original long-form narrative appraisal, performed by an appraiser licensed by the state of Montana, or an appraiser who has been certified by a nationally recognized appraisal society or institute, to the local department ~~of revenue, appraisal~~ office~~, located~~ in the county where the property is situated;

(b) ~~The appraisal required in (1)(a) must h~~Have a valuation date within six months of the base-year valuation date for the appraisal required in (1)(a), or ~~must~~ be adjusted by the ~~county appraiser~~ department or the appraiser who performed and prepared the narrative appraisal to reflect changes in market conditions between the appraisal date and the base-year valuation date;

(c) ~~Must s~~Submit a property adjustment form (AB-26) to the local department ~~of revenue, appraisal~~ office~~, located~~ in the county where the property is situated; and

(d) ~~In order to be considered, must f~~File the property adjustment form (AB-26) and the original long-form narrative appraisal within 30 days after receipt of a valuation notice or before the first Monday in June, whichever is later.

(2) For the independent appraisal to be considered, the department ~~of revenue~~ must:

(a) Maintain the information and requirements in (1)(a) through (d) as a part of the file supporting the value placed on the property for tax purposes;

(b) Conduct on-site reviews of the subject property verifying the property characteristics of the subject property;

(c) Verify the comparable sales used in the independent appraisal as valid arm's-length transactions as defined in 15-8-111, MCA; and

(d) Conduct on-site reviews of the comparable properties being used to support the value of the subject property in the

appraisal.

(3) After making a determination regarding use of the independent appraisal value as market value for tax purposes, the department ~~of revenue~~ must return the form (AB-26) to the taxpayer stating clearly the reasons for accepting or rejecting the application and, if accepted~~,~~ and appropriate, what adjustments were made to the appraised value and why those adjustments were made.

(4) When a tax appeal board decision indicates that the independent appraisal value is market value for the property under appeal, and the department files no further appeal within the time prescribed by law, the independent appraisal value shall become the value for assessment and taxation purposes, until such time as changing circumstances with respect to the property requires a new valuation and assessment.

AUTH: Sec. 15-1-201, MCA
IMP: Sec. 15-7-102, 15-7-111, and 15-8-111, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.20.455 to clarify the deadline for filing a property adjustment form (AB-26) and for other minor housekeeping purposes.

5. The Department proposes to repeal the following rules:

42.20.104 COMPARABLE PROPERTY which can be found at page 42-2009 of the Administrative Rules of Montana.
AUTH: Sec. 15-1-201, MCA
IMP: Sec. 15-1-101, MCA

REASONABLE NECESSITY: The department is proposing to repeal ARM 42.20.104 because the term used in this rule was moved to ARM 42.20.106 with other definitions for this chapter.

42.20.136 RESIDENCE DEFINED which can be found on page 42-2026 of the Administrative Rules of Montana.
AUTH: Sec. 15-1-201, MCA
IMP: Sec. 15-8-111, MCA

REASONABLE NECESSITY: The department is proposing to repeal ARM 42.20.136 because the term used in this rule was moved to ARM 42.20.106 with other definitions for this chapter.

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

Cleo Anderson
Department of Revenue
Director's Office
P.O. Box 5805
Helena, Montana 59604-5805

and must be received no later than October 11, 2002.

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

8. An electronic copy of this Notice of Public Hearing is available through the Department's site on the World Wide Web at http://www.state.mt.us/revenue/rules_home_page.htm, under the Notice of Rulemaking section. 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.

9. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and 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 6 above or faxed to the office at (406) 444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

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

/s/ Cleo Anderson	/s/ Kurt G. Alme
CLEO ANDERSON	KURT G. ALME
Rule Reviewer	Director of Revenue

Certified to Secretary of State August 30, 2002

**BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA**

In the matter of the proposed amendment of ARM 42.20.501, 42.20.502, 42.20.503, 42.20.504, 42.20.505, 42.20.509, 42.20.511, 42.20.512, 42.20.515, and 42.20.516; and repeal of ARM 42.20.506 and 42.20.518 relating to property phase-in valuation	))))))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT AND REPEAL

TO: All Concerned Persons

1. On October 8, 2002, at 10:30 a.m., a public hearing will be held in the Fourth Floor Conference Room of the Sam W. Mitchell Building at Helena, Montana, to consider the amendment of ARM 42.20.501, 42.20.502, 42.20.503, 42.20.504, 42.20.505, 42.20.509, 42.20.511, 42.20.512, 42.20.515, and 42.20.516; and repeal of ARM 42.20.506 and 42.20.518 relating to property phase-in valuation.

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

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Revenue not later than 5:00 p.m., September 25, 2002, 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 5805, Helena, Montana 59604-5805; telephone (406) 444-2855; fax (406) 444-3696; or e-mail canderson@state.mt.us.

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

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

(1) "~~1996~~ 2002 tax year value" means the market value of a property which appears on the ~~1996~~ 2002 ~~assessment notice~~ property tax record of that property.

(2) "Annual appraisal trend factor class ~~5~~ five" means a factor used to annually reappraise class ~~5~~ five qualifying air and water pollution control property, new industrial property, gasohol facilities, qualifying research and development firms, and electrolytic reduction facilities real property by trending their cost values up or down based on accepted cost indices.

(3) "CDU rating" means a composite rating of the overall condition, desirability, and usefulness of a structure, used nationally as a simple, direct, and uniform method of estimating

accrued depreciation.

~~(3)~~ (4) "Comstead exemption" means the percentage of phase-in value of commercial property that is exempt from taxation pursuant to 15-6-201, MCA.

~~(4)~~ (5) "Current year phase-in value" is the difference between the ~~value before reappraisal (VBR)~~ reappraisal value and the ~~reappraisal value~~ value before reappraisal (VBR) times the phase-in percentage, added to the VBR. The current year phase-in value is the amount subject to tax each year, and is determined by the following formula:

Current year phase-in value =
[(Reappraisal (REAP) value - VBR) x phase-in ~~percentage~~%] + VBR

~~(5)~~ (6) "Destruction" means the removal or deletion of improvements, buildings, living areas, garages, and out-buildings caused by burning, razing, or natural disaster.

~~(6)~~ (7) "Dwelling unit" is defined as a building or portion of a building that contains living facilities with provision for sleeping, eating, cooking, and sanitation for one or more persons.

~~(7)~~ (8) "~~Effective tax rate~~ Full reappraisal to taxable value conversion factor" is the total taxable value of ~~a~~ class ~~of~~ four property divided by the total reappraisal value of ~~the same~~ class ~~of~~ four property.

~~(8)~~ (9) "Homestead exemption" means the percentage of phase-in value of residential property that is exempt from taxation pursuant to 15-6-201, MCA.

~~(9)~~ (10) "Improvement grade change" means a change in the quality of construction of an improvement. Each improvement grade signifies a different level of construction quality. Examples of improvement grades include, but are not limited to, the following:

(a) 1F-1 = cheap construction;

(b) 1F-5 = average construction; and

(c) 1F-9 = superior construction.

~~(10) "Land cap" refers to a limit or "cap" on the land value of residential parcels that qualify under 15-7-111, MCA. The value of the contiguous land (up to five acres) under one ownership cannot exceed 75% of the value of the improvements located on the land; or 75% of the statewide average value of improvements, whichever is greater.~~

(11) "Land productivity change (grade change)" means a change in the productive capacity or yield of agricultural or forest land. In a land productivity change, the land use does not change~~,~~; rather, the land as currently used simply becomes more or less productive. For example, a productivity change in grazing land may occur when it is discovered that the productivity potential has decreased due to a new saline seep on the land. Because the land continues to be used as grazing land, the department shall continue to classify the land as agricultural grazing land, but the grade of the grazing land may be changed to reflect its lessened productivity.

(12) and (13) remain the same.

(14) "Land use change" means the conversion of a current use of land to a different, alternate use. Land splits shall be considered land use changes. Examples of land use changes contained in this definition include, but are not limited to, the following:

(a) agricultural land converted to tract land;

(b) forest land converted to tract land; ~~or~~

(c) forest land converted to agricultural land~~.~~; or

(d) land that is converted to another use due to a subdivision of real property.

(15) "Living area" means any room or group of rooms designed as the living quarters of one family or household, equipped with cooking and toilet facilities, and having an independent entrance from a public hall or from the outside.

~~(15)~~(16) "Neighborhood (NBHD) group percentage" means the percent of change in value from the total ~~1996~~ 2002 tax year value to the total ~~1997~~ 2003 reappraisal value, excluding properties with new construction, for those homogeneous areas within each county or between counties that have been defined as a neighborhood group. The neighborhood group percentage is determined by using the following formula:

Neighborhood Group Percentage =
(Total ~~1997~~ 2003 NBHD REAP Value - Total ~~1996~~ 2002 NBHD Tax Year Value)
Total ~~1996~~ 2002 NBHD Tax Year Value

(a) Individual neighborhood group percentages will be determined for residential land, commercial land, residential improvements, and commercial improvements.

~~(16)~~(17) "New construction" means the construction, addition, or substitution of improvements, buildings, living areas, garages, and outbuildings; or the extensive remodeling of existing improvements, buildings, living areas, garages, outbuildings, land reclassification, and land use changes.

~~(17)~~(18) "New construction trend factor" for industrial property" means a factor used to adjust reappraisal values and VBRs (values before reappraisal) in instances where the property has new construction or destruction. The factor will be derived from nationally accepted cost indices.

~~(18)~~(19) "Phase-in percentage" for tax years ~~1997 and 1998~~ 2003 through 2008 is ~~2%~~ 16.6% per year. The phase-in percentage accumulates annually.

~~(a) The 1997 Phase-in percentage = 2%.~~

~~(b) The 1998 Phase-in percentage = 4%.~~

~~(c) The phase-in percentage for tax years 1999 through 2002 is 25% per year of the difference between the reappraisal value less the 1998 phase-in value.~~

~~(19)~~(20) The "previous year tax revenue" ~~is determined by~~ means the product of multiplying the previous tax year total taxable value for each taxing jurisdiction by the previous year mill levy for that taxing jurisdiction.

~~(20)~~(21) "Reappraisal (REAP) value" means the full ~~1997~~ 2003 value determined for the current reappraisal cycle pursuant

to 15-7-111, MCA, adjusted annually for new construction or destruction. The ~~1997~~ 2003 reappraisal value reflects a market value of the property on January 1, ~~1996~~ 2002. A current year REAP value is the same as the ~~1997~~ 2003 reappraisal value of the property if there is no new construction, destruction, land splits, land use changes, land reclassifications, land productivity changes, improvement grade changes, or other changes made to the property during ~~1997~~ 2003 or subsequent tax years.

(22) "Subdivision of real property" means the first sale of a land parcel that results in the land being taxable as class four as described in 15-6-134, MCA, or nonagricultural land as described in 15-6-133(1)(c), MCA.

~~(21)~~(23) "Taxable market value" means that portion of the total market value subject to taxation after the total market value has been adjusted, if applicable, ~~for the land cap,~~ for the phase-in of value, and the homestead/comstead exemption.

~~(22)~~(24) "Value before reappraisal (VBR)" means the ~~1996~~ 2002 tax year value adjusted for any new construction or destruction that occurred in the prior year. The VBR for the ~~1997~~ 2003 tax year and subsequent years is the same as the ~~1996~~ 2002 tax year value if there is no new construction, destruction, land splits, land use changes, land reclassifications, land productivity changes, improvement grade changes, or other changes made to the property during ~~1996~~ 2002 or subsequent tax years.

AUTH: Sec. 15-1-201 and 15-7-111, MCA
IMP: Sec. 15-6-201, 15-7-111 and 15-10-120, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.20.501 to incorporate reappraisal adjustments as required by amendments to 15-7-111, MCA, as enacted by the 2000 special session, and changes made to the same statute by SB 501 in the 2001 legislative session. Additional amendments were made to correct terminology such as changing "assessment notice" to the correct title of "property tax record." New definitions were developed for "CDU rating," "living area," and "subdivision of real property" in order to clarify the use of those terms as they are used within the rules of this sub-chapter. The definition of "land cap" is being deleted because it is no longer applicable.

42.20.502 DETERMINATION OF VALUE BEFORE REAPPRAISAL (VBR), EXCLUDING INDUSTRIAL PROPERTIES (1) For property that contains no new construction, destruction, land splits, land use changes, land reclassifications, land productivity changes, improvement grade changes, or other changes made to the property during ~~1996~~ 2002 or subsequent tax years, the current year VBR will be the same as the prior year VBR.

(2) For class ~~3~~ three property that contains a land reclassification or a land use change, the current year VBR will be the prior year VBR of the new classification or land use change.

(3) For class ~~3~~ three property that contains a

productivity or grade change, the current year VBR will be the prior year VBR of the prior grade.

(4) For class ~~4~~ four property (excluding industrial property) that contains new construction, the current year VBR is determined by dividing the reappraisal value by ~~1~~ one plus the percent of neighborhood group change. The following formula illustrates that calculation:

VBR = Reappraisal value /(1 + NBHD group percentage)

(5) Land which has been reclassified as residential or commercial land after January 1, 2002, will have the VBR determined by comparing other 2002 market values of similar residential or commercial land, and determining a comparable VBR for the new residential or commercial land.

~~(5)~~ (6) For class ~~4~~ four property (excluding industrial property) that has been either partially or wholly destroyed, the current year VBR is calculated by first determining what percent of the property has been destroyed. That percent is multiplied by the prior year improvement VBR to determine a value amount that is attributed to the destruction. The current year VBR is then the difference between the prior year VBR and the value attributed to the destruction. The following formula illustrates that calculation:

Current year VBR =
Prior year VBR -
(Percent of property destroyed x prior year improvement VBR)

~~(6)~~ (7) For class ~~10~~ ten property that contains a land reclassification or a land use change, the current year VBR will be the prior year VBR of the new classification or land use change.

~~(7)~~ (8) For class ~~10~~ ten property that contains a productivity or grade change, the current year VBR will be the prior year VBR of the prior grade.

~~(8)~~ ~~(a)~~ (9) The only instances when the current year VBR will be less than the prior year VBR are:

~~(i)~~ (a) In the case of class ~~4~~ four improvements that have been partially or wholly destroyed;

~~(ii)~~ (b) When the neighborhood group percentage change is negative and there is new construction; or

~~(iii)~~ (c) When land use changes have occurred.

~~(b)~~ (10) In all other situations, the current year VBR will be the greater of the value determined through application of the formula in (4) or the prior year VBR.

AUTH: Sec. 15-1-201 and 15-7-111, MCA
IMP: Sec. 15-7-111, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.20.502 to incorporate reappraisal adjustments as required by amendments to 15-7-111, MCA, as enacted by the 2000 special session, and changes made to the same statute by SB 501 in the 2001 legislative session. Changing the class references from

numeric to text is necessary so that the rule conforms to the correct format of these classes as identified in the statutes.

42.20.503 DETERMINATION OF CURRENT YEAR PHASE-IN VALUE FOR CLASS ~~3~~ THREE, CLASS ~~4~~ FOUR, AND CLASS ~~10~~ TEN PROPERTY ~~(1) The department is required to determine the current year phase-in value for each property in class 3, class 4, and class 10 annually. The current year phase-in value is determined by adding the difference between the reappraisal (REAP) value and the VBR times the phase-in percentage to the VBR.~~

~~1997 Phase-In =~~
~~[(1997 Reappraisal Value - Value Before Reappraisal) x 2%]~~
~~+ Value Before Reappraisal~~

~~1998 Phase-In =~~
~~[(1997 Reappraisal Value - Value Before Reappraisal) x 4%]~~
~~+ Value Before Reappraisal~~

~~(2)~~ (1) For tax years ~~1999~~ 2003 through ~~2002~~ 2008, the department is required to determine the current year phase-in value for each property in class ~~3~~ three, class ~~4~~ four, and class ~~10~~ ten annually. The current year phase-in value is determined by subtracting the ~~1998~~ 2002 ~~phase-in value~~ VBR from the ~~1997~~ 2003 reappraisal value multiplied by the applicable phase-in percentage, the product of which is added to the ~~1998 phase-in~~ 2002 VBR value. The calculations of the phase-in values are represented by the following formula:

~~1999~~ 2003 Phase-~~I~~in =
[(~~1997~~ 2003 reappraisal value - ~~1998~~ 2002 ~~phase-in~~ VBR value) x ~~25~~ 16.6%] + ~~1998~~ 2002 ~~phase-in value~~ VBR

~~2000~~ 2004 Phase-in =
[(~~1997~~ 2003 reappraisal value - ~~1998~~ 2002 ~~phase-in~~ VBR value) x ~~50~~ 33.32%] + ~~1998~~ 2002 ~~phase-in value~~ VBR

~~2001~~ 2005 Phase-in =
[(~~1997~~ 2003 reappraisal value - ~~1998~~ 2002 ~~phase-in~~ VBR value) x ~~75~~ 49.98%] + ~~1998~~ 2002 ~~phase-in value~~ VBR

~~2002~~ 2006 Phase-in =
[(~~1997~~ 2003 reappraisal value - 2002 VBR value) x 66.64%]
+ 2002 VBR value

2007 Phase-in =
[(2003 reappraisal value - 2002 VBR value) x 83.30%]
+ 2002 VBR value

2008 Phase-in =
2003 reappraisal value

AUTH: Sec. 15-1-201 and 15-7-111, MCA
IMP: Sec. 15-7-111, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.20.503 to incorporate reappraisal adjustments as required by amendments to 15-7-111, MCA, as enacted by the 2000 special session, and changes made to the same statute by SB 501 in the 2001 legislative session. Changing the class references from numeric to text is necessary so that the rule conforms to the correct format of these classes as identified in the statutes.

42.20.504 NEW CONSTRUCTION DETERMINATION (1) The following criteria will be used to identify new construction and destruction:

(a) All residential or commercial structures, out-buildings, and mobile homes that were built, remodeled, or destroyed in the preceding year;

(b) Properties with new, attached garages built in the preceding year;

(c) Properties which had any land reclassification or land use changes; or

(d) Properties with out-buildings built in the preceding year.

(2) The following will not be considered new construction or destruction:

(a) Properties with square footage changes due to correction of measurements or sketch vectoring, or due to coding corrections for story heights, such as story with full finished attic to ~~1 ½~~ 1.5 stories;

(b) Properties with improvement grade changes;

(c) Properties with condition, desirability, ~~utility~~ and usefulness (CDU~~)~~ ~~factor~~ rating) changes;

(d) Properties with changes in heat or air conditioning;

(e) Residential dwelling~~s~~ units with changes in square footage of living area of 100 square feet or less;

(f) Properties with changes in effective year; or

(g) Properties with changes in finished basement areas.

AUTH: Sec. 15-1-201 and 15-7-111, MCA
IMP: Sec. 15-7-111, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.20.504 to incorporate reappraisal adjustments as required by amendments to 15-7-111, MCA, as enacted by the 2000 special session, and changes made to the same statute by SB 501 in the 2001 legislative session. Minor housekeeping changes were also made.

42.20.505 ASSESSMENT NOTICES AND VALUATION REVIEWS

(1) As required by 15-7-102, MCA, the assessment notice shall include:

(a) ~~R~~reappraisal value;

(b) ~~C~~current year phase-in value;

(c) ~~The~~ total amount of mills levied against the property in the prior year;

(d) ~~S~~statement that the notice is not a tax bill; and

(e) ~~The~~ amount of appraised value exempt from taxation

under ~~15-6-134~~ 15-6-201, MCA.

(2) A taxpayer may seek a department review of any of the required valuation items set forth in (1)(a), (b), and (e) of this rule. Additionally, a taxpayer may request a review of any of the methods used to determine those values which are shown in (1)(a), (b), and (e).

AUTH: Sec. 15-1-201 and 15-7-111, MCA

IMP: Sec. 15-6-201, 15-7-102, 15-7-111, MCA, and Sec. 11, Ch. 463, L. 1997

REASONABLE NECESSITY: The department is proposing to amend ARM 42.20.505 to correct the citation shown in the rule from 15-6-134 to 15-6-201, MCA. Section 15-6-134, MCA addresses the taxable percentage of class four property, only, and 15-6-201, MCA, refers to the categories that are exempt from taxation.

42.20.509 DETERMINATION OF VALUE BEFORE REAPPRAISAL (VBR) FOR INDUSTRIAL PROPERTIES (CLASS ~~4~~ FOUR) (1) For property that contains no new construction, destruction, ~~or~~ land use changes, land splits, or other changes to the property, the current year VBR will be the same as the prior year VBR.

(2) The reappraisal value of new construction will be trended back to a VBR. The trend used to arrive at the VBR shall be calculated using cost indices from "Marshall Valuation Service." The trend used shall be called the new construction trend factor. The new construction trend factor for industrial properties is ~~.892~~ .84. The VBR will be adjusted to reflect the new construction as if it were in place in ~~1996~~ 2002. The same method will be used in subsequent tax years.

For purposes of illustration, assume the following:

Reappraisal New Construction Value = $100,000
New Construction Trend Factor = ~~.892~~ .84

(a) Given these assigned values, the trend factor is applied as follows:

New construction VBR =
REAP new construction value x new construction trend factor

Example: ~~$89,000~~ 84,000 = $100,000 x ~~.892~~ .84

(3) Property destroyed after January 1, ~~1996~~ 2002, will be removed from the VBR of the industrial site. The destroyed property also will be deducted from the reappraised value at its reappraised cost.

(4) Land which has been reclassified as industrial land after January 1, ~~1996~~ 2002, will have the VBR determined by comparing other ~~1996~~ 2002 market values of similar industrial land, and determining a comparable VBR for the new industrial land.

AUTH: Sec. 15-1-201 and 15-7-111, MCA
IMP: Sec. 15-7-111, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.20.509 to incorporate reappraisal adjustments as required by amendments to 15-7-111, MCA, as enacted by the 2000 special session, and changes made to the same statute by SB 501 in the 2001 legislative session. The law as amended changed the new construction trend factor percentage and the rule reflects this change, as well as the changes to applicable years.

42.20.511 VALUATION OF CLASS ~~5~~ FIVE REAL PROPERTY FOR QUALIFYING AIR AND WATER POLLUTION CONTROL PROPERTY, NEW INDUSTRIAL PROPERTY, GASOHOL FACILITIES, QUALIFYING RESEARCH AND DEVELOPMENT FIRMS, AND ELECTROLYTIC REDUCTION FACILITIES

(1) Qualifying air and water pollution control property, new industrial property, gasohol facilities, qualifying research and development firms, and electrolytic reduction facilities real property included in class ~~5~~ five will be revalued annually. The department will apply an annual appraisal trending factor to the qualifying property to arrive at the market value. An annual appraisal trend factor will be calculated, using the January cost indices from Marshall Valuation Service, for the current tax year. If Marshall Valuation Service is not available, other accepted cost manuals or indices may be used.

(2) The annual appraisal trend factor will be applied to the previous year's market value to arrive at the current year's market value.

AUTH: Sec. 15-1-201 and 15-7-111, MCA
IMP: Sec. 15-7-111, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.20.511 for housekeeping purposes only. Changing the class references from numeric to text is necessary so that the rule conforms to the correct format of these classes as identified in the statutes.

42.20.512 VALUATION OF CLASS ~~5~~ FIVE LOCALLY ASSESSED ELECTRIC AND TELEPHONE COOPERATIVES AND TELECOMMUNICATIONS COMPANIES (1) The department shall annually appraise locally assessed electric and telephone cooperatives' and locally assessed telecommunications companies' property using the methods described in ARM Title 42, chapter 22. The methods described are used in appraising other property with similar characteristics.

AUTH: Sec. 15-1-201 and 15-7-111, MCA
IMP: Sec. 15-6-135 and 15-7-111, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.20.512 for housekeeping purposes only. Changing the class references from numeric to text is necessary so that the rule conforms to the correct format of these classes as identified in the statutes. The rule is further amended to include locally assessed telecommunications companies because they are in class five property in Montana.

42.20.515 DETERMINATION OF TOTAL TAXABLE VALUE OF NEWLY TAXABLE PROPERTY (1) For the ~~1999~~ 2001 tax year and subsequent tax years, the department will calculate for each taxing jurisdiction the total taxable value of class ~~4~~ four newly taxable property as follows:

(a) For tax years 2001 and 2002, t~~T~~he department shall determine the reappraisal value of class ~~4~~ four newly taxable property in a taxing jurisdiction. The reappraisal value of newly taxable class ~~4~~ four property is calculated as the difference between the current year total reappraisal value of class ~~4~~ four property and the previous year total reappraisal value of class ~~4~~ four property. Beginning with tax year 2001, class four newly taxable property in a taxing jurisdiction will include the total reappraisal value of class four property for any tax increment financing district which has been dissolved or terminated.

(b) ~~The department also shall determine the additional class 4 land value excepted from taxation in a taxing jurisdiction for the current tax year as a result of the land cap provided in 15-7-111, MCA. The additional class 4 land value excepted from taxation is calculated as the difference between the total class 4 land value excepted from taxation under 15-7-111(4), MCA, for the current tax year and the total class 4 land value excepted from taxation under 15-7-111(4), MCA, for the previous tax year.~~ For tax year 2003 and subsequent tax years, the current year total reappraisal value is determined by valuing each current year parcel with the 2003 valuation schedules and models. The previous year total reappraisal value is determined by valuing each previous year parcel with the 2003 valuation schedules and models. The difference between the current year total reappraisal value and the previous year total reappraisal value is the reappraisal value of class four newly taxable property.

~~(c) The total market value of class 4 newly taxable property for the current tax year is determined by adding the total reappraisal value of class 4 newly taxable property for the current year and the additional class 4 land value excepted from taxation for the current tax year by the land cap provisions.~~

~~(d)~~ (c) The total taxable value of newly taxable property for the current tax year is determined by multiplying the current year total ~~market~~ reappraisal value by the current year ~~effective tax rate~~ full reappraisal to taxable value conversion factor for class ~~4~~ four property.

~~(e)~~ (d) For example, applying the steps set forth ~~above~~ in (1)(a), the total ~~market~~ reappraisal value of newly taxable class ~~4~~ four property for a taxing jurisdiction, would be determined as follows:

Current year total class ~~4~~ four reappraisal value	$2,000,000
Previous year total class ~~4~~ four reappraisal value	-1,800,000
Reappraisal value of new class ~~4~~ four property	$ 200,000
~~Current year total land value excepted by cap~~	~~$ 20,000~~

~~Previous year total land value excepted by cap~~	~~-~~	~~15,000~~
~~Land value excepted by land cap for current year~~	~~$~~	~~5,000~~

~~Reappraisal value of new class 4 property~~	~~$~~	~~200,000~~
~~Current year value of land excepted by land cap~~	~~+~~	~~5,000~~
~~Market value of class 4 newly taxable property~~	~~$~~	~~205,000~~

~~(f)~~ (e) Using the above example, the total taxable value of newly taxable class ~~4~~ four property in the taxing jurisdiction for the ~~1999~~ 2001 tax year would be determined by multiplying the total ~~market~~ reappraisal value of newly taxable class ~~4~~ four property by the ~~1999~~ 2001 ~~effective tax rate~~ full reappraisal to taxable value conversion factor for class ~~4~~ four property in that jurisdiction as shown below~~.~~:

~~Total market value of new class 4 property~~	~~$~~	~~205,000.00~~
~~1999 effective tax rate for class 4 property~~	~~x~~	~~2.66%~~
~~Total taxable value of new class 4 property~~	~~$~~	~~5,453.00~~

Total reappraisal value of new class four property	$	200,000
2001 full reappraisal to taxable value conversion factor for class four property	x	2.51%
Total taxable value of newly taxable class four property	$	5,020

(2) For tax year ~~1999~~ 2001 and subsequent tax years, the department will calculate for each taxing jurisdiction the total taxable value of newly taxable property that is classified as class ~~5, 6, 8, 9, 12 and 13~~ five, six, eight, nine, twelve, and thirteen property. ~~Except as provided in (3) of this rule, t~~The taxable value of newly taxable property of class ~~5, 6, 8, 9, 12 and 13~~ five, six, eight, nine, twelve, and thirteen property shall be determined as follows:

(a) The department shall determine the total market value of newly taxable property in a taxing jurisdiction. The total market value of newly taxable property is calculated as the difference between the current year total reappraisal value for each class of property and the previous year total reappraisal value of the same class of property.

(b) For each class of property, the total taxable value of newly taxable property for the current tax year is determined by multiplying the current year total market value of newly taxable property by the current year tax rate for that class of property.

~~(3) For the 2000 tax year, the department shall calculate the total taxable value for class 8 property as follows:~~

~~(a) The department shall determine the total reappraisal value of newly taxable class 8 property in a taxing jurisdiction. The total reappraisal value of newly taxable property is calculated as the difference between the current year total reappraisal value of class 8 property and the previous year total reappraisal value of class 8 property.~~

~~(b) The department also shall determine the total value of class 8 property excepted from taxation in a taxing jurisdiction~~

~~for the 2000 tax year as a result of the exemption provided in 15-6-138(6), MCA.~~

~~(c) The total market value of class 8 newly taxable property for the 2000 tax year is determined by adding the reappraisal value of class 8 newly taxable property for the 2000 tax year and the amount of class 8 property value excepted from taxation for the 2000 tax year by the provisions of 15-6-138(6), MCA.~~

~~(d) The total taxable value of newly taxable class 8 property for the 2000 tax year is determined by multiplying the 2000 tax year total market value of newly taxable class 8 property by the tax rate for class 8 property applicable to the tax year 2000.~~

~~(4)~~ (3) The total taxable value of newly taxable class ~~3~~ three and class ~~10~~ ten property shall be determined in the same manner as set forth in (2), ~~of this rule~~ to the extent that land is transferred into a taxing jurisdiction (e.g., a change from exempt status to taxable status) and identified as newly taxable property. For jurisdictions in which land transfers have not been specifically identified, a value for newly taxable class ~~3~~ three and ~~10~~ ten property will not be calculated.

~~(5)~~ (4) The total taxable value of all newly taxable property in a taxing jurisdiction shall be determined by adding together:

(a) the separate taxable values as determined above for class ~~3, 4, 5, 6, 8, 9, 10, 12 and 13~~ three, four, five, six, eight, nine, ten, twelve, and thirteen property for that taxing jurisdiction; and

(b) the total taxable value of eliminated property for the taxing jurisdiction which is calculated by the department at 0.12% of the previous year total taxable value of the taxing jurisdiction.

AUTH: Sec. 15-1-201 and 15-7-111, MCA
IMP: Sec. 15-40-420, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.20.515 to incorporate reappraisal adjustments as required by amendments to 15-7-111, MCA, as enacted by the 2000 special session, and changes made to the same statute by SB 501 in the 2001 legislative session. Reference to "land cap" is being deleted since it is no longer applicable. As a result of adjustments made to the computer-assisted mass appraisal system (CAMAS), the department is able to more accurately determine newly taxable property for tax year 2003 and subsequent tax years. New language in the rule describes that new methodology. An addition to the current rule specifies that the value associated with a tax increment financing district that has been dissolved or terminated will be considered as newly taxable property, in accordance with current law. Changing the class references from numeric to text is necessary so that the rule conforms to the correct format of these classes as identified in the statutes.

42.20.516 APPLICATION OF PHASE-IN PROVISIONS FOR CLASS ~~3~~

THREE, CLASS ~~4~~ FOUR, AND CLASS ~~10~~ TEN PROPERTIES THAT DECREASE IN VALUE DUE TO REAPPRAISAL (1) The department will not apply a phase-in percentage calculation to class ~~3~~ three, class ~~4~~ four, and class ~~10~~ ten properties when the reappraisal value decreased as a result of the reappraisal of those properties. The value to be used for assessment purposes for those properties will be the reappraisal value.

(2) The reappraisal value is subject to any applicable ~~land cap adjustments or~~ homestead and comstead exemptions.

AUTH: Sec. 15-1-201, MCA
IMP: Sec. 15-6-134 and 15-7-111, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.20.516 because reference to the "land cap" has been deleted since it is no longer applicable. All other amendments are housekeeping. Changing the class references from numeric to text is necessary so that the rule conforms to the correct format of these classes as identified in the statutes.

4. The Department proposes to repeal the following rules:

42.20.506 CERTIFIED MILL LEVY DETERMINATION which can be found on page 42-2093 of the Administrative Rules of Montana.

AUTH: Sec. 15-1-201 and 15-7-111, MCA
IMP: Sec. 15-6-134 and 15-7-111, MCA

REASONABLE NECESSITY: The department is proposing to repeal ARM 42.20.506 because the former requirements of the department to certify mill levies as referenced in 7-6-2522 and 15-10-202, MCA, were deleted by the provisions of SB 501 in the 2001 legislative session.

42.20.518 LAND CAP ELIGIBILITY AND APPLICATION which can be found on page 42-2098 of the Administrative Rules of Montana.

AUTH: Sec. 15-1-201, MCA
IMP: Sec. 15-7-111, MCA

REASONABLE NECESSITY: The department is proposing to repeal ARM 42.20.518 because an amendment to 15-7-111, MCA, in the 2000 special legislative session, deleted the "land cap" provisions to tax years beginning after December 31, 2001.

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 5805
Helena, Montana 59604-5805

and must be received no later than October 11, 2002.

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.state.mt.us/revenue/rules_home_page.htm, under the Notice of Rulemaking section. 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 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.

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

/s/ Cleo Anderson	/s/ Kurt G. Alme
CLEO ANDERSON	KURT G. ALME
Rule Reviewer	Director of Revenue

Certified to Secretary of State August 30, 2002

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the proposed amendment of ARM 42.17.504 relating to rates for new employers	))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On October 9, 2002, at 9:00 a.m., a public hearing will be held in the Director's Conference Room on the Fourth Floor of the Sam W. Mitchell Building, at Helena, Montana, to consider the amendment of ARM 42.17.504 relating to rates for new employers.

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

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Revenue not later than 5:00 p.m., September 25, 2002, 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 5805, Helena, Montana 59604-5805; telephone (406) 444-2855; fax (406) 444-3696; or e-mail canderson@state.mt.us.

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

42.17.504 RATES FOR NEW EMPLOYERS (1) Rates for new employers are based on ~~Standard Industrial Classification (SIC)~~ North American Industry Classification System (NAICS) codes which are assigned to ~~for~~ nine major ~~industrial classifications~~ rate divisions, plus a non-classifiable establishment division for employer accounts whose industrial class cannot be determined. ~~SIC codes are assigned using the Standard Industrial Classification Manual. The SIC code assigned determines the major industrial classification and rate for the new employer account. On accounts comprised of two or more businesses or industries, the business or industry that produces the most revenue determines the proper SIC code.~~

(2) A professional employer organization (PEO) licensed under Title 39, chapter 8, MCA, for the first calendar year of subjectivity~~,~~ is assigned the non-classifiable rate for new employers. Thereafter, unless the PEO is experience-rated, the PEO is assigned a rate as a new employer in the industry in which the majority of workers are placed for the PEO's clients.

(a) The PEO must provide the department with the quarterly report and a list of workers showing which workers were assigned to which client. If the list is not provided, the PEO will be

assigned the non-classifiable rate for new employers for the following year.

(3) The ~~SIC~~ NAICS codes are assigned to rate divisions as follows:

(a) Division A: NAICS Code 11 - agriculture, forestry, ~~and~~ fishing, and hunting;

(b) Division B: NAICS Code 21 - mining;

(c) Division C: NAICS Code 23 - construction;

(d) Division D: NAICS Code 31-33 - manufacturing;

(e) Division E: ~~- transportation, communications, and public utilities;~~

(i) NAICS Code 22 - utilities;

(ii) NAICS Code 48 - transportation; and

(iii) NAICS Code 49 - warehousing;

(f) Division F: NAICS Code 42 - wholesale trade;

(g) Division G:

(i) NAICS Code 44-45 - retail trade; and

(ii) NAICS Code 722 - food services and drinking places;

(h) Division H:

(i) NAICS Code 52 - finance~~,~~ and insurance~~,~~; and

(ii) NAICS Code 53 - real estate, rental, and leasing;

(i) Division I: ~~- services~~

(i) NAICS Code 51 - information services;

(ii) NAICS Code 54 - professional and technical services;

(iii) NAICS Code 55 - management of companies and enterprises;

(iv) NAICS Code 56 - administrative support, waste management, and remediation services;

(v) NAICS Code 61 - educational services;

(vi) NAICS Code 62, health care and social assistance;

(vii) NAICS Code 71 - arts, entertainment, and recreation;

(viii) NAICS Code 721 - accommodation services; and

(ix) NAICS Code 81 - other services; and

(j) Division K: NAICS Code 99 - non-classifiable establishments.

(4) Employers that do not provide sufficient information to be properly classified are assigned to ~~the~~ Division K, NAICS Code 99, non-classifiable establishments, ~~division~~ which carries the maximum rate for new employers. Employers have 30 days from the postmarked date of the rate notice or rate letter to submit sufficient information for a proper ~~SIC~~ NAICS classification and rate assignment.

(5) The average rate for each ~~major industrial classification~~ rate division is computed once a year to set rates for the calendar year. Rates for new employers are determined using the average contribution rates in effect for the prior and current calendar year, plus any adjustment for changes in the rate schedule.

AUTH: Sec. 39-8-201 and 39-51-302, MCA
IMP: Sec. 39-8-207 and 39-51-1101, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.17.504 because the Standard Industrial Classification (SIC)

system is being replaced by the North American Industry Classification System (NAICS). The Montana Department of Labor and Industry has been dual coding both SIC and NAICS for the past few years, but they will discontinue assigning SIC to employer accounts this year. There is no "one-to-one" relationship between the SIC and NAICS codes, and there is no method in place to update the SIC when a major industry classification (NAICS) changes for any given employer. Without these changes, the department would not have a reliable method of assigning unemployment insurance tax rates for new employers in future years. Changing the rule will allow the department to assign the unemployment insurance rates for new employers to correspond with the assignment of industry codes using the NAICS. NAICS was adopted by the Office of Management and Budget, Executive Office of the President, on April 9, 1997 (Federal Register Volume 62, Number 68, pages 17287-17337). NAICS codes are assigned by the department of labor and industry using the North American Industry Classification System Manual. The NAICS code assigned determines the major industrial classification and rate for the new employer account. On accounts comprised of more than one primary business activity, the industry code is assigned based on the establishment's principal product or group of products produced, or services rendered. Revenue or employment may be used to determine principal product or service, consistent with the principles in the NAICS manual.

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

Cleo Anderson
Department of Revenue
Director's Office
P.O. Box 5805
Helena, Montana 59604-5805

and must be received no later than October 11, 2002.

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

6. An electronic copy of this Notice of Public Hearing is available through the Department's site on the World Wide Web at http://www.state.mt.us/revenue/rules_home_page.htm, under the Notice of Rulemaking section. The Department strives to make the electronic copy of this Notice of Public Hearing conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the Department strives to keep its website accessible at all times, concerned persons should be aware that the website may be

unavailable during some periods, due to system maintenance or technical problems.

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

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

/s/ Cleo Anderson	/s/ Kurt G. Alme
CLEO ANDERSON	KURT G. ALME
Rule Reviewer	Director of Revenue

Certified to Secretary of State August 30, 2002

**BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA**

In the matter of the proposed amendment of ARM 42.4.110; and transfer and amendment of ARM 42.15.431 and 42.15.432 relating to personal income tax credits for energy conservation	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT AND TRANSFER AND AMENDMENT

TO: All Concerned Persons

1. On October 4, 2002, at 9:00 a.m., a public hearing will be held in the Fourth Floor Conference Room of the Sam W. Mitchell Building, at Helena, Montana, to consider the amendment of ARM 42.4.110; and the transfer and amendment of ARM 42.15.431 and 42.15.432 relating to personal income tax credits for energy conservation.

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

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Revenue not later than 5:00 p.m., September 25, 2002, 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 5805, Helena, Montana 59604-5805; telephone (406) 444-2855; fax (406) 444-3696; or e-mail canderson@state.mt.us.

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

42.4.110 DEFINITIONS The following definitions apply to terms used in this sub-chapter:

(1) through (3) remain the same.

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

AUTH: Sec. 15-1-201, 15-30-305, 15-32-407, and 15-35-122, MCA

IMP: Sec. 15-24-3001, 15-32-404, and 15-35-103, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.4.110 to add the definition for "new construction" to help clarify what items may be included in new construction for the energy credit as it applies to 15-32-109, MCA, as enacted by SB 506 of the 2001 legislative session.

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

42.15.431 CREDIT FOR INVESTMENT FOR ENERGY CONSERVATION

(1) ~~A credit against tax liability is allowed for expenditures made in both residential and nonresidential buildings for the purpose of conserving energy.~~

~~(2) Single and multiple family dwellings shall be subject to the residential credit limitations. All other buildings shall be subject to the limitations for nonresidential buildings. A building used for both residential and nonresidential purposes shall be categorized according to its primary use. Primary use is based on either actual or imputed rents.~~

~~(3)~~ In new construction, ~~no~~ credit is not allowed for that portion of capital expense incurred in meeting established standards. ~~In~~ For new ~~residential and nonresidential~~ buildings, only the cost ~~for~~ of that portion of a capital expenditure ~~that is~~ in excess of established standards is to be used in calculating the credit. The minimum standards utilized by the department ~~of revenue~~ in determining allowances will be taken from the currently recognized energy building code in Montana and the United States office of housing and urban development. If Montana does not have an applicable energy building code, then national standards meeting the demands of this geographical area will be followed. The energy code or standard relied upon by the department is to be updated on an annual basis.

~~(4)~~(2) In the improvement of existing ~~residential and nonresidential~~ buildings, a credit will be given for capital investments that are recognized to substantially reduce the waste or dissipation of energy, or reduce the amount of energy required for proper utilization of the building.

~~(5)~~(3) A credit will not be allowed for capital investments that are directly used in a production or manufacturing processor rendering a service to customers.

~~(6)~~(4) ~~A credit is not allowed for the purchase and installation of new equipment or appliances such as hot water heaters, furnaces, air conditioners, etc.~~ A credit is allowed to individuals for the installation of a new domestic hot-water, heating, or cooling system in an existing building only if the new system reduces the waste or dissipation of energy, or reduces the amount of energy required.

~~(7)~~(5) ~~This credit must be claimed on Form 2C, which may be obtained from the Montana Department of Revenue, Helena, Montana 59620. The completed form must be attached to the taxpayer's return for the year in which the credit is claimed.~~ See ARM 42.4.118 for filing requirements.

AUTH: Sec. 15-32-105, MCA
IMP: Sec. 15-32-105 and 15-32-109, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.15.431 to incorporate the changes in 15-32-109, MCA, as enacted by SB 506 of the 2001 legislative session. The

department is striking (1) and (2) because SB 506 removed the qualification for resident and nonresident classification from the statute so there is no longer a separate distinction between the two. The department further proposes to transfer this rule to Chapter 4 where other energy rules are located.

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

(a) insulation in existing buildings of floors, walls, ceilings, and roofs;

(b) insulation in new buildings of floors, walls, ceilings, and roofs, insofar as it produces an insulating factor in excess of established standards;

(c) insulation of pipes and ducts located in non-heated areas and of hot-water heaters and tanks;

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

(e) storm or triple glazed windows;

(f) storm doors;

(g) insulated exterior doors;

(h) caulking and weather stripping;

(i) devices which limit the flow of hot-water from shower heads and lavatories;

(j) waste heat recovery devices;

(k) glass fireplace doors;

(l) exhaust fans used to reduce air conditioning requirements;

(m) replacement of incandescent light fixtures with light fixtures of a more efficient type;

(n) lighting controls with cutoff switches to permit selective use of lights;

(o) clock-regulated thermostats.; and

(p) installation of new domestic hot-water, heating, or cooling systems, so long as the replacement or installation of the new system reduces the waste or dissipation of energy, or reduces the amount of energy required.

(2) This is not to be considered an exhaustive list of qualifying capital investments. The department will consider other investments that substantially reduce the waste or dissipation of energy, or reduce the amount of energy required for the heating, cooling, or lighting of buildings.

AUTH: Sec. 15-32-105, MCA

IMP: Sec. 15-32-105 and 15-32-109, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 45.15.432 to incorporate the changes in 15-32-109, MCA, as enacted by SB 506 of the 2001 legislative session. The department further proposes to transfer this rule to Chapter 4 with other energy related rules.

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 5805
Helena, Montana 59604-5805

and must be received no later than October 11, 2002.

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

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

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

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

/s/ Kurt G. Alme
KURT G. ALME
Director of Revenue

Certified to Secretary of State August 30, 2002

BEFORE THE BOARD OF HOUSING
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment of ARM 8.111.513 pertaining to the terms and conditions of loans made from TANF housing assistance funds	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On July 11, 2002, the Board of Housing published a notice of proposed amendment of the above-stated rule at page 1832, 2002 Montana Administrative Register, issue number 13.

2. The Board has amended the rule exactly as proposed.

3. No comments or testimony were received.

Reviewed by: DEPARTMENT OF COMMERCE
BOARD OF HOUSING

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

By: /s/ Mark A. Simonich
MARK A. SIMONICH, Director

Certified to the Secretary of State August 30, 2002.

**BEFORE THE DEPARTMENT OF CORRECTIONS
OF THE STATE OF MONTANA**

In the matter of the amendment of ARM 20.9.101, 20.9.103, 20.9.106, 20.9.110, 20.9.113, 20.9.115, 20.9.116, 20.9.120, 20.9.122; adoption of new rules I through VIII pertaining to Youth Placement Committees; and repeal of ARM 20.9.121	))))))))	NOTICE OF AMENDMENT, ADOPTION AND REPEAL

TO: All Concerned Persons

1. On March 14, 2002, the Department of Corrections published notice of the proposed amendment, adoption and repeal of the above-stated rules at page 618 of the 2002 Montana Administrative Register, Issue Number 5. An amended notice of public hearing was published at page 1039 of the 2002 Montana Administrative Register, Issue Number 7.

2. The Department has adopted new Rule III (ARM 20.9.128), new Rule IV (ARM 20.9.129), new Rule VII (ARM 20.9.140) and new Rule VIII (ARM 20.9.141) exactly as proposed.

3. The Department has amended ARM 20.9.101, 20.9.103, 20.9.106, 20.9.110, 20.9.113, 20.9.115, 20.9.116, 20.9.120 and 20.9.122 with the following changes, stricken matter interlined, new matter underlined:

20.9.101 DEFINITIONS For the purpose of this rule, the following definitions apply:

(1) same as proposed.

(2) same as proposed, but is renumbered (3).

~~(3)~~ (4) "Committee" means a youth placement committee ~~with the department of corrections member~~ appointed by the ~~department and the remaining members appointed by the~~ youth court judge pursuant to 41-5-121, MCA.

(4) through (10) same as proposed, but are renumbered (5) through (11).

~~(11)~~ (13) "Early intervention" means provision of supervision or services to a youth by the youth court upon initial referral to the youth court for a ~~status or~~ misdemeanor offense or services intended to prevent first offenders from further involvement in the juvenile justice system.

(12) through (14) same as proposed, but are renumbered (14) through (16).

~~(15) "Out-of-home placement" means placement of a youth in a program, facility, or home other than that of the youth's custodial parent, for purposes other than pre-adjudicatory detention or assessment. The term does not include placement in a shelter care or emergency placement facility for a period of~~

~~less than 45 days.~~

~~(16)~~ (17) "Placement" has the same meaning as "out-of-home placement" as defined in 41-5-103, MCA, and used throughout these rules but may include shelter care, detention, and emergency placements of less than 45 days.

(17) through (24) same as proposed, but are renumbered (18) through (25).

~~(25) "Youth care facility" (YCF) means a licensed or unlicensed facility in which foster care is provided and includes youth foster homes, youth group homes, child care agencies, boarding schools and youth assessment centers.~~

(26) same as proposed.

~~(27)~~ (2) "CAPS" means child and adult protective services, the online statewide management system maintained by DPHHS.

(28) same as proposed, but is renumbered (12).

AUTH: 41-5-2006 and ~~52-1-103,~~ 53-1-203, MCA
IMP: 41-5-121, 41-5-123, 41-5-124, 41-5-125, 41-5-130, 41-5-131, 41-5-132 ~~41-5-2006, 52-1-103,~~ and 53-1-203, ~~and 53-21-102,~~ MCA

20.9.103 DUTIES OF THE YOUTH PLACEMENT COMMITTEE CHAIR

(1) through (1)(f) same as proposed.

(g) in the case of participating districts, forward primary and alternative recommendations to the youth court judge, the county attorney, ~~the department's representative~~ the juvenile community corrections bureau chief and the youth's attorney prior to any scheduled disposition hearing;

(h) through (j) same as proposed.

(2) Committee meetings shall provide a means ~~venue~~ for department and youth court compliance and monitoring with 41-5-2003 and 41-5-2004, MCA, through the exchange and gathering of information as directed by department policy.

(3) and (4) same as proposed.

(5) The department of corrections shall ~~appoint one~~ recommend the department member, and the youth court judge shall appoint the remaining committee members who shall serve a term of two years. A member may be reappointed to additional terms.

(6) same as proposed.

AUTH: 41-5-2006 and ~~52-1-103,~~ 53-1-203, MCA
IMP: 41-5-121, 41-5-122, 41-5-123, 41-5-124, 41-5-125, 41-5-130, 41-5-131, and 41-5-132 ~~and 41-5-2006~~, MCA

20.9.106 REFERRALS TO THE COMMITTEE (1) through (7) same as proposed.

AUTH: ~~52-1-103(17),~~ 53-1-203, MCA
IMP: 41-5-121, 41-5-122, 41-5-123, 41-5-124, and 41-5-125, MCA

20.9.110 PROCEDURES FOR YOUTH PLACEMENT COMMITTEE MEETINGS (1) through (7) same as proposed.

AUTH: ~~41-5-2006, 52-1-103(17), and~~ 53-1-203, MCA
IMP: 41-5-122, 41-5-123, 41-5-124 and 41-5-125, MCA

20.9.113 PLACEMENT RECOMMENDATION PROCEDURES (1) The committee chair shall submit in writing the primary and alternative recommendations prior to disposition~~:~~

~~(a)~~ to the department juvenile community corrections bureau chief and youth court judge within 48 hours of the meeting, excluding weekends and legal holidays in non-participating districts~~;~~.

~~(b) to the presiding youth court judge within 48 hours of the meeting, excluding weekends and legal holidays in participating districts.~~

(2) and (3) same as proposed.

(4) In non-participating districts the department shall determine whether to accept the committee's recommendation within 72 hours of receipt of the recommendations~~, excluding weekends and legal holidays~~ and shall notify the committee chair of its decision.

(4)(a) through (5)(b) same as proposed.

(6) In non-participating districts, if the department rejects both of the committee's recommended placements, the department shall notify the committee chair in writing of the reasons for rejecting each placement following the disposition hearing. The department shall make arrangements with the youth's probation officer for the placement of the youth in an appropriate placement determined by the department. The department shall notify the committee chair, the county attorney and the appropriate youth court judge in writing of the facility selected for the placement of the youth within ~~three working days~~ 72 hours of the department's decision.

(7) and (8) same as proposed.

AUTH: ~~52-1-103(17),~~ 53-1-203, MCA
IMP: 41-5-123, 41-5-124 and 41-5-125, MCA

20.9.115 CRITERIA FOR APPROVING RECOMMENDATIONS

(1) through (1)(g) same as proposed.

(h) the judicial district that will be financially responsible for the placement costs has adequate funding resources with which to pay for the placement without overspending that judicial district's allocated juvenile residential placement budget; and

(i) in non-participating districts the placement recommended is in accordance with a disposition under 41-5-1512 and 41-5-1513, MCA, pursuant to an adjudication under 41-5-1502, MCA.~~;and~~

~~(j)~~ (2) In participating districts the placement recommended shall be approved by the department if the recommendation is in accordance with a disposition under 41-5-1302, 41-5-1501, 41-5-1512 or 41-5-1513, MCA.

(2) same as proposed, but is renumbered (3).

AUTH: ~~52-1-103,~~ 53-1-203, MCA
IMP: 41-5-123, 41-5-124 and 41-5-125, MCA

20.9.116 SIX-MONTH REVIEWS OF YOUTH CONTINUING IN PLACEMENT (1) same as proposed.

(2) Reviews of a youth's placement progress conducted by a citizen review board or foster care review committee may be ~~accepted~~ adopted by the ~~committee chair of the~~ youth placement committee as a ~~substitute for~~ part of the six-month review provided the review addresses and documents all of the information required in (1)(a), (b) and (c).

AUTH: 53-1-203, MCA
IMP: 41-5-122, MCA

20.9.120 RECOMMENDATIONS FOR RESIDENTIAL TREATMENT OR PLACEMENT (1) through (1)(d) same as proposed.

(e) there is a current mental health diagnosis and:

(e)(i) through (2) same as proposed.

(a) there are no available programs, facilities or other placements in Montana accessible during the next ~~30~~ 10 days which can provide appropriate treatment or services for the youth; or

(2)(b) through (3) same as proposed.

(4) No youth shall be placed in residential treatment or a residential placement unless:

(a) there is a contract with DPHHS or;

(b) an individual placement agreement signed by the provider and the placing agency which contains the following:

(a) through (e) same as proposed, but are renumbered (i) through (v).

(i) and (ii) same as proposed, but are renumbered (A) and (B).

(f) and (g) same as proposed, but are renumbered (vi) and (vii).

AUTH: ~~52-1-103,~~ 53-1-203, MCA
IMP: 41-5-122, 41-5-123, 41-5-124 and 41-5-125, MCA

20.9.122 CONFIDENTIALITY OF COMMITTEE MEETINGS AND RECORDS (1) through (4) same as proposed.

AUTH: ~~52-1-103,~~ 53-1-203, MCA
IMP: 41-5-123, 41-5-124 and 41-5-125, MCA

4. The Department has adopted new Rule I (ARM 20.9.123), new Rule II (ARM 20.9.124), new Rule V (ARM 20.9.134), and new Rule VI (ARM 20.9.135) with the following changes, stricken matter interlined, new matter underlined:

RULE I (20.9.123) EVALUATION OF JUDICIAL DISTRICTS

(1) same as proposed.

(a) a random review of ~~all~~ 25% of offenders receiving services through the youth court which were funded wholly or in

part by funds allocated by the department;

(b) a random review of ~~all~~ 25% of offenders placed in state youth correctional facilities by the district;

(c) a random review of ~~all~~ 25% of information entered into the CAPS system by the district; and

(1)(d) through (6) same as proposed.

AUTH: 41-5-2006, MCA
IMP: 41-5-130, 41-5-131, 41-5-132, 41-5-2001, 41-5-2002, 41-5-2003, 41-5-2004, 41-5-2005 and 41-5-2006, MCA

RULE II (20.9.124) ACCESS TO DISTRICT RECORDS (1) and (2) same as proposed.

AUTH: 41-5-2006, MCA
IMP: 41-5-215, ~~and~~ 41-5-216 and 41-5-2003, MCA

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

(2) and (3) same as proposed.

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

RULE VI (20.9.135) MONITORING AND AUDITING OF PARTICIPATING AND NON-PARTICIPATING DISTRICTS (1) and (2) same as proposed.

AUTH: 41-5-2006 and 53-1-203, MCA
IMP: 41-5-123 and 41-5-2006, MCA

5. The Department has repealed ARM 20.9.121 as proposed.

6. The Department received three written comments and two people testified at the hearing. A summary of the comments appear below with the Department's responses:

COMMENT 1: 20.9.106 REFERRALS TO THE COMMITTEE - The RAFT is a risk/needs tool designed to provide measures of the total risk score of the youth's risk of re-offending, a treatment profile for establishing case priorities, and a change profile/index to determine direction and degree of change over intervals of six months. This instrument is not a standardized test. DOC will accept this instrument or another comparable,

accepted test. I do not believe that the RAFT, even as a test that admittedly does not have established reliability or validity, can pretend to provide the information required in this rule and I do not know of any accepted instrument available to juvenile probation officers that can cover all of the proposed requirements. I disagree with the establishment of a rule that does not have a means for implementation.

RESPONSE: The Department of Corrections expects that a formal instrument be used to assess the treatment needs of a youth which will indicate the outcomes expected from the treatment provided and a means of measuring the outcomes. The Department of Corrections does not require the use of any specific instrument such as the RAFT; however, some formal assessment tool to determine what treatment the youth needs, the outcomes expected from the treatment and a means of measuring the success of the treatment provided does need to be used.

COMMENT 2: 20.9.120 RECOMMENDATIONS FOR RESIDENTIAL TREATMENT OR PLACEMENT - If the intention of this rule is to avoid keeping a youth in detention for long periods of time while waiting for an in-state bed this change is a mistake. It keeps the youth in detention for up to 30 days waiting whereas under the rule as it currently stands the youth could be placed in an available bed outside of Montana at any point that "there are no available programs, facilities or other placement in Montana."

RESPONSE: The Department of Corrections has amended the proposed rule change to ten (10) working days to minimize the length of detention while providing for the use of facilities in-state as a priority over out-of-state placements.

COMMENT 3: One commenter asked that the rules be set aside and a streamlined approach to placing youth be considered.

RESPONSE: The Department of Corrections cannot and will not set aside the rules which are mandated by statute and which have worked well to manage placement, treatment, and costs. To set aside the rules would require the Department to violate the statutory requirements or would require significant statutory changes in the Montana Youth Court Act.

COMMENT 4: Legislative Services commented on the statutory authority and implemented sections.

RESPONSE: The Department adopted almost all of the suggested changes or modified statutory citation to reference the correct statutory section.

COMMENT 5: Legislative Services proposed various technical changes and textual changes to ARM 20.9.101 concerning the proposed amendments.

RESPONSE: The Department adopted the proposed changes or modified language to clarify confusion generated by the proposed amendments.

COMMENT 6: Legislative Services suggested technical changes concerning uniformity of language and suggested clarifications of the proposed amendments to ARM 20.9.103.

RESPONSE: The Department adopted the suggested changes or made clarifications in conformity with the comments of the Legislative Services staff attorney.

COMMENT 7: Legislative Services suggested clarifications of the proposed amendments to ARM 20.9.106.

RESPONSE: The Department adopted the proposed amendment to further clarify the amendments and eliminate any ambiguity from the use of the term "placement" in the rule.

COMMENT 8: Legislative Services commented that there were ambiguities in this section and a section which conflicted with the statutory requirements in the proposed amendments to ARM 20.9.113.

RESPONSE: The Department has adopted the changes suggested to comply with the statutory requirements and removed the ambiguity concerning notification of the Department and youth court judge.

COMMENT 9: Legislative Services commented that there were style and drafting issues concerning the numbering of sub-sections and confusion with the distinctions between participating and non-participating jurisdictions relative to consent adjustments in ARM 20.9.115.

RESPONSE: The Department has renumbered the sub-sections to comply with style and drafting requirements. The distinctions between participating and non-participating jurisdictions exists because of the management of the funding of the district and the requirements to maintain youth in placements within the budget constraints imposed by participation or the lack of budgetary constraints for non-participation. The Department of Corrections maintains control over the placements and the costs of placements in non-participating jurisdictions. Participating jurisdictions must manage their own budgets based upon an allocation of funding from the Department and therefore have more discretion on how to deal with youth within their communities.

COMMENT 10: Legislative Services stated there may be confusion in referencing resources of the Department and judicial district in one rule and resources of the Department in another district in the proposed amendments to ARM 20.9.115 and 20.9.116.

RESPONSE: The reason for the different references is due to the contractual obligations of participating jurisdictions to manage their resources and the allocation of funding from the Department and the inability of participating districts to overspend their allocation unless they obtain supplemental funding from the cost containment review panel. In non-participating jurisdictions, the district does not have any obligation to manage a budget or allocation and remain within the allocation except through the review of expenditures by the Department.

COMMENT 11: Legislative Services commented that there were ambiguities in the proposed amendments to ARM 20.9.120.

RESPONSE: The Department of Corrections has reworded the section to eliminate the ambiguities and requirements on when residential treatment would be approved, and the documentation necessary for the Department to pay for the placements.

COMMENT 12: Legislative Services commented that one cannot conduct a random review of all the information and suggested the Department reword the requirement in the proposed adoption of new Rule I (ARM 20.9.123).

RESPONSE: The Department of Corrections has reworded the requirement to require a 25% random sample of the information in each sub-section.

DEPARTMENT OF CORRECTIONS

/s/ Bill Slaughter
Bill Slaughter, Director

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

Certified to the Secretary of State August 30, 2002

**BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA**

In the matter of the amendment of ARM 23.16.102, 23.16.120, 23.16.402, 23.16.1716, 23.16.1822, 23.16.1901, 23.16.2001, and 23.16.3501 concerning forms used by the department in regulating gambling, gambling applications and licenses, loans, letters of withdrawal, machine specifications – bill acceptors, and promotional games of chance	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On July 25, 2002, the Department of Justice published notice of the proposed amendment of ARM 23.16.102, 23.16.120, 23.16.402, 23.16.1716, 23.16.1822, 23.16.1901, 23.16.2001 and 23.16.3501 at page 1947 of the 2002 Montana Administrative Register, Issue Number 14.

2. The Department of Justice has amended ARM 23.16.102, 23.16.120, 23.16.402, 23.16.1716, 23.16.1822, 23.16.1901, 23.16.2001 and 23.16.3501 exactly as proposed.

3. These amendments will be effective September 13, 2002.

4. The following comments were received and appear with the Department of Justice's response.

Comments: At the public hearing, Diana Koon, Executive Director, Montana Tavern Association; Kati Kintli, Jackson, Murdo, Grant and McFarland, P.C., an attorney who represents many license applicants; and Ronda Carpenter, Montana Coin Machine Operators Association, all stated that they support the proposed rules. The Department of Justice also received written comments from Mr. Rich Miller, Executive Director, Gaming Industry Association of Montana, Inc., supporting the proposed rule changes. However, Ms. Kintli requested that capital contributions be included in the exceptions for ARM 23.15.120 requirements.

Response: The Division is unable to include capital contributions in the exceptions to ARM 23.16.120. Investments of that nature are covered under ARM 23.16.116. To cover the circumstances described by Ms. Kintli, the Division will contemplate the appropriate changes to ARM 23.16.116.

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

/s/ Ali Sheppard
ALI SHEPPARD, Rule Reviewer

Certified to the Secretary of State August 30, 2002.

**BEFORE THE BOARD OF COSMETOLOGISTS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA**

In the matter of the transfer of ARM 8.14.101 through 8.14.1217 pertaining to the board of cosmetologists	))))	NOTICE OF TRANSFER

TO: All Concerned Persons

1. Pursuant to Chapter 483, Laws of Montana 2001, effective July 1, 2001, the Board of Cosmetologists is transferred from the Department of Commerce to the Department of Labor and Industry ARM Title 24, Chapter 132.

2. The Department of Labor and Industry has determined that the transferred rules will be numbered as follows:

OLD	NEW	
8.14.101	24.132.101	Board Organization
8.14.201	24.132.201	Procedural Rules
8.14.202	24.132.202	Citizen Participation
8.14.301	24.132.301	Definitions
8.14.401	24.132.401	General Requirements
8.14.402	24.132.2301	Unprofessional Conduct
8.14.404	24.132.2302	Aiding And Abetting Unlicensed Practice
8.14.601	24.132.501	Application For School License
8.14.602	24.132.1101	Inspection - School Layout
8.14.603	24.132.1102	School Operating Standards
8.14.604	24.132.1103	Substitute Instructor
8.14.605	24.132.1104	Curriculum - Cosmetology, Manicuring And Esthetics Students
8.14.606	24.132.1105	Student Registration
8.14.607	24.132.1301	Applications For Authority To Offer Teacher-Training Courses
8.14.608	24.132.1302	Instructor Requirements - Teacher-Training Programs
8.14.609	24.132.1303	Teacher-Training Equipment
8.14.611	24.132.1304	Curriculum - Teacher Training Units
8.14.612	24.132.1111	Transfer Policies - Recruitment - Field Trips
8.14.613	24.132.1112	Instructional Space And Facilities
8.14.801	24.132.502	Application for Instructor's License
8.14.802	24.132.503	Applications For License - Cosmetologist, Manicurist, Esthetician
8.14.805	24.132.504	Application - Out-Of-State Cosmetologists, Manicurists, Estheticians
8.14.807	24.132.1113	Transfer Students - Out-Of-State - Cosmetology, Manicuring, Esthetics
8.14.812	24.132.505	Duplicate Licenses

OLD	NEW	
8.14.813	24.132.506	Lapsed License
8.14.814	24.132.404	Fees - Initial, Renewal, ~~Penalty~~ Late Renewal And Refund Fees
8.14.815	24.132.2101	Continuing Education - Instructors/ Inactive Instructors
8.14.816	24.132.1501	Salons/Booth Rental - Cosmetology, Manicuring Or Esthetics
8.14.817	24.132.1502	Booth Rental Licenses - Applications
8.14.820	24.132.1503	Responsibility Of Salon Owner
8.14.821	24.132.402	Variances
8.14.822	24.132.1114	Five-Year Completion Requirement
8.14.823	24.132.1115	Education Exception
8.14.901	24.132.701	Schools - Application
8.14.902	24.132.702	School Requirements
8.14.903	24.132.709	Inspection And Equipment
8.14.904	24.132.710	Instructor Qualifications
8.14.905	24.132.711	Student Or Cadet Instructor Registration
8.14.906	24.132.712	Curriculum - Electrology Students
8.14.1004	24.132.713	Salon
8.14.1101	24.132.901	Floors
8.14.1102	24.132.902	Walls And Ceilings
8.14.1103	24.132.903	Lighting
8.14.1104	24.132.904	Rest Room Facilities
8.14.1105	24.132.905	Handwashing Facilities
8.14.1106	24.132.911	Construction, Cleaning And Sanitizing Tools And Equipment
8.14.1107	24.132.912	Disposal Of Waste
8.14.1108	24.132.913	Personal Hygiene
8.14.1109	24.132.914	Premises
8.14.1110	24.132.915	Disease Control
8.14.1201	24.132.1701	Sanitation For Facilities
8.14.1204	24.132.1702	Lighting
8.14.1206	24.132.1703	Restroom Facilities
8.14.1207	24.132.1704	Water Supply
8.14.1208	24.132.1705	Handwashing Facilities
8.14.1209	24.132.1706	Implements, Tools, Instruments, Supplies And Equipment
8.14.1210	24.132.1716	Cleaning And Sanitizing Tools And Equipment
8.14.1211	24.132.1717	Sanitizing Agents
8.14.1212	24.132.1718	Storage And Handling Of Tools And Equipment
8.14.1213	24.132.1719	Storage And Handling Of Salon Preparations
8.14.1214	24.132.1720	Disposal Of Waste - Sewage
8.14.1215	24.132.1721	Personal Hygiene Of Personnel
8.14.1216	24.132.403	Premises And General Requirements
8.14.1217	24.132.1722	Disease Control

3. The transfer of rules is necessary because this board was transferred from the Department of Commerce to the

Department of Labor and Industry by the 2001 legislature by Chapter 483, Laws of Montana 2001.

BOARD OF COSMETOLOGISTS
WENDELL PETERSEN, CHAIRMAN

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

By: /s/ KEVIN BRAUN
Kevin Braun
Rule Reviewer

Certified to the Secretary of State, August 30, 2002.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of ARM 24.16.9001, 24.16.9002, 24.16.9003, 24.16.9004, 24.16.9005, 24.16.9006, and 24.16.9007, the adoption of new rules, the repeal of ARM 24.16.9008, 24.16.9009 and 24.16.9010, and the transfer of existing rules, all pertaining to prevailing wage matters	) NOTICE OF AMENDMENT,) ADOPTION, REPEAL) AND TRANSFER

TO: All Concerned Persons

1. On April 25, 2002, the Department of Labor and Industry published notice of the proposed amendment, adoption, repeal and transfer of the above-stated rules at page 1172 of the 2002 Montana Administrative Register, Issue Number 8.

2. On May 17, 2002, a public hearing was held in Helena at which members of the public appeared and made comments. Written comments were also submitted prior to the closing date of May 24, 2002.

3. After consideration of the comments received, the Department has amended the following rules as proposed:

24.16.9001 PURPOSE AND SCOPE

24.16.9002 DEFINITIONS

24.16.9003 ESTABLISHING THE STANDARD PREVAILING RATE OF WAGES AND FRINGE BENEFITS

24.16.9004 DEPARTMENT ASSISTANCE AND NEW JOB CLASSIFICATION RATES

4. After consideration of the comments received, the Department has adopted the following rules as proposed:

NEW RULE I (24.17.141) OBLIGATIONS OF PARTIES REGARDING THE PAYMENT OF PREVAILING WAGES

NEW RULE II (24.17.107) PREVAILING WAGE DISTRICTS ESTABLISHED

NEW RULE III (24.17.501) PUBLIC WORKS CONTRACTS FOR CONSTRUCTION SERVICES SUBJECT TO PREVAILING RATES

NEW RULE IV (24.17.511) COMMERCIAL SUPPLIER DEFINED

NEW RULE V (24.17.514) COMMERCIAL SUPPLIERS NOT SUBJECT TO PREVAILING WAGE LAWS

NEW RULE VI (24.17.521) CLASSIFYING EMPLOYEES FOR CONSTRUCTION SERVICES

NEW RULE VII (24.17.526) PROJECTS OF A MIXED NATURE

NEW RULE VIII (24.17.161) DIVIDING PROJECTS PROHIBITED

NEW RULE IX (24.17.621) CLASSIFYING EMPLOYEES FOR NON-CONSTRUCTION SERVICES

NEW RULE X (24.17.614) "SITE OF WORK" FOR NON-CONSTRUCTION SERVICES

NEW RULE XI (24.17.301) REQUIRED RECORDS

NEW RULE XIII (24.17.307) PAYROLL CERTIFICATION

NEW RULE XIV (24.17.311) FULL PAYMENT REQUIRED

NEW RULE XV (24.17.316) WAGE AVERAGING PROHIBITED

NEW RULE XVI (24.17.321) PAYMENT OF FRINGE BENEFITS

NEW RULE XVII (24.17.326) OVERTIME WAGES COMPUTATIONS

NEW RULE XVIII (24.17.171) APPRENTICES

NEW RULE XIX (24.17.821) FILING COMPLAINTS

NEW RULE XX (24.17.822) JURISDICTIONAL REVIEW

NEW RULE XXI (24.17.824) REQUESTING PARTY'S FAILURE TO PROVIDE INFORMATION

NEW RULE XXII (24.17.827) EMPLOYER RESPONSE TO COMPLAINT

NEW RULE XXIII (24.17.829) DEPARTMENT REVIEW OF EMPLOYER RECORDS

NEW RULE XXIV (24.17.831) DETERMINATION

NEW RULE XXV (24.17.851) CRITERIA TO DETERMINE PENALTY AND COST IMPOSITION

NEW RULE XXVI (24.17.834) REQUEST FOR REDETERMINATION

NEW RULE XXVII (24.17.841) DEFAULT ORDERS AND DISMISSALS

NEW RULE XXVIII (24.17.838) MANDATORY, NONBINDING MEDIATION

NEW RULE XXIX (24.17.837) REQUEST FOR FORMAL HEARING

NEW RULE XXX (24.17.847) APPEAL OF FORMAL HEARING

NEW RULE XXXI (24.17.844) REQUEST FOR RELIEF IF MAIL IS NOT RECEIVED

NEW RULE XXXII (24.17.814) COMPUTATION OF TIME PERIODS

NEW RULE XXXIII (24.17.817) FACSIMILE FILINGS

NEW RULE XXXIV (24.17.901) CONTRACT INELIGIBILITY/ DEBARMENT

NEW RULE XXXV (24.17.906) LIST OF INELIGIBLES

5. After consideration of the comments received, the Department has repealed three rules, ARM 24.16.9008, 24.16.9009, and 24.16.9010, as proposed.

6. After consideration of the comments received, the Department has amended the following rules as proposed, but with the following changes from the original proposal, new material is underlined, material to be deleted is stricken:

24.16.9005 OBLIGATIONS OF PUBLIC CONTRACTING AGENCIES

(1) same as proposed.

(a) An unequivocal agreement by the contractor to give preference to employment of bona fide Montana residents in compliance with 18-2-403(1), MCA. For any construction project, excluding projects involving the expenditure of federal aid funds or where residency preference laws are specifically prohibited by federal law, the bid specifications and the contract shall provide that at least 50% of the workers (including workers employed by subcontractors) ~~man hours worked (labor performed) on the project~~ will be ~~performed by~~ bona fide Montana residents in compliance with 18-2-403(1) and 18-2-409, MCA. In the case of a particular contractor such percentage of Montana residents shall be modified to comply with any written directive by the commissioner specifying a different percentage.

(b) through (4) same as proposed.

AUTH: 18-2-409 and 18-2-431, MCA
IMP: 18-2-403, 18-2-421 and 18-2-422, MCA

24.16.9006 OBLIGATIONS OF EMPLOYERS, CONTRACTORS AND SUBCONTRACTORS (1) same as proposed.

(a) In the performance of a public works contract for a construction project, a contractor, subcontractor or employer shall ensure that at least 50% of all workers performing labor ~~man hours worked (labor performed)~~ under the contract for public works ~~on the project is performed by~~ are bona fide Montana residents.

(b) through (2) same as proposed.

AUTH: 18-2-409 and 18-2-431, MCA

IMP: 18-2-403, MCA

24.16.9007 ADOPTION OF STANDARD PREVAILING RATE OF WAGES
(1) through (1)(d) same as proposed.
(e) The current building construction services rates are contained in the 2002 version of "The State of Montana Prevailing Wage Rates - Building Construction Services" publication.
(f) The current non-construction services rates are contained in the 2001 version of "The State of Montana Prevailing Wage Rates - Service Occupations" publication.
(g) The current heavy and highway construction services rates are contained in the 2002 version of "The State of Montana Prevailing Wage Rates - Heavy and Highway Construction Services" publication.
(2) and (3) same as proposed.
AUTH: 18-2-409, 18-2-431 and 39-3-202, MCA
IMP: 18-2-401, 18-2-402, 18-2-403 and 18-2-412, MCA

7. After consideration of the comments received, the Department has adopted the following new rule as proposed, but with the following changes from the original proposal, new material is underlined, material to be deleted is stricken:

NEW RULE XII (24.17.304) RECORDS AVAILABILITY (1) Every employer (including a contractor or subcontractor) performing work on a public works project shall make available to the department records necessary to determine if the prevailing wage rate has been or is being paid to employees on the public works project. Such records shall be made available for inspection and transcription within ~~24~~ 72 hours of an on-site inspection, within five days of a mail-in request or at such later time as may be specified by the department.
AUTH: 18-2-431, MCA
IMP: 18-2-422 and 18-2-423, MCA

8. The comments received and the Department's response to the comments are as follows:

COMMENT 1: The Montana Contractors Association ("MCA") commented that proposed changes to ARM 24.16.9006 need clarification as to enforceability of the proposed rule. MCA is concerned that it is not possible to determine when compliance with the rule will be determined. MCA is also concerned that the 50% of man hours requirement may not be possible to meet if applied on an individual employer or subcontractor basis, and that certain specialty contractors from outside Montana may consist of one person enterprises not able to make the 50% preference. MCA recommends that the general contractor be responsible for preference requirements and that compliance be determined at the end of the project.

RESPONSE 1: The Department has decided not to adopt the proposed amendments to ARM 24.16.9005 and 24.16.9006 concerning

the 50% preference being based on number of hours worked.

COMMENT 2: The AFL-CIO and several of its affiliated locals commented that the proposed rule change to ARM 24.16.9006 made the 50% preference requirement unenforceable as there were no specifics as to how the Department would enforce the preference and compliance would not be known until the conclusion of the project and then there would be no remedy for Montana workers. Comments were also made from organized labor that specialty contractors from outside of Montana would fill skilled positions with non-residents resulting in either less work for Montana contractors or fewer skilled jobs for Montana residents.

RESPONSE 2: The Department has decided not to adopt the proposed amendments to ARM 24.16.9005 and 24.16.9006 concerning the 50% preference being based on number of hours worked.

COMMENT 3: Numerous other commenters stated opposition to the proposed amendments to ARM 24.16.9006 concerning the 50% Montana resident preference. The reasons ranged from opinions that the proposed amendments would not be enforceable to opinions that Montana workers would miss opportunities to obtain good paying construction jobs on public works projects.

RESPONSE 3: The Department has decided not to adopt the proposed amendments to ARM 24.16.9005 and 24.16.9006 concerning the 50% preference being based on number of hours worked.

COMMENT 4: MCA commented concerning proposed NEW RULE XII that record production be consistent with the five days in statute for mail in requests, or that as an alternate, on-site records be produced within 72 hours.

RESPONSE 4: The Department agrees that 72 hours to produce the records is a reasonable time, and has amended NEW RULE XII accordingly.

COMMENT 5: MCA proposed that concerning NEW RULE XIX, the Department review possible alternatives for establishing reasonable criteria for accepting third-party complaints so as to prevent frivolous or harassing complaints being filed against given firms. Other commenters also agreed that frivolous or harassing complaints should not be accepted by the Department.

RESPONSE 5: The Department will conduct an informal screening of complaints to prevent clearly frivolous or harassing complaints from going forward. In the event that the Department receives a significant number of complaints that appear to be frivolous, the Department will consider whether it should establish formal criteria for acceptable complaints, or develop a formal screening process. In the event a complaint is rejected by the Department's informal screening, the complaining party will be given notice and an opportunity for a hearing concerning whether the Department abused its discretion in

rejecting the complaint as frivolous.

COMMENT 6: Numerous comments were received from organized labor that NEW RULE XIX would be a good rule as often times employees were reluctant to comment on compliance issues while still employed and that third parties had a legitimate interest in ensuring compliance with the law.

RESPONSE 6: The Department acknowledges the support for the rule.

COMMENT 7: A commenter expressed his concern over the lack of precision in NEW RULE III(4) concerning what constitutes "heavy construction".

RESPONSE 7: The Department acknowledges that there is an element of imprecision in the explanation of what constitutes "heavy construction", but notes that in addition to the list of examples provided, the rule provides that heavy construction is construction that is not properly classified as either "building construction" or "highway construction". The Department concludes that sufficient information is contained within the rule for a person to make a reasonable judgment as to whether a project falls within the ambit of "building construction" or "highway construction", or whether the project is more appropriately classified as "heavy construction".

COMMENT 8: The Department received several additional comments following the close of the public comment period.

RESPONSE 8: Although the Department is unable to formally consider the untimely comments, the Department notes that the untimely comments merely echoed the comments described in Comment 3, above. The Department's response to Comment 3 is given above.

COMMENT 9: The Department notes that ARM 24.16.9003 was also amended effective August 1, 2002, pertaining to the methodology used for establishing rates. Interested persons are encouraged to see page 1985 of the 2002 Montana Administrative Register, Issue No. 14 for further information.

RESPONSE 9: So noted.

COMMENT 10: The Department notes that ARM 24.16.9007 was also amended effective August 1, 2002, to update the version of the building construction services rates and the heavy and highway construction rates to the 2002 editions of the publications. The added language restores subsections (1)(e), (1)(f) and (1)(g) that were inadvertently proposed for deletion. Interested persons are encouraged to see page 1985 of the 2002 Montana Administrative Register, Issue No. 14 for further information.

RESPONSE 10: So noted.

9. The Department of Labor and Industry has determined that in addition to the actions noted above, it will transfer the existing prevailing wage rules from ARM Title 24, chapter 16, to ARM Title 24, chapter 17 as follows:

OLD	NEW	
24.16.9001	24.17.101	Purpose And Scope
24.16.9002	24.17.103	Definitions
24.16.9003	24.17.121	Establishing The Standard Prevailing Rate Of Wages And Fringe Benefits
24.16.9004	24.17.124	Department Assistance And New Job Classification Rates
24.16.9005	24.17.144	Obligations Of Public Contracting Agencies
24.16.9006	24.17.147	Obligations Of Employers, Contractors And Subcontractors
24.16.9007	24.17.127	Adoption Of Standard Prevailing Rate Of Wages

10. The new rules, amendments, repeals and transfers are effective September 13, 2002, and apply to public works contracts entered into on or after that date.

/s/ KEVIN BRAUN
Kevin Braun
Rule Reviewer

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

Certified to the Secretary of State: August 30, 2002.

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

In the matter of the amendment of ARM 24.21.411 and the adoption of new rules relating to apprenticeship	))))	NOTICE OF AMENDMENT AND ADOPTION

TO: All Concerned Persons

1. On June 27, 2002, the Department of Labor and Industry published a notice of proposed amendment and adoption of the above-stated rules at page 1701, 2002 Montana Administrative Register, issue number 12.

2. A public hearing was held in Helena on July 22, 2002. Members of the public attended the hearing and offered oral comments. In addition, a number of written comments were received prior to the closing of the comment period on July 29, 2002.

3. After consideration of the comments, the Department has amended ARM 24.21.411 exactly as proposed.

4. After consideration of the comments, the Department has adopted NEW RULE I (ARM 24.21.416) COMPLAINT PROCESS - APPEAL, as proposed with the following changes, stricken matter interlined, new matter underlined:

NEW RULE I (24.21.416) COMPLAINT PROCESS - APPEAL (1) A dispute or complaint involving an apprenticeship agreement subject to the jurisdiction of the apprenticeship and training program (registration agency) may be filed with the Apprenticeship and Training Program, Department of Labor and Industry, P.O. Box 1728, Helena, MT 59624-1728, telephone (406) 444-3998, or fax to (406) 444-3037. This complaint process does not affect existing complaint procedures recognized in registered apprenticeship standards.

(a) same as proposed.

(2) through (6) same as proposed.

AUTH: 39-6-101, MCA
IMP: 39-6-101 and 39-6-102, MCA

5. After consideration of the comments, the Department has adopted the following rules, exactly as proposed:

NEW RULE II (24.21.1002) SUPERVISION REQUIRED

NEW RULE III (24.21.415) RATIO WAIVER PROCESS

NEW RULE IV (24.21.1003) APPRENTICE TO JOURNEYWORKER RATIO

6. The Department has thoroughly considered all of the comments made. The comments received, and the Department's responses, are as follows:

Comment 1: Several commentors expressed overall support for the proposed rule changes.

Response 1: The Department acknowledges those comments, and thanks the members of the Advisory Committee for their efforts.

Comment 2: Several commentors suggested that proposed NEW RULE I should exempt existing complaint procedures in registered apprenticeship standards established via a collective bargaining agreement under the Labor Management Relations Act.

Response 2: The Department has amended the proposed language in proposed NEW RULE I(1) to include recognition of established complaint procedures in registered apprenticeship standards.

Comment 3: A commentor objected to the concept that sponsors affected by collective bargaining agreements be exempt from the proposed rules. The commentor asked that apprenticeship sponsors who are most affected by the proposed rules have their comments weighed accordingly.

Response 3: The Department thoroughly considered all comments. Proposed NEW RULE I is a default rule, and has been modified to allow dispute resolution processes in collective bargaining agreements to take precedence over proposed NEW RULE I in order to prevent conflict with federal law. In the vast majority of cases, complaint procedures and other language affecting apprenticeship, when created via collective bargaining, meet or exceed existing state standards.

Comment 4: A commentor expressed concern with proposed NEW RULE II(3), which allows limited supervision for sponsors of apprenticeship who have a residential market focus. The commentor stated that limited supervision should be allowed by all sectors of the market, and that the Master of the shop is ultimately responsible for the safety and quality of work of the apprentice.

Response 4: The Department acknowledges the commentor's concerns regarding proposed NEW RULE II(3) and notes that the commentor was a member of the Advisory Committee. The reason for differences in supervision standards is because a greater degree of safety and work performance is required in commercial work. Therefore, proposed NEW RULE II(4) and (5) allow apprentices in the later part of their term to work with limited supervision in all sectors of the market, while (3) allows an employer additional flexibility to judge the performance level of an apprentice when working in a residential market.

Comment 5: A commentor voiced concern about allowing ratio waivers in proposed NEW RULE III, suggesting that the market could be flooded with too many apprentices in the system, raising the future possibility the market could not support them as journeyworkers. The commentor was also concerned that existing journeyworkers could be replaced by a large number of apprentices entering the system through the ratio waiver process.

Response 5: The Department acknowledges the commentor's concerns with proposed NEW RULE III but notes that ratio waivers are already allowed by ARM 24.21.411(1)(j), and the Department has not witnessed a large number of apprentices entering the system through the waiver process. The allowance for a ratio waiver was designed for employer/sponsors operating in market areas that have a limited available pool of journeyworkers. However, the existing rule does not define a process for obtaining a ratio waiver, thus proposed NEW RULE III now defines the process.

Comment 6: A commentor suggested that proposed NEW RULE III(1)(b), stating that current registered apprentices of a sponsor seeking a ratio waiver must have a minimum 80% grade average, was too restrictive because a passing grade for most related instruction is 70%.

Response 6: The reason the Department requires a higher grade average before granting a ratio waiver is because the Advisory Committee wanted to assure that the required related instruction was receiving more than "lip service" by both the sponsor and apprentice. Therefore, the apprentice's grades should be above the required minimum standards.

Comment 7: The same commentor had concerns that proposed NEW RULE III(1)(c), which basically states that a sponsor must have a registered program in good standing for two years before being eligible for ratio waiver, was too restrictive. The commentor stated that most plumbers have years of experience before obtaining a Masters license.

Response 7: The Department notes that, in formulating subsection (c), the committee considered it necessary for a sponsor to have an established record as a sponsor of apprenticeship, not just personal experience in the occupation, however extensive. The committee believed that if an exception to the law is granted, the sponsor should have a proven record for compliance with program requirements.

Comment 8: Two commentors expressed concern with proposed NEW RULE III(1)(d), noting that the Advisory Committee could not agree on all of the language in the rule.

Response 8: The Department acknowledges the disagreement over proposed NEW RULE III(1)(d). In the Advisory Committee meetings

where proposed NEW RULE III was discussed, the major disagreement over subsection (d) was related to the type of Job Service order to be utilized in a bona fide search for qualified journeyworkers. When the committee could not come to an agreement, the Department reviewed the various types of job orders currently offered by the Job Service and decided that the confidential job order most closely met all of the concerns voiced by the committee, incorporated the confidential job order language into the proposed rule, and notified the committee of this decision.

After these above comments were received, the Department polled the members of the Advisory Committee, and the majority of those responding stated that there was agreement on all other points in subsection (d), and that the existing language in proposed NEW RULE III(1)(d) should remain as proposed.

Comment 9: One commentor wanted to make optional the requirement in proposed NEW RULE III(1)(d) that sponsors post a confidential job at a local Job Service Office. The commentator stated that a job search for qualified journeymen could possibly be more successful using other sources.

Response 9: The proposed NEW RULE III(1)(d) requirements, including posting a confidential job order through the local Job Service office, are a minimum standard. The members of the Advisory Committee were polled on this issue and a majority of those responding favored keeping the Confidential Job Order requirement. Sponsors are still free to recruit in any additional manner they see fit.

Comment 10: Several commentators expressed concern that the requirements in proposed NEW RULE III(1)(d) were too restrictive for small, independent, non-union and/or rural employers who did not belong to internal trade associations and/or have access to labor pools in their geographic market area.

Response 10: Proposed NEW RULE III(1)(d) requires notice and documentation of sponsors' efforts and does not limit sponsors only to these methods. Sponsors are free to make additional efforts. These requirements actually assist sponsors in demonstrating undue hardship due to rural or other limited job pool conditions, so that the Department may have grounds to grant a ratio waiver. The Department concludes that the proposed language will not have an adverse effect on small, rural or other apprenticeship, and after polling the Advisory Committee, has determined that the majority of the committee agreed on this part of subsection (d).

7. The new rules and amendments will be effective September 13, 2002.

/s/ KEVIN BRAUN
Kevin Braun,
Rule Reviewer

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

Certified to the Secretary of State: August 30, 2002.

**BEFORE THE COMMISSIONER OF POLITICAL PRACTICES
OF THE STATE OF MONTANA**

In the matter of the amendment of ARM 44.12.102, 44.12.103, 44.12.105, 44.12.107, 44.12.201, 44.12.202, 44.12.203, 44.12.205, 44.12.207, 44.12.209, 44.12.211, and 44.12.213, adoption of new rules I through V, and repeal of ARM 44.12.101, all relating to lobbying and regulation of lobbying	NOTICE OF AMENDMENT, ADOPTION, AND REPEAL

TO: All Concerned Persons

1. On May 16, 2002, the Commissioner of Political Practices published notice of public hearing on the proposed amendment, adoption, and repeal of rules regarding regulation of lobbying, at page 1440 of the 2002 Montana Administrative Register, Issue Number 9.

2. The Commissioner has repealed ARM 44.12.101 as proposed. The Commissioner has adopted new RULES III (44.12.106), IV (44.12.106A), and V (44.12.212) exactly as proposed. The Commissioner has amended ARM 44.12.201, 44.12.203, 44.12.205, 44.12.209, and 44.12.213 exactly as proposed.

3. The Commissioner has adopted new RULES I and II with the following changes. Matter to be added is underlined. Matter to be deleted is interlined.

RULE I (44.12.101A) PREAMBLE AND STATEMENT OF APPLICABILITY (1) same as proposed.

(2) Based on the preceding, the commissioner has attempted to clarify legislative lobbying issues relating to promoting or opposing the introduction or enactment of legislation in 2002 rulemaking. In addition, the 2003 Montana legislature will be asked to clarify certain provisions of the Act concerning the reporting of legislative lobbying activities. Included in the 2003 legislation will be amendments specifying that the following lobbying expenditures must be reported:

(a) expenditures made to influence any official action by the legislature or legislators, not just the introduction or enactment of legislation;

~~and~~ (b) lobbying the governor to sign, veto or amendatory veto legislation ~~must be reported.~~; and

(c) expenditures made for lobbying support personnel, supplies, and equipment to assist or support a lobbying activity.

(3) same as proposed.

AUTH: 5-7-111, MCA
IMP: 5-7-101, MCA

RULE II (44.12.104) PERSONAL LIVING EXPENSES--LIMITATIONS AND RECORDS (1) through (3) same as proposed.

~~(4) The personal living expense exemption in 5-7-102(10)(a), MCA, only applies to payments for personal living expenses incurred by a lobbyist. Payments for the personal living expenses of a principal's employees, agents, officer and agents who are not lobbyists but who are paid to support or assist lobbying activities must be reported by the principal as a lobbying expenditure.~~

AUTH: 5-7-111, MCA
IMP: 5-7-102(10)(a), MCA

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

44.12.102 LOBBYING--DEFINITIONS AND SCOPE--REPORTABLE ACTIVITIES For purposes of Title 5, chapter 7, MCA, and this chapter:

(1) "Compensation" includes:

(a) all direct or indirect payments of salaries, fees, wages and benefits by a principal to ~~an individual for lobbying or to the officers, agents, attorneys or employees of a principal~~ a lobbyist to lobby or to support or assist a lobbying activity. The term includes, but is not limited to, all payments made to a lobbyist to lobby or to support or assist a lobbying activity for overtime, compensatory time, retirement, health insurance, membership fees for social, civic and professional organizations, life insurance, professional liability insurance, unemployment, worker's compensation, personal use of a vehicle, rental car payments, disability insurance and other benefits; and

(1)(b) and (2) same as proposed.

~~(3) "Grassroots lobbying" means an effort, whether written, oral or by any other medium, by a principal or a lobbyist to encourage others, including the general public, to engage in direct communication with a public official to influence official action that is supported or opposed by the principal or lobbyist. The term includes letter-writing campaigns, mailings, telephone banks, print and electronic media advertising, billboards, publications and educational campaigns involving official action that is supported or opposed by a principal or a lobbyist.~~

~~(4)~~ (3) "Lobbying" shall have the definition set forth in 5-7-102(6)(a) and (b), MCA. Unless otherwise exempted from the definition of "lobbying" by Title 5, chapter 7, MCA, or this chapter, lobbying shall include:

(a) any direct communication by a lobbyist with a public official to promote or oppose official action;

(b) all time spent by a lobbyist to present oral or written testimony to one or more public officials promoting or opposing official action by any public official or group of public officials, including the legislature or a committee of the legislature; or

(c) signing a sign-in sheet as an opponent or proponent of official action at a legislative hearing ~~or a public hearing conducted by a public official other than a legislator or a legislative committee~~.

~~(5)~~ (4) "Lobbying activity" or "lobbying activities" mean actions or efforts by a lobbyist to lobby or to support or assist lobbying, including preparation and planning activities after a decision has been made to support or oppose official action, ~~grassroots lobbying,~~ research and other background work that is intended, at the time it is performed, for use in lobbying or to support or assist lobbying activities. The terms "lobbying activity" or "lobbying activities" do not include:

(a) information or testimony submitted to the legislature or a legislative committee in response to a subpoena issued under 5-5-101 through 5-5-105, MCA;

(b) actions of public officials in performing judicial, quasi-judicial or ministerial acts or the actions of any person to influence the actions of public officials in performing judicial, quasi-judicial or ministerial acts (5-7-102(13), MCA);

(c) activities of an employee or representative of a radio, newspaper, magazine, television, cable television or other medium of mass communication in gathering and disseminating news and information to the general public;

(d) activities involving a bona fide news story, commentary, or editorial distributed through the facilities of any radio, television, broadcasting station, newspaper, magazine or other periodical publication of general circulation;

(e) activities involving communications by a membership organization or corporation to its members, shareholders or employees;

(f) information or testimony compelled by statute, rule, executive order or other action of the legislature, the governor or a state agency, including information or testimony compelled by a state contract, grant, loan, permit or license; or

(g) information or testimony provided in response to an oral or written request from a legislative committee, the legislature or a public official made during a public hearing or other public proceeding if the information or testimony solicited during the public hearing or public proceeding does not support or oppose the official action under consideration.

~~(6)~~ (5) "Lobbyist" shall have the definition set forth in 5-7-102(8), MCA. The term "lobbyist" does not include:

(a) an individual lobbying or acting on his/her own behalf (5-7-101(2) and 5-7-101(8), MCA);

(b) a public official, including a legislator, who promotes or opposes the introduction or enactment of legislation before the legislature or the members of the legislature (5-7-102(6)(a), MCA); or

(c) an individual working for the same principal as a licensed lobbyist if the individual does not have direct communication with a public official to support or oppose official action on behalf of the principal (5-7-102(8)(b)(ii), MCA).

~~(7)~~ (6) "Major effort to support, oppose or modify official action" in 5-7-208(5)(d), MCA, means any official action on which a principal's lobbyist, employee, officer, agent, attorney or representative engages in direct communication with any public official on two or more occasions to support, oppose or modify the official action.

~~(8)~~ (7) "Official action" means a vote, decision, recommendation, approval, disapproval, or other action, including inaction, that involves the use of discretionary authority by the legislature or a member of the legislature concerning the introduction or enactment of legislation.

~~(9)~~ (8) "Payment" and "payment to influence official action" shall have the definitions set forth in 5-7-102(9) and (10), MCA. The term "payment to influence official action" does not include:

(a) payments by a principal to an individual only for travel expenses totaling less than $1,000 per calendar year (5-7-102(7), MCA). However, a principal who makes payments of less than $1,000 for travel expenses to more than one individual for lobbying in a calendar year must file reports required by the Act and these rules if total payments for the calendar year to all individuals for lobbying total $1,000 or more; or

(b) personal living expenses paid to a lobbyist (5-7-102(10)(a), MCA).

~~(10)~~ (9) "Personal living expenses" means payments or reimbursement by a principal for a lobbyist's meals, food, lodging or residential utilities.

~~(11)~~ (10) "Principal" shall have the definition set forth in 5-7-102(12), MCA.

~~(12)~~ (11) "Public official" shall have the definition set forth in 5-7-102(13), MCA, and as specifically designated in ARM 44.12.106 and 44.12.106A.

~~(13)~~ (12) "Travel expenses" means payments or reimbursement for transportation costs, including rental car payments.

AUTH: 5-7-111, MCA
IMP: 5-7-102, MCA

44.12.103 LOBBYISTS AND LOBBYING SUPPORT PERSONNEL--REPORTING OF INFORMATION TO PRINCIPAL (1) It is the duty of each individual lobbyist whose activities are covered by Title 5, chapter 7, MCA, to maintain records relating to information required to be reported and exemptions claimed. Each

individual lobbyist must timely transmit such information to his principal to allow timely reporting by the principal.

(2) Except as provided in (3), the records submitted to a principal by an individual lobbyist who is paid to lobby or who is paid to support or assist a lobbying activity must for each reporting period specified in 5-7-208, MCA:

(a) identify each calendar day on which the ~~individual~~ lobbyist was paid to lobby or to support or assist a lobbying activity;

(b) indicate the reportable time spent by a lobbyist lobbying or assisting or supporting a lobbying activity for each calendar day identified in (2)(a); and

(c) identify each official action on which the ~~individual~~ lobbyist lobbied or supported or assisted a lobbying activity during the reporting period. The official action identified under this subsection must include sufficient detail to enable a principal to file a report required by 5-7-208(5)(d), MCA, and ARM 44.12.202. The following are examples of official action descriptions that satisfy the requirements of this subsection:

(i) identification of proposed or introduced legislation by bill draft request number or bill or resolution numbers (e.g., opposed HB 62 or supported SB 381, with amendments); or

(ii) using descriptive phrases that adequately describe the official action supported, opposed or modified (e.g., senate resolution 6, supported confirmation of Gayle ~~Good Gal~~ Smith to be director of department of administration).

(3) The daily itemization requirements of (2)(a) and (b) do not apply to a lobbyist ~~or lobbying support personnel~~ if all compensation and reimbursement paid by a principal will be reported as provided in ARM 44.12.203(1)(a), 44.12.205(1) and (2), 44.12.207(2)(a) or 44.12.211(1)(a).

AUTH: 5-7-111, MCA
IMP: 5-7-208 and 5-7-212, MCA

44.12.105 STATE GOVERNMENT AGENCIES--LOBBYING--DEFINITIONS AND REPORTING (1) through (2)(a) same as proposed.

(b) each agency of state government and each office of a public official must file reports under Title 5, chapter 7, MCA, and these rules concerning the activities of their ~~employees, agents, attorneys or officers~~ lobbyists who lobby or support or assist a lobbying activity. State agencies and the offices of elected public officials shall file consolidated lobbying reports covering the lobbying activities of all ~~employees, officers, attorneys and agents~~ lobbyists as follows:

(i) The offices of an elected public official shall file a consolidated lobbying report covering the lobbying activities of all ~~employees, officers, attorneys and agents~~ lobbyists who lobby or assist or support a lobbying activity. If an elected public official is a member of a multi-member tribunal (e.g., the Montana supreme court) or a board or

commission (e.g., the Montana public service commission), the tribunal, board or commission shall file a consolidated report including the lobbying activities of the ~~employees, agents, attorneys or officers of~~ lobbyists for each elected public official who is a member of the tribunal, board or commission.

(ii) A state agency shall file a consolidated lobbying report covering the lobbying activities of all its ~~employees, officers, attorneys and agents~~ lobbyists who lobby or support or assist a lobbying activity. However, a state agency may elect not to file a report concerning lobbying activities by boards, commissions, or entities that are attached for administrative purposes only as defined in 2-15-121, MCA, or that have otherwise been granted autonomy to act under Montana law. If an agency elects not to include in its lobbying report the lobbying activities of any boards, commissions, or entities that are attached for administrative purposes only or entities which exercise autonomous powers, the agency shall specifically identify the boards, commissions, or entities not included in the state agency's lobbying report.

AUTH: 5-7-111, MCA
IMP: 5-7-111, 5-7-208, and 5-7-211, MCA

44.12.107 LOCAL GOVERNMENT LOBBYING--DEFINITIONS AND REPORTING (1) through (2)(a) same as proposed.

(b) each local government entity must file reports under Title 5, chapter 7, MCA, and this chapter concerning the activities of their ~~elected officials, employees, agents, attorneys or officers~~ lobbyists who lobby or support or assist a lobbying activity. Local government entities shall file consolidated lobbying reports covering the lobbying activities of all employees, officers, attorneys and agents.

AUTH: 5-7-111, MCA
IMP: 5-7-111, 5-7-208, and 5-7-211, MCA

44.12.202 PRINCIPALS--REPORTS--MAINTENANCE OF RECORDS

(1) Pursuant to 5-7-208, MCA, a principal shall report all payments made to each lobbyist for ~~the purpose of~~ lobbying~~, including payments made to support or assist a lobbyist engaged in lobbying or payments~~ or to support or assist a lobbying activity.

(2) Unless exempted by Title 5, chapter 7, MCA, or this chapter, reports shall include, without limitation, all payments made to a lobbyist to influence official action, including payments made ~~to support or assist a lobbyist engaged in lobbying or~~ to support or assist any lobbying activity.

(3) same as proposed.

(4) Principals must report each official action on which the principal's lobbyists~~, employees, agents, officers or attorneys~~ exerted a major effort to support, oppose or modify official action, together with a statement of the principal's

position supporting or opposing the official action (5-7-208(5)(d), MCA).

(5) and (6) same as proposed.

AUTH: 5-7-111, MCA
IMP: 5-7-208, MCA

44.12.207 PRINCIPALS--REPORTING OF OFFICE ~~AND LOBBYING SUPPORT PERSONNEL~~ AND MISCELLANEOUS EXPENSES (1) Principals shall report payments to influence official action, including payments to a lobbyist ~~engaged in lobbying and payments~~ to lobby or to support or assist a lobbying activity, for each expense category in 5-7-208(5)(a), MCA.

~~(2) A principal shall report the compensation paid to the principal's lobbyists, employees, officers, agents, or attorneys to support or assist a lobbyist engaged in lobbying or to support or assist a lobbying activity. The compensation paid to such lobbying support personnel shall be reported as follows:~~

~~(a) If the compensation paid is a periodic, lump sum or contingent fee and the primary purpose of the contract is to provide support or assistance to a lobbyist engaged in lobbying or to support or assist a lobbying activity, the entire amount of the fee shall be reported.~~

~~(b) If an individual is a salaried employee or officer of the principal, and his/her duties include providing support or assistance to a lobbyist engaged in lobbying or support or assistance for a lobbying activity, the compensation may be allocated and reported on a daily or hourly basis.~~

~~(c) If the compensation paid is a fee for services which includes support or assistance to a lobbyist engaged in lobbying or support or assistance for a lobbying activity, but not as the primary purpose of the contract, either:~~

~~(i) the proportion of the total fee which equals the proportion of the total time spent providing support or assistance to a lobbyist engaged in lobbying or to support or assist a lobbying activity on behalf of the principal shall be reported; or~~

~~(ii) if the principal is being billed on an hourly basis, the compensation paid for the actual time billed for providing support or assistance to a lobbyist engaged in lobbying or to support or assist a lobbying activity on behalf of the principal shall be reported.~~

~~(3) In calculating and reporting the compensation paid to a principal's employees, officers, agents or attorneys as provided in (2)(b) and (c), a fraction of an hour shall be rounded up to the nearest quarter of an hour and reported as specified in ARM 44.12.203(2).~~

~~(4)~~ (2) If a principal provides at the principal's expense office space, utilities, supplies and equipment to a lobbyist ~~or to the officers, agents, attorneys, or employees who provide support or assistance to a lobbyist engaged in lobbying or who~~ to lobby or to support or assist a lobbying activity, the principal shall report the cost of providing

such office space, utilities, supplies and equipment as follows:

(a) If the actual cost of providing office space, utilities, supplies and equipment can be determined and the actual cost is less than $5,000 for a reporting period, then actual cost may be reported. In the alternative, a principal may report that office space, utilities, supplies and equipment were provided to a lobbyist ~~or lobbyist support personnel~~ during the reporting period and the cost of providing such office space, utilities, supplies and equipment was:

(i) $1,000 or less for the reporting period; or

(ii) more than $1,000 but less than $5,000 for the reporting period.

(b) If the cost of providing office space, utilities, supplies and equipment to a lobbyist ~~or lobbying support personnel~~ during a reporting period is $5,000 or more, then the actual cost must be determined and reported.

(c) If the cost of providing office space, utilities, supplies and equipment to a lobbyist ~~or lobbying support personnel~~ is reported as provided in ARM 44.12.207~~(4)~~ (2) (a)(i) or (ii), the principal must make a good faith determination of such expenses and retain all calculations and records relied on as provided in ARM 44.12.202. If the actual cost of providing office space, utilities, supplies and equipment can be determined but is not reported as provided in ARM 44.12.207~~(4)~~ (2) (a)(i) and (ii), the actual cost determination must be retained as a record under ARM 44.12.202.

~~(5)~~ (3) Nothing in this rule requires a principal to report the cost of office space, utilities, supplies and equipment ~~and lobbying support personnel costs~~ for a lobbyist or a lobbying activity if the lobbyist is responsible for paying the cost of the lobbyist's office space, supplies, ~~support personnel,~~ equipment and utilities out of the amount paid to the lobbyist. If, however, the lobbyist is reimbursed by the principal for any office space, supplies, support personnel, equipment or utility costs incurred as part of a lobbying activity, the amount of such reimbursement must be reported.

~~(6) Grassroots lobbying expenditures must be reported by a principal unless otherwise exempted by the Act or this chapter. Expenditures made for compensation paid to prepare and distribute grassroots lobbying materials, printing costs, mailing costs, equipment costs, utility costs, office space costs, advertising costs, and any other expenditures made to assist or support a grassroots lobbying effort must be reported by a principal unless otherwise exempted by the Act or this chapter. The following examples illustrate what is reportable as a grassroots lobbying expenditure:~~

~~Example A~~

~~Principal Blue Hat is an association of widget dealers who sell widgets to the public. Principal Blue Hat determines~~

~~that SB 30 will have severe adverse impacts on widget dealers. Principal Blue Hat's employees and lobbyist prepare a fact sheet and a press release to be used at a press conference blasting SB 30. In addition, Principal Blue Hat sends copies of the fact sheet and a legislative alert letter to Blue Hat's members, asking the membership to contact their legislators and widget purchasers to oppose SB 30. Principal Blue Hat also obtains customer lists from the membership and sends 1,800 customers the fact sheet, pre-printed and stamped postcards opposing SB 30 and a letter requesting that the customers either contact their legislators to oppose SB 30 or sign and mail the pre-printed stamped postcards to their legislators. Three weeks after the press conference, SB 30 passes the senate and Principal Blue Hat's lobbyist prints an additional 200 copies of the fact sheet and distributes the fact sheet to all 150 legislators. The following grassroots lobbying expenditures must be reported by Principal Blue Hat:~~

~~(a) Principal Blue Hat does not have to report the cost of personnel, equipment, office space, supplies and utilities used to prepare the fact sheet and press release for the news conference blasting SB 30. ARM 44.12.102(5)(d) exempts activities involving bona fide news stories from the definition of "lobbying activity."~~

~~(b) Principal Blue Hat does not have to report the cost of personnel, equipment, office space, supplies and utilities used to prepare the legislative alert. Similarly, Blue Hat does not have to report the cost of distributing the alert and fact sheet to Blue Hat's membership. ARM 44.12.102(5)(e) exempts communications to Blue Hat's membership from the definition of "lobbying activity."~~

~~(c) Principal Blue Hat must report the cost of personnel, equipment, office space, supplies and utilities used to:~~

~~(i) distribute the fact sheet to legislators, including the time spent by Blue Hat's lobbyist directly communicating with legislators while distributing the fact sheet;~~

~~(ii) reproduce copies of the fact sheet distributed to legislators and the membership's customers; and~~

~~(iii) prepare and distribute the letter and pre-printed stamped postcards mailed to the membership's customers, including the value of the postage for the stamped pre-printed postcards.~~

~~Example B~~

~~Same facts as Example A, except that the fact sheet is prepared for immediate distribution to legislators, other interest groups supporting Principal Blue Hat's position on SB 30 and the public. 5,000 copies of the fact sheet are printed the day before the press conference and the fact sheet is distributed at a committee hearing the day after the press conference. Under this example, the following are reportable as lobbying expenditures:~~

~~(a) Principal Blue Hat does not have to report the cost of personnel, equipment, office space, supplies and utilities used to prepare the press release for the news conference under ARM 44.12.102(5)(d).~~

~~(b) Principal Blue Hat does not have to report the cost of personnel, equipment, office space, supplies and utilities used to prepare the legislative alert under ARM 44.12.102(5)(e).~~

~~(c) Principal Blue Hat must report the cost of personnel, equipment, office space, supplies and utilities as follows:~~

~~(i) all payments made or costs incurred to prepare, reproduce and distribute the fact sheet must be reported. This interpretation is consistent with the commissioner's historic interpretation of the identical membership communication exemption under Montana's Campaign Finance and Practices Act. The full cost of preparing and distributing a membership communication must be reported if the communication is distributed unsolicited to nonmembers. The same rationale applies to Principal Blue Hat's preparation of the fact sheet as part of Blue Hat's lobbying effort; and~~

~~(ii) all payments made or costs incurred to prepare and distribute the letter and pre-printed stamped postcards mailed to the membership's customers, including the value of the postage for the stamped pre-printed postcards must be reported.~~

AUTH: 5-7-111, MCA
IMP: 5-7-111 and 5-7-208(5)(a), MCA

44.12.211 ALLOCATIONS OF TIME AND COSTS--ALTERNATIVE REPORTING METHOD (1) A principal may use the following alternatives to report payments ~~for lobbying~~ to a lobbyist to lobby or ~~payments~~ to support or assist a lobbying activity:

(a) if most or all of ~~an employee's~~ a lobbyist's time during a reporting period is devoted to lobbying or supporting or assisting lobbying activities, the total sum of all compensation paid to him during the period may be reported as lobbying payments;

(b) if less than all of ~~an individual's~~ a lobbyist's time is devoted to lobbying or supporting or assisting lobbying activities, then the sum reportable may be calculated as the proportion of the total compensation paid which equals the proportion of the total hours or days spent lobbying or supporting or assisting lobbying activities during the reporting period. For example, if ~~an employee or agent~~ a lobbyist is paid $500 per week and spends the equivalent of two days lobbying or supporting or assisting lobbying activities, then $200 may be reported by his principal as lobbying payments; and

(c) office space, utilities, supplies, equipment and salary payments made to support or assist a lobbyist engaged in lobbying or ~~to support or assist~~ a lobbying activity may be reported as a proportion of total expenses for the reporting

period. If it can be reasonably determined that a given proportion of total expenses during a period were related to lobbying or supporting or assisting lobbying activities, a principal may report the proportion of total expenses for the period ~~which~~ that equals the proportion of time and budget spent on lobbying or supporting or assisting lobbying activities.

(2) same as proposed.

AUTH: 5-7-111, MCA
IMP: 5-7-111 and 5-7-208, MCA

5. The following comments were received and appear with the Commissioner's responses.

COMMENT 1: The definition of "compensation" in ARM 44.12.102(1)(a) is unnecessarily detailed.

RESPONSE: While the Commissioner does not agree that the definition is unnecessarily detailed, minor changes in the definition have been made.

COMMENT 2: The definitions of "compensation," "payment," and "payment to influence official action" in ARM 44.12.102(1) and ARM 44.12.102(8) go beyond what is contemplated by or authorized under the existing law.

RESPONSE: The Commissioner has considered this comment but disagrees with the contention that the Montana Lobbyist Disclosure Act does not authorize the language proposed in the rules. The definitions were drafted based on existing law, which includes definitions of "payment" and "payment to influence official action" in Montana Code Annotated § 5-7-102(9) and (10). All payments to influence official action must be reported. The existing definition of "payment" is quite comprehensive, including the distribution, transfer, and advance of money, property, or "anything of value." "Payment to influence official action" includes, in Montana Code Annotated § 5-7-102(10)(a), direct or indirect payments to a lobbyist by a principal.

COMMENT 3: The reference in ARM 44.12.102(4)(c) to a "public hearing conducted by a public official other than a legislator or a legislative committee" is inconsistent with the limitation set forth in RULE I, stating that the rules will only be applied to legislative lobbying.

RESPONSE: The Commissioner agrees, and the language has been deleted.

COMMENT 4: The exemption for "activities involving a bona fide news story" in ARM 44.12.102(5)(d) should be deleted, since news stories can be an effective lobbying tool.

RESPONSE: This exemption is borrowed from Montana's campaign finance and practices laws, specifically the exemptions from the definitions of "contribution" and "expenditure" in Montana Code Annotated §§ 13-1-101(6)(b)(ii) and (10)(b)(iii). The Commissioner has decided to retain the exemption, which is based on First Amendment considerations.

COMMENT 5: The reference to "Gayle Good Gal" in ARM 44.12.103(2)(c)(ii) could offend some people, and should be modified.

RESPONSE: The Commissioner agrees, and the reference has been changed to "Gayle Smith."

COMMENT 6: The phrase "and necessary" preceding "personal living expenses" in (1) of RULE II should be deleted, because the phrase is undefined and vague.

RESPONSE: The Commissioner has considered this comment but has decided to leave the language as proposed.

COMMENT 7: Subsection (2) of RULE II should not be adopted, since "personal living expenses" are exempt from reporting requirements.

RESPONSE: The Commissioner has decided to retain this subsection in the rule, because a lobbyist must provide the principal with adequate records to enable the principal to file reports that comply with the Act and the rules. The principal must retain records that support amounts reported under the Act and the rules. The principal must be able to document why payments to a lobbyist were not reported if an audit is conducted under Montana Code Annotated § 5-7-212, or a complaint is filed under ARM 44.12.213.

COMMENT 8: The record-keeping requirements necessary for compliance with ARM 44.12.207(4) are onerous. Legislative revisions that will lessen the burden should be considered.

RESPONSE: The Commissioner has made some revisions to ARM 44.12.207 that address some of these concerns. The Commissioner will consider proposing legislative changes in a future session.

COMMENT 9: It is not appropriate to include tips and gratuities in ARM 44.12.209.

RESPONSE: The Commissioner disagrees, and has decided to retain the language as proposed.

COMMENT 10: The provisions of RULE V do not resolve the conflict in language between 5-7-203 and 5-7-301, MCA, regarding whether a person has a week in which to apply for a

license after having triggered the registration requirements. Legislative clarification should be pursued.

RESPONSE: While the Commissioner has decided to leave the language as proposed, the Commissioner will consider proposing legislative changes in the 2003 legislation referenced in RULE I.

COMMENT 11: The complaint procedure in ARM 44.12.213 does not provide Due Process for the person who is the subject of the complaint. There should be an opportunity for a hearing prior to a decision by the Commissioner.

RESPONSE: The Commissioner believes that the investigation procedure provides Due Process for the subject of the complaint. The complaint process is an investigation to determine if there is substantial credible evidence and/or probable cause to believe that a violation of the Act or rules has occurred. A formal enforcement action initiated in a court of law, pursuant to Montana Code Annotated § 5-7-305, is a necessary prerequisite to imposition of any criminal or civil penalties. Therefore, the subject of the complaint will be provided with Due Process in any court proceedings that may follow the investigation by the Commissioner.

COMMENT 12: New language in the rules requiring documentation and reporting of efforts of staff who support or assist lobbying activities goes beyond the requirements of the laws and Montana Supreme Court decisions.

RESPONSE: The Commissioner believes there is sufficient statutory authority to adopt the rules as proposed in MAR Notice No. 44-2-117. However, the Commissioner also acknowledges that there are statutory conflicts and ambiguities within the Montana Lobbyist Disclosure Act that can only be resolved by the Montana Legislature or through an initiative. The Commissioner has decided to delete portions of proposed rules requiring the reporting of expenditures made for lobbying support personnel. The 2003 Montana Legislature will be asked to resolve reporting requirements for lobbying support personnel.

COMMENT 13: New language in the rules requiring reporting of "grassroots lobbying" efforts go beyond the requirements of the laws and Montana Supreme Court decisions.

RESPONSE: The Commissioner believes there is sufficient statutory authority to adopt the rules as proposed in MAR Notice No. 44-2-117. However, the Commissioner also acknowledges that there are statutory conflicts and ambiguities within the Montana Lobbyist Disclosure Act that can only be resolved by the Montana Legislature or through an initiative. The Commissioner has decided to delete portions of proposed rules requiring the reporting of expenditures made

for grassroots lobbying. The 2003 Montana Legislature will be asked to resolve reporting requirements for grassroots lobbying efforts.

COMMENT 14: The requirements for reporting entertainment expenses do not reflect the true cost of the event. The entire expense of an event should be reported as a lobbying expense.

RESPONSE: The Commissioner has considered this comment but decided to leave the language as proposed.

COMMENT 15: Without legislative changes the rules cannot create new definitions for "lobbying activities." A principal should only be required to report costs of "face-to-face" lobbying efforts.

RESPONSE: The Commissioner believes there is sufficient statutory authority to adopt the rules as proposed. The Commissioner believes that the inclusion of a description of "lobbying activities" provides much-needed clarification regarding whether certain activities engaged in by a lobbyist are reportable.

COMMENT 16: The rules are too complex, and do not comply with the mandate of Montana Code Annotated § 5-7-111 that they be "as simple and easily complied with as possible."

RESPONSE: The Montana Lobbyist Disclosure Act requires disclosure of amounts of money spent for lobbying. Montana Code Annotated § 5-7-101(1). The extensive group discussions leading up to the drafting of these rules revealed that the specific requirements of the law as they relate to particular forms of lobbying are considerably more complex than originally thought. Montana Code Annotated § 5-7-111 also requires that the rules "be designed to effect and promote the purposes of [the Montana Lobbyist Disclosure Act], express or implied." The Commissioner believes that the new and amended rules are as simple and workable as possible, given the complexity of the law and the requirement that the rules effectuate the purposes of the existing laws.

By: /s/ LINDA L. VAUGHEY
Linda L. Vaughey
Commissioner

By: /s/ JIM SCHEIER
Jim Scheier
Assistant Attorney General
Rule Reviewer

Certified to the Secretary of State on August 30, 2002.

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;**
- **Department of Public Service Regulation; and**
- **Office of the State Auditor and Insurance Commissioner.**

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.**

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, 2002. This table includes those rules adopted during the period July 1, 2002 through September 30, 2002 and any proposed rule action that was pending during the past 6-month period. (A notice of adoption must be published within 6 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, 2002, 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 2001 and 2002 Montana Administrative Registers.

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