

# MONTANA ADMINISTRATIVE REGISTER

## ISSUE NO. 12

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 The Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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

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BEFORE THE DEPARTMENT OF ADMINISTRATION  
OF THE STATE OF MONTANA

In the matter of the adoption of New	)	NOTICE OF PUBLIC HEARING
Rules I & II, amendment of ARM	)	ON PROPOSED ADOPTION,
2.21.3702, 2.21.3703, 2.21.3704,	)	AMENDMENT, TRANSFER,
2.21.3708, 2.21.3709, 2.21.3715,	)	AND REPEAL
2.21.3719, 2.21.3721, 2.21.3723,	)	
2.21.3724, 2.21.3726, and 2.21.3728,	)	
the amendment and transfer of ARM	)	
2.21.3712, and the repeal of ARM	)	
2.21.3718 and 2.21.3727 in the	)	
Recruitment and Selection Policy	)	

TO: All Concerned Persons

1. On July 19, 2006, at 9:00 a.m., a public hearing will be held in Room 136, Mitchell Building, 125 N. Roberts Street, Helena, Montana, to consider the proposed adoption, amendment, transfer, and repeal of the above-stated rules.

2. The Department of Administration will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m. on July 6, 2006, to advise us of the nature of the accommodation that you need. Please contact State Personnel Division, Department of Administration, P.O. Box 200127, Helena, MT 59620-0127; telephone (406) 444-3871; Montana Relay Services 711; FAX (406) 444-0544; or e-mail ldavis@mt.gov.

3. The proposed new rules provide as follows:

RULE I NONCOMPETITIVE REASSIGNMENTS AND PROMOTIONS

(1) An agency may reassign or promote an employee to another position without a competitive process when the agency determines it is in the best interests of the agency.

(2) An agency must justify a noncompetitive reassignment or promotion by documenting the reasons for the action.

(3) The agency head must approve a noncompetitive reassignment or promotion outside an employee's current classification and pay level.

(4) The employee promoted or reassigned must possess the qualifications necessary to perform the duties and responsibilities assigned to the position, or the agency must establish an appropriate training assignment.

(5) The provisions of this rule do not apply if they would create a conflict with a collective bargaining agreement.

AUTH: 2-18-102, MCA  
IMP: 2-18-102, 49-3-201, MCA

RULE II LIMITED REEMPLOYMENT FOR RETIREES (1) An agency may reemploy an employee who previously retired from the agency without a competitive hiring process if:

(a) the retiree possesses the requisite skills and qualifications to perform the duties and responsibilities of the position; and

(b) the agency determines that reemployment is in the agency's best interests.

(2) An agency must document the reasons for reemployment and why it was determined to be in the agency's best interests.

(3) Reemployment under this rule is subject to the hour and wage limitations set forth for retirees in 19-3-1106 and 19-20-731, MCA. Limitation provision information is available from the Montana Public Employee Retirement Administration and Montana Teachers' Retirement System.

AUTH: 2-18-102, MCA

IMP: 2-18-102, 49-3-201, MCA

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

2.21.3702 POLICY AND OBJECTIVES (1) It is the policy of the state of Montana to:

(a) recruit and select employees on the basis of merit and job-related qualifications ~~and without consideration of regard to~~ race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, ~~or~~ national origin as provided in 49-3-201, MCA, or sexual orientation as provided in the Nondiscrimination-Equal Employment Opportunity (EEO) policy, ARM 2.21.4001, et seq. ~~except where marital status, age, or physical or mental disability is a bona fide occupational qualification reasonably necessary to the department's operations;~~

(b) provide qualified applicants with a reasonable opportunity to learn about, ~~to~~ apply for, and ~~to~~ be considered for positions when external recruitment is conducted.

(2) Agencies may use a bona fide occupational qualification (BFOQ) where the reasonable demands of a position require such distinction. To establish a BFOQ for a position, an agency must demonstrate that the distinction is reasonably necessary to the normal operations of the agency's business or that the differentiation is based on reasonable factors as provided in 49-3-103, MCA. This means the agency must present evidence that a definable group of employees would be unable to perform the job safely and efficiently or that it would be impossible or highly impractical to consider the qualifications of each such employee and that the BFOQ is reasonably necessary to the operation of the agency.

~~(2) Nothing in these rules is intended to:~~

~~(a) limit a department's discretion to select a recruitment method for a vacancy, including, but not limited to, internal recruitment, promotion, reassignment or training assignment, job registry recruitment, or external to the general public~~

recruitment provided the department follows applicable rules for whichever method is selected; or

~~(b) preclude the use of recruitment and selection procedures that assist in the achievement of affirmative action objectives. Compliance with these rules does not relieve a department of its equal employment opportunity and affirmative action obligations or its obligations under other state or federal rules and regulations that govern recruitment and selection.~~

(3) An agency may not select an individual for permanent status without a competitive recruitment process except as allowed in [NEW RULE I].

~~(3)(4) It is the objective of this policy to establish minimum standards for fair and consistent treatment of applicants and employees in recruitment and selection in accordance with applicable that comply with relevant state and federal laws, and regulations, and rules.~~

(5) Nothing in this policy is intended to preclude the use of recruitment and selection procedures that assist in the achievement of affirmative action objectives. Compliance with these rules does not relieve an agency of any obligations they may have to undertake affirmative action to assure equal employment opportunity.

AUTH: 2-18-102, MCA

IMP: 2-18-102, 49-3-201, MCA

2.21.3703 DEFINITIONS For purposes of this subchapter, the following definitions apply:

(1) "Adverse impact" means that members of a group identified and protected from discrimination such as sex, race, or ethnicity who experience a substantially lower rate of selection in hiring, promotion, pay rates, and other benefits of employment. Groups protected from discrimination are referred to in ARM 2.21.3702.

(2) "Agency" means a department, board, commission, office, bureau, institution, or unit of state government recognized in the state budget, as provided in 2-18-101, MCA, unless excepted in 2-18-103 or 2-18-104, MCA.

(4)(3) "Bona fide occupational qualification (BFOQ)" means a legal exception to an otherwise discriminatory hiring practice an exception to the prohibitions against discrimination that is allowed where the reasonable demands of a position require an age, physical or mental disability, marital status, or sex, religion, or national origin distinction. "Reasonable demands" is to be strictly construed, as provided in 49-2-402, MCA, and the burden rests with the department to demonstrate that the exemption should be granted, as provided in 49-2-402, MCA.

~~(2) "Essential duties," or the essential functions of the job as referred to in the Americans with Disabilities Act of 1990, means the fundamental job duties of the position that are required to be performed by the employee either with or without an accommodation.~~

(4) "Competencies" means sets of measurable and observable knowledge, skills, abilities, and behaviors that contribute to success in a job.

(3)(5) "External recruitment" means the open, competitive soliciting solicitation of applications from any interested persons which includes in the general public including and current state employees of a department.

~~(4)~~(6) "Internal recruitment" means the open, competitive soliciting solicitation of applications that, at the discretion of the department agency, is limited to:

(a) current employees of the department agency, the division, or other appropriate internal unit; or to

(b) employees in a reduction-in-force pool who have been laid off from the department agency; or to

(c) job registry participants.

(7) "Internet applicant" means an individual who satisfies the following four criteria:

(a) the individual submits an expression of interest in employment through the Internet or related electronic data technologies;

(b) the agency considers the individual for employment in a particular position;

(c) the individual's expression of interest indicates the individual possesses the basic qualifications for the position; and

(d) the individual at no point in the agency's selection process prior to receiving an offer of employment from the agency, removes himself or herself from further consideration or otherwise indicates that he or she is no longer interested in the position.

~~(5)~~(8) "Job analysis" means the process of gathering, analyzing, and creating information about a position in order to identify the essential duties, functions, roles, and competencies required to perform the work of the position, and the written documentation of the results of the analysis. ~~a study of a position to determine the major duties/responsibilities and activities/tasks, their relative importance to the job and the knowledge, skills, and abilities required to perform them. Job analysis is also used to determine the qualifications for the position.~~

~~(6)~~(9) "Job expert" means a person who is knowledgeable about the position being filled and/or a person who has expertise in the recruitment and selection process. ~~Examples may include the incumbent, the incumbent's supervisors, persons in the same or a similar position, and the personnel or EEO officer.~~

~~(7)~~(10) "Job-related" means criteria shown by a job analysis to be directly related to a specific activity/task or activities/tasks duties in a job or to be directly related to a qualification or competency necessary to perform ~~a specific activity/task or activities/tasks~~ in a job.

~~(8)~~(11) "Qualifications" means the minimum competencies needed to perform the job and the education and experience associated with successful job performance. ~~knowledge, skills, and abilities required to perform a job and the education and experience leading to them.~~

~~(a) Knowledge: a body of facts and information relating to a particular subject or subject area. Examples of knowledge include knowledge of law, accounting principles, laboratory procedures.~~

~~(b) Skill: a present competence to perform a learned psychomotor act. Examples of skill include typing, operating a front-end loader, drafting.~~

~~(c) Ability: a present competence to perform a function, physical or mental. Examples of abilities include problem solving ability, spatial ability, visual acuity.~~



(9) ~~"Rating scale" means a system used to score suggested responses in a selection procedure. Examples are: a scale that uses a 0-5 rating or a scale that uses a (+), (✓), (-) system of scoring.~~

~~(10)~~(12) "Reasonable accommodation" means any change in the work environment or in the way things are customarily done that enables an individual with a disability to enjoy equal employment opportunities and means adjustments made to accommodate an individual's religious beliefs or practices. ~~, in accordance with section 504 of the Rehabilitation Act of 1973 and Title I of the Americans with Disabilities Act of 1990:~~

~~(a) modifications or adjustments to a job application process that enable a qualified applicant with a disability to be considered for the position such qualified applicant desires;~~

~~(b) modifications or adjustments to the work environment, or to the manner or circumstances under which the position held or desired is customarily performed that enable a qualified individual with a disability to perform the essential functions of that position; or~~

~~(c) modifications or adjustments that enable an employee with a disability to enjoy equal benefits and privileges of employment as are enjoyed by other similarly situated employees without disabilities, unless the accommodation would impose an undue hardship on the department. (Types of reasonable accommodations and the criteria for evaluating undue hardship can be found in the reasonable accommodation guide and the Nondiscrimination-Equal Employment Opportunity Guide prepared by available from the sState pPersonnel dDivision, dDepartment of aAdministration website: <http://hr.mt.gov/HRServices/policiesguides.asp>.~~

~~(11) "Selection procedures" means procedures to evaluate applicants' qualifications as they relate to the knowledge, skills and abilities and education and experience for a job. These may include, but are not limited to:~~

~~(a) Performance tests evaluate an applicant's knowledge, skill, or ability on a task very similar or identical to that required on the job, such as a typing test or driving test.~~

~~(b) Physical tests generally include endurance and strength measurements.~~

~~(c) Reference checks are inquiries that relate to an applicant's possession of job-related qualifications and are requested of persons able to evaluate the applicant's job-related qualifications, such as a former or current supervisor.~~

~~(d) Structured interviews consist of job-related questions or situations asked to assess an applicant's knowledge, skills, and/or abilities to perform the job. Questions or situations may be administered in oral or written form.~~

~~(e) Supplement questions describe a specific area of the job in detail and ask applicants to describe their knowledge, skills and abilities, training and/or experience as it relates to the specific area.~~

~~(f) Training and experience evaluations examine an applicant's education, training and/or experience as they relate to the job.~~

~~(g) Written tests are paper and pencil exams that evaluate job-related qualifications and may include, but are not limited to, true or false, multiple choice, fill-in-the-blank or essay items.~~

~~(h) Work samples are products that result from an applicant's efforts and are representative of the applicant's level of competence in a specific area(s). A work~~

sample may be requested at the time of application or may be requested later in the process. Examples include a budget or a work plan that was prepared by the applicant, a legal brief or computer program written by the applicant or a thesis or educational paper written by the applicant. A written work sample may be used to evaluate an applicant's written communication skills, when appropriate.

(12) "Suggested response" means the written criteria used to evaluate an applicant's response to a job-related question or situation asked in a selection procedure.

AUTH: 2-18-102, MCA

IMP: 2-18-102, 49-3-201, MCA

#### 2.21.3704 JOB REGISTRY PROGRAM AND REEMPLOYMENT

FOLLOWING LAY-OFF (1) This rule implements the job registry components of the State Employee Protection Act, 2-18-1201, et seq., MCA.

(2) For purposes of administering this rule, the following definitions apply:

(a) "Agency" means, ~~as provided in 2-18-1202, MCA,~~ a department, board, commission, office, bureau, institution, or unit of state government recognized in the state budget, but does not include the Montana university system, as provided in 2-18-1202, MCA.

~~(b)~~ (d) "Effective date of lay-off" means the date determined by the department agency to be the end of employment for an employee, ~~allowing adequate time for appropriate notice before lay-off.~~

~~(c)~~ (b) "Employee" means, ~~as provided in 2-18-1202, MCA,~~ "a person employed by the state who has achieved permanent status, as defined in 2-18-101, MCA, or officers and employees of the legislative branch and teachers under the authority of the ~~d~~Department of ~~e~~Corrections or ~~d~~Department of ~~p~~Public ~~h~~Health and ~~h~~Human ~~s~~Services who have been employed for at least ~~6~~ six continuous months," as provided in 2-18-1202, MCA. This term does not include a student intern, as defined in 2-18-101, MCA, or employees individuals who choose the retirement benefits provided for in 19-2-706, MCA, in-lieu instead of the benefits provided for in ~~of~~ the State Employee Protection Act.

(d) "Job registry" means a special job register from which all agencies may attempt to hire employees prior to seeking applications from the general public, as provided in 2-18-1203, MCA.

(e) "Job registry coordinator" means the ~~s~~State ~~p~~Personnel ~~d~~Division, ~~d~~Department of ~~a~~Administration.

~~(f)~~ (c) "Permanent status" means, ~~as provided in 2-18-101, MCA,~~ "the state an employee attains after satisfactorily completing an appropriate probationary period, as provided in 2-18-101, MCA.

(3) The job registry coordinator shall administer the job registry ~~provided for under the State Employee Protection Act.~~

(a) Agencies must inform the job registry coordinator about employees who have been notified of a reduction in force and their anticipated termination date(s).

(b) Employees may elect to participate in the job registry after they ~~who~~ have been notified of a pending lay-off, or have been laid off ~~terminated~~ due to a reduction in force, ~~may elect to participate in the job registry.~~

(c) Participating ~~To participate~~, employees must complete the application materials developed by the job registry coordinator and submit them to the coordinator. The job registry coordinator may require participants to update materials.

~~(c) An employee, who does not elect to participate in the job registry or whose eligibility to participate has expired, and who subsequently applies as an external applicant for a vacancy, is not entitled to the benefits of the job registry.~~

(4) Agencies are encouraged ~~The department encourages agencies to consider applicants included in~~ check the job registry before ~~recruiting~~ posting vacancies externally to ~~from~~ the general public, but, pursuant to 2-18-1203, MCA, agencies are not required to utilize the job registry.

~~(a) An agency may limit an internal applicant pool to current agency employees and employees who have been laid off from the agency. Reemployment of a person who was terminated at the end of seasonal employment is internal recruitment.~~

~~(b) An agency may limit its applicant pool to job registry participants. An agency may fill any vacancy from the job registry before posting it to the general public.~~

~~(c) An agency may recruit internally to the agency and to the job registry simultaneously unless this practice conflicts with agency policy or the provisions of a collective bargaining agreement. Internal applicants and job registry participants may be treated as one applicant pool. In order to break a tie between two applicants with substantially equal qualifications, an agency may select the applicant with the longest state government service.~~

~~(d) Recruitment from the job registry is not a solicitation of applications from the general public. Therefore, pursuant to 39-30-103, MCA, veterans', persons with disabilities', and Indian employment preferences do not apply.~~

(5) The public employment hiring preferences for veterans, persons with disabilities, and American Indians do not apply when agencies consider participants from the job registry, because it is not an initial hiring, as provided in 39-30-103, MCA.

~~(5)(6) When an agency hires a job registry participant, the agency must notify the job registry coordinator.~~

~~(6) The job registry coordinator will ask participants to update materials as needed.~~

(7) An employee's eligibility to participate in the job registry ends when:

(a) the employee secures employment with at an hourly salary equal to or higher than the position from which the employee was laid off. Acceptance of permanent employment at a lower hourly salary or acceptance of seasonal, temporary, or short-term employment does not end an employee's right to continue participation on the job registry;

(b) an employee refuses a reinstatement offer, as provided in Rule 5007 of the reduction in work force, MOM Policy 3-0155, revised July 18, 2003 ARM 2.21.5007. An agency shall notify the job registry coordinator when a reinstatement offer is refused;

(c) an employee notifies the job registry coordinator ~~withdraws~~ in writing that he or she no longer wishes to participate ~~from participation~~; or

(d) two years have elapsed, either since the employee's effective date of lay-off or since the date of the employee's completion of job training provided under 2-18-1203~~1 et seq.~~, MCA, whichever is later.

(8) ~~As provided in 2-18-1204, MCA, a~~An employee "who is subsequently transferred to a different position in a state agency is entitled to the same hourly salary as previously received if the new position is at the same grade level or higher as than the one previously held, as provided in 2-18-1204, MCA."

(9) A laid-off employee who is reemployed as a permanent employee within two years of the employee's effective date of lay-off ~~while still participating on the job registry shall not~~ will not be required to serve the qualifying period for use of annual leave and sick leave. Any ~~Leave which~~ the employee has elected to bank transfers to the new position.

(10) ~~Pay for Agencies shall use pay plan rule 1818, change from nonclassified to classified, MOM Policy 3-0505, revised July 1, 2003, to establish a pay rate for an employee laid off from a non-classified position, as described in pay plan rules 1802 and 1803, who accepts a classified position shall be determined using pay plan rule 1818, change from non-classified to classified.~~

(11) An employee who is hired from the job registry or a laid-off employee who is reemployed as a permanent employee within two years of the employee's effective date of lay-off in a position at a grade lower than the one held at lay-off is treated as a voluntary demotion, using ~~under~~ pay plan rule 1812, demotions, MOM Policy 3-0505, revised July 1, 2003.

(12) Pay for an employee who is demoted as the result of a RIF, but who is not laid-off, is administered using pay plan rule 1812, demotions, MOM Policy 3-0505, revised July 1, 2003.

~~(12)(13) In some cases, An agency may consider a demotion as a result of a RIF as may be considered "exceptional circumstances" and provide for purposes of a pay plan exception. Pay plan exceptions are described in, as provided in pay plan rule 1828, individual pay plan exceptions, MOM Policy 3-0505, revised July 1, 2003.~~

~~(13)(14) A termination caused by lay-off does not constitute a break in service for purposes of calculating longevity increment hours unless the employee has refused to accept a reinstatement offer or the employee's eligibility to participate on the job registry has ended, pursuant to the State Employee Protection Act, 2-18-1201 et seq., MCA. If the employee is ever reemployed by an agency within two years of the employee's effective date of lay-off, the employee's longevity increment hours are restored. Only actual years of employment count toward longevity.~~

(15) The MOM policies referenced in this rule are incorporated by reference and are available from the State Personnel Division, Department of Administration, Room 130 Mitchell Building, 125 Roberts Street, P.O. Box 200127, Helena, MT 59620-0127, telephone (406) 444-3871, or on the State Personnel Division website: <http://hr.mt.gov/HRServices/policiesguides.asp>.

AUTH: 2-18-102, MCA

IMP: 2-18-102, 49-3-201, MCA

2.21.3708 EXTERNAL RECRUITMENT (1) An agency must use an  
E~~external recruitment process must be used if a selection is not made through~~

internal recruitment, a training assignment, or job registry recruitment: unless the agency:

- (a) fills a position through internal recruitment;
- (b) fills a position with an applicant participating in the job registry;
- (c) fills a position with a participant in on-the-job training, work experience, or other programs conducted under the Workforce Investment Act such as dislocated worker programs, adult and youth programs, welfare-to-work programs, Native American programs, and school-to-work programs;
- (d) recalls a seasonal employee, as defined in 2-18-101, MCA, who was selected using a competitive process;
- (e) selects a short-term worker or student intern as defined in 2-18-101, MCA. A short-term worker or student intern may be selected without going through a competitive recruitment process; or
- (f) the agency fills a position with a noncompetitive reassignment or promotion in accordance with [NEW RULE I].

(2) The A vacancy announcement for all positions open to external recruitment must be sent to posted with the State of Montana Employment Information website: <http://mt.gov/statejobs/statejobs.asp> job service for at least five working days for all permanent and seasonal employment that is opened to external recruitment. The State of Montana Employment Information website is maintained by the State Personnel Division, Department of Administration.

~~(2) (3)~~ Each agency must send post vacancy announcements for temporary employment, as defined in 2-18-101, MCA, or for permanent positions being filled an agency is filling on a temporary basis to with the State of Montana Employment Information website: <http://mt.gov/statejobs/statejobs.asp> job service unless the agency decides, on a case-by-case basis, that the position must be filled immediately or other conditions exist that make it impractical to do so.

~~(3) Positions filled by participants in on-the-job training, work experience or other programs conducted under federally authorized employment or training programs do not require posting with the job service.~~

~~(4) An agency may distribute V~~vacancy announcements may be distributed to other appropriate recruitment sources in an endeavor to achieve a diverse workforce from all segments of society such as newspapers, the internet, Indian community colleges, placement organizations for women and/or persons with disabilities, in addition to the job service and other agencies in a manner consistent with agency policy.

~~(5) An agency may limit external recruitment advertising, including posting at the job service, to a geographic area; however, all properly completed applications received by the closing date must be considered, regardless of whether the applicant resides within that geographic area.~~

~~(6) An agency may use an applicant search service or an Internet recruitment service to accept applicants including Internet applicants for vacant positions that are opened to external recruitment. Each agency shall post all external vacancy announcements with the job service for at least five working days.~~

AUTH: 2-18-102, MCA

IMP: 2-18-102, 49-3-201, MCA

2.21.3709 EXTERNAL VACANCY ANNOUNCEMENTS (1) ~~It is recommended that all e~~External vacancy announcements must contain all the information required ~~prescribed~~ by the state's guidelines for preparing a vacancy announcement.

(2) The guidelines are incorporated by reference and (available from the sState pPersonnel dDivision, dDepartment of aAdministration, Room 130 Mitchell Building, 125 Roberts Street, P.O. Box 200127, Helena, MT 59620-0127, telephone (406) 444-3871, or on the State Personnel Division website: <http://hr.mt.gov/HRServices/policiesguides.asp>). ~~Additional information may be included at the department's discretion.~~

AUTH: 2-18-102, MCA

IMP: 2-18-102, 49-3-201, MCA

2.21.3715 EQUAL EMPLOYMENT OPPORTUNITIES (1) ~~As provided in 49-3-201, MCA, E~~each agency shall develop an EEO program as provided in 49-3-201, MCA, and the Nondiscrimination-EEO Policy, ARM 2.21.4004 promulgate written directives to provide equal employment opportunity in recruitment and selection. The procedures for establishing the program are in the "Nondiscrimination-Equal Employment Opportunity Guide" available on the State Personnel Division website: <http://hr.mt.gov/HRServices/policiesguides.asp>.

(2) ~~As provided in 49-2-102, MCA, e~~Each agency shall maintain electronic records for each job, on sex, race, and ethnic group for employees and applicants, as provided in 49-2-102, MCA, and the Uniform Guidelines on Selection Procedures, 1978. The guidelines, adopted by reference, are published in Title 29, Code of Federal Regulations (CRF) Part 1607 and are available on the US Equal Employment Opportunity Commission website: <http://www.eeoc.gov/policy/regs/index.html>. "shall maintain records on age, sex, and race that are required to administer the civil rights laws and regulations. These records are confidential and available only to federal and state personnel legally charged with administering civil rights laws and regulations. However, statistical information compiled from records on age, sex, and race must be made available to the general public."

(a) State Personnel Division, Department of Administration, shall provide the utilization analysis and the adverse impact reports annually to each agency.

(b) Each agency shall make adverse impact and utilization analysis evaluations at least annually for each group that is 2% or more of the labor force and develop an action plan to correct problem areas.

(c) Records must be maintained for a period of time consistent with the employee record keeping policy, MOM Policy 3-0110, revised June 12, 1992 ARM 2.21.6605, et seq.

(3) At any step in the recruitment and selection process Agencies shall and in accordance with the Americans with Disabilities Act of 1990, each agency is required to make a reasonable accommodations to for a known physical or mental limitation of an otherwise qualified individual with a disability unless provision of such accommodation to do so would impose an undue hardship, as set forth by the

Americans with Disabilities Act of 1990 and the Montana Human Rights Act, Title 49, MCA. Requests for reasonable accommodation Steps in the recruitment and selection process may include receiving an accessible copy of the vacancy announcement, submitting an application, participating in an interviewing, or testing procedure, etc.

(4) Agencies shall make reasonable accommodations for religious observances or practices of an employee or applicant with regard to scheduling of tests or other selection procedures unless to do so would create an undue hardship on the conduct of the business, as set forth in the Guidelines on Discrimination Because of Religion. The guidelines, adopted by reference, are published in Title 29 CFR, Part 1605, revised July 1, 2003, and are available on the US Equal Employment Opportunity Commission website: <http://www.eeoc.gov/policy/regs/index.html>.

(5) Reasonable accommodation requests may must be evaluated on a case-by-case basis.

(6) The MOM policies and ARM rules and the state and federal guidelines referenced in this rule are incorporated by reference and are also available from the State Personnel Division, Department of Administration, Room 130 Mitchell Building, 125 Roberts Street, P.O. Box 200127, Helena, MT 59620-0127, or telephone (406) 444-3871.

AUTH: 2-18-102, MCA

IMP: 2-18-102, 49-3-201, MCA

#### 2.2.3719 DEVELOPMENT OF SELECTION PROCEDURES

~~(1) An agency may use any selection procedure or combination of procedures that are based on information obtained from a job analysis. It is recommended that agencies follow the procedures in the "Recruitment and Selection Manual" published by state personnel division, department of administration.~~

~~(2) Selection procedures must be developed by persons familiar with the position (job experts) in advance of any review of applicant qualifications.~~

(1) Selection procedures must be developed in advance of any review of applicant qualifications by job experts familiar with the position.

(2) Each selection procedure must include job-related criteria obtained from a job analysis.

(a) An agency should review the written position description or job profile to be sure that it accurately describes the current job duties, competencies, and qualifications.

(b) An agency should review and follow the procedures in the "Recruitment and Selection Manual" published by the State Personnel Division, Department of Administration, and are available on the State Personnel Division website: <http://hr.mt.gov/HRServices/policiesguides.asp>.

(3) Selection procedures must have written criteria against which applicant qualifications performance can be evaluated, such as (suggested responses and a rating scale).

(4) An agency may use any selection procedure or combination of procedures that best assess the job qualifications. Provision shall be made for periodic update and review of selection procedures.

~~(5) Each agency makes the determination whether an applicant meets the qualifications for a position. Agencies may use various procedures such as supplemental questions, structured interviews, performance tests, or reference checks, etc., to determine whether an applicant meets the qualifications for a position.~~

AUTH: 2-18-102, MCA

IMP: 2-18-102, 49-3-201, MCA

2.21.3721 EVALUATION OF QUALIFICATIONS (1) An agency will determine whether an applicant meets the job qualifications. Persons involved in evaluating applicants' qualifications must be job experts.

(2) Job experts shall use job-related criteria, such as education and experience, suggested responses to questions, suggested responses and rating scales to evaluate applicants' qualifications against job qualifications.

(3) Evaluation techniques should permit an applicant to be compared against the requirements for the job qualifications as well as relative to others in the applicant pool.

(4) A selection may be made from any of the most qualified group of applicants. The public employment hiring preferences must be applied as provided in veterans' employment preference, MOM Policy 3-0172, revised October 3, 2003, persons with disabilities employment preference, MOM Policy 3-0171, revised February 11, 2000, and as provided in 2-18-111, MCA, hiring preference for residents of Indian reservations for state jobs within reservation. These policies are incorporated by reference and are also available from the State Personnel Division, Department of Administration, Room 130 Mitchell Building, 125 Roberts Street, P.O. Box 200127, Helena, MT 59620-0127, or telephone (406) 444-3871.

AUTH: 2-18-102, MCA

IMP: 2-18-102, 49-3-201, MCA

2.21.3723 INTENTIONAL MISREPRESENTATION (1) Agencies may exclude an applicant from further consideration for employment or discharge an employee if it learns that ~~When an applicant has made intentionally misrepresentation~~ misrepresented facts about his or her qualifications or job history during the recruitment and selection process, the applicant may be excluded from further employment consideration for the position or may be removed from appointment.

(2) Applicants shall be notified that willful misstatements of qualifications may exclude them from further consideration for the position or lead to discharge removal from employment.

AUTH: 2-18-102, MCA

IMP: 2-18-102, 49-3-201, MCA



2.21.3724 NOTIFICATION OF APPLICANTS (1) As provided in ARM 2.21.1428 and 2.21.3617, for an applicant claiming an employment preference, agencies must be given:

(a) provide the applicant a written notice of the hiring decision; ~~Each agency shall~~

(b) maintain a record of which applicants were notified; and

(c) record of the date the notification was sent in accordance with ARM 2.21.1428 and 2.21.3617.

AUTH: 2-18-102, MCA

IMP: 2-18-102, 49-3-201, MCA

2.21.3726 DOCUMENTATION (1) The following ~~materials~~ documentation must be included in the ~~documentation for each selection~~ recruitment and selection process:

(a) job information;

(b) screening information; and

(c) applicant information.

(2) For the purposes of this subchapter, "job information" means:

(a) a description of the current duties of the job;

(b) a copy of the vacancy announcement;

(c) a copy of newspaper or journal advertising, if any, and a list of all recruitment sources used; and

(d) a copy of Internet posting, if any.

(3) For the purposes of this subchapter, "screening information" means:

(a) a copy of all selection procedures and any criteria used to evaluate qualifications such as suggested responses and rating scales; and

(b) the names and titles of any persons who participated in the design or administration of the selection procedures.

(4) For the purposes of this subchapter, "applicant information" means:

~~(d)~~ (a) all applications, supplement question responses, scoring, reference checks, and any other application materials received;

~~(e)~~ a copy of all selection procedures and any criteria used to evaluate performance (suggested responses and rating scale);

~~(f)~~ any written evaluations;

~~(g)~~ the names and titles of any persons who participated in the design or administration of the selection procedures;

~~(h)~~ (b) records or other information necessary for the applicant flow survey;  
and

~~(i)~~ (c) correspondence with applicants.

~~(2)~~ (5) The items listed in this rule must be maintained for a period of time consistent with the employee record keeping policy, MOM Policy 3-0110, revised June 12, 1992. This policy is incorporated by reference and available from the State Personnel Division, Department of Administration, Room 130 Mitchell Building, 125 Roberts Street, P.O. Box 200127, Helena, MT 59620-0127, telephone (406) 444-3871, or on the State Personnel Division website:

<http://hr.mt.gov/HRServices/policiesguides.asp> ~~minimum of two years after the materials are last used, in case of litigation.~~

AUTH: 2-18-102, MCA

IMP: 2-18-102, 49-3-201, MCA

2.21.3728 ACCESS TO DOCUMENTATION AND CONFIDENTIALITY

(1) All application and selection materials shall be confidential. Job information as described in ARM 2.21.3726 is public information.

(2) Screening information as described in ARM 2.21.3726 is public information; however, an agency may maintain the confidentiality of selection procedures and criteria as set forth in ARM 2.21.3726 if:

(a) the agency can establish a legitimate business need to reuse the procedures and criteria; or

(b) the agency determines public disclosure of the information would jeopardize the agency's ability to select the best-qualified candidate for the position.

(3) Applicant information as described in ARM 2.21.3726 is confidential pursuant to Montana's constitutional guarantee of privacy; however, an agency may release applicant information to third parties if the agency:

(a) receives a properly executed court order;

(b) receives a properly executed release from the applicant; or

(c) as part of the application or selection process, notifies applicants that upon weighing the merits of public disclosure against an applicant's individual privacy interests, the agency determined that continued consideration for the position was contingent upon the applicant providing authorization for release of specified applicant information.

(4) Release of applicant information under (3) will be made in accordance with the terms of the court order or release.

~~(2) An agency may withhold personal information relating to any applicant from any person not involved in administering the hiring process. An agency shall release materials relating to selection decisions to other parties upon the receipt of a properly executed administrative or judicial order.~~

AUTH: 2-18-102, MCA

IMP: 2-18-102, 49-3-201, MCA

5. The department proposes to amend and transfer the following rule:

2.21.3712 (2.21.3707) INTERNAL RECRUITMENT (1) When an agency recruits internally, it may ~~An agency may limit internal recruitment to:~~

(a) current employees, as defined in 2-18-101, MCA, of the agency, the division, or other appropriate internal unit; or ~~exclude applications from job registry participants and the general public.~~

(b) current agency employees and employees who have been laid off from the agency within one year of the effective date of layoff.

(2) An agency may recruit from the job registry before soliciting from the general public.

(3) An agency may recruit internally to the agency and to the job registry simultaneously unless this practice conflicts with agency policy or the provisions of a collective bargaining agreement.

~~(2)~~(4) Internal vacancy announcements must be posted according to agency policy. ~~It is recommended that~~ The internal vacancy announcements should contain information similar to that required in ARM 2.21.3709 ~~for external recruitment.~~

AUTH: 2-18-102, MCA  
IMP: 2-18-102, 49-3-201, MCA

6. The department proposes to repeal the rules as follows:

2.21.3718 JOB ANALYSIS found at ARM page 2-1111.

AUTH: 2-18-102, MCA  
IMP: 2-18-102, 49-3-201, MCA

2.21.3727 ACCESS TO SELECTION MATERIAL found at ARM page 2-1114.

AUTH: 2-18-102, MCA  
IMP: 2-18-102, 49-3-201, MCA

7. Reasonable Necessity: The Department of Administration has determined that it is necessary to revise the Recruitment and Selection policy to comply with evolving state and federal requirements, to reflect current practices, and to enhance readability. The proposed revisions are in response to recommendations made to the Department of Administration by a formal advisory committee, the Human Resource (HR) Advisory Group, that recommended the changes after considerable study over a period of time and by other HR leadership from all agencies that are involved in recruitment and selection practices. The proposed revisions explain the recruitment and selection process that agencies must follow and clarify state and federal equal employment opportunities requirements.

Although much of the material in these rules applies only to the internal workings of state government, there remains enough potential effect on the general public to preserve this information, and make it available, in administrative rule.

8. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments also may be submitted to the Department of Administration, State Personnel Division, Attention Linda Davis, P.O. Box 200127, Helena, MT 59620-0127, e-mail ldavis@mt.gov, no later than July 28, 2006.

9. The State Personnel Division, Department of Administration has been designated to preside over and conduct the hearing.

10. The Department of Administration maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this department. Persons who wish to have their name added to the mailing list must 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 personnel rules. Such written request may be mailed or delivered to Department of Administration, State Personnel Division, Attention: Linda S. Davis, P.O. Box 200127, Helena, MT 59620-0127, faxed to the office at (406) 444-0544, e-mailed to ldavis@mt.gov, or may be made by completing a request form at any rules hearing held by the Department of Administration.

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

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

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

Certified to the Secretary of State June 12, 2006

BEFORE THE DEPARTMENT OF ADMINISTRATION  
OF THE STATE OF MONTANA

In the matter of the proposed ) NOTICE OF PUBLIC HEARING  
amendment of ARM 2.59.1705 pertaining ) ON PROPOSED AMENDMENT  
to licensing examination and ) AND ADOPTION  
continuing education provider )  
requirements and the proposed )  
adoption of NEW RULE I pertaining )  
to records to be maintained )

TO: All Concerned Persons

1. On July 18, 2006, at 10:00 a.m., a public hearing will be held in Room 342 of the Park Avenue Building, 301 S. Park, Helena, Montana, to consider the proposed amendment and adoption of the above-stated rules.

2. The Department of Administration, Division of Banking and Financial Institutions, will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice. If you require an accommodation, contact the Division of Banking and Financial Institutions no later than 5:00 p.m. on July 12, 2006, to advise us of the nature of the accommodation that you need. Please contact Christopher Romano, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; telephone (406) 841-2928; TDD (406) 444-1421; facsimile (406) 841-2930; e-mail to cromano@mt.gov.

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

2.59.1705 LICENSING EXAMINATION AND CONTINUING EDUCATION  
PROVIDER REQUIREMENTS (1) through (12) remain the same.

(13) The fee for review of an initial and biennial education provider application is ~~\$350~~ \$100 for the application fee and \$50 for each approved continuing education credit hour. All fees are nonrefundable and must be submitted with the application.

(14) and (15) remain the same.

AUTH: 32-9-130, MCA

IMP: 32-9-110, 32-9-118, MCA

REASON: The division has determined that it is reasonably necessary to amend ARM 2.59.1705 in order to ensure that the cost of approving continuing education providers and continuing education credit hours is commensurate with the time allocated by the division's mortgage broker examiners in reviewing and approving the submitted materials. The division has proposed to reduce the initial and biennial education provider application fee from \$350 to \$100 while adding a \$50 fee for

each approved continuing education credit hour. Under the existing rule there is no difference in cost for approving an education provider that submits a course for three credit hours in comparison to an education provider that submits multiple courses that total 40 credit hours. The time allocated by division staff in approving these materials is directly related to the amount of credit hours submitted for approval. The division estimates that for every hour of continuing education submitted it takes an examiner two hours to review and approve the materials. This time allocated includes not only the time spent on the review, but also time dedicated to correspondence with the education provider regarding the courses submitted.

There are currently 12 continuing education providers that the division has approved. The division anticipates that there will be a financial impact on the related costs of approving the continuing education credit hours. Currently the division has approved 374 continuing education credit hours among the 12 approved education providers. Under the proposed rule and based upon the current approved continuing education credit hours the approved education providers would be required to submit fees in the amount of \$19,900. The estimate differs from the \$4,200 submitted by the education providers under the existing rule. The division does not anticipate any financial impact on the mortgage broker and loan originator licensees.

4. The proposed new rule provides as follows:

NEW RULE I RECORDS TO BE MAINTAINED (1) A mortgage broker shall create and retain a residential mortgage file. The residential mortgage file shall contain:

- (a) a record of all cash, checks, or other monetary instruments received in connection with each mortgage loan application showing the identity of the payor, date received, amount, and purpose;
- (b) applicant's name, date, name of person taking the application, HUD-1 Settlement Statement, copies of all agreements or contracts with the applicant, including any commitment and lock-in agreements, and all disclosures required by state and federal law signed by the borrower;
- (c) correspondence sent and received by the mortgage broker;
- (d) a record of any and all contact with the borrower;
- (e) a copy of the hazard insurance, which is adequate to cover replacement costs of all improvements on the property securing the loan, including an endorsement naming the investor as the insured, when applicable;
- (f) a copy of the statement from the investor authorizing the loan;
- (g) a copy of the appraisal;
- (h) a copy of the borrower's credit report;
- (i) a copy of all documentation used to support the borrower's income;
- (j) a copy of all documentation used to support the borrower's assets;
- (k) a copy of the promissory note;
- (l) a copy of the policy of title insurance on the property securing the loan;

and

(m) a copy of all closing documents, including closing instructions and Good Faith Estimate and final Truth in Lending disclosure signed by the borrower.

(2) A mortgage broker shall maintain a trust account records file showing a sequential listing of checks written for each bank account relating to the licensee's business as a mortgage broker, showing at a minimum, check number, the payee, amount, date, and purpose of payment, including identification of the loan to which it relates, if any. The licensee shall reconcile the bank accounts monthly.

AUTH: 32-9-130, MCA

IMP: 32-9-121, 32-9-124, 32-9-125, MCA

REASON: The division has determined that it is reasonably necessary to adopt New Rule I titled Records to be Maintained in order for the division's mortgage broker examination staff to ensure that mortgage broker and loan originator licensees are in compliance with the provisions of the Montana Mortgage Broker and Loan Originator Licensing Act. It is reasonably necessary for the division's mortgage broker examination staff to review the records outlined in New Rule I in order to perform an examination of a licensees' residential mortgage loan files as well as to investigate any complaints filed by Montana consumers against a licensee. In particular, 32-9-124, MCA, prohibits licensees from making any deceptive statements or misrepresentations in connection with a residential mortgage loan as well as employing any scheme to defraud or mislead a borrower. Additionally, this statute also provides that state and federal disclosures be provided to the borrower at the time of application.

The licensee's financial documents required in (1) and (2) of New Rule I is reasonably necessary to ensure that licensees are in compliance with 32-9-125, MCA. This statute sets forth the trust account requirements as well as restrictions on when a licensee may accept a fee when assisting a borrower with a residential mortgage loan. In addition, a review of these financial documents by the division's mortgage broker examination staff may be necessary to determine that a licensee has not violated any prohibited practices outlined in 32-9-124, MCA.

The division does not anticipate any financial impact from this proposed rule. There are currently 120 mortgage broker entities, 29 mortgage broker sole proprietors, 138 individual mortgage brokers, and 292 loan originators licensed in Montana.

5. Concerned persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Mark Prichard, Legal Counsel, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; faxed to the office at (406) 841-2930; e-mailed to mprichard@mt.gov, and must be received no later than July 24, 2006.

6. Mark Prichard, Legal Counsel, Division of Banking and Financial Institutions, has been designated to preside over and conduct the hearing.

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

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

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

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

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

Certified to the Secretary of State June 12, 2006.



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

In the matter of the proposed	)	NOTICE OF PUBLIC HEARING
amendment of ARM 6.6.5203,	)	ON PROPOSED AMENDMENT
relating to small business	)	
health insurance purchasing	)	
pool, premium assistance and	)	
premium incentive payments,	)	
and tax credits	)	

TO: All Concerned Persons

1. On July 13, 2006, at 10:00 a.m., a public hearing will be held in the 2nd floor conference room, State Auditor's Office, 840 Helena Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rule.

2. The State Auditor's Office will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the office no later than 5:00 p.m., July 6, 2006, to advise us as to the nature of the accommodation needed. Please contact Darla Sautter, State Auditor's Office, 840 Helena Avenue, Helena, Montana 59601; telephone (406) 444-2726; facsimile (406) 444-3497; or e-mail to dsautter@mt.gov.

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

6.6.5203 REGISTRATION REQUIRED--ELIGIBILITY

- (1) remains the same.
- (2) Only employers with two to ~~five~~ nine eligible employees will be issued a certificate of registration or put on the waiting list.
- (3) through (5) remain the same.

AUTH: 33-22-2005, MCA

IMP: 33-22-2001, 33-22-2002, 33-22-2003, 33-22-2004, 33-22-2005, 33-22-2006, 33-22-2007, 33-22-2008, MCA

4. REASONABLE NECESSITY STATEMENT: The smallest employer groups (two to five employees) were offered the first chance to enroll in the purchasing pool and receive assistance. The State Auditor's Office received many inquiries from slightly larger employer groups who were ineligible under the rules because of their size. Additional funding for the program becomes available July 1, 2006. The waiting list for the employers with two to five employees has been substantially served. It is now possible to offer assistance to a broader group of employers. The applicable statute limits eligibility to employers with up to nine

employees. Therefore, eligibility should be offered to employers with two to nine employees.

5. Concerned persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Christina L. Goe, State Auditor's Office, 840 Helena Avenue, Helena, Montana 59601, or by facsimile (406) 444-3497, or by e-mail, addressed to cgoe@mt.gov, and must be received no later than July 21, 2006.

6. Christina L. Goe has been designated to preside over and conduct the hearing.

7. The State Auditor's Office 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 whether the person wishes to receive notices regarding insurance rules, securities rules, or both. Such written requests may be mailed or delivered to the State Auditor's Office, 840 Helena Avenue, Helena, Montana 59601, or by facsimile to (406) 444-3497, or e-mailed to dsautter@mt.gov, or may be made by completing a request form at any rules hearing held by the State Auditor's Office.

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

JOHN MORRISON, State Auditor  
and Commissioner of Insurance

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

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

Certified to the Secretary of State on June 12, 2006.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW  
OF THE STATE OF MONTANA

In the matter of the amendment of ARM )	NOTICE OF PUBLIC HEARING ON
17.8.501, 17.8.505, and 17.8.514 )	PROPOSED AMENDMENT
pertaining to definitions, air quality )	
operation fees, and open burning fees )	(AIR QUALITY)

TO: All Concerned Persons

1. On August 8, 2006, at 10:30 a.m., the Board of Environmental Review will hold a public hearing in Room 111, Department of Environmental Quality, Metcalf Building, 1520 East Sixth Avenue, Helena, Montana to consider the proposed amendment of the above-stated rules.

2. The board will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the board no later than 5:00 p.m., July 31, 2006, to advise us of the nature of the accommodation that you need. Please contact the board secretary at P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2544; fax (406) 444-4386; or e-mail ber@mt.gov.

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

17.8.501 DEFINITIONS For the purposes of this subchapter:

(1) remains the same.

(2) "Portable facility" means an emitting source designated by the department in its database with the county code number "777," based on ability to move the source to other locations.

(3) "Wildland fire use" means the management of naturally-ignited fire to accomplish specific resource management objectives in predefined geographic areas. The term does not include fire on agricultural land.

AUTH: 75-2-111, MCA

IMP: 75-2-211, MCA

17.8.505 AIR QUALITY OPERATION FEES (1) through (4)(b) remain the same.

(5) The air quality operation fee for facilities other than portable facilities is based on the actual, or estimated actual, amount of air pollutants emitted by the facility during the previous calendar year and is an administrative fee of \$470, plus ~~\$21.53~~ 22.30 per ton of PM-10, sulfur dioxide, lead, oxides of nitrogen, and volatile organic compounds emitted.

(6) The air quality operation fee for portable facilities is \$600.

(6) through (9) remain the same, but are renumbered (7) through (10).

AUTH: 75-2-111, 75-2-220, MCA

IMP: 75-2-211, 75-2-220, MCA

REASON: Pursuant to 75-2-220, MCA, the department assesses air quality permit application fees, annual air quality operation fees, and major open burning permit fees. In the aggregate, these fees must be sufficient to cover the department's costs of developing and administering the permitting requirements of the Clean Air Act of Montana. Under ARM 17.8.510, the structure and the amount of the fees are to be determined and reviewed annually by the board.

Air quality operation fees are required for all facilities that hold an air quality permit or that will be required to obtain an air quality permit pursuant to the Title V air quality operating permit program. The air quality operation fee has been based on the actual, or estimated actual, amount of air pollutants emitted during the previous calendar year and includes an administrative fee plus a per-ton fee for tons of PM-10 (particulate matter with a diameter of 10 microns or less), sulfur dioxide, lead, oxides of nitrogen and volatile organic compounds emitted.

The amount of money the department needs to generate through air quality operation fees depends on the legislative appropriation and the amount of carryover from the previous fiscal year. The emission component of the operation fee is also revised to account for changes in the total amount of pollutants emitted in the state in the previous calendar year.

The board is proposing to assess an annual flat fee of \$600 for portable facilities rather than basing their fee on emissions of air pollutants. A flat fee is more appropriate for portable sources than a fee based on emissions of air pollutants, because emission levels are not a good measure of the amount of staff resources required to regulate portable sources. Portable sources require approximately the same amount of regulatory review regardless of size.

There are 327 portable facilities that are currently paying annual fees ranging from \$470 to \$3,765. Changing the method of fee assessment for portable facilities to an annual flat fee of \$600 will keep the total fees collected for these sources the same.

This rulemaking would set the air quality operation fees to be billed in calendar year 2006. Air quality fees billed in 2006 will fund the department's activities in fiscal year 2007, and, for facilities other than portable facilities, would be based on emissions from calendar year 2005.

The legislative appropriation for fiscal year 2006 was \$2,902,420. The amount of the carryover from fiscal year 2005 was \$175,710. The total amount of pollutants reported for calendar year 2005 fees was 106,143 tons, and the per-ton component of the air quality operation fee was \$21.53.

The appropriation for fiscal year 2007 is \$2,996,826, an increase of \$94,406 from this fiscal year. The projected carryover from fiscal year 2006 is \$210,055. The total amount of pollutants reported for 2006 fees is 106,590 tons. Based upon the appropriation, the carryover, the projected permit application fees, and the emission inventory, to cover the department's costs of developing and administering the air quality permitting program, it is necessary for the board to increase the per-ton charge for facilities other than portable facilities to \$22.30. Therefore, the board is proposing to amend ARM 17.8.505(5) by replacing the per-ton charge of \$21.53 with \$22.30.

In calendar year 2005, the total amount of fees assessed was \$2,554,096. The amount of fees that would be assessed to meet this fiscal year's appropriation would be \$2,665,639, including \$196,200 for portable facilities and \$2,469,439 for nonportable facilities, for a total increase of \$111,543. In calendar year 2006, fees would be assessed for 623 facilities.

The board is proposing to amend ARM 17.8.501 to add a definition of "portable facility," because the term has not previously been defined in subchapter 5, and proposed amendments to ARM 17.8.505 would institute a new method of fee assessment for portable facilities.

17.8.514 AIR QUALITY OPEN BURNING FEES (1) through (3) remain the same.

(4) The air quality major open burning permit application fee shall be based on the actual, or estimated actual, amount of air pollutants emitted by the applicant in the last calendar year during which the applicant conducted open burning pursuant to an air quality major open burning permit required under ARM 17.8.610.

(a) The air quality major open burning permit application fee is the greater of the following, as adjusted by any amount determined pursuant to (4)(b):

(i) a fee calculated using the following formula:

tons of total particulate emitted in the previous  
appropriate calendar year,  
multiplied by ~~\$10.87~~ 16.47; plus  
tons of oxides of nitrogen emitted in the previous  
appropriate calendar year,  
multiplied by ~~\$2.72~~ 4.12; plus  
tons of volatile organic compounds emitted in the  
previous appropriate calendar year,  
multiplied by ~~\$2.72~~ 4.12; or

(ii) remains the same.

(b) To conduct wildland fire use burning, an applicant for an air quality major open burning permit shall, in addition to submitting the fees specified in (4)(a), submit a fee of \$1,000.

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

AUTH: 75-2-111, MCA

IMP: 75-2-211, 75-2-220, MCA

REASON: The board is proposing to amend ARM 17.8.501 to add the definition of "wildland fire use," because this term has not previously been defined in subchapter 5, and proposed amendments to ARM 17.8.514 would institute a new fee for wildland fire use burning.

The board is proposing to amend ARM 17.8.514 by revising the fee required for major open burning permit applications for fiscal year 2007. Each year, in consultation with the Montana Airshed Group, which includes the major open burners in the state, the department develops a budget reflecting the cost the

department will incur that fiscal year in operating its Smoke Management Program for major open burners. Fees assessed to individual burners are based upon the budget and the burner's actual, or estimated actual, emissions during the previous calendar year in which the burner conducted open burning pursuant to an air quality major open burning permit. For calendar year 2005, the major open burners reported 6,070 tons of emissions, compared to 9,029 tons for calendar year 2004, or a decrease of 2,959 tons.

The operating budget for 13 major open burners in fiscal year 2007 is \$42,954, compared to a budget of \$42,141 for fiscal year 2006. The \$813 budget increase is due to increases of \$180 for rule publishing costs with the Secretary of State, \$1,000 for communications, \$661 for salaries, \$198 for benefits, and \$206 for indirect costs. These increases are offset by a \$32 decrease in travel, a \$1,000 decrease in technical support funding, and carryover of \$400 resulting from an increase of the minimum fee in FY 2006. The board is proposing to increase the permit fees from \$10.87 per ton of particulate, \$2.72 per ton of oxides of nitrogen, and \$2.72 per ton of volatile organic compounds emitted to \$16.47, \$4.12, and \$4.12 respectively.

The cumulative amount of the fees would equal the budget of \$42,954. This amount would be distributed among the 13 major open burners.

The board also is proposing to institute an additional fee of \$1,000 for applicants intending to manage naturally-ignited wildland fire use (WFU) burning. Applicants would be required to submit the fee prior to permit issuance for the year in which WFU burning would occur.

Decades of aggressive wildland fire suppression have resulted in large portions of forestland with a natural buildup of vegetative matter. Land managers are practicing progressive methods to protect forest health which includes the management of WFU. Congress, in part through the Healthy Forests Act, initiated an effort to restore forest health on federal lands to reflect natural conditions that existed prior to the implementation of aggressive wildland fire suppression activities. As a result of these developments, the practice of using WFU as a tool for managing federal lands has increased. The emissions from WFU affect the attainment and maintenance of air quality standards and visibility, and department staff time tracking and responding to WFU smoke impacts has increased. In order to fund activities associated with WFU, the board is proposing an additional fee for major open burners who intend to utilize WFU. The department expects to collect a total of \$2,000 in WFU fees from two permittees.

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 the board secretary at Board of Environmental Review, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana 59620-0901; faxed to (406) 444-4386; or e-mailed to ber@mt.gov, no later than 5:00 p.m., August 15, 2006. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

5. Katherine Orr, attorney for the board, or another attorney for the agency Legal Services Bureau, has been designated to preside over and conduct the

hearing.

6. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supplies; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; opencut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA; underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. Such written request may be mailed or delivered to the board secretary at Board of Environmental Review, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901; faxed to (406) 444-4386; e-mailed to ber@mt.gov; or may be made by completing a request form at any rules hearing held by the board.

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

Reviewed by:

BOARD OF ENVIRONMENTAL REVIEW

/s/ David M. Rusoff  
DAVID M. RUSOFF  
Rule Reviewer

BY: /s/ Joseph W. Russell  
JOSEPH W. RUSSELL, M.P.H.,  
Chairman

Certified to the Secretary of State, June 12, 2006.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY  
STATE OF MONTANA

In the matter of the proposed ) NOTICE OF PUBLIC HEARING  
adoption of NEW RULE I pertaining ) ON PROPOSED ADOPTION  
to incorporation by reference of )  
ANSI B30.5 ) (Crane and Hoist Operator Engineer  
 ) Licensing Program)

TO: All Concerned Persons

1. On July 19, 2006, at 9:00 a.m., a public hearing will be held in room 489, of the Park Avenue Building, 301 South Park Avenue, Helena, Montana to consider the proposed adoption of the above-stated rule.

2. The Department of Labor and Industry (department) 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 Crane and Hoist Operator Engineer Licensing Program no later than 5:00 p.m., on July 14, 2006, to advise us of the nature of the accommodation that you need. Please contact Dan Bernhardt, Crane and Hoist Operator Engineer Licensing Program, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2350; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2309; e-mail [dlibsdcra@mt.gov](mailto:dlibsdcra@mt.gov).

3. The proposed new rule provides as follows:

NEW RULE I INCORPORATION BY REFERENCE OF AMERICAN NATIONAL STANDARDS INSTITUTE B30.5 (1) The Department of Labor and Industry adopts and incorporates by reference the following sections of the American National Standards Institute (ANSI) B30.5, 2004 edition which sets forth standards for mobile and locomotive cranes:

- (a) Section 5-2.1 Inspection – General;
- (b) Section 5-2.3 Maintenance;
- (c) Section 5-3.1.3 Conduct of Operators;
- (d) Section 5-3.2 Operating Practices;
- (e) Section 5-3.3 Signals; and
- (f) Section 5-3.4.5 Operating Near Electric Power Lines.

(2) The purpose of this incorporation is to provide minimum requirements and standards for the operation of crane and hoist equipment as specified in 50-76-102, and 50-76-103, MCA, for the protection of the public health, safety, and welfare. The American National Standards Institute is a nationally recognized model code setting forth minimum standards and requirements for crane and hoist operation.

(3) A copy of the ANSI B30.5 may be viewed at the Department of Labor and Industry, Crane and Hoist Operator Engineer Licensing Program, 301 South Park Avenue, Helena, MT 59620-0513.



(4) A copy of the ANSI B30.5 can be purchased directly from ANSI, 1819 L Street NW, Suite 600, Washington, DC 20036.

AUTH: 50-76-110, 50-76-112, MCA

IMP: 50-76-109, 50-76-110, MCA

REASON: It is reasonable and necessary to adopt NEW RULE I in the continuing effort of the department to update and clarify the rules pertaining to the Crane and Hoist Operator Engineer Licensing Program. Section 50-76-110(2), MCA, authorizes the department to adopt by rule applicable operating and safety standards established by the American National Standards Institute. Chapter 93, L. of 2005 (House Bill 401) authorized the department to adopt by rule applicable operating and safety standards established by the American National Standards Institute.

4. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Crane and Hoist Operator Engineer Licensing Program, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2309, or by e-mail to [dlibsdcra@mt.gov](mailto:dlibsdcra@mt.gov), and must be received no later than 5:00 p.m., July 27, 2006.

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

6. The Crane and Hoist Operator Engineer Licensing Program maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this program. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all Crane and Hoist Operator Engineer Licensing Program administrative rulemaking proceedings or other administrative proceedings. Such written request may be mailed or delivered to Crane and Hoist Operator Engineer Licensing Program, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2309, e-mailed to [dlibsdcra@mt.gov](mailto:dlibsdcra@mt.gov), or made by completing a request form at any rules hearing held by the agency.

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

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

DEPARTMENT OF LABOR AND INDUSTRY

/s/ MARK CADWALLADER

Mark Cadwallader  
Alternate Rule Reviewer

/s/ KEITH KELLY

Keith Kelly, Commissioner  
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State June 12, 2006

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

In the matter of the adoption of Rules I	)	NOTICE OF PUBLIC HEARING
through IV and amendment of ARM	)	ON PROPOSED ADOPTION
37.114.101, 37.114.201, 37.114.203,	)	AND AMENDMENT
37.114.204, 37.114.205, 37.114.312,	)	
37.114.313, 37.114.314, 37.114.315,	)	
37.114.503, 37.114.504, 37.114.506,	)	
37.114.509, 37.114.510, 37.114.515,	)	
37.114.516, 37.114.518, 37.114.519,	)	
37.114.521, 37.114.522, 37.114.525,	)	
37.114.527, 37.114.528, 37.114.530,	)	
37.114.534, 37.114.537, 37.114.539,	)	
37.114.540, 37.114.542, 37.114.548,	)	
37.114.555, 37.114.557, 37.114.558,	)	
37.114.560, 37.114.561, 37.114.563,	)	
37.114.565, 37.114.566, 37.114.568,	)	
37.114.570, 37.114.573, 37.114.575,	)	
37.114.577, 37.114.579, 37.114.588,	)	
37.114.589, 37.114.591, 37.114.592,	)	
37.114.595, 37.114.1002, and	)	
37.114.1005 pertaining to the control of	)	
communicable diseases	)	

TO: All Interested Persons

1. On July 12, 2006, at 4:00 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 and amendment of the above-stated rules.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice or provide reasonable accommodations at the public hearing site. If you need to request an accommodation, contact the department no later than 5:00 p.m. on July 3, 2006, 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; e-mail dphhslegal@mt.gov.

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

RULE I CHICKENPOX (VARICELLA) (1) A confirmed or probable case must be excluded from school, medical offices, and other public places and instructed to avoid contact with individuals who are susceptible until vesicles become

dry.

(2) Susceptible contacts should be evaluated and counseled regarding the advisability of and recommendations for post-exposure vaccination.

(3) Susceptible contacts ineligible for immunization and determined to be at high-risk for complications should be promptly evaluated for consideration whether varicella-zoster immune globulin (VZIG) administration should occur.

AUTH: 50-1-202, MCA

IMP: 50-1-202, MCA

## RULE II SEVERE ACUTE RESPIRATORY SYNDROME (SARS)

(1) Whenever a probable or confirmed case exists:

(a) the case must be isolated in a manner approved by both the department and the local health officer, and isolation must be imposed until the case is no longer considered infectious; and

(b) those who are identified as having been contacts with the case must be monitored for fever by the local health officer for ten days following their last contact with the case.

(2) A compliance order must be issued by the local health officer to each contact under surveillance that requires the contact to:

(a) monitor and record the contact's temperature twice daily;

(b) remain in the contact's local community; and

(c) daily report the contact's health status to the person designated in the order.

(3) Contacts reporting or identified with two successive temperature readings equal to or greater than 101°F must be instructed to remain home until the local health officer arranges immediate transportation to a facility approved by both the department and the local health officer for evaluation of the contact's condition.

(4) If symptoms consistent with SARS are identified by a health care provider, the patient will be subject to (1)(a).

(5) If no symptoms develop, or symptoms consistent with the development of SARS are attributed to a non-SARS etiology, the contact may be released from monitoring requirements with the approval of the local health officer.

AUTH: 50-1-202, MCA

IMP: 50-1-202, MCA

## RULE III SMALLPOX (1) Whenever a probable or confirmed case exists:

(a) the case must be isolated in a facility approved by both the department and the local health officer and isolation must be imposed until all scabs are separated and the case is no longer considered infectious; and

(b) those who are identified as contacts of the case or contacts of another contact of the case must be offered vaccination, and:

(i) if not vaccinated, must be quarantined and monitored for fever by the local health officer for 18 days following their last contact with the case or contact; or

(ii) if vaccinated, must be monitored for fever for 14 days following physical evidence of successful vaccination.

(2) A compliance order must be issued by the local health officer to each individual described in (1)(b) who is under surveillance that requires that individual to:

- (a) monitor and record the individual's temperature twice daily;
- (b) remain in the individual's local community; and
- (c) daily report the individual's health status to the person designated in the order.

(3) An individual described in (1)(b) who reports or is identified with two successive temperature readings equal to or exceeding 101°F must be instructed to remain home until the local health officer arranges immediate transportation to a facility designated by the local health officer for evaluation of the individual's condition.

(4) If an individual with a fever as described in (3) develops a rash, the individual will be subject to (1)(a).

(5) If no rash develops within five days after the onset of fever and the fever is diagnosed as being caused by recent vaccination or some other nonsmallpox etiology, the individual may be released to their home, where compliance with the terms of the compliance order required by (2) must be continued.

(6) An investigation must be conducted by the department and the local health officer to identify the source of exposure, and surveillance for additional cases must be initiated.

AUTH: 50-1-202, MCA

IMP: 50-1-202, MCA

RULE IV INCORPORATION BY REFERENCE (1) The department adopts and incorporates by reference the following publications:

(a) The "Control of Communicable Diseases Manual, An Official Report of the American Public Health Association", (18th edition, 2004), which lists and specifies control measures for communicable diseases. A copy of the "Control of Communicable Diseases Manual" may be obtained from the American Public Health Association, 800 I Street NW, Washington, DC 20001.

(b) The "Guideline for Isolation Precautions in Hospitals" (1996), which specifies precautions that should be taken to prevent transmission of communicable diseases for cases admitted to a hospital or other health care facility. A copy of the guideline may be obtained from the National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161, phone: (703) 487-4650. Any orders should refer to the publication number PB96138102 for the "Guideline for Isolation Precautions in Hospitals" (1996).

(c) The "Sexually Transmitted Diseases Guidelines for Treatment 2002" published by the U.S. Centers for Disease Control and Prevention in the May 10, 2002, Morbidity and Mortality Weekly Report, volume 51, which specify the most currently accepted effective treatments for sexually transmitted diseases. A copy of the 2002 guidelines is available from the Department of Public Health and Human Services, Public Health and Safety Division, HIV/STD Section, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951, phone: (406) 444-3565.

AUTH: 50-1-202, MCA

IMP: 50-1-202, MCA

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

37.114.101 DEFINITIONS Unless otherwise indicated, the following definitions apply throughout this chapter:

~~(1) "Blood and body fluid precautions" mean the following requirements to prevent spread of disease through contact with infective blood or body fluids:~~

~~(a) If soiling with blood or body fluids is likely, gowns must be used to cover clothes, worn only once, and laundered.~~

~~(b) Single-use gloves must be used if blood or body fluids, mucous membranes, or non-intact skin will be touched, items or surfaces soiled with blood or body fluids handled, and for performing vascular access procedures other than venipuncture; the gloves must be changed before touching another person and discarded in a manner preventing contact with them thereafter. (It is recommended, though not required, that single-use gloves coupled with proper aseptic procedures also be used for performing venipuncture.)~~

~~(c) Hands must be washed immediately after gloves are removed or if they are potentially contaminated with blood or body fluids and before touching another person.~~

~~(d) Articles contaminated with blood or body fluids must be discarded or disinfected.~~

~~(e) Injuries from needles or other sharp devices must be avoided; used needles must not be recapped, bent, or broken by hand, removed from disposable syringes, or otherwise manipulated by hand; after use, disposable syringes and needles, scalpel blades, and other sharp items must be placed in a prominently labeled, puncture-resistant container for disposal, located as closely as practicable to the use area; large bore reusable needles must be placed in such a container for transport to the reprocessing area.~~

~~(f) If a needle-stick injury occurs, the injured person must be evaluated immediately to determine if hepatitis prophylaxis is needed or human immunodeficiency virus is a concern.~~

~~(g) Any blood spills must be cleaned up promptly with a solution of 5.25% sodium hypochlorite (for example, regular chlorox or purex bleach) diluted 1:10 with water.~~

~~(h) A case must be restricted to a private room if the case's hygiene is poor, i.e., the case does not wash hands after touching infective material, contaminates the environment with infective material, or shares contaminated articles with other individuals who as yet have not contracted the disease in question; such a person may share a room with anyone else infected with the same organism.~~

~~(i) Masks and protective eyewear or face shields must be worn during procedures that are likely to generate droplets of blood or other body fluids.~~

~~(j) In areas where resuscitation is likely to be practiced (e.g. emergency rooms), mouthpieces, resuscitation bags, or other ventilation devices must be available.~~

~~(k) No one who has an exudative lesion or weeping dermatitis in an area likely to be touched may directly care for a patient or handle patient care equipment.~~

~~(2) "Carrier" means a person or animal who harbors a specific infectious agent without discernible illness and serves as a potential source of infection. A carrier may be "incubatory" (just before onset), "convalescent" (after clinical recovery), or "healthy" (no apparent illness at any time). The carrier state may be temporary or permanent.~~

~~(3) (1) "Case" means a person who is confirmed or suspected to have a reportable disease or condition as listed in ARM 37.114.203.~~

~~(4) (2) "Clean" means to remove infectious agents and/or organic matter from surfaces, by scrubbing and washing as with hot water and soap or detergent, infectious agents and organic matter on which and in which infectious agents and/or organic matter may be able to live and remain virulent, by scrubbing and washing as with hot water and soap or detergent.~~

~~(5) (3) "Communicable disease" means an illness due or suspected to be due to a specific infectious agent or its toxic products, which results from transmission of that agent or its products to a susceptible host, directly or indirectly.~~

~~(6) (4) "Concurrent disinfection" means the use of a method which will destroy any harmful infectious agents present immediately after the discharge of infectious material from the body of an infected person, or after the soiling of articles with such infectious discharges before there is opportunity for any other contact with them.~~

~~(7) (5) "Contact" means a person or animal that ~~has~~ may have had an opportunity to acquire an infection due to ~~it's~~ the contact's association with an suspected or confirmed infected person or animal or a contaminated environment.~~

~~(8) (6) "Contamination" means the presence of a disease-causing agent upon a living body surface or within or upon any inanimate article or substance.~~

~~(7) "Control of Communicable Diseases Manual" means the "Control of Communicable Diseases Manual, An Official Report of the American Public Health Association", (18th edition, 2004). A copy of the "Control of Communicable Diseases Manual" may be obtained from the American Public Health Association, 800 I Street NW, Washington, DC 20001.~~

~~(9) (8) "Department" means the Department of Public Hhealth and Human Services.~~

~~(10) "Drainage and secretion precautions" means the following requirements to prevent spread of disease through contact with purulent material from an infected body site:~~

~~(a) If soiling by the infective material is likely, gowns must be worn, used only once, and laundered.~~

~~(b) Single-use gloves must be used if infective material will be touched, and discarded in a manner preventing contact with them thereafter.~~

~~(c) Anyone touching the case or potentially contaminated articles must wash their hands immediately afterward and before touching another person.~~

~~(d) Any article contaminated with infective material must be discarded or disinfected in a manner which prevents contact with the material thereafter.~~

~~(11) "Enteric precautions" mean the following requirements to prevent spread of disease through feces:~~

~~(a) Gowns must be used to cover clothes if soiling is likely, worn only once, and laundered.~~

~~(b) Single-use gloves must be used if infective material will be touched, and discarded in a manner preventing contact with them thereafter.~~

~~(c) Hands must be washed after touching the case or potentially contaminated articles and before touching another person.~~

~~(d) Articles contaminated with infective material must be either thoroughly disinfected before they are removed from the infected person's room, or bagged, labeled, and burned or decontaminated.~~

~~(e) A case must be restricted to a private room if the case's hygiene is poor, i.e., the case does not wash hands after touching infective material, contaminates the environment with infective material, or shares contaminated articles with other individuals who as yet have not contracted the disease in question; such a person may share a room with anyone else infected with the same organism.~~

(9) "Guideline for Isolation Precautions in Hospitals" means the guideline published by the federal Government Printing Office. A copy of the guideline may be obtained from the National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161, phone: (703)487-4650. Any orders should refer to the publication number PB96138102 for the "Guideline for Isolation Precautions in Hospitals" (1996).

~~(42) (10) "Health care" means health care as defined in 50-16-504, MCA.~~

~~(43) (11) "Health care facility" is a facility as defined in 50-5-101, MCA.~~

~~(44) (12) "Health care provider" means a health care provider as defined in 50-16-504, MCA.~~

~~(45) (13) "HIV infection" means infection with the human immunodeficiency virus.~~

~~(46) (14) "Household contact" is a person or animal living within the household of an infected person.~~

~~(47) (15) "Infected person" means a person who harbors an infectious agent and who has either manifest disease or inapparent infection whether or not illness is currently discernible.~~

~~(48) (16) "Infection" means the entry and development or multiplication of an infectious agent in the body of man or animals. Infection is not synonymous with infectious disease; the result may be inapparent or manifest. The presence of living infectious agents on the exterior surface of the body or upon articles of apparel or soiled articles is not infection, but contamination of such surfaces and articles.~~

(17) "Infection control precautions" means those measures necessary to prevent the transmission of disease from an infected person to another person, taking into consideration the specific suspected or confirmed communicable disease and the specific circumstances of the case. The infection control precautions required for a case admitted to a hospital or other health care facility are those measures identified as isolation precautions applicable to the specific disease in the "Guideline for Isolation Precautions in Hospitals" (1996) adopted in [Rule IV]. The infection control precautions required for a case not admitted to a hospital or other health care facility are those measures identified as methods of control applicable to the specific disease in the "Control of Communicable Diseases Manual, An Official Report of the American Public Health Association", (18th edition, 2004), adopted in



[Rule IV]. Infection control precautions are required, as stated in this rule, whether or not the person is subject to isolation.

~~(49)~~ (18) "Infectious agent" means an organism, chiefly a microorganism, but including a helminths, that is capable of producing an infection or infectious disease.

~~(20)~~ (19) "Infectious disease" means a clinically manifest disease of man or animals resulting from an infection.

~~(24)~~ (20) "Infectious person" means a person from whom another person may acquire an infectious agent by touch or proximity.

~~(22)~~ (21) "Isolation" means separation during the period of communicability of an infected or probably infected person from other persons, in places and under conditions approved by the department or local health officer and with observance of all applicable infection control precautions. ~~preventing the direct or indirect conveyance of the infectious agent to persons who are susceptible to the infectious agent in question or who may convey the infection to others. Isolation may be either modified or strict, as defined below:~~

~~(a) "Modified isolation" means instruction by either the department, a local health officer, or an attending physician, directed to the infected person, any members of that person's family, and any other close contacts, in accordance with "Guideline for Isolation Precautions in Hospitals" published by the government printing office, published in 1996, setting restrictions on the movements of and contacts with the infected person and specifying whichever of the following are also appropriate:~~

- ~~(i) tuberculosis isolation;~~
- ~~(ii) respiratory isolation;~~
- ~~(iii) enteric precautions;~~
- ~~(iv) drainage and secretion precautions;~~
- ~~(v) blood and body fluid precautions;~~

~~(b) "Strict isolation" includes the following measures:~~

~~(i) An infected person must be isolated behind a closed door in a separate bed in a room protected from potential vectors.~~

~~(ii) A person caring for an infected person must avoid coming into contact with any other person until every precaution required has been taken to prevent the spread of infectious material.~~

~~(iii) Each person caring for an infected person must wear a washable outer garment, mask, and gloves, and must thoroughly wash their own hands with soap and hot water after handling an infected person or an object an infected person may have contaminated. Before leaving the room of an infected person, a person caring for an infected person must remove the washable outer garment and hang it in the infected person's room until the garment and room are disinfected.~~

~~(iv) An object which may have been contaminated by an infected person must be either thoroughly disinfected before it is removed from the infected person's room or bagged, labeled, and burned or decontaminated.~~

~~(v) Disposal of feces and urine of an infected person must be made by flushing them down a toilet attached to a municipal or other sewage system approved by the department.~~

~~(23)~~ (22) "Laboratorian" means any person who supervises or works in a laboratory.

(23) "Local health officer" means a county, city, city-county, or district health officer appointed by a local board of health. As used in these rules, the term will include the authorized representative of a local health officer.

(24) "Outbreak" means an incidence of a disease or infection significantly exceeding the incidence normally observed in a population of people over a period of time specific to the disease or infection in question.

(25) "Physician" means a person licensed to practice medicine in any jurisdiction in the United States or Canada.

(26) "Potential outbreak" means the presence or suspected presence of a communicable disease in a population where the number of susceptible persons and the mode of transmission of the disease may cause further spread of that disease.

(27) "Quarantine" means those measures required by a local health officer or the department to prevent transmission of disease to or by those individuals who have been or are otherwise likely to be in contact with an individual with a communicable disease.

(28) "Reportable disease" means any disease, the occurrence or suspected occurrence of which is required to be reported by ARM 37.114.203 ~~to be reported~~.

~~(29) "Respiratory isolation" means:~~

~~(a) the patient must be in a private room;~~

~~(b) any person in close contact with the patient must wear a mask;~~

~~(c) any person caring for the patient must thoroughly wash their hands after touching the patient or contaminated articles and before touching another person; and~~

~~(d) articles contaminated with infective material must be discarded or bagged, labeled for decontamination, and decontaminated.~~

~~(30) (29) "Sensitive occupation" means employment in direct care of children, the elderly, or individuals who are otherwise at a high risk for disease or where disease spread could occur due to the nature of the work~~ an occupation described in ARM 37.114.301.

~~(31) (30) "Sexually transmitted disease" means human immunodeficiency virus (HIV) infection, syphilis, gonorrhea, chancroid, lymphogranuloma venereum, granuloma inguinale, or chlamydial genital infections.~~

~~(32) "Sexually Transmitted Diseases Treatment Guidelines 2002" means the guidelines published by the U.S. Centers for Disease Control and Prevention. A copy of the 2002 guidelines is available from the Department of Public Health and Human Services, Public Health and Safety Division, HIV/STD Section, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951, phone: (406)444-3565.~~

(32) "Surveillance" means scrutiny of all aspects of occurrence and spread of a disease that are pertinent to effective control.

(33) "Susceptible" means having insufficient resistance against a disease and consequently liable likely to contract the disease if exposed.

~~(34) "Tuberculosis isolation" means:~~

~~(a) the patient must be in a private room which has ventilation to the outside and away from an enclosed area;~~

~~(b) if the infective organism can be spread by cough, a mask must be worn by anyone entering the patient's room; if the organism can be spread by fluid, a gown and gloves must be worn;~~

~~(c) any person caring for the patient must wash their hands after touching the patient or potentially contaminated articles and before touching another person; and  
(d) all potentially contaminated articles must be cleaned, disinfected, or discarded.~~

~~(35) The department hereby adopts and incorporates by reference the "Guideline for Isolation Precautions in Hospitals" published by the Government Printing Office in 1996, which specifies precautions that should be taken to prevent transmission of communicable diseases. A copy of the "Guideline" may be obtained from the National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161, phone: (703)487-4650. Any orders should refer to the publication number PB96138102 for the Guideline for Isolation Precautions in Hospitals (1996).~~

AUTH: 50-1-202, 50-2-116, 50-17-103, MCA

IMP: 50-1-202, 50-17-103, 50-18-101, MCA

37.114.201 REPORTERS (1) With the exception noted in (3) below, any person, including but not limited to a physician, dentist, nurse, medical examiner, other health care practitioner, administrator of a health care facility, public or private school administrator, ~~city health officer~~, or laboratorian who knows or has reason to believe that a case exists shall immediately report: to the local health officer the information specified in ARM 37.114.205(1) through (2).

~~(a) to the department alone in the case of acquired immune deficiency syndrome (AIDS) or human immunodeficiency virus (HIV) infection, the following information, if available:~~

~~(i) name and age of the case;~~

~~(ii) whether or not the case is suspected or confirmed;~~

~~(iii) name and address of the case's physician; and~~

~~(iv) name of the reporter or other person the department can contact for pertinent information about the case;~~

~~(b) the information specified in ARM 37.114.205(1)(a) through (e) to the county, city-county, or district health officer in every case other than a case of AIDS, HIV infection, Colorado tick fever, or influenza; or~~

~~(c) if the disease in question is Colorado tick fever or influenza, the fact that a case has occurred to the county, city-county, or district health officer.~~

(2) A ~~county, city-county, or district~~ local health officer must submit to the department, on the schedule noted in ARM 37.114.204, the information specified in ARM 37.114.205 concerning each confirmed or suspected case of which the officer is informed.

(3) A state funded anonymous testing site for HIV infection is not subject to the reporting requirement in (1)~~(a) above~~ with regard to HIV testing.

AUTH: 50-1-202, 50-17-103, 50-18-105, MCA

IMP: 50-1-202, 50-2-118, 50-17-103, 50-18-102, 50-18-106, MCA

37.114.203 REPORTABLE DISEASES AND CONDITIONS (1) The following communicable diseases and conditions are reportable:

(a) through (g) remain the same.

(h) Chickenpox;

(h) through (y) remain the same but are renumbered (i) through (z).

~~(z)~~ (aa) Hepatitis A, B (acute or chronic), or non-A non-B C (acute or chronic);

(aa) through (au) remain the same but are renumbered (ab) through (av).

(aw) Severe acute respiratory syndrome (SARS);

(av) remains the same but is renumbered (ax).

(ay) Smallpox;

(aw) through (ay) remain the same but are renumbered (az) through (bb).

(bc) Tickborne relapsing fever;

(bd) Transmissible spongiform encephalopathies;

(az) through (bf) remain the same but are renumbered (be) through (bk).

~~(bg)~~ (bl) An occurrence in a community or region of a case or cases of any communicable disease in the "Control of Communicable Diseases Manual, An Official Report of the American Public Health Association", 17th edition, 2000 (18th edition, 2004), with a frequency in excess of normal expectancy; and

~~(bh)~~ (bm) Any unusual incident of unexplained illness or death in a human or animal.

~~(2) The department hereby adopts and incorporates by reference the "Control of Communicable Diseases Manual, An Official Report of the American Public Health Association", 17th edition, 2000, which lists and specifies control measures for communicable diseases. A copy of the "Control of Communicable Diseases Manual" may be obtained from the American Public Health Association, 4015 15th Street NW, Washington, DC 20005.~~

AUTH: 50-1-202, 50-17-103, 50-18-105, 50-18-106, MCA

IMP: 50-1-202, 50-2-118, 50-17-103, 50-18-102, 50-18-106, MCA

37.114.204 REPORTS AND REPORT DEADLINES (1) ~~A county, city-county, or district~~ local health officer ~~or the officer's authorized representative~~ must immediately report to the department by telephone the information cited in ARM 37.114.205(1) through (2) whenever a case of one of the following diseases is suspected or confirmed:

(a) through (f) remain the same.

(g) Severe acute respiratory syndrome (SARS);

(h) Smallpox;

(i) Tularemia;

(g) and (h) remain the same but are renumbered (j) and (k).

(2) ~~A county, city-county, or district~~ local health officer ~~or the officer's authorized representative~~ must mail or transmit by a secure electronic means to the department the information required by ARM 37.114.205(1) through (2) for each suspected or confirmed case of one of the following diseases, within the time limit noted for each:

(a) ~~On the same day information~~ Information about a case of one of the following diseases should be submitted on the same day it is received by the county, city-county, or district local health officer:

(i) through (xxi) remain the same.

(xxii) An occurrence in a community or region of a case or cases of any communicable disease in the "Control of Communicable Diseases Manual, An Official Report of the American Public Health Association", 17th edition, 2000 (18th edition, 2004), with a frequency in excess of normal expectancy.

(b) ~~Within seven calendar days after the date information~~ Information about a case of one of the following diseases should be submitted within seven calendar days after it is received by the county, city-county, or district local health officer:

(i) through (iii) remain the same.

(iv) Chickenpox (varicella);

(iv) through (ix) remain the same but are renumbered (v) through (x).

~~(x) (xi)~~ Hepatitis, A, B (acute or chronic), or non-A non-B C (acute or chronic);

(xi) through (xxiii) remain the same but are renumbered (xii) through (xxiv).

(xxv) Tickborne relapsing fever;

(xxvi) Transmissible spongiform encephalopathies;

(xxiv) remains the same but is renumbered (xxvii).

~~(xxv) (xxviii)~~ Tuberculosis; or

~~(xxvi) Tularemia; or~~

(xxvii) remains the same but is renumbered (xxix).

(3) ~~By Friday of each~~ Each week during which a suspected or confirmed case of one of the diseases listed below influenza is reported to the county, city-county, or district local health officer, ~~that the officer or the officer's authorized representative must mail or transmit to the department on Friday of that week the total number of the cases of each such disease of influenza reported that week;~~

~~(a) Colorado tick fever; and~~

~~(b) Influenza.~~

(4) ~~Whenever a~~ A laboratory that performs a blood lead analysis, ~~a laboratorian employed at that laboratory must submit to the department, by the 15th day following the month in which the test was performed, a copy of all blood lead analyses performed that month, including analyses in which lead was undetectable.~~

(5) A laboratorian laboratory that performs tuberculosis, hepatitis B surface antigen, or sexually transmitted disease testing must submit to the department, ~~by the 15th day following each month, a report on a form supplied by the department indicating the number of tests with negative or positive results which were done that month for tuberculosis or a sexually transmitted disease for each of those diseases.~~

~~(6) The department hereby adopts and incorporates by reference the "Control of Communicable Diseases Manual, An Official Report of the American Public Health Association", 17th edition, 2000, which lists and specifies control measures for communicable diseases. A copy of the "Control of Communicable Diseases Manual" may be obtained from the American Public Health Association, 1015 15th Street NW, Washington, DC 20005.~~

AUTH: 50-1-202, 50-17-103, 50-18-105, MCA

IMP: 50-1-202, 50-17-103, 50-18-102, 50-18-106, MCA

37.114.205 REPORT CONTENTS (1) through (1)(d) remain the same.

(2) The information required by (1) ~~of this rule~~ must be supplemented by any

other information in the possession of the reporter which the department requests and which is related to case management and/or investigation of the case.

~~(3) Within 30 days of receiving a completed report of a case with HIV infection or AIDS, the department will:~~

~~(a) remove the name, street address, and any other information that could be used to identify the case from all reports, both paper and electronic;~~

~~(b) generate a number-based unique identifier for the case to be used internally by the department; and~~

~~(c) contact the local health officer of the county where the case resides or the officer's designee to give the officer or designee information about the case and the need for further investigation and/or follow-up.~~

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

~~(5)~~ (4) The name and/or unique identifier of any case with a reportable disease or condition and the name and address of the reporter of any such case are confidential and not open to public inspection.

AUTH: 50-1-202, 50-17-103, 50-18-105, MCA

IMP: 50-1-202, 50-17-103, 50-18-102, 50-18-106, MCA

37.114.312 IMPORTATION OF DISEASE (1) remains the same.

(2) Whenever a person knows or has reason to believe that an infected person, whether or not infectious, has been brought within the boundaries of the state, s/he shall report the name and location of the infected person to the department, with the exception of those individuals who are HIV-positive; in the latter case, only the information described in ARM 37.114.205(2) must be provided to the department.

AUTH: 50-1-202, MCA

IMP: 50-1-202, MCA

37.114.313 CONFIRMATION OF DISEASE (1) Subject to the limitation in (2) below, if a local health officer receives information about a case of any of the following diseases, the officer ~~or the officer's authorized representative~~ must ensure that a specimen from the case is submitted to the department, which ~~specimen~~ will be analyzed to confirm the existence or absence of the disease in question:

(a) through (o) remain the same.

(p) Severe acute respiratory syndrome (SARS);

(q) Smallpox;

(p) through (s) remain the same but are renumbered (r) through (u).

(2) In the event of an outbreak of diarrheal disease, influenza, or measles, analysis of specimens from each case is unnecessary after the disease organism is determined by the department.

(3) A laboratorian or any other person in possession of a specimen from a case of a disease listed in (1)(a) through ~~(s)~~ (u) ~~above~~ must submit the specimen to the local health officer upon request.

(4) If no specimen from the case is otherwise available and the case refuses to allow a specimen to be taken for purposes of (1), the case will be assumed to be

infected and must comply with whatever control measures are imposed by the department, or the local health officer.

AUTH: 50-1-202, 50-1-204, MCA

IMP: 50-1-202, 50-1-204, MCA

37.114.314 INVESTIGATION OF A CASE (1) Immediately after being notified of a case or an outbreak of a reportable disease, a local health officer ~~or the officer's designee~~ must:

(a) investigate and take whatever steps are necessary to prevent spread of the disease;

(b) ~~(2)~~ if the local health officer or designee finds that the nature of the disease and the circumstances of the case or outbreak warrant such action, the local health officer must:

(i) ~~(a)~~ examine or ensure that a physician examines any infected person in order to verify the diagnosis;

(ii) ~~(b)~~ make an epidemiologic investigation to determine the source and possible spread of infection;

(iii) ~~(c)~~ take appropriate steps, as outlined in the ~~the~~ "Control of Communicable Diseases Manual, An Official Report of the American Public Health Association", ~~17th edition, 2000~~ (18th edition, 2004), to prevent or control the spread of disease; and

(iv) ~~(d)~~ notify contacts ~~(for example, emergency responders)~~ as defined in ARM 37.114.101 of the case and give them the information needed to prevent contracting the disease.

~~(e) (3) whenever~~ Whenever the identified source of a reportable disease or a person infected or exposed to a reportable disease who should be quarantined or placed under surveillance is located outside of the jurisdiction of the local health officer or the officer's designee, the local health officer must:

(i) ~~(a)~~ notify the department or the local health officer of the jurisdiction in which the source or person is located if within Montana; or

(ii) ~~(b)~~ notify the department if the source or person is located outside of Montana.

~~(2) The department hereby adopts and incorporates by reference the "Control of Communicable Diseases Manual, An Official Report of the American Public Health Association", 17th edition, 2000, which specifies control measures for communicable diseases. A copy of the report may be obtained from the American Public Health Association, 1015 15th Street NW, Washington, DC 20005.~~

AUTH: 50-1-202, 50-2-118, 50-17-103, 50-18-105, MCA

IMP: 50-1-202, 50-2-118, 50-17-103, 50-17-105, 50-18-102, 50-18-107, 50-18-108, MCA

37.114.315 POTENTIAL OUTBREAKS (1) Whenever a disease listed in ARM 37.114.204(1) is confirmed or whenever any other communicable disease listed in the "Control of Communicable Diseases Manual, An Official Report of the American Public Health Association", ~~17th edition, 2000~~ (18th edition, 2004), or

other communicable disease which constitutes a threat to the health of the public becomes so prevalent as to endanger an area outside of the jurisdiction where it first occurred, the local health officer of the jurisdictional area in which the disease occurs must notify the department and cooperate with the department's epidemiologist or the epidemiologist's representative to control the spread of the disease in question.

~~(2) The department hereby adopts and incorporates by reference the "Control of Communicable Diseases Manual, An Official Report of the American Public Health Association", 17th edition, 2000, which lists and specifies control measures for communicable diseases. A copy of the "Control of Communicable Diseases Manual" may be obtained from the American Public Health Association, 1015 15th Street NW, Washington, DC 20005.~~

AUTH: 50-1-202, MCA

IMP: 50-1-202, 50-2-118, MCA

37.114.503 ACQUIRED IMMUNE DEFICIENCY SYNDROME (AIDS) AND HIV INFECTION (1) Whenever human immunodeficiency virus (HIV) infection occurs, ~~blood and body fluid~~ infection control precautions must be used for the duration of the infection.

(2) through (4) remain the same.

AUTH: 50-1-202, 50-2-118, 50-16-1004, MCA

IMP: 50-1-202, 50-2-118, 50-16-1004, MCA

37.114.504 AMEBIASIS (1) Whenever a case of amebiasis occurs:

(a) ~~Enteric~~ Infection control precautions are required.

(b) remains the same.

AUTH: 50-1-202, 50-2-118, MCA

IMP: 50-1-202, 50-2-118, MCA

37.114.506 ANTHRAX (1) Whenever a case of anthrax occurs:

(a) ~~If~~ if skin lesions exist, ~~drainage and secretion~~ infection control precautions must be used until lesions are bacteriologically free of anthrax bacilli; ~~and~~

(b) ~~All~~ all bodily discharges must be concurrently disinfected.

(2) ~~Strict isolation must be imposed upon each case of inhalation anthrax. The local health officer, in collaboration with state authorities, must immediately investigate every case or suspected case in an effort to establish the diagnosis and determine the source of the infection.~~

AUTH: 50-1-202, 50-2-118, MCA

IMP: 50-1-202, 50-2-118, MCA

37.114.509 BRUCELLOSIS (1) Whenever a case of brucellosis occurs:

~~(a) Drainage and secretion~~ Infection control precautions must be used.

~~(2)~~ (b) Concurrent disinfection of purulent discharges is necessary.



(c) The local health officer, in collaboration with state authorities, must immediately investigate every case or suspected case in an effort to establish the diagnosis and determine the source of the infection.

AUTH: 50-1-202, 50-2-118, MCA

IMP: 50-1-202, 50-2-118, MCA

37.114.510 CAMPYLOBACTER ENTERITIS (1) Whenever a case of campylobacter enteritis occurs:

(a) Enteric Infection control precautions must be observed.

(2) (b) The local health officer may not allow an infected person to engage in a sensitive occupation as described in ARM 37.114.301 until symptoms of illness resolve and, if determined necessary by the local health officer, evidence is provided that a stool specimens are specimen is clear of the organisms causing campylobacter diarrhea.

AUTH: 50-1-202, 50-2-118, MCA

IMP: 50-1-202, 50-2-118, MCA

37.114.515 CHLAMYDIAL GENITAL INFECTION (1) An individual with a chlamydial genital infection must be directed to undergo appropriate antibiotic therapy and to avoid sexual contact until seven days have elapsed since the commencement of effective treatment prescribed by the ~~centers for disease control and prevention~~ Centers for Disease Control and Prevention in the 1998 guidelines for treatment of sexually transmitted diseases "Sexually Transmitted Diseases Treatment Guidelines 2002".

(2) An individual who contracts the infection must be interviewed by the local health officer or the officer's designee to determine the person's sexual contacts, and those contacts must be provided with appropriate medical treatment.

(3) The department hereby adopts and incorporates by reference the 1998 guidelines for treatment of sexually transmitted diseases published by the U.S. centers for disease control and prevention in the January 23, 1998, Morbidity and Mortality Weekly Report, volume 47, which specify the most currently accepted effective treatments for sexually transmitted diseases. A copy of the 1998 guidelines is available from the Department of Public Health and Human Services, Health Policy and Services Division, HIV/STD Section, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951, phone: (406)444-3565.

AUTH: 50-1-202, 50-2-118, 50-18-105, MCA

IMP: 50-1-202, 50-2-118, 50-18-102, 50-18-107, MCA

37.114.516 CHOLERA (1) Enteric Infection control precautions must be employed.

AUTH: 50-1-202, 50-2-118, MCA

IMP: 50-1-202, 50-2-118, MCA

37.114.518 COLORADO TICK FEVER (1) Whenever a case of Colorado tick fever occurs:

(a) Blood and body fluid infection control precautions must be employed; and

(2) (b) The infected person must be directed not to donate blood for four months after the date of diagnosis.

AUTH: 50-1-202, 50-2-118, MCA

IMP: 50-1-202, 50-2-118, MCA

37.114.519 CRYPTOSPORIDIOSIS (1) Enteric precautions must be used by a case employed in a sensitive occupation, as described in ARM 37.114.301, until three post-treatment stool specimens collected on three successive days test negative. The local health officer must prohibit an infected person from engaging in a sensitive occupation until symptoms of illness resolve and, if determined necessary by the local health officer, evidence that a stool specimen is clear of the organisms causing cryptosporidiosis is provided.

(2) Sources of infection must be sought, especially in the home, within the family, in food, and in water.

AUTH: 50-1-202, MCA

IMP: 50-1-202, MCA

37.114.521 DIARRHEAL DISEASE OUTBREAK (1) Enteric Infection control precautions must be imposed on persons employed in sensitive occupations.

(2) Enteric Infection control precautions must be imposed until laboratory tests determine the etiologic agent involved, after which control measures must be imposed which are appropriate for that agent and set out in the "Control of Communicable Diseases Manual, An Official Report of the American Public Health Association", 17th edition, 2000 (18th edition, 2004).

(3) The department hereby adopts and incorporates by reference the "Control of Communicable Diseases Manual, An Official Report of the American Public Health Association", 17th edition, 2000, which lists and specifies control measures for communicable diseases. A copy of the "Control of Communicable Diseases Manual" may be obtained from the American Public Health Association, 1015 15th Street NW, Washington, DC 20005.

AUTH: 50-1-202, 50-2-118, MCA

IMP: 50-1-202, 50-2-118, MCA

37.114.522 DIPHTHERIA (1) For a confirmed case of diphtheria, strict isolation of an infected person must be imposed until two cultures, taken not less than 24 hours apart and not less than 24 hours after cessation of antimicrobial therapy, from nose and throat fail to show diphtheria bacilli, except that upon clinical recovery and when appropriate antibiotics have been used as therapy, respiratory isolation may be imposed instead of strict isolation, ending 14 days after the date administration of antibiotics commenced. Where culture is impractical, isolation may

end after 14 days of appropriate antibiotic therapy.

(2) All household contacts must be placed under quarantine by the local health officer until their nose and throat cultures are negative.

(3) All ~~carriers~~ infectious persons must be treated unless medically contraindicated.

(4) A contact in a sensitive occupation must be excluded by the local health officer ~~or the officer's designee~~ from work until the contact is determined not to be an carrier infectious person.

(5) remains the same.

AUTH: 50-1-202, 50-1-204, 50-2-118, MCA

IMP: 50-1-202, 50-1-204, 50-2-118, MCA

37.114.525 ESCHERICHIA COLI 0157:H7 ENTERITIS (1) ~~Enteric Infection control~~ precautions must be observed.

(2) The local health officer ~~may not allow~~ must prohibit an infected person to ~~engage from engaging~~ in a sensitive occupation ~~as described in ARM 37.114.301~~ until two successive stool specimens collected at least 24 hours apart and not less than 48 hours after cessation of any administration of antimicrobials are culture-negative for escherichia coli 0157:H7 enteritis.

AUTH: 50-1-202, 50-2-118, MCA

IMP: 50-1-202, 50-2-118, MCA

37.114.527 GASTROENTERITIS OUTBREAK (1) Enteric Infection control precautions must be employed until laboratory tests indicate what organism is responsible for the infection, after which control measures must be taken which are specific for the organism in question.

AUTH: 50-1-202, 50-2-118, MCA

IMP: 50-1-202, 50-2-118, MCA

37.114.528 GIARDIASIS (1) ~~Enteric Infection control~~ precautions must be ~~observed~~ used by a case employed in a sensitive occupation until three post-treatment stool specimens collected on three successive days are negative.

(2) An individual employed in a sensitive occupation must be assessed for transmission risk. At the discretion of the local health officer, if the circumstances of the case warrant it (e.g., hygiene factors, food type, population served, etc.), the case may be restricted from employment until stool specimens obtained on three successive days are negative.

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

AUTH: 50-1-202, 50-2-118, MCA

IMP: 50-1-202, 50-2-118, MCA

37.114.530 GONORRHEA (1) A person who contracts genital gonorrhea must be directed to undergo appropriate antibiotic therapy and to avoid sexual

contact until seven days have elapsed since the commencement of effective treatment prescribed by the ~~centers for disease control and prevention~~ Centers for Disease Control and Prevention in the ~~1998 guidelines for treatment of sexually transmitted diseases~~ "Sexually Transmitted Diseases Treatment Guidelines 2002". Individuals who have contracted genital gonorrhea must also be treated for eChlamydia.

(2) The local health officer ~~or the officer's designee~~ must interview an individual who contracts the infection in order to determine the person's sexual contacts, and must ensure that those contacts are examined and receive the medical treatment indicated by clinical or laboratory findings.

(3) ~~The department hereby adopts and incorporates by reference the 1998 guidelines for treatment of sexually transmitted diseases published by the U.S. centers for disease control and prevention in the January 23, 1998, Morbidity and Mortality Weekly Report, volume 47, which specify the most currently accepted effective treatments for sexually transmitted diseases. A copy of the 1998 guidelines is available from the Department of Public Health and Human Services, Health Policy and Services Division, HIV/STD Section, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951, phone: (406)444-3565.~~

AUTH: 50-1-202, 50-2-118, 50-18-105, MCA

IMP: 50-1-202, 50-2-118, 50-18-102, 50-18-107, MCA

37.114.534 HANSEN'S DISEASE (LEPROSY) (1) For a case of Hansen's disease, ~~modified isolation~~ infection control precautions must be imposed if the infected person is infectious. The degree of isolation must be determined by the local health officer, who must be advised by a physician specially qualified to manage this disease.

AUTH: 50-1-202, 50-1-204, 50-2-118, MCA

IMP: 50-1-202, 50-1-204, 50-2-118, MCA

37.114.537 HEMOLYTIC UREMIC SYNDROME (1) Whenever a case of hemolytic uremic syndrome occurs:

(a) ~~Enteric~~ Infection control precautions must be observed.

(2) (b) The local health officer may not allow an infected person to engage in a sensitive occupation, ~~as described in ARM 37.114.301~~, until stool specimens are culture-negative for escherichia coli 0157:H7 enteritis.

AUTH: 50-1-202, MCA

IMP: 50-1-202, MCA

37.114.539 HEPATITIS TYPE A (1) For a case of type A hepatitis, enteric infection control precautions must be imposed until five days after the onset of jaundice.

(2) remains the same.

AUTH: 50-1-202, 50-2-118, MCA

IMP: 50-1-202, 50-2-118, MCA

37.114.540 HEPATITIS TYPE B (ACUTE OR CHRONIC) (1) For a case of type B hepatitis:

(a) ~~Blood and body fluid~~ Infection control precautions must be imposed until it is determined that viremia no longer exists.

(b) The local health officer ~~or the officer's designee~~ must identify contacts and advise them how to prevent acquisition of the disease, given the nature of their relationship to the case.

(2) In the event a hepatitis B surface antigen (HbsAg) is positive in a pregnant woman, the local health officer must:

(a) ensure appropriate health care providers and the birthing facility are aware of the mother's status and the infant's need for prophylaxis;

(b) ensure that hepatitis B immunoglobulin (HBIG) and vaccine are readily available at the birthing facility at the expected time of delivery;

(c) confirm the administration of HBIG and vaccine after delivery and submit the report form provided by the department within seven days after delivery and counsel the mother and provider regarding the need for further vaccination and testing;

(d) at one to two months and again at six to seven months after delivery contact the health care provider or guardian of the infant to confirm the vaccine was given and provide an update to the department using a form provided by the department; and

(e) at nine to 15 months after delivery, confirm testing of the infant for the surface antigen and antibody to the hepatitis B virus (HBV), counsel as appropriate, and provide an update to the department using a form provided by the department.

AUTH: 50-1-202, 50-2-118, 50-19-101, MCA

IMP: 50-1-202, 50-2-118, 50-19-101, MCA

37.114.542 HEPATITIS, NON-A-NON-B C (ACUTE OR CHRONIC) (1) ~~For a case of non-A non-B hepatitis, the control standards set out in ARM 37.114.540 for hepatitis, type B, must be followed.~~ The local health officer must ensure that each case:

(a) is counseled regarding prevention of transmission to others and provided with referrals to counseling and medical care as appropriate; and

(b) is encouraged to notify and refer at-risk contacts for testing, or to request assistance of the local public health officer with contact notification.

AUTH: 50-1-202, 50-2-118, MCA

IMP: 50-1-202, 50-2-118, MCA

37.114.548 LEGIONELLOSIS (1) ~~Drainage and secretion~~ Infection control precautions must be observed for each case of legionellosis until that person is treated and his/her discharges are found to be no longer infectious.

AUTH: 50-1-202, 50-2-118, MCA

IMP: 50-1-202, 50-2-118, MCA

37.114.555 MEASLES: RUBEOLA (1) A local health officer or the department shall impose ~~modified isolation consisting of respiratory isolation of infection control precautions on~~ a measles case and quarantine of susceptible contacts whenever a suspected or confirmed case of measles occurs. If isolation and quarantine are imposed, the local health officer shall provide the notice required by ARM 37.114.307 and 37.114.308 and make immunizations available.

AUTH: 50-1-202, 50-1-204, 50-2-118, MCA

IMP: 50-1-202, 50-1-204, 50-2-118, MCA

37.114.557 MENINGITIS: BACTERIAL OR VIRAL (1) A case of aseptic or viral meningitis must be kept in ~~strict~~ isolation during febrile illness or until the existence of bacterial meningitis is ruled out.

(2) Whenever a case of meningococcal meningitis, meningococcemia, or ~~bacterial meningitis~~ resulting from infection with haemophilus influenzae sero-type b occurs:

(a) ~~modified isolation consisting of respiratory isolation, blood and body fluid precautions, and drainage and secretion precautions~~ infection control precautions must be imposed upon the case until 24 hours have passed since the initiation of antibiotic chemotherapy; and

(b) remains the same.

AUTH: 50-1-202, 50-1-204, 50-2-118, MCA

IMP: 50-1-202, 50-1-204, 50-2-118, MCA

37.114.558 MUMPS (1) For a case of mumps, ~~the following measures~~ infection control precautions must be imposed:

(a) ~~drainage and secretion precautions until the fever and swelling of the salivary glands have disappeared; and~~

(b) ~~respiratory isolation~~ for nine days after the onset of swelling parotitis.

AUTH: 50-1-202, 50-2-118, MCA

IMP: 50-1-202, 50-2-118, MCA

37.114.560 OPHTHALMIA NEONATORUM (1) Whenever a case of ophthalmia neonatorum is confirmed:

(a) ~~drainage and secretion~~ infection control precautions must be imposed until 24 hours after administration of an antibiotic; and

(b) and (2) remain the same.

AUTH: 50-1-202, 50-2-118, MCA

IMP: 50-1-202, 50-2-118, MCA

37.114.561 ORNITHOSIS (PSITTACOSIS) (1) Respiratory Infection control precautions must be imposed upon a case of ornithosis as long as the fever lasts.

(2) The local health officer must inquire whether a bird epidemiologically linked to a case of ornithosis was obtained from an aviary, and, if so, determine the location of the aviary and report it to the Montana ~~s~~State ~~v~~Veterinarian, ~~d~~Department of ~~l~~Livestock.

AUTH: 50-1-202, 50-2-118, MCA

IMP: 50-1-202, 50-2-118, MCA

37.114.563 PERTUSSIS (WHOOPING COUGH) (1) ~~Modified isolation consisting of respiratory isolation~~ Infection control precautions must be imposed upon a case of pertussis for five days after the start of antibiotic therapy, or 21 days after the date of onset of symptoms if no antibiotic therapy is given.

(2) remains the same.

(3) A person identified by the local health officer ~~or the officer's designee~~ as a close contact must be monitored by the local health officer ~~or the officer's designee~~ for respiratory symptoms for 20 days after the person's last contact with the case.

(4) If a close contact shows respiratory symptoms consistent with pertussis, the health officer ~~or the officer's designee~~ must order the contact to avoid contact with anyone outside of the contact's immediate family until a medical evaluation indicates that the contact is not developing pertussis.

(5) Surveillance for susceptible contacts must be initiated immediately by the local health officer ~~or the officer's designee~~ and immediate immunizations recommended by the officer ~~or designee~~ must be administered to identified susceptible contacts.

AUTH: 50-1-202, 50-2-118, MCA

IMP: 50-1-202, 50-2-118, MCA

37.114.565 PLAGUE (1) Whenever a case of pneumonic plague exists:

(a) ~~strict~~ isolation must be imposed for no less than three days following commencement of antibiotic therapy to which the infected person responds; and

(b) those who are identified by the local health officer ~~or the officer's designee~~ as having been in household or face-to-face contact with the case must be placed on chemoprophylaxis and kept under surveillance by the local health officer ~~or the officer's designee~~ for seven days, or, if they refuse chemoprophylaxis, be kept in ~~strict~~ isolation with careful surveillance for seven days.

(2) Whenever a case of bubonic plague exists, ~~drainage and secretion~~ infection control precautions must be imposed until antibiotic therapy has been terminated and the lesions are bacteriologically negative for plague bacilli.

(3) Concurrent disinfection of discharges and bodily fluids must be done in all plague cases.

(4) An investigation must be conducted by the local health officer ~~or the officer's designee~~ to identify vectors and reservoirs whenever a case of bubonic plague exists.

AUTH: 50-1-202, 50-1-204, 50-2-118, MCA

IMP: 50-1-202, 50-1-204, 50-2-118, MCA

37.114.566 POLIOMYELITIS (1) For a case of poliomyelitis, ~~modified isolation consisting of enteric~~ infection control precautions must be imposed for seven days from the onset of illness, or for the duration of fever, if longer.

(2) The local health officer ~~or the officer's designee~~ must initiate surveillance for susceptible contacts and recommend immunization to them immediately.

AUTH: 50-1-202, 50-2-118, MCA

IMP: 50-1-202, 50-2-118, MCA

37.114.568 Q-FEVER (QUERY FEVER) (1) Whenever a case of Q-fever occurs:

(a) ~~Respiratory~~ infection control precautions must be used; and

(2) ~~(b) Bodily~~ fluid discharges must be concurrently disinfected.

AUTH: 50-1-202, 50-2-118, MCA

IMP: 50-1-202, 50-2-118, MCA

37.114.570 RABIES: HUMAN (1) For a case of human rabies, ~~strict~~ isolation must be imposed for the duration of the illness.

AUTH: 50-1-202, 50-1-204, 50-2-118, MCA

IMP: 50-1-202, 50-1-204, 50-2-118, MCA

37.114.573 ROCKY MOUNTAIN SPOTTED FEVER (1) ~~Ticks removed from a case must be destroyed by chemical or physical means which entirely dispose of the tick while avoiding skin contact. The local health officer must conduct an investigation to determine the specific geographic areas of potential exposure and report the results to the department.~~

AUTH: 50-1-202, 50-2-118, MCA

IMP: 50-1-202, 50-2-118, MCA

37.114.575 RUBELLA: CONGENITAL (1) ~~Modified isolation consisting of respiratory isolation~~ Infection control precautions must be imposed on any person with congenital rubella during the time they are hospitalized.

(2) The local health officer ~~or the officer's designee~~ must identify any susceptible contact of the person with congenital rubella, to the extent possible, and encourage them to undergo rubella immunization if not already immune.

AUTH: 50-1-202, 50-2-118, MCA

IMP: 50-1-202, 50-2-118, MCA

37.114.577 SALMONELLOSIS (OTHER THAN TYPHOID FEVER) (1) remains the same.

(2) Whenever a case of salmonellosis exists:

(a) ~~enteric~~ infection control precautions must be imposed upon the case for



the duration of the illness;

(b) the local health officer ~~or the officer's designee~~ must prohibit the case from engaging in a sensitive occupation until two successive specimens of the case's feces have been determined by a laboratory to be negative for salmonella organisms, the first specimen of which is collected at least 48 hours after cessation of the therapy and the second not less than 24 hours thereafter; and

(c) stool cultures must be made for any family contacts of a case who are identified by the local health officer ~~or the officer's designee~~ and who are themselves involved in a sensitive occupation, ~~if~~. If the culture is positive for salmonella, the contact is subject to the requirements of (2)(a) and (b) ~~above~~.

AUTH: 50-1-202, 50-2-118, MCA

IMP: 50-1-202, 50-2-118, MCA

37.114.579 SHIGELLOSIS (1) For a case of shigellosis, ~~enteric infection~~ infection control precautions must be imposed for the duration of the illness.

(2) remains the same.

AUTH: 50-1-202, 50-2-118, MCA

IMP: 50-1-202, 50-2-118, MCA

37.114.588 TULAREMIA (1) ~~Drainage and secretion~~ Infection control precautions must be followed whenever open lesions exist or lacrimal sacs are draining (i.e., tears are produced).

AUTH: 50-1-202, 50-2-118, MCA

IMP: 50-1-202, 50-2-118, MCA

37.114.589 TYPHOID FEVER (1) remains the same.

~~(2) (a)~~ Enteric Infection control precautions must be imposed until specific therapy for the fever has been completed and no fewer than three successive specimens of feces have been found negative for typhoid organisms, the first of which is taken one month after therapy is discontinued and followed by the other two at no less than one-week intervals.

~~(3) (b)~~ The local health officer may not allow an infected person to engage in a sensitive occupation until ~~modified isolation~~ infection control precautions have ~~has~~ been terminated in accordance with ~~(2) of this rule~~ (1)(a).

AUTH: 50-1-202, 50-2-118, MCA

IMP: 50-1-202, 50-2-118, MCA

37.114.591 YELLOW FEVER (1) ~~Blood and body fluid~~ Whenever a case of yellow fever occurs, infection control precautions must be followed.

AUTH: 50-1-202, 50-2-118, MCA

IMP: 50-1-202, 50-2-118, MCA

37.114.592 YERSINIOSIS (1) ~~Modified isolation consisting of enteric~~  
Whenever a case of yersiniosis occurs, infection control precautions must be imposed.

AUTH: 50-1-202, 50-2-118, MCA

IMP: 50-1-202, 50-2-118, MCA

37.114.595 ILLNESS IN TRAVELER FROM FOREIGN COUNTRY

(1) Isolation and quarantine must be imposed until the etiologic agent of the disease is determined, at which point control measures must be imposed which are prescribed for that etiologic agent in the "Control of Communicable Diseases Manual, An Official Report of the American Public Health Association", ~~17th edition, 2000~~ (18th edition, 2004).

~~(2) The department hereby adopts and incorporates by reference the "Control of Communicable Diseases Manual, An Official Report of the American Public Health Association", 17th edition, 2000, which lists and specifies control measures for communicable diseases. A copy of the "Control of Communicable Diseases Manual" may be obtained from the American Public Health Association, 1015 15th Street NW, Washington, DC 20005.~~

AUTH: 50-1-202, 50-1-204, 50-2-118, MCA

IMP: 50-1-202, 50-1-204, 50-2-118, MCA

37.114.1002 TUBERCULOSIS: COMMUNICABLE STATE (1) A person has communicable tuberculosis if one of the following conditions exists:

(a) and (b) remain the same.

(c) in the case of extrapulmonary tuberculosis, drainage from the extrapulmonary site is not being disposed of in accordance with ~~drainage and secretion~~ infection control precautions.

~~(2) For purposes of this rule, a~~ A person diagnosed as having communicable tuberculosis will continue to be regarded as having communicable tuberculosis until:

(a) through (c) remain the same.

(d) in the case of extrapulmonary tuberculosis, drainage from the extrapulmonary site is disposed of according to ~~drainage and secretion~~ infection control precautions.

AUTH: 50-1-202, 50-17-103, MCA

IMP: 50-1-202, 50-17-103, MCA

37.114.1005 ISOLATION OF CASE: TESTING AND QUARANTINE OF CONTACTS (1) ~~Tuberculosis isolation as defined in ARM 37.114.104~~ must be imposed ~~by the department or the local health officer~~ upon a case of communicable tuberculosis until the infected person is determined by the department or local health officer to be no longer communicable.

(2) and (3) remain the same.

AUTH: 50-1-202, 50-1-204, 50-2-118, 50-17-103, MCA

IMP: 50-1-202, 50-1-204, 50-2-118, 50-17-102, 50-17-103, 50-17-105,  
MCA

4. Title 37, chapter 114 of the Administrative Rules of Montana (ARM) provides detailed information regarding appropriate practices for control of communicable diseases in the state of Montana, as contemplated by state statutes. The Department of Public Health and Human Services (the department) proposes these new rules and modifications to existing rules to improve communicable disease control and reporting practices across Montana, and to bring required practices in line with national standards and best medical practices as determined on a national basis.

In recent years, the recognition of new communicable diseases and the reemergence of others previously considered to be controlled, as well as concern for the potential use of communicable diseases for bioterrorist activities, have necessitated new and/or renewed efforts in identification and control of certain communicable diseases. At the same time, health care and public health practices for optimal identification and control of communicable diseases continue to evolve. Because appropriate public health practices are significantly determined by application of standards adopted by nationally recognized authorities, and by application of best practices developed in the medical community, the ARM must be reviewed and updated periodically to ensure conformity of public health practices in Montana with the standard of care for communicable disease control.

Ultimately, the department believes that periodic review and updating of these rules, taking into consideration current "best practices" in the public health arena, is reasonably necessary to ensure the department continues to fulfill its obligation to provide the greatest possible protection of the public health in the state of Montana. Failure by the department to remain current in the objectives and methodologies of public health practice, and to adopt and enforce rules commensurate with those objectives and methodologies, could result in an inadequate response to occurrences of communicable disease, including instances of widespread exposure due to bioterrorist activity.

#### RULE I – Chickenpox (Varicella)

The national Centers for Disease Control and Prevention ("CDC") has established guidelines to track better the use and effectiveness of the varicella vaccine. Further, the availability of an effective vaccine provides an opportunity for effective prevention of varicella that was not available in the past. Therefore, the department recommends the addition of varicella as a reportable condition, and has developed reasonable control measures designed to minimize the transmission of varicella.

The department considered not specifying reporting and control measures for varicella, but believes it would be unreasonable not to establish minimum requirements for identification and control of varicella, including provision of varicella vaccine, to those citizens of Montana identified as susceptible and likely exposed to

varicella. While varicella has typically been perceived to be a relatively minor childhood illness, for a certain percentage of individuals infected with the virus, varicella can lead to severe medical complications, physical impairments, and, in some cases, death. Therefore, the department believes responsible public health regulation mandates these reasonable practices for reporting and control of varicella. Further, this proposed rule will result in a standardized approach to case investigation and data collection, further resulting in reliable data submissions to the department and, ultimately, to the CDC.

#### RULE II – Severe Acute Respiratory Distress Syndrome (SARS)

SARS is a communicable disease with significant potential for severe medical manifestation and death. SARS has emerged in clusters in various parts of the world in the last several years. Therefore, the CDC has strongly recommended the addition of SARS as a reportable condition with implementation of immediate control measures to prevent spread of the disease from a suspected or confirmed case. The proposed control measures are reasonably necessary to identify and control the spread of this virulent disease, and are in line with national guidelines for reporting and control of SARS.

The department considered not specifying reporting and control measures for SARS, or specifying measures that were less stringent in application, but determined that the best interests of the citizens of Montana would only be served by a public health system that makes full efforts to identify suspected or confirmed cases of SARS and implements control measures commensurate with the virulence of the disease.

#### RULE III – Smallpox

Smallpox is a severe, highly transmissible, communicable disease with significant potential for severe medical manifestation, lifelong physical disfigurement, and death. While naturally occurring smallpox was eradicated through a concerted immunization effort in the U.S. and in the world during the last century, recent concern for the potential use of smallpox for bioterrorism activities has resulted in a renewed recommendation from the CDC for the reporting of and development of control measures related to suspected or confirmed cases of smallpox. The existence of an effective vaccine, which may provide immunity to those exposed to a suspected or confirmed case, necessitates development of reporting and control practices that expeditiously identify a suspected or confirmed case and those individuals who may have been exposed to the case.

The department considered not specifying control measures for smallpox, or, in the alternative, prescribing control measures that were less stringent in application. However, based on the virulence of the disease, and the potential damage to be caused by an outbreak, as well as the existence of an effective treatment protocol – the immunization of exposed individuals, the department believes the control measures outlined are reasonably necessary. The control measures provide for timely identification of suspected or confirmed cases of smallpox and those

individuals potentially exposed to those cases in order that immunization may be offered in time to prevent disease in exposed persons and further transmission of the disease.

#### RULE IV – Incorporation by Reference

This rule has been added to provide a single location for incorporation by reference of the public health standards sources utilized by the department. The sources incorporated by reference are: the "Control of Communicable Diseases Manual, An Official Report of the American Public Health Association", (18th edition, 2004), which lists and specifies control measures for communicable diseases; the "Guideline for Isolation Precautions in Hospitals" (1996), which specifies precautions that should be taken to prevent transmission of communicable diseases for cases admitted to a hospital or other health care facility; and the "Sexually Transmitted Diseases Treatment Guidelines 2002" published by the U.S. Centers for Disease Control and Prevention in the May 10, 2002, Morbidity and Mortality Weekly Report, volume 51, which specify the most currently accepted effective treatments for sexually transmitted diseases.

The "Control of Communicable Diseases Manual, An Official Report of the American Public Health Association," (18th edition, 2004), is an updated reference to the most current edition of the manual. The manual is a publication of the American Public Health Association and serves as the standard public health reference for state and local public health agencies throughout the country. Use of this reference helps ensure that health care practitioners and public health professionals are uniformly and consistently applying best practices to control the spread of communicable diseases.

The "Guideline for Isolation Precautions in Hospitals" has also been updated to the most current publication of the Guidelines. The Guideline establishes the national standard for infection control precautions for cases admitted to a hospital or other health care facility. As well, the "Sexually Transmitted Diseases Treatment Guidelines 2002" establish the current understanding of best medical practices related to the treatment of sexually transmitted diseases.

All of these standards sources have long been employed by the department in establishing internal practices, as well as determining administrative rules for communicable disease control. However, the citation and incorporation by reference of these standards sources in current rules occur in every specific rule in which compliance with the specific source is mandated. The department believes, upon review, that a single incorporation by reference provision, and consequent removal of incorporation by reference in each specific rule to which it is applicable, provides a more practical, understandable format for cross-reference to the standards sources.

The following rules have been modified to conform to this general revision: ARM 37.114.315; 37.114.515; 37.114.521; 37.114.530; and 37.114.595.

#### ARM 37.114.101 – Definitions

A number of definitions related to infection control measures and isolation settings were removed from this rule, and reference to those defined terms was modified within the substantive rules as indicated below. The deleted definitions include:

"Blood and Body Fluid Precautions;"  
"Drainage and Secretion Precautions;"  
"Enteric Precautions;"  
"Modified Isolation;"  
"Respiratory Isolation;"  
"Strict Isolation;" and  
"Tuberculosis Isolation;"

In the current rules, these various terms are used to describe two fundamental concepts. First, the rules indicate that for certain communicable diseases, isolation of an infected person is required. Isolation, simply, is the separation of an infected person from other persons in order to prevent the transmission of disease from an infected person to a noninfected person. Second, the rules identify "infection control precautions" that must be employed to prevent the spread of disease from one person to another. In general, these precautions are determined on a disease-by-disease basis, and are based on the specific infectious agent - its infection progression, its standard means of transmission from one person to another, and its virulence.

As a result of dated terminology and potential conflicts between sources cited, consistent application of the control measures listed in the existing rules can be problematic. First, there is not a clean dividing line between isolation and the infection control measures detailed. The current definitions of "modified isolation," "respiratory isolation," "strict isolation," and "tuberculosis isolation" include isolation provisions – identifying the requirement for separation of an infected person from other persons – as well as infection control precautions provisions – identifying the steps necessary to be taken to prevent transmission of the disease from one person to another, regardless of the level of isolation in specified settings.

Second, the current rules attempt to provide direction on isolation and infection control precautions by cross referencing the "Guideline for Isolation Precautions in Hospitals" ("Guideline") and the "Control of Communicable Diseases Manual" ("CCDM"). In addition to these references, additional requirements for isolation and infection control precautions are listed in many instances. As the Guideline and CCDM have been updated, the rules have not consistently been modified to reflect changes in terminology or infection control precautions. This has resulted in procedures that may not be reflective of the current Guideline/CCDM, best medical practices, or best public health practices.

Lastly, many of the specific requirements set forth in the existing rules may already be referenced by the Guideline/CCDM requirements, or may be additional steps deemed reasonable and necessary by the drafters of the rules. As a result, isolation

and/or infection control precautions referenced or stated may be redundant or contradictory. For these reasons, the department believes it is necessary to modify the rules to provide a rational, understandable, consistent method of describing the isolation and infection control precautions applicable to each communicable disease.

National standards for infection control precautions in circumstances where the infected person is admitted to a hospital or other health care facility are established by the CDC and published by the Government Printing Office as the "Guideline for Isolation Precautions in Hospitals." National standards for infection control precautions in circumstances where the infected person is not admitted to a hospital or other health care facility are established by the American Public Health Association and published as the "Control of Communicable Diseases Manual." These two resources represent the practice standard for infection control precautions in the medical and public health communities, and are defined and incorporated by reference, as discussed below, in Title 37, chapter 114 of the ARM.

The format of these proposed rules removes internal definition and description of infection control measures in favor of the application of the national standard infection control precautions as set forth in the Guideline/CCDM. This objective is realized through use, in these proposed rules, of the single defined term, "infection control precautions," which definition cross-references the Guideline and the CCDM. These modifications will result in a clearer statement of expectations without materially changing the source of expertise and guidance on infection control measures for the public health community or the medical community. A reference to "infection control precautions," as used in these rules, is a reference to either the specific "isolation precautions" set forth in the Guideline, or the specific "measures for control" set forth in the CCDM.

Again, a public health or health care practitioner will apply the standards set forth in the Guideline for infected persons admitted to a hospital or other health care facility, and will apply the standards set forth in the CCDM for infected persons not admitted to a hospital or other health care facility. For those persons admitted to a hospital or other health care facility, the applicable infection control precautions would be those practices identified in the Guideline as the "isolation precautions" applicable to the specific disease or condition being treated. For those persons not admitted to a hospital or other health care facility, the applicable infection control precautions would be those practices identified in the CCDM as the "methods of control" applicable to the specific disease or condition being treated.

The department considered continuing the current practice of internally describing specific infection control measures, along with the incorporation by reference of the Guideline/CCDM. In the alternative, the department considered trying to draft, in rules, the specific sequence of infection control measures applicable to each disease. However, the Guideline/CCDM provide parameters for infection control measures that are not static, specific steps to be followed on a disease by disease basis, but, rather, fluid and dynamic determinations of required behavior based on the specific circumstances of a particular case. It would not be feasible to draft rules

for infection control precautions specific to each disease, as the circumstances of a specific case are not defined only by the disease condition afflicting the patient. Such rule drafting would almost certainly continue to result in confusing and contradictory application of requirements.

A significant number of rules have been modified to conform to this new format for identifying isolation and isolation precaution requirements. The modified rules are: ARM 37.114.503; 37.114.504; 37.114.506; 37.114.509; 37.114.510; 37.114.516; 37.114.518; 37.114.521; 37.114.525; 37.114.527; 37.114.528; 37.114.537; 37.114.539; 37.114.540; 37.114.548; 37.114.557; 37.114.558; 37.114.560; 37.114.561; 37.114.565; 37.114.566; 37.114.568; 37.114.577; 37.114.579; 37.114.588; 37.114.589; 37.114.591; 37.114.592; 37.114.1002; and 37.114.1005.

The definition of carrier has been deleted to align the rules to the terminology currently used in the public health and health care fields. The term carrier is no longer used to identify a person who is a potential source of infection to other persons. Further, as used in the rules (carrier is used only in ARM 37.114.522 – the rule pertaining to control measures for diphtheria), the intended meaning of the term carrier is more appropriately expressed through use of the defined term infectious person.

The department considered not deleting the defined term carrier. However, the department believes the inherent credibility of the communicable disease rules is best served by keeping the rules current with the terminology and practices of the public health and health care communities. To do otherwise would tend to indicate that the rules are not current, vital components of public health practice.

The definition of sensitive occupation is related to ARM 37.114.301, the substantive rule related to occupations that are deemed to be sensitive for public health purposes. Currently, the definition of sensitive occupation, in ARM 37.114.101, does not include all of the occupations identified as sensitive in ARM 37.114.301. Because many of the rules specifying control measures for certain communicable diseases include limitations on a case's ability to work in a sensitive occupation by reference to either or both ARM 37.114.101 and 37.114.301, the department believes the definition and the rule should both be complete and consistent in their identification of sensitive occupations.

A definition of "Control of Communicable Diseases Manual" has been added as has a definition of the "Guideline for Isolation Precautions in Hospitals," and a definition of the "Sexually Transmitted Diseases Treatment Guidelines 2002."

A definition of "local health officer" has been added. The definition comports with the definition of the same term in state statute, and, as used in the ARM, the term "local health officer" includes an authorized representative of a local health officer. Currently, many of the rules identify responsibilities of local health authorities by assigning duties under the rules to the "local health officer or officer's designee." Since many duties identified under the rules are the obligation of the local health



officer to perform, the term appears many times within the rules. The department believes that defining the term "local health officer," which term will include any authorized designee of the local health officer, makes the rules far more readable and understandable. Since the statutory statement of a local health officer's authority specifically includes the right of a local health officer to act through an authorized representative in the performance of the health officer's duties, the inclusion of authorized representatives in the definition of "local health officer" does not conflict with statutory expectations. Further, such definition prevents confusion in circumstances where the rules reference only the local health officer as opposed to the local health officer or the officer's designee.

The department considered continuing to use the term "local health officer or officer's designee" to identify the class of persons with duties to perform certain functions under these rules. However, the department determined that such continued use would make these rules more burdensome to read, and would result in significant potential for confusion in that rules that refer only to the "local health officer" could be read to prohibit action by an authorized representative of the local health officer, when no such outcome is intended either in the rules or in the underlying statutes. The following rules have been modified to conform to this general revision: ARM 37.114.204; 37.114.314; 37.114.515; 37.114.522; 37.114.530; 37.114.540; 37.114.566; 37.114.577; and 37.114.1005.

In other places, minor changes were made within definitions to clarify the meaning, intent, and application of those terms within these rules.

#### ARM 37.114.201

This rule was modified, deleting an abbreviated reporting process that had been applicable to HIV/AIDS, influenza, and Colorado tick fever. All of these conditions are included in the list of reportable diseases set forth in ARM 37.114.203, but for various reasons related to patient confidentiality and/or a desire to mandate a less burdensome reporting requirement for these specific conditions, an alternate process for reporting was, over time, drafted into ARM 37.114.201. As currently drafted, this abbreviated reporting process does not allow for accurate tracking or characterization of cases of HIV/AIDS, influenza, and Colorado tick fever. The department believes the proposed change, which requires reporting of these conditions in the same manner as other reportable conditions, will allow more accurate data to be collected with a minimal impact on reporting sources and health agencies, and will simplify reporting procedures.

The department considered continuing the current reporting processes, but determined that continued use of the abbreviated reporting process, and the resulting potential for difficulties in tracking or inconsistencies in information provided would render the department less able to identify significant public health concerns related to these conditions in a timely manner, and could delay appropriate response by the department.

#### ARM 37.114.203

A number of conditions have been added to the list of conditions required to be reported to local health officers and/or the department. The additions include chickenpox (varicella), smallpox, and severe acute respiratory syndrome (SARS). These conditions are also the subject matter of new specific rules, Rules I, II, and III as discussed above. The rationales for their addition to the list of reportable conditions are the same as the rationales for proposal of Rules I, II, and III, as fully presented previously in this rationale.

Also added to the list of reportable conditions are transmissible spongiform encephalopathies and tick-borne relapsing fever. For both of these conditions, responsible public health policy mandates monitoring of cases in order to identify trends in the number of cases, identify potential infection sources, and provide adequate instruction regarding prevention and control of the diseases. Further, transmissible spongiform encephalopathies are conditions of significant interest to the public (due to recent concerns for mad cow disease) with a significant potential for public concern. The department believes that human cases of transmissible spongiform encephalopathies must be reported to the department in a timely manner in order for the department to respond to public concerns related to this disease. Timely and appropriate identification, investigation, and intervention related to these diseases is only possible if cases are properly reported to the department.

The department considered not requiring reporting of these diseases, but determined that the public health risks associated with these diseases, and the need and ability to provide adequate public health response in a timely manner, including response necessary to calm public fears, necessitates listing of these diseases as reportable conditions.

#### ARM 37.114.204

This rule identifies appropriate timeframes for subsequent reporting by local health officers, and direct reporting by certain other health care entities, to the department of cases of reportable diseases. Modifications were made to effectuate the standardization of reporting requirements related to Colorado tick fever and influenza with those related to all other reportable conditions. Other changes for the same purpose, and the rationale for the changes, are discussed above in the section pertaining to ARM 37.114.201.

A modification was made to move Tularemia from a periodic reporting requirement to an immediate reporting requirement. This change is due to concern for Tularemia's potential use as a bioterror agent. In order to ensure timely investigation of potential bioterror activities, the department believes that cases of Tularemia need to be reported as quickly as possible.

A modification was made to include hepatitis B surface antigen tests as a condition reportable to the department by laboratories. Additional changes related to reporting

and control of hepatitis B are discussed below in the section regarding ARM 37.114.540. Addition of hepatitis B surface antigen tests to the reporting requirements is fundamental to the objective and rationale discussed in that section.

#### ARM 37.114.205

This rule identifies the data elements required to be included in a report required pursuant to ARM 37.114.201 through 37.114.204. Minor changes were made to comply with state policies related to a rule's internal reference to other sections of the same rule.

Other modifications were made to eliminate an alternative method of reporting cases of HIV infection or AIDS. The alternative report requirements mandated the removal of patient names, and their replacement by a unique identifying number, in reports of HIV/AIDS. The alternative reporting process was created at a time when absolute confidentiality of HIV/AIDS testing was necessary to encourage testing. However, the CDC now recommends name-based reporting of cases of HIV infection and AIDS. These modifications standardize the report contents for cases of HIV/AIDS with all other reportable conditions, and comply with current CDC recommendations.

The department considered continuing the current reporting of HIV/AIDS cases, but since the department is required to report HIV/AIDS cases to the CDC accurately, and is encouraged to make such reports in a name-based format, continued use by the department of the nonname-based reporting process would not allow the department to provide information to the CDC in an accurate format.

#### ARM 37.114.313

This rule requires a local health officer to provide a biological specimen to the department to confirm the existence or absence of certain diseases upon receipt of a report of a suspected case. Modifications have been made to add smallpox and severe acute respiratory syndrome (SARS) to the list of diseases that must be confirmed. The virulence of these diseases and their potential impact to public health necessitate immediate confirmation of a suspected case of disease. Confirmation of either disease may require highly specialized laboratory services, and may involve submission of specimens to the CDC. Timely submission of a specimen to the department is imperative to timely confirmation of cases of disease, and to an appropriate public health response to confirmed cases.

The department considered not adding smallpox and SARS to the list of diseases required to be confirmed by submission of a specimen, but determined that failure to provide a specimen where a suspected case is identified would result in delayed confirmation of cases. In the case of smallpox and SARS, any delay in confirmation of a case could result in increased risk of exposure and infection to those persons who are or have been in contact with the person suspected to be infected. Because of the virulence of these diseases, any delay could result in an unacceptable increase of risk to the public health.

ARM 37.114.506

This provision identifies the primary control measures required in cases of anthrax. Modifications were made to require formal investigation of every confirmed or suspected case of anthrax. The department believes that, as a potential bioterrorism agent, anthrax cases must be investigated thoroughly to determine possible sources of infection and/or rule out bioterrorist activities.

The department considered not imposing the investigation requirement, but determined that emerging national requirements related to bioterrorism investigation and prevention will or do impose a requirement for such investigation. Further, the department believes that responsible conduct of public health activities necessitates efforts to identify anthrax exposure due to bioterrorist activities, as such activities will likely result in more cases of disease than exposure to naturally occurring anthrax.

ARM 37.114.509

This provision identifies the primary control measures required in cases of brucellosis. Modifications were made to require formal investigation of every confirmed or suspected case of brucellosis. The department believes that, as a potential bioterrorism agent, brucellosis cases must be investigated thoroughly to determine possible sources of infection and/or rule out bioterrorist activities.

The department considered not imposing the investigation requirement, but determined that emerging national requirements related to bioterrorism investigation and prevention will or do impose a requirement for such investigation. Further, the department believes that responsible conduct of public health activities necessitates efforts to identify brucellosis exposure due to bioterrorist activities, as such activities will likely result in more cases of disease than exposure to naturally occurring brucellosis.

ARM 37.114.510

This provision identifies the primary control measures required in cases of Campylobacter Enteritis. Modifications were made to clarify the conditions under which a person may return to work in a sensitive occupation following a diagnosis of Campylobacter Enteritis. The modified rule gives a local health officer greater flexibility to require testing prior to a return to work and clarifies that one clear stool specimen is sufficient to allow a return to work.

The department considered not modifying this rule. However, questions have arisen in the past regarding how many clear specimens are required to allow a case to return to work in a sensitive occupation. The department believes that local health officers can best determine when symptoms of illness resolve, and, if a stool specimen is deemed necessary by the public health officer, one clear stool specimen is sufficient to establish a resolution of symptoms. Not modifying this rule

would lead to continued confusion regarding its appropriate application.

ARM 37.114.519

This provision identifies the primary control measures required in cases of Cryptosporidiosis. As the rule currently exists, there is no express authority for a local health officer to prohibit an infected person from working in a sensitive occupation. Modifications were made deleting specific isolation precautions applicable to this condition, and additional modifications were made requiring a local health officer to prohibit an infected person from working in a sensitive occupation until symptoms of illness resolve, and to require a clear stool specimen prior to allowing a case to return to work.

The department considered not modifying this rule. However, the department believes this condition to be of sufficient virulence that allowing an infected person to continue working in a sensitive occupation is not commensurate with responsible public health practice. The department further believes that proof of noncommunicability, in the form of a clear stool specimen, if deemed necessary by a local health officer, is sufficient to ensure that persons working in sensitive occupations who have been diagnosed with Cryptosporidiosis are no longer infectious before returning to work.

ARM 37.114.525

This provision identifies the primary control measures required in cases of Eschichia Coli 0157:H7 Enteritis. Minor modifications were made to clarify that local health officer must prohibit an infected person from engaging in a sensitive occupation. This modification does not change the intended effect of this rule, but clarifies language that could otherwise have been construed to give a local health officer discretion to allow an infected person to engage in a sensitive occupation prior to a conclusive determination that the person is no longer contagious. As well, the current rule prohibits a case from working in a sensitive occupation "until stool specimens" are culture-negative for escherichia coli 0157:H7 enteritis. The modified rule clarifies the ambiguous reference to stool specimens by specifying that two successive stool specimens collected at least 24 hours apart and not less than 48 hours after cessation of any administration of antimicrobials must be culture-negative before the case may be allowed to return to work. The department believes this standard comports with current medical standards for determining that a person diagnosed with this disease is no longer contagious, and application of this specific standard remedies the ambiguity of the current rule.

The department considered not modifying this rule, or, in the alternative, modifying the rule in a less stringent manner. However, the department determined that the virulence of this disease necessitates application of strict constraints related to infected persons who work in sensitive occupations.

ARM 37.114.528

This provision identifies the primary control measures required in cases of Giardiasis. Language has been added that require local health officers to assess cases employed in sensitive occupations for transmission risk, and gives them authority to restrict a case from working in a sensitive occupation until proof is obtained that the person is no longer contagious.

The department considered not modifying this rule. However, the department believes that this condition is of sufficient virulence that it is appropriate in some circumstances to prohibit an infectious person from working in a sensitive occupation. The department also believes that local health officers can best determine when the circumstances of a specific case necessitate prohibition from work, and when the circumstances of a specific case no longer pose a threat to public health so that a return to work is appropriate.

#### ARM 37.114.540

This provision identifies the primary control measures required in cases of hepatitis B (acute or chronic). Significant modifications were made to implement procedures for appropriate follow-up to a positive prenatal hepatitis B surface antigen test. The Montana Legislature added the hepatitis B surface antigen test to the standard serological test required to be performed on every woman receiving prenatal care by modification of section 50-19-101 of the Montana Code Annotated in 2001. The modifications to this rule ensure that appropriate follow-up care of an infant born to a mother with a positive test result will be provided, by administration of hepatitis B immunoglobulin and vaccine.

The department considered not revising this rule, but determined that failure to provide for appropriate care of an infant following a positive test of the infant's mother for hepatitis B surface antigens would result in unnecessary health risks to newborn infants where effective treatment regimens exist. Further, failure to implement rules for treatment of infants would be antithetical to the purpose for the inclusion of the hepatitis B surface antigen test in the prenatal standard serological test.

#### ARM 37.114.542

This provision identifies the primary control measures required in cases of hepatitis C (acute or chronic). The modified rule requires counseling of persons with hepatitis C regarding prevention of transmission of the disease to others, and to encourage them to notify contacts about transmission risks and the availability of testing.

The department considered not modifying this rule, but determined that responsible public health practice mandates reasonable efforts to educate persons infected with hepatitis C in methods to prevent transmission of the disease to others, and some attempt to influence the infected person to notify contacts of the infection risk and the availability of testing.

ARM 37.114.557

This provision identifies the primary control measures required in cases of meningitis: bacterial or viral. Modifications were made to clarify which bacterial agents are of interest from a public health perspective as causes of meningitis. Only the specifically identified invasive bacterial agents of meningitis pose sufficient risks of communicability as to necessitate public health intervention.

The department considered not modifying this rule, but determined that nonspecific designation of meningitis as a public health concern results in increased workload for the public health community without a commensurate public health benefit.

ARM 37.114.573

This provision identifies the primary control measures required in cases of Rocky Mountain spotted fever. Modifications were made to delete the requirement that ticks be destroyed. In some cases, submission of ticks for further study to the department or other research facility is necessary.

Language was also added requiring local health officers to investigate to determine the specific geographic location of exposure of a case. Many people are able to identify the geographic location they believe was the site of exposure, and gathering this information will assist public health authorities to provide education regarding exposure risks and exposure prevention to persons using those areas.

The department considered not modifying this rule but determined that the modifications are necessary to facilitate full evaluation of specific instances of exposure, and to facilitate effective public outreach to prevent cases of Rocky Mountain spotted fever.

Other Modifications

Other minor modifications have been made within these rules to conform the rules to the requirements of the Secretary of State regarding rule drafting, including but not limited to, formatting, numbering, capitalization, hyphenation, and internal reference to other provisions/rules. These modifications are not substantive and do not modify the meaning or intent of the rules.

5. Interested persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210, no later than 5:00 p.m. on July 20, 2006. Data, views, or arguments may also be submitted by facsimile (406)444-1970 or by electronic mail via the Internet to dphhslegal@mt.gov. The department also maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or

programs of interest. For placement on the mailing list, please write the person at the address above.

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

/s/ Denise Pizzini  
Rule Reviewer

/s/ Russell Cater for  
Director, Public Health and  
Human Services

Certified to the Secretary of State June 12, 2006.



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

In the matter of the amendment of ARM	)	NOTICE OF PUBLIC HEARING
37.82.101 pertaining to Medicaid	)	ON PROPOSED AMENDMENT
assistance	)	

TO: All Interested Persons

1. On July 12, 2006, at 3:00 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 and amendment of the above-stated rules.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice or provide reasonable accommodations at the public hearing site. If you need to request an accommodation, contact the department no later than 5:00 p.m. on July 3, 2006, 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; e-mail [dphhslegal@mt.gov](mailto:dphhslegal@mt.gov).

2. The rule as proposed to be amended provides as follows. Matter to be added is underlined. Matter to be deleted is interlined.

37.82.101 MEDICAL ASSISTANCE, PURPOSE AND INCORPORATION OF POLICY MANUALS (1) Subject to applicable state and federal laws, regulations and rules, the Montana ~~m~~Medicaid program pays for covered medically necessary services for persons determined eligible by the department or its agents.

(2) The department adopts and incorporates by reference the state policy manuals, namely the Family Medicaid Manual and the SSI Medicaid Manual manuals governing the administration of the ~~m~~Medicaid program ~~effective July 1, 2005~~ dated July 1, 2006. The Family Medicaid Manual, the SSI Medicaid Manual, and the proposed manual updates are available for public viewing at each local Office of Public Assistance or at the Department of Public Health and Human Services, Human and Community Services Division, 111 N. Last Chance Gulch, P.O. Box 202925, Helena, MT 59620-2925. The proposed manual updates are also available on the department's website at [www.dphhs.mt.gov/legalresources/proposedmanualchange.shtml](http://www.dphhs.mt.gov/legalresources/proposedmanualchange.shtml).

AUTH: 53-2-201, 53-6-113, MCA

IMP: 53-6-101, 53-6-131, 53-6-141, MCA

3. ARM 37.82.101 currently adopts and incorporates by reference the Family Medicaid Manual and the SSI Medicaid Manual governing the administration of the

Medicaid program effective July 1, 2005. The department has made revisions to these manuals that will be applied retroactively to January 1, 2006. Amendment of ARM 37.82.101 is therefore necessary in order to incorporate into the Administrative Rules of Montana the revised versions of the policy manuals, to permit all interested parties to comment on the department's policies and to offer suggested changes. It is estimated that changes to the Family Medicaid Manual and to the SSI Medicaid Manual could affect 82,147 recipients. Manuals and draft manual material are available for review in each local Office of Public Assistance and on the department's website at [www.dphhs.mt.gov](http://www.dphhs.mt.gov). Following is a brief overview of the changes being made to each manual section for the Family Medicaid Manual and the SSI Medicaid Manual.

Family Medicaid Manual - Fiscal impact based on the changes below is expected to be zero.

FMA 201-10 Transitional Medicaid. This manual section was updated to reflect a recent federal clarification from the Centers for Medicare and Medicaid Services, U.S. Department of Health and Human Services, mandating removal of the requirement that adult Transitional Medicaid Assistance (TMA) recipients continue to cooperate with the Child Support Enforcement Division (CSED). Other minor clarification and formatting changes were also made to this section.

FMA 900 Child Support Overview. This manual section was updated to reflect a recent federal clarification from the Centers for Medicare and Medicaid Services, U.S. Department of Health and Human Services, mandating removal of the requirement that adult TMA recipients continue to cooperate with the CSED. This section was also updated with minor policy clarifications.

FMA 901-1 Child Support Cooperation. This manual section was updated to reflect a recent federal clarification from the Centers for Medicare and Medicaid Services, U.S. Department of Health and Human Services, mandating removal of the requirement that adult TMA recipients continue to cooperate with the CSED. This section also changes the policy regarding adults who are not cooperating with CSED but who later wish to cooperate. If CSED has closed such an individual's support case, only a new CSED referral (HCS/CS-332) is required to bring the individual back into cooperation. If CSED has not closed such an individual's support case, the needs of that individual can be added back to the Medicaid case if the individuals begin cooperation with reference to the element with which the individual previously failed to cooperate.

FMA 902-1 Child Support - Good Cause for Non-Cooperation. This manual section was updated to provide that the CSED referral will not be sent to the CSED office when the county Office of Public Assistance has determined an individual has good cause for not cooperating with CSED.

FMA 903-1 Child Support - Failure/Refusal to Cooperate. This manual section was updated to reflect a recent federal clarification from the Centers for Medicare and

Medicaid Services, U.S. Department of Health and Human Services, mandating removal of the requirement that adult Transitional Medicaid Assistance (TMA) recipients continue to cooperate with the Child Support Enforcement Division (CSED). The manual section was also changed to provide that if CSED has closed an individual's support case due to the individual's noncooperation status, that individual is only required to complete a new CSED referral (HCS/CS-332) in order to be considered to be cooperating and to have the needs of that individual to be included in the Medicaid case.

Fiscal impact of the following proposed changes to the SSI Medicaid Manual is expected to be zero. Although these changes include increases to the categorically needy standard and Pickle Standards and a statement of SSI Standard Payment Amount, all of these standards are required to match the federal standards as published by the Social Security Administration. Increases reflect the Social Security Administration's annual Cost of Living Allocation (COLA). These increases do not result in any increase in the number of eligible individuals, but only retain eligibility for those already receiving benefits.

MA 001 Categorically Needy; MA 005 Nursing Home Residents; and MA 11 Standard Payment Amounts (SPA). These manual sections were updated to incorporate increases in the federal benefit standards related to Cost of Living Allocations in the Supplemental Security Income Program based on the Social Security Act. The categorically needy standard in each of these manual sections is updated from \$579 to \$603 for the SSI Standard Payment Amount for an individual, and from \$869 to \$904 for the SSI Standard Payment Amount for a couple. Federal law requires the standards set forth in these manual sections to match the federal standards as published by the Social Security Administration. These increases do not result in an increase in the number of eligible individuals, but only retain eligibility for those already receiving these benefits.

MA 006 Pickle Applicants. "Pickle" is a special mandatory category of Medicaid eligibility defined at 42 CFR 435.135. Persons who are "Pickle-eligible" are individuals currently receiving Social Security benefits who were eligible for both OASDI and SSI at the same time and who lost their SSI eligibility at some time since April 1977 due to a cost of living increase (later amended to be a loss of SSI for any reason). The income of a Pickle-eligible individual or couple is tested against an adjusted categorically needy standard that takes into account the cumulative increase in the Consumer Price Index since the time their SSI ended. The adjusted categorically needy standard for Pickle-eligible individuals and couples is calculated based on the current year's SSI Standard Payment Amounts (also known as "categorically needy standard") and is adjusted backward for each year since July 1976 from that current standard by the cumulative increase in the Consumer Price Index. The table set forth in the manual section is provided as an alternative to calculating each case individually by deducting the increase which caused closure of SSI and all COLA increases since the time of the original increases. The changes to this table do not result in increased numbers of individuals eligible under this category, but do result in continued eligibility for those already receiving or for those

who would qualify and will apply in the future.

Unless otherwise noted, the following changes, most of which are intended to be policy clarifications, are not expected to result in fiscal impacts.

MA 201-4 Disabled Widows and Widowers and MA 201-9 Disabled Widow(er)s who Lost SSI Coverage Because of More Liberal Social Security Disability Criteria.

These manual sections are being deleted from the manual because it has been discovered they were each representing parts of the one defined Medicaid group under 42 CFR 435.137. The group defined in 42 CFR 435.137 was a group which was receiving OASDI in 1983, was entitled to receive widow's or widower's disability benefits in January 1984, and had applied for Medicaid by June 30, 1988. In order to have been entitled to widow's or widower's disability benefits in January 1984, these individuals would have had to have been at least 50 years of age at the time. Thus, these individuals are at least age 71 at present. Because disability benefits terminate when an individual attains age 65, the individuals who originally fit into this group are no longer recipients of widow's or widower's disability benefits, but are instead receiving retirement benefits. Therefore, there are no individuals who would fit into this group at this time. The manual sections are being removed from the manual in order to avoid confusion.

MA 601-2 Financial Responsibility of Relatives. This section is being rewritten to clarify that an institutionalized married person's resource eligibility for Medicaid must be based upon the resources owned by both the institutionalized married person's resources and the resources of that person's spouse, including a resource assessment and allocation, based on 42 USC 1396r-5, notwithstanding less specific conflicting regulations in the financial methodologies outlined in both 42 CFR and 20 CFR. The regulations in 42 CFR and 20 CFR regarding responsibility of relatives are out of date and at present apply to those who are not institutionalized or receiving Medicaid as if they were institutionalized (as in HCBS waiver). 42 CFR has not been updated to incorporate 42 USC 1396r-5, which superseded these regulations and apply more specifically to the institutionalized Medicaid groups.

MA 903-1 Resource Assessments (Residential Medical Institutions); MA 1001-1 Resource Assessments (Home & Community Based Services/Waiver). These manual sections were updated to incorporate federal payment standards related to the Spousal Impoverishment provisions of OBRA 1993 codified at 42 USC 1396r-5. The minimum and maximum spousal resource maintenance allowance standards in each of these manual sections are updated in MA 903-1 and MA 1-1001-1 from \$19,200 and \$95,100 to \$19,908 and \$99,540. Federal law requires the standards set forth in these manual sections to meet the federal standards as published by CMS. These increases do not result in an increase in the number of eligible individuals, but instead allow slight increases to the amount of assets the community spouse of an institutionalized or waiver recipient may retain rather than spend down to attaining Medicaid resource eligibility.

MA 904-2 Post eligibility Treatment of Income for Institutionalized Spouses; MA

1002-2 Income Disregards for Waiver Spouses. The maximum monthly maintenance needs allowance (income allowance for community spouses) set forth in these manual sections are updated to incorporate federal payment standards. The needs allowance is updated from \$2,377.50 to \$2,488.50. This standard is the maximum amount of income, including the community spouse's own income, that can be set aside for the needs of the community spouse. The amount disregarded from the nursing home or waiver spouse's income, when combined with the community spouse's own income, cannot exceed this standard. This increase will not result in an increase in the number of eligible individuals and will have no significant impact on the amount of client liability for costs of care because the increase will match the Cost of Living Allowance increase to most pensions (including Social Security benefits), thus resulting in zero net change.

4. The department intends that the amendments to ARM 37.82.101 be applied retroactively to January 1, 2006. The department was unable to file this rule at an earlier date due to the pressing nature of other business in the Office of Legal Affairs. No detrimental effects are anticipated as a result.

5. Interested persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210, no later than 5:00 p.m. on July 20, 2006. Data, views, or arguments may also be submitted by facsimile (406)444-1970 or by electronic mail via the Internet to dphhslegal@mt.gov. The department also maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. For placement on the mailing list, please write the person at the address above.

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

/s/ Francis Clinch  
Rule Reviewer

/s/ Russell Cater for  
Director, Public Health and  
Human Services

Certified to the Secretary of State June 12, 2006.

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

In the matter of the amendment of ARM	)	NOTICE OF PUBLIC HEARING
37.80.101, 37.80.202, 37.80.203,	)	ON PROPOSED AMENDMENT
37.80.301, and 37.80.501 pertaining to	)	
the child care assistance program	)	

TO: All Interested Persons

1. On July 12, 2006, 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 amendment of the above-stated rules.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice or provide reasonable accommodations at the public hearing site. If you need to request an accommodation, contact the department no later than 5:00 p.m. on July 3, 2006, 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; e-mail dphhslegal@mt.gov.

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

37.80.101 PURPOSE AND GENERAL LIMITATIONS (1) through (2)(d) remain the same.

(3) A parent who is not making monthly payments on outstanding child care overpayments is not eligible for further child care assistance. Any parent who misses a payment as required by the terms of an overpayment repayment agreement or order and who does not become fully current in making all payments required under the agreement or order within the times described below will not be eligible to receive child care assistance until the parent has become fully current in making all payments required under the agreement or order, or unless the department has agreed to modify the payment schedule under the repayment agreement or order.

(a) Unless the department has agreed to a modified repayment schedule, a parent will cease being eligible to receive child care assistance if the parent has not become fully current in making all required payments on or before the 90th day following the first missed payment. The period of ineligibility will begin on the 90th day following the first missed payment and will end when the parent has become fully current in making all payments required under the repayment agreement or order.

(b) Unless the department has agreed to a modified repayment schedule, a

parent will cease being eligible to receive child care assistance if the parent has not become fully current in making all required payments on or before the 60th day following the second missed payment. The period of ineligibility will begin on the 60th day following the second missed payment and will end when the parent has become fully current in making all payments required under the repayment agreement or order.

(c) Unless the department has agreed to a modified repayment schedule, a parent will cease being eligible to receive child care assistance if the parent has not become fully current in making all required payments on or before the 30th day following of the third missed payment. The period of ineligibility will begin on the 30th day following the third missed payment and will end when the parent has become fully current in making all payments required under the repayment agreement or order.

(d) Unless the department has agreed to a modified repayment schedule, a parent will cease being eligible to receive child care assistance when the parent has missed more than three payments, and the parent will not be eligible to receive further child care assistance until the parent has become fully current in making all payments required under the repayment agreement or order.

(4) through (13)(a) remain the same.

(b) the Montana Child Care Manual in effect on ~~May 1, 2005~~ May 1, 2006. The "Montana Child Care Manual", dated ~~May 1, 2005~~ May 1, 2006, is adopted and incorporated by this reference. The manual contains the policies and procedures utilized in the implementation of the department's child care assistance program. A copy of the Montana Child Care Manual is available at each child care resource and referral agency; at the Department of Public Health and Human Services, Human and Community Services Division, 1400 Broadway, P.O. Box ~~202952~~ 202925, Helena, MT ~~59620-2952~~; 59620-2925; and, on the department's website at [www.dphhs.mt.gov](http://www.dphhs.mt.gov).

AUTH: 52-2-704, 53-4-212, MCA

IMP: 52-2-702, 52-2-704, 52-2-713, 52-2-731, 53-2-201, 53-4-211, 53-4-601, 53-4-611, 53-4-612, MCA

37.80.202 FINANCIAL REQUIREMENTS FOR ELIGIBILITY; PAYMENT FOR CHILD CARE SERVICES; PARENT'S COPAYMENT (1) through (13) remain the same.

~~(14) For the period beginning September 1, 2004, the household's monthly copayment shall be the amount specified in the department's child care assistance sliding fee scale as amended September 1, 2004. The sliding fee scale is adopted and incorporated by reference and shall be in effect beginning September 1, 2004. A copy of the sliding fee scale is available upon request from the Department of Public Health and Human Services, Human and Community Services Division, Early Childhood Services Bureau, Cogswell Building, 1400 Broadway, P.O. Box 202952, Helena, MT 59620-2952. The household's size and income are taken into consideration in determining the copayment amount each household must pay.~~

AUTH: 52-2-704, 53-4-212, MCA

IMP: 52-2-704, 52-2-713, 52-2-721, 52-2-722, 52-2-723, 52-2-731, 53-2-201, 53-4-211, 53-4-212, 53-4-601, 53-4-611, 53-4-612, MCA

37.80.203 REQUIREMENT TO REPORT CHANGES (1) through (2)(c) remain the same.

(d) training or school attendance, including changes to the location or hours of the training and circumstances regarding satisfactory progress; ~~and~~

(e) mailing address, residential address, and phone number; and

(f) any change in:

(i) compliance by the applicant or recipient with any order or determination of DPHHS Child Support Enforcement Division;

(ii) receipt of child support by the applicant or recipient pursuant to a district court order, including but not limited to changes in the frequency or amount of child support received; or

(iii) circumstances concerning good faith reasons for an applicant or recipient not to pursue child support enforcement through the department's Child Support Enforcement Division.

(3) and (4) remain the same.

AUTH: 52-2-704, 53-4-212, MCA

IMP: 52-2-704, 52-2-713, 53-2-108, 53-2-201, MCA

37.80.301 REQUIREMENTS FOR CHILD CARE FACILITIES, COMPLIANCE WITH EXISTING RULES, CERTIFICATION (1) Child care facilities must be in compliance with applicable licensing and registration requirements as specified in ~~ARM 23.7.109 37.95.101, and 37.95.102~~ 37.95.1010, 37.95.1011, 37.95.1015, 37.95.1016, 37.95.1020, and 37.95.1021 to receive payment under this chapter. Loss of eligibility for funds under this chapter for failing to comply with child care facility licensing and registration requirements is in addition to other remedies available for such violations.

(2) through (4)(b)(ii) remain the same.

(iii) health, building, or fire officials investigating child care facility health and safety issues.

(5)(a) through (5)(b) remain the same.

(c) The provider shall make sign in/sign out records available to child care resource and referral agency staff and state and local government health, safety, or law enforcement representatives upon request.

(d) remains the same.

AUTH: 52-2-704, MCA

IMP: 52-2-704, 52-2-713, 52-2-721, 52-2-722, 52-2-723, 52-2-731, MCA

37.80.501 TERMINATION OF CHILD CARE ASSISTANCE (1) through (1)(h) remain the same.

(i) the parent is no longer in compliance with an order or determination of the DPHHS Child Support Enforcement Division, the parent has failed to report a change in the amount of child support the parent receives pursuant to a district court



order that affects eligibility, or the parent has failed to report changes in circumstances concerning good cause reasons for the applicant or recipient not to pursue child support enforcement.

(2) When child care assistance is terminated due to the household's loss of eligibility, as specified in (1)(b), (c), (f), ~~or (g)~~, or (i), notice of termination must be sent to both the parent and the provider at least ~~40~~ ten days prior to the effective date of termination. No notice is required from the state when child care is terminated by the parent or provider, or for the other reasons specified in (1)(a), (d), (e), or (h).

(a) through (4) remain the same.

AUTH: 52-2-704, MCA

IMP: 52-2-704, MCA

### 3. ARM 37.80.101 PURPOSE AND GENERAL LIMITATIONS

The department proposes to revise ARM 37.80.101(3) by which parents who fail to make monthly payments pursuant to child care overpayment repayment agreements or orders are not eligible to receive further child care assistance. To date, the department has not specified a time frame for ineligibility on these grounds, and parents have been able to wait up to 90 days between each payment of an overpayment before they would lose eligibility for child care assistance. In order to prevent this practice, the department proposes amending (3) to set forth an appropriate graduated 90 day, 60 day, and 30 day time frame for ineligibility, by which assistance can be terminated within progressively shorter periods of time following each episode of a parent failing to make a required payment for an overpayment. Under this proposed rule change, absent prior agreement by the department, a parent will become ineligible if the parent does not come into full compliance with the agreement or order within 90 days of the date the parent first fails to make a required payment, within 60 days of the date the parent fails for the second time to make a required payment, within 30 days of the date the parent fails for the third time to make a required payment, and immediately upon the parent failing for more than three times to make a required payment. No fiscal impact is anticipated with this rule change.

ARM 37.80.101(13)(b) adopts and incorporates by reference the Montana Child Care Manual. By incorporating such manuals into the administrative rules, the department gives interested parties and the public general notice and an opportunity to comment on policies governing program eligibility. Additionally, as a result of the incorporation of such manuals into the administrative rules, the policies contained in the manuals have the force of law in case of litigation between the department and a program applicant or recipient concerning the eligibility of the applicant or recipient for program benefits.

ARM 37.80.101(13)(b) currently adopts and incorporates by reference the Montana Child Care Manual effective May 1, 2005. The department proposes to make some revisions to this manual that took effect on May 1, 2006. The

department proposes to revise sections 1-4a, 1-5, 1-9, 2-1, 6-2, 6-2a, 6-6, 6-8, 6-9, 6-13, 7-5a, 7-5b, and 7-5c of the Montana Child Care Manual.

The proposed amendments to ARM 37.80.101(13)(b) are therefore necessary in order to incorporate into the Administrative Rules of Montana the revised versions of the policy manuals and to permit all interested parties to comment on the department's policies, and to offer suggested changes. The department intends that the manual amendments be applied retroactively to May 1, 2006. No detrimental effects are anticipated as a result.

Manuals and draft manual materials are available for review in each local Office of Public Assistance and on the department's website at [www.dphhs.mt.gov](http://www.dphhs.mt.gov). Following is a brief overview of the changes being made to each manual section for the Montana Child Care Manual. Unless otherwise noted, no fiscal impact is anticipated with these rule changes.

The department proposes updating the Child Care Manual, section 1-4a, at page 2 of 5, entitled "Children with Special Needs" to require approval by the Montana Statewide Inclusion Coordinator ["the coordinator"] of all increased rates for payment for child care with reference to children with special needs. The coordinator has expertise in the special needs area, and requiring the approval of the coordinator for such increases would ensure any rate increases are allowed only in appropriate circumstances. The fiscal impact of the proposed manual changes will likely save the department money by preventing inappropriate approval of increased rates for children with special needs.

The department proposes updating the Child Care Manual, section 1-5, to incorporate the August 1, 2006, Sliding Fee Scale. This scale was updated to coincide with 2005 Federal Poverty Guidelines. The department has determined that it is necessary to update the Sliding Fee Scale to ensure families in poverty have the ability to access public funding used to subsidize the child care assistance. The fiscal impact is \$288,600.

The department proposes updating the Child Care Manual, section 1-9, at page 1 of 8, entitled "Confidentiality" to set forth the correct address of its Early Childhood Services Bureau as P.O. Box 202925, 111 North Jackson Street, 5th Floor, Helena, MT 59620-2925.

The department proposes updating the Child Care Manual, section 2-1, entitled "Application Process" at page 8 of 12, bullet No. 3. This section sets forth the process that families must follow in order to receive child care subsidies, and the update requires Child Care Resource and Referral Eligibility Specialists to verify with parents at recertification the accuracy of the hours billed for the previous month of children care. This is accomplished by requiring parents to verify the accuracy of the child care provider's billing by reviewing and signing a copy of the most recent Explanation of Benefits Form. Requiring Child Care Resources and Referral Eligibility Specialists to review Explanation of Benefit Forms with the family at

recertification will likely save the department money by reducing the submission of false claims and by ensuring that claims are submitted accurately.

The department proposes striking Child Care Manual, section 2-1 at page 11 of 12, bullet No. 2, entitled "Presumptive Eligibility". The department has determined that contrary to the current provision of this section, it is not necessary for a parent to submit a Child Care Service Plan Form when submitting an initial application in order to receive presumptive 30 day eligibility, and that submission of the form is necessary only to approve a family for child care subsidy when the family has completed the entire application process and certification is approved.

The department proposes updating the Child Care Manual, section 6-2, entitled "Legally Unregistered Providers" at page 5 of 9, bullet No. 2, to state accurately the increased cost of FBI fingerprint background checks from a cost of \$32.00 to \$34.00; and at bullet No. 3 to state accurately the increased cost of Western Identification Network (WIN) fingerprint checks from \$8.00 to \$10.00. Background checks are required for applicants certified as Legally Unregistered Providers and Legally Unregistered In-home Providers, as well as for all adults living in the providers' household. Pursuant to this manual section, fingerprint background checks can be obtained under the FBI or the WIN system through the Montana Department of Justice by submitting a Department of Justice fingerprint card, as well as a check or money order made out to the Department of Justice for the cost of the respective background check. The department forwards the card and the check or money order to the Department of Justice. The manual changes reflect increased costs for the two background checks.

The department also proposes updating section 6-2, page 5 of 9, bullet No. 3, to add the state of Washington to the list of states that complete WIN fingerprint checks because the state of Washington was erroneously not included when the manual was revised on May 1, 2005. These manual changes will ensure the department recovers the full cost of completing fingerprint processes.

The department proposes updating the Child Care Manual, section 6-2, at pages 4 and 6 of 9 to set forth the correct address of DPHHS Early Childhood Services Bureau as P.O. Box 202925, 111 North Jackson Street, 5th Floor, Helena, MT 59620-2925.

The department proposes creating in the Child Care Manual a section 6-2a, in response to "Dane's Law". Dane's Law became effective October 1, 2005, and makes it a felony for any employee, owner, household member, volunteer, or operator of a day care facility as defined in 52-2-703, MCA to administer either prescriptive or nonprescriptive medication to a child without the written consent of the child's parent, and prohibits the inappropriate administration of medications. It is necessary to apply Dane's Law to legally unregistered providers, and this newly proposed manual section will clarify the proper forms legally unregistered providers are required to have on file at each Child Care Resource and Referral.

The department proposes updating the Child Care Manual, section 6-6, entitled "Absent Day Policies - Maintaining Continuity of Care" at page 8 of 12 in order to clarify that the Child Care Resource and Referral should redetermine eligibility for a parent when a grace period has been approved, thus setting up a new certification plan.

The department proposes updating the Child Care Manual, section 6-8, entitled "Auditing and Investigations" at page 1 of 3, bullet No. 2, in order to clarify what should be included on a spreadsheet when comparing child care hours approved to what was invoiced in an investigation. The proposed manual change will allow the investigation process to be more consistent in each CCR&R district.

The department proposes updating the Child Care Manual, section 6-9, entitled "Corrections and Overpayments" at pages 3 and 7 of 9 to set forth the correct zip code of the department's fiscal accounts receivable as 59604-4210, and to clarify processes with regard to disposition of payments pertaining to eligibility specialists.

The department proposes updating the Child Care Manual, section 6-13, entitled "Resources for CCR&R Eligibility Specialists" at page 2 and 3 of 21 to set forth the correct names, titles, and e-mail addresses of personnel and to set forth the correct address of the department's Early Childhood Services Bureau subsequent to the recent change of address of that bureau.

The department proposes updating the Child Care Manual, section 7-5a, entitled "Higher Education Merit Pay" at page 3 of 7 in order to correct some typographical errors.

The department proposes updating the Child Care Manual, section 7-5b, entitled "Higher Education Merit Pay" at page 2 of 8 to clarify a policy change for Higher Education Merit Pay application release dates and due dates. Under the "Higher Education Merit Pay" program, the department pays monetary incentives to people who are working in licensed or registered child care, Head Start, or resource and referral agencies, and who are enrolled in an early childhood course of study at an institution of higher education. Currently, applicants for this program may apply only during August and September, and they are informed in October as to whether their applications are approved or denied. In order to coordinate this program with the semester system used in Montana schools, the manual section is being changed to allow applications to be made available in April and submitted in June, and also to be made available in October and submitted in November. Applicants will be notified within one month of the due date for submission of the applications as to whether their applications are approved or denied.

The department proposes correction of typographical errors at page 4 of 8.

The department proposes updating the Child Care Manual, section 7-5c, entitled "Toddler Merit Pay" at page 1 of 6 in order to clarify that providers who have

successfully completed the 60 hour program in order to be certified as Infant/Toddler Caregivers are thereafter ineligible to participate in the Infant Toddler Merit Pay program.

ARM 37.80.202 FINANCIAL REQUIREMENTS FOR ELIGIBILITY; PAYMENT FOR CHILD CARE SERVICES; PARENT'S COPAYMENT

The department proposes deleting (14) of ARM 37.80.202. The subject matter addressed in that subsection, that is changed in the household monthly copayment as based upon the child care assistance sliding fee scale, is otherwise incorporated into the administrative rules by reference in the Montana Child Care Manual, which is otherwise incorporated by virtue of the provisions of ARM 37.80.101(13).

ARM 37.80.203 REQUIREMENT TO REPORT CHANGES

The department proposes adding (2)(f) to ARM 37.80.203 in order to set forth accurately those changes in circumstances which an applicant for or recipient of child care assistance must report to the resource and referral agency administering the case. An applicant or recipient of child care assistance must make such a report to the resource and referral agency within ten calendar days from the date an applicant or recipient learns of any of the following changes in circumstances:

(a) Any change in compliance by the applicant or recipient with any order or determination of DPHHS Child Support Enforcement Division;

(b) Any change in the receipt of child support by the applicant or recipient pursuant to a district court order, including but not limited to changes in the frequency or the amount of child support received; or

(c) Any change in circumstances concerning good faith reasons for an applicant or recipient not to pursue child support enforcement through the department's Child Support Enforcement Division.

Specific requirements that parents report changes in child support matters will make it clear that child support requirements apply not only during the application period, but throughout the course of certification. No fiscal impact is anticipated with this rule change.

ARM 37.80.301 REQUIREMENTS FOR CHILD CARE FACILITIES; COMPLIANCE WITH EXISTING RULES, CERTIFICATION

The department proposes amending ARM 37.80.301(1) to refer accurately to ARM 37.95.101 through 37.95.1021 in referring to child care facilities being in compliance with licensing and registration requirements. The department discovered the current rule incorrectly refers to ARM 37.95.101 and 37.95.102. No fiscal impact is anticipated with this rule change.

ARM 37.80.501 TERMINATION OF CHILD CARE ASSISTANCE

The department proposes amending ARM 37.80.501(1) by adding subsection

(1)(i) under this rule in order to state that failure to comply with the department's Child Support Enforcement Division, failure to report changes in court-ordered child support received, and failure to report changes in circumstances regarding whether an applicant or recipient has "good cause" for not applying for child support through the Child Support Enforcement Division are grounds for termination of child care assistance. Adding such failures to comply to the list of reasons for termination of assistance makes it clear to parents the potential consequences of their not complying with child support requirements. No fiscal impact is anticipated with this rule change.

4. The department intends that the amendments to ARM 37.80.101, 37.80.202, 37.80.203, 37.80.301, and 37.80.501 to be applied retroactively to January 1, 2006. No detrimental effects are anticipated as a result. The adoption of Rule I and all other rule amendments are intended to become effective July 1, 2006.

5. Interested persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210, no later than 5:00 p.m. on July 20, 2006. Data, views, or arguments may also be submitted by facsimile (406)444-1970 or by electronic mail via the Internet to dphhslegal@mt.gov. The department also maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. For placement on the mailing list, please write the person at the address above.

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

/s/ Francis Clinch  
Rule Reviewer

/s/ Russell Cater for  
Director, Public Health and  
Human Services

Certified to the Secretary of State June 12, 2006.

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

In the matter of the proposed adoption of	)	NOTICE OF PUBLIC
New Rules I through VI relating to movie and	)	HEARING ON PROPOSED
television industries and related media - tax	)	ADOPTION
credit	)	

TO: All Concerned Persons

1. On July 17, 2006, at 1:00 p.m., a public hearing will be held in the Fourth Floor (East) Conference Room of the Sam W. Mitchell Building, at Helena, Montana, to consider the adoption of the above-stated rules.

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

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Revenue no later than 5:00 p.m., July 3, 2006, to advise us of the nature of the accommodation that you need. Please contact Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-5828; fax (406) 444-3696; or e-mail canderson@mt.gov.

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

NEW RULE I DEFINITIONS The following definitions apply to terms used in this subchapter:

(1) "Compensation" is defined in 15-31-903, MCA. This definition includes the Social Security wages and any other compensation reported on federal Form W-2. This does not include compensation paid to persons for contract labor, as a loan out, or extras that may be reported on a federal Form 1099-MISC.

(2) "Extra" means a person who appears in a movie in a nonspecific, nonspeaking, unnoticed, or unrecognized character role, such as part of a crowd or background, e.g., a patron in a restaurant, a soldier on a battlefield; usually without any screen credit; also termed atmosphere people; contrast with walk-on and nonspeaking role, bit players, or principals.

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

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

(5) "Principal photography" means the filming of major and significant

portions of a film production that involves the main/lead actors/actresses. It can also mean productions that involve still shots, such as automobile commercials.

(6) "Resident" means natural persons and includes, for the purpose of determining liability to the tax imposed by the state, any person domiciled in the state of Montana and any other person who maintains a permanent place of abode within the state even though temporarily absent from the state and who has not established a residence elsewhere.

(7) "Television series or segment" means one or more productions that may be exhibited by a television station or network.

AUTH: 15-31-911, MCA

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

REASONABLE NECESSITY: The department is proposing to adopt New Rule I to define terms used in this subchapter that are not already defined in the law.

NEW RULE II STATE CERTIFICATION (1) At the time the Department of Commerce certifies the production, pursuant to 15-31-904, MCA, and provides a copy of the state certification to the production company, the Department of Commerce shall provide the Department of Revenue with a copy of the application and the state certification.

AUTH: 15-31-911, MCA

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

REASONABLE NECESSITY: The department is proposing to adopt New Rule II to clarify when the Department of Commerce notifies the Department of Revenue regarding the approval.

NEW RULE III SUBMISSION OF COSTS AND APPLICATION FOR TAX CREDIT (1) Upon notification from the Department of Commerce that a production company has been granted state certification, the department will send a Film Production Credit form to the production company along with the instructions for completing the form.

(2) At the conclusion of the principal photography, the statement of expenditures referred to in 15-31-905, MCA, shall be sent to the department. However, when the production company ultimately files its application to receive the tax credit(s), it may supplement this statement of expenditures and compensation with an updated statement that reflects expenditures and compensation paid to Montana residents arising after principal photography is complete.

(3) When the production company files its tax return, it shall complete the application referred to in (1), and return it to the department along with the appropriate fee as provided in 15-31-906, MCA, and supporting documentation.

AUTH: 15-31-911, MCA

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



REASONABLE NECESSITY: The department is proposing to adopt New Rule III to clarify when the department will send the necessary forms to the production company that must be filed with the department in order to receive the credit and to clarify that expenditures that satisfy the definition of a qualified expenditure and compensation to a Montana resident may still qualify for the credit even if the expenditure or compensation is paid after the completion of principal photography.

NEW RULE IV CERTIFICATION FOR EMPLOYMENT PRODUCTION TAX CREDIT (1) A production company that is applying for an employment production tax credit under 15-31-907, MCA, shall require and retain in the film production company records a declaration of residency form for each Montana resident. A copy of one of the following items must be attached to the declaration of residency form:

- (a) valid Montana driver's license;
- (b) current Montana voter's registration card; or
- (c) previous year's Montana personal income tax return.

(2) Compensation for talent, management, and labor are eligible for the employment production tax credit only when paid to individuals who are Montana residents during the time that they work on the project.

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

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

(5) Compensation paid to persons for contract labor, as a loan out, or extras that may be reported on a federal Form 1099-MISC does not qualify for the employment production tax credit.

AUTH: 15-31-911, MCA

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

REASONABLE NECESSITY: The department is proposing to adopt New Rule IV to clarify the process to be followed when applying for an employment production tax credit. A problem could arise if compensation paid to extras is included in the calculation of the \$30,000 limit because such inclusion could result in an application fee well in excess of the potential tax credit. The department believes such a result is contrary to the intent and spirit of the legislation. Finally, the department believes it necessary to clarify that if a state certified production seeks both the employment credit and the expenditure credit, and the compensation paid to Montana residents does not exceed \$30,000, the total fee is \$500.

NEW RULE V QUALIFIED EXPENDITURES (1) An expense not specifically listed in 15-31-903, MCA, may still be considered a qualified expenditure.

(2) In order for any expenditure to be properly considered a qualified expenditure, a production company shall demonstrate that:

- (a) the production company made the expenditure;
- (b) the expenditure occurred in Montana;
- (c) the expenditure was not made for goods and services obtained outside Montana; and
- (d) the expenditure was directly tied to the state certified production.

(3) Qualified expenditures may include compensation paid to persons for contract labor, as a loan out, or extras that may be reported on a federal Form 1099-MISC, so long as the compensation otherwise meets the criteria listed in 15-31-903, MCA. With respect to loan outs, the following conditions must also be satisfied:

(a) The loan out, whether a limited liability company, corporation, S-corporation, or partnership must be incorporated or organized under the laws of Montana; and

(b) The individual who owns/operates the loan out must be a Montana resident.

(4) Qualified expenditures may not include payments made for payroll taxes. However, payments made for mandatory insurance coverage may qualify to the extent the payment occurred in Montana and was directly tied to a state certified production.

AUTH: 15-31-911, MCA

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

REASONABLE NECESSITY: The department is proposing to adopt New Rule V to clarify that the list of expenditures provided in 15-31-903(4)(a), MCA, was not intended to be an exhaustive list of all permissible expenditures otherwise qualifying for the credit. Additionally, the department believes it necessary to further clarify that while payments made to loan outs may qualify as a qualified expenditure, certain prerequisites must first be satisfied.

NEW RULE VI PENALTY AND INTEREST (1) Penalty and interest on any recapture provided for in 15-31-910, MCA, must be calculated from the date specified in 15-1-216, MCA, for payment of tax.

(2) Penalty and interest must be added to the recapture at the same rates provided in 15-1-216, MCA.

AUTH: 15-31-911, MCA

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

REASONABLE NECESSITY: The department is proposing to adopt New Rule VI to clarify the computation of penalty and interest provided for in 15-31-910, MCA, on recapture of the credit.

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

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

and must be received no later than July 21, 2006.

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

6. An electronic copy of this Notice of Public Hearing is available through the department's site on the World Wide Web at [www.mt.gov/revenue](http://www.mt.gov/revenue), under "for your reference"; "DOR administrative rules"; and "upcoming events and proposed rule changes." The department strives to make the electronic copy of this Notice of Public Hearing conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the department strives to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems.

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

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

/s/ Cleo Anderson  
CLEO ANDERSON  
Rule Reviewer

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

Certified to Secretary of State June 12, 2006

BEFORE THE SECRETARY OF STATE  
OF THE STATE OF MONTANA

In the matter of the proposed )  
amendment of ARM 44.2.203 priority )  
handling of documents )

NOTICE OF PUBLIC HEARING  
ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On July 19, 2006 a public hearing will be held at 10:00 am. in the Secretary of State's Office Conference Room 260 of the State Capitol, Helena, Montana, to consider the proposed amendment of the above-stated rule.

2. The Secretary of State will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Secretary of State no later than July 12, 2006, to advise us of the nature of the accommodation that you need. Please contact Janice Frankino Doggett, Secretary of State's Office, P.O. Box 202801, Helena, MT 59620-2801; telephone (406) 444-5375; FAX (406) 444-4196; or e-mail jdoggett@mt.gov.

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

44.2.203 PRIORITY HANDLING OF DOCUMENTS (1) The office shall may charge a priority handling fee of \$20 for processing paperwork within 24 hours of the next business day. ~~foreign or domestic profit or not for profit corporation filings.~~

(2) ~~The priority handling fee for all other documents shall be \$5.~~ The office may charge an expedite fee of \$100 for processing paperwork within one hour subject to receipt by 4:00 p.m. each business day.

(3) ~~This fee shall cover the costs of same day filing of the documents.~~ If the documents are not in proper order for filing, then the office shall attempt to notify the submitter the same day and inform him the customer of the defects by telephonic, electronic, or facsimile transmission.

AUTH: ~~30-9-403, 30-13-217, 30-13-311, 35-1-1201, 35-2-1001, 35-12-521,~~  
30-9A-526, 35-1-1307, 35-2-1107, MCA

IMP: ~~30-9-403, 30-13-311, 30-13-217, 35-1-1201, 35-2-1001, 35-12-521, 74-~~  
3-125, MCA

REASON: Frequent users of the priority service have requested the ability to file within one hour. Many other states offer one hour processing service, and the Secretary of State can improve its service by offering an expedite service in addition to a priority service. Fees in the Secretary of State's office must be commensurate with cost. In order to provide one hour service, the bureau will dedicate one FTE toward ensuring prompt service. \$100 is a commensurate fee. A one hour priority

filing fee is a new fee that will affect an estimated 20 filers per day resulting in \$2000 revenue per business day.

4. Concerned persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to Janice Frankino Doggett, Secretary of State's Office, P.O. Box 202801, Helena, MT 59620-2801, or by e-mailing [jdoggett@mt.gov](mailto:jdoggett@mt.gov), and must be received no later than 5:00 p.m., July 20, 2006.

5. Janice Frankino Doggett, at the address above, has been designated to preside over and conduct the hearing.

6. The Secretary of State maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices, and specifies that the person wishes to receive notices regarding administrative rules, corporations, elections, notaries, records, Uniform Commercial Code, or a combination thereof. Such written request may be mailed or delivered to the Secretary of State's Office, Administrative Rules Bureau, 1236 Sixth Avenue, P.O. Box 202801, Helena, MT 59620-2801, faxed to the office at (406) 444-3976, e-mailed to [jabrancum@mt.gov](mailto:jabrancum@mt.gov), or may be made by completing a request form at any rules hearing held by the Secretary of State's Office.

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

/s/ Janice Frankino Doggett

Janice Frankino Doggett  
Rule Reviewer  
Secretary of State

/s/ Brad Johnson

Brad Johnson  
Secretary of State

Dated June 12, 2006

BEFORE THE MONTANA STATE LIBRARY  
OF THE STATE OF MONTANA

In the matter of the adoption	)	NOTICE OF AMENDMENT,
of New Rules I through	)	ADOPTION, AND REPEAL
XIII, amendment of ARM	)	
10.102.1151, 10.102.1152,	)	
10.102.1153, 10.102.1154, and	)	
10.102.1156, and the repeal of	)	
ARM 10.102.1150 pertaining to	)	
public library standards	)	

TO: All Concerned Persons

1. On December 22, 2005, the Montana State Library published MAR Notice No. 10-100-9 regarding the public hearing on the proposed amendment, adoption, and repeal of the above-stated rules at page 2491 of the 2005 Montana Administrative Register, issue no. 24.

2. On January 11, 2006, the State Library held a public hearing on the proposed amendment, adoption, and repeal of the above-stated rules in Helena. Several comments were received by the January 19, 2006 deadline.

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

COMMENT 1: New Rule I(2)(a) recognizes establishment of public libraries under Title 7, MCA, which is the authority under which Parmly Billings Library is established. However, a number of the rules set standards which would require the library to violate the interlocal agreement under which the library is governed to attain compliance. For example, New Rule V(1)(a) requires that the library board hire the library director, whereas our interlocal agreement provides that the Billings City Administrator hires the director. Rather than propose perhaps a dozen changes to the rules and standards to accommodate our exceptional, if not unique, governance, I suggest that more general provision be made for certification of public libraries under Title 7, MCA. One method would be to replace the terms "library board" or "board" with the term "library governing authority", as is used in New Rule III(1)(c), which, in our case, might mean either the library board or the Billings city council, depending on the specific standard. Another method would be to provide a certification form that permits documentation of how a library's governance limits or proscribes compliance with certain standards.

RESPONSE 1: We will provide a certification form that permits documentation of how a library's governance limits or proscribes compliance with certain standards. We feel that all essential standards can still be met by Title 7, MCA, libraries, but it may not be the library board that "meets" the standard, it might

be the local governing authority.

COMMENT 2: In New Rule I(3)(a), it states: "In order for the board to be knowledgeable about current library issues, new board members receive an orientation by the library director and/or others." I would add after director and a trustee rather than and/or others.

RESPONSE 2: We agree to change the language so that it states: "In order for the board to be knowledgeable about current library issues, new board members receive an orientation by the library director, a trustee, and/or others." We agree that it is important to recognize that a trustee might be the appropriate person to provide orientation as well as the library director. We add the "or others" because sometimes other management level staff may play an important role in the orientation process.

COMMENT 3: I believe New Rule V(3)(b), under excellent standards reads: "the director keeps the community and funding officials aware of the library's purpose, planning, and services through the use of newspaper articles, websites, radio programs, attending meetings, etc." should be considered an essential standard not an excellent standard.

RESPONSE 3: We disagree. We feel that we need to leave this standard as an excellent, not essential, because the Statewide Standards Committee, representing all types and sizes of public libraries, felt strongly that some of the smaller libraries would need to have more resources available then they currently do to make this an essential standard. The Statewide Standards Committee will consider a change in future years, but for now they have made as many essential standards as they feel fairly can challenge all sizes of public libraries.

4. The Montana State Library amends the following rules as proposed: ARM 10.102.1151, 10.102.1152, 10.102.1153, 10.102.1154, and 10.102.1156.

5. The Montana State Library has adopted NEW RULE II (10.102.1150B), NEW RULE III (10.102.1150C), NEW RULE IV (10.102.1150D), NEW RULE V (10.102.1150E), NEW RULE VI (10.102.1150F), NEW RULE VII (10.102.1150G), NEW RULE VIII (10.102.1150H), NEW RULE IX (10.102.1150I), NEW RULE X (10.102.1150J), NEW RULE XI (10.102.1150K), NEW RULE XII (10.102.1150L), NEW RULE XIII (10.102.1150M) exactly as proposed.

6. The Montana State Library has repealed ARM 10.102.1150 exactly as proposed.

7. The Montana State Library has adopted the following New Rule as proposed, but with the following changes, new material underlined, deleted matter interlined:

NEW RULE I (10.102.1150A) PUBLIC LIBRARY STANDARDS: GENERAL

(1) through (3) remain as proposed.

(a) In order for the board to be knowledgeable about current library issues, new board members receive an orientation by the library director, a trustee, and/or others.

(b) through (4)(e) remain as proposed.

/s/ Darlene Staffeldt  
Darlene Staffeldt, State Librarian  
Rule Reviewer  
Montana State Library

Certified to the Secretary of State June 12, 2006.



BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY  
OF THE STATE OF MONTANA

In the matter of the amendment of ARM )	NOTICE OF AMENDMENT,
17.74.343, the adoption of New Rules I )	ADOPTION, AND REPEAL
through XIX, and the repeal of ARM )	
17.74.302, 17.74.303, 17.74.307 through )	(ASBESTOS CONTROL)
17.74.310, 17.74.314 through 17.74.319, )	
17.74.325 through 17.74.331, 17.74.335 )	
through 17.74.338, 17.74.341 and )	
17.74.342 pertaining to the asbestos )	
control program )	
)	

TO: All Concerned Persons

1. On January 26, 2006, the Department of Environmental Quality published MAR Notice No. 17-242 regarding a notice of public hearing on the proposed amendment, adoption, and repeal of the above-stated rules at page 125, 2006 Montana Administrative Register, issue number 2.

2. The department has amended ARM 17.74.343, adopted New Rules IV (17.74.353), V (17.74.354), VI (17.74.355), VII (17.74.356), VIII (17.74.357), IX (17.74.358), X (17.74.359), XI (17.74.360), XII (17.74.361), XIII (17.74.362), XVI (17.74.365), XVII (17.74.366), XVIII (17.74.367), and XIX (17.74.368), and repealed ARM 17.74.302, 17.74.307 through 17.74.310, 17.74.314 through 17.74.319, 17.74.325 through 17.74.331, 17.74.335 through 17.74.338, 17.74.341, and 17.74.342 exactly as proposed. The department is not repealing ARM 17.74.303 as proposed. The department has adopted New Rules I (17.74.350), II (17.74.351), III (17.74.352), XIV (17.74.363), and XV (17.74.364) as proposed, but with the following changes, new matter underlined; stricken matter interlined:

NEW RULE I (17.74.350) INCORPORATION BY REFERENCE --  
PUBLICATION DATES (1) Unless expressly provided otherwise, whenever there is a reference in this subchapter to:

- (a) remains as proposed.
- (b) a section of the United States Code (USC), the reference is to the 2000 edition of the USC and Supplement 4 III (2002 2003); or
- (c) a section of the Montana Code Annotated (MCA), the reference is to the 2005 edition of the MCA; ~~or,~~
- ~~(d) a rule of another agency of the state of Montana, the reference is to the December 31, 2004, edition of the Administrative Rules of Montana (ARM).~~

NEW RULE II (17.74.351) INCORPORATION BY REFERENCE (1) For the purposes of this subchapter, the department adopts and incorporates by reference:

- (a) 40 CFR 61, subparts A and M, pertaining to national emission standards for hazardous air pollutants (NESHAPs) for asbestos, with the following exception:

(i) 40 CFR 61.145(a)(2) and (4) are is not incorporated by reference.

(b) and (c) remain as proposed.

(2) Copies of these materials may be obtained from the Department of Environmental Quality, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, MT 59620-0901. Copies of the CFR are available from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402, (202) 512-1800. The CFR can also be accessed electronically at <http://www.access.gpo.gov/nara/cfr/index.html> ~~www.gpoaccess.gov/cfr/index.html~~.

NEW RULE III (17.74.352) DEFINITIONS For purposes of this subchapter the following definitions apply:

(1) through (4) remain as proposed.

(5) "Asbestos project" has the meaning given in 75-2-502(3), MCA. "Pipe," as the term is used in this definition and 75-2-503(3), MCA, includes any coating or wrap made of regulated asbestos-containing material that partially or wholly surrounds covers the inner or outer surface of the pipe.

(6) through (36) remain as proposed.

NEW RULE XIV (17.74.363) RENEWAL OF ACCREDITATION (1) through (6) remain as proposed.

(7) An applicant for renewal of accreditation as instructor shall attend a refresher course:

(a) taught by another instructor; or

(b) taught by the instructor with three or more students.

NEW RULE XV (17.74.364) TRAINING PROVIDER REQUIREMENTS

(1) and (2) remain as proposed.

(3) For department approval of a training course, instructors' qualifications must include:

(a) remains as proposed.

(b) current accreditation in the course(s) they teach.

(i) A training provider who is accredited as a contractor/supervisor may teach the asbestos project worker course without current accreditation as an asbestos project worker.

(c) through (10) remain as proposed.

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

COMMENT NO. 1: A commentor stated that the definition of "asbestos project" in New Rule III(5) should include a project that involves pipes made of, or covered with, asbestos. The commentor also stated that, although many pipes have asbestos wrap on the outside for heat insulation, asbestos covering may exist on the inside of pipes, because inserting new pipes and liners inside old corroded pipes is a common practice. The commentor suggested substituting the word "covers" for "surrounds" to assure that asbestos on the inside of pipes is a material covered by the program.

RESPONSE: The department agrees with the comment and has replaced "surrounds" with "covers the inner or outer surface of" in New Rule III(5).

COMMENT NO. 2: A commentor stated that, instead of repealing ARM 17.74.303 and completely deregulating homeowners who conduct an asbestos project within their residences, the department should replace the homeowner exemption in the rules with a program that requires education of homeowners about their risks and voluntary control options by means of a brochure disseminated by real estate agents to the buyer whenever an existing residence changes hands.

RESPONSE: In its notice of proposed rulemaking, the department proposed to repeal ARM 17.74.303, which provides an exemption from the asbestos rules, other than rules related to transportation and disposal of asbestos-containing material, for a homeowner conducting, on his or her own, an asbestos abatement project in his or her private residence, when the sole use of the residence is as the homeowner's domicile. With repeal of this rule, pursuant to the adoption and incorporation by reference of 40 CFR Part 61, subpart M, the National Emission Standard for Asbestos (asbestos NESHAP), in New Rule II(1)(a), based on the definition of "facility" in 40 CFR 61.141, the exemption would have been expanded to apply to residential buildings having four or fewer dwelling units.

The Asbestos Control Act does not authorize the department to adopt rules to create a mandatory education program. However, the asbestos control program does distribute many brochures concerning asbestos hazards and control, and maintains a web site ([www.deq.mt.gov/asbestos.index.asp](http://www.deq.mt.gov/asbestos.index.asp)) that provides guidance to homeowners concerning testing, managing, and abating asbestos-containing materials.

In addition, the department has decided not to repeal ARM 17.74.303. Please see the response to comment no. 3.

COMMENT NO. 3: Several comments were received requesting that the department not repeal ARM 17.74.303.

RESPONSE: The department agrees with the comments and is not repealing ARM 17.74.303 at this time.

The rulemaking authority in the Asbestos Control Act, 75-2-503(1), MCA, directs the department to establish rules that are consistent with federal law. In this case, the federal law is 40 CFR Part 61, subpart M. ARM 17.74.303 contains additional requirements beyond those in the asbestos NESHAP. 40 CFR 61.141 and 40 CFR 61.145(a) of the asbestos NESHAP establish an exclusion for residential buildings having four or fewer dwelling units, and ARM 17.74.303 establishes exclusions for private homeowners conducting abatement projects in their private domicile. Therefore, retaining ARM 17.74.303 does not conflict with the Asbestos Control Act or the asbestos NESHAP.

The department does not currently have the resources to adequately regulate residential asbestos projects. However, the department will postpone, for approximately two years, any action regarding the repeal of ARM 17.74.303 to provide time for the department to further research the impact of retaining, modifying, or repealing the rule. The research regarding the repeal of ARM 17.74.303 will include the asbestos NESHAP compliance rate, the public and

commercial building asbestos project permit compliance rate, the residential (residential buildings having four or fewer dwelling units) renovation compliance rate, asbestos control program resources, revenue generated from residential asbestos abatement project permit issuance, and any other relevant factors.

**COMMENT NO. 4:** A commentor asked what is meant by the phrase "sufficient size" in relation to the sign, and the letters appearing on the sign, for a warning of asbestos danger, which is required by the Montana Asbestos Work Practices and Procedures Manual, as incorporated by reference in New Rule II(1)(c).

**RESPONSE:** 40 CFR 61.145(d)(1)(iii), incorporated by reference in New Rule II(1)(a), provides the dimensions and other requirements for the sign required for vehicles used to transport asbestos-containing material. The markings must:

(a) be displayed in such a manner and location that a person can easily read the legend;

(b) conform to the requirements for 51 cm x 36 cm (20 in x 14 in) upright format signs specified in 29 CFR 1910.145(d)(4) and 40 CFR 61.149(d)(1); and

(c) display the following legend in the lower panel with letter sizes and styles of a visibility at least equal to those specified in 40 CFR 61.149(d)(1).

Legend:

DANGER  
ASBESTOS DUST HAZARD  
CANCER AND LUNG DISEASE HAZARD  
Authorized Personnel Only

Notation:

2.5 cm (1 inch) Sans Serif, Gothic or Block  
2.5 cm (1 inch) Sans Serif, Gothic or Block  
1.9 cm (3/4 inch) Sans Serif, Gothic or Block  
14 Point Gothic

**COMMENT NO. 5:** A commentor asked why the word "appropriate" is part of the definitions of "appropriate protective clothing," and "appropriate respirator." The commentor stated that HEPA is an acronym, and the definition of "HEPA" doesn't make sense to the commentor. The commentor stated that "leak tight" refers to "dust tight," which is not defined. The commentor also stated that the rules should require that an "alternative work practice waiver" be submitted before it is implemented.

**RESPONSE:** The terms "appropriate protective clothing," "appropriate respirator," "HEPA," "leak tight," and "alternative work practice waiver" are defined in the Montana Asbestos Work Practices and Procedures Manual, which is incorporated by reference in New Rule II. The department believes the term "appropriate" helps clarify the fact that there are various types of protective clothing and respirators, only some of which are appropriate for use in an asbestos abatement proceeding.

The acronym "HEPA" appears only in the Montana Asbestos Work Practices and Procedures Manual, which relies on the definition of the term in 29 CFR

1926.1101(b). The department agrees with the comment concerning the use of the acronym and will include the full name – "high efficiency particulate air" – in the definition of "HEPA" found in that manual.

The definition of "leak tight" includes, in addition to "dust tight," the statement that leak tight "means that solids or liquids cannot escape or spill out." The department believes the definition of "leak tight," taken as a whole, is sufficiently clear in its meaning.

Regarding the comment that the rules should provide that an "alternative work practice waiver" be submitted before it is implemented, the department notes that the Montana Asbestos Work Practices and Procedures Manual requires the contractor to submit a request for such a waiver, and the department's approval of the request may be granted on a case-by-case basis only when the health, safety, and welfare of building occupants/persons are protected adequately by the alternative work practices. The department believes it is clear that such a waiver must be obtained before the "alternative work practices" are undertaken, and respectfully states that it believes no additional clarification is required.

COMMENT NO. 6: A commentor asked whether the phrase "seven calendar day notification period applies" means that a person has seven calendar days after completion of a project to notify the department.

RESPONSE: The phrase "seven calendar day notification period applies" is not used in any of the proposed new asbestos control rules, or in any existing asbestos control rules that are not proposed for repeal. However, it appears in section 4.0 of the Montana Asbestos Work Practices and Procedures Manual, which is incorporated by reference in New Rule II(1)(c). The manual states that a "seven calendar day notification period applies to those projects with a contract volume less than \$3,000." That statement is intended to explain how long it takes to obtain a permit under the Montana Asbestos Control Act, 75-2-503(2), MCA, which states, "for asbestos projects having a cost of \$3,000 or less, the department shall issue asbestos project permits within 7 calendar days following the receipt of a properly completed permit application and the appropriate fee." The department agrees that the use of the phrase "seven calendar day notification period applies" in the manual may be confusing, and therefore is replacing the second and third sentences in the second paragraph of section 4.0 of the manual with the following:

"Applications and fees for projects with a contract volume less than \$3,000 must be submitted at least seven calendar days prior to the anticipated starting date of the project to ensure that the permit is issued in time. Applications and fees for projects with a contract volume of \$3,000 or more must be submitted at least ten working days prior to the anticipated starting date of the project to ensure that the permit is issued in time."

COMMENT NO. 7: A commentor asked why the department can't take faxes of asbestos project notifications.

RESPONSE: The department will accept a legible fax of the "Application For a Montana Asbestos Abatement Project Permit and NESHAP Demolition/Renovation Notification" that is followed by prompt submittal of a hard copy.

COMMENT NO. 8: A commentor asked whether the department is authorized to require retention of asbestos project records for 30 years.

RESPONSE: The 30-year standard in New Rule XI(1) for retaining records is the same standard that was in ARM 17.74.341(2), which is being repealed. Also, the Montana Asbestos Abatement Project Permit issued by the department includes a 30-year recordkeeping condition that requires the permittee to:

"Maintain the following project documents for at least 30 years for recordkeeping and auditing purposes: Air clearance air sampling data including lab reports, field data, and the name of the person(s) collecting and analyzing the samples; Visual inspections; Waste Disposal Manifest; and other project documentation."

The department believes it is important to maintain a consistent recordkeeping standard for the asbestos control program. Therefore, the department is not amending the recordkeeping standard in New Rule XI(1).

COMMENT NO. 9: A commentor stated that the citation in New Rule II(1)(a)(i) to the asbestos NESHAPs being adopted and incorporated by reference should match the citation of the NESHAPs in New Rule IV(1)(a).

RESPONSE: The department agrees with the comment and has corrected the citation in New Rule II(1)(a)(i). The incorrect citation was an inadvertent drafting error.

COMMENT NO. 10: A commentor stated that New Rule XIV, "Renewal of Accreditation," states, and past practice implies, that asbestos inspectors are not able to conduct any inspections after their license has expired and before they receive their renewal accreditation from the department. The commentor stated that he and other inspectors have experienced delays of up to one month or more between the date of training and the receipt of accreditation from the department. The commentor stated that, when faced with many inspections, all on very tight timeframes, this has the potential to reduce productivity and delay projects.

The commentor proposed that the department change the rule to allow for a grace period during which inspectors may conduct inspections while waiting for a new accreditation card from the department. The commentor stated that a grace period of 30 days, depending upon the expedience of the Asbestos Control Program staff, should suffice. The commentor stated that the rule should state that inspections conducted after training has occurred, but before issuance of a replacement accreditation card, are allowed.

RESPONSE: The department believes it is inappropriate for asbestos inspectors with an expired license to conduct inspections. The department will address the timely issuance of renewals. However, the prohibition on asbestos-related work by persons whose accreditation has expired is based, in part, on the fact that U.S. Environmental Protection Agency (EPA) guidance does not allow it. Instead, the department encourages persons to attend a recertification course and re-apply for accreditation well in advance of accreditation expiration.

COMMENT NO. 11: The proposed repeal of ARM 17.74.303 and exclusion from the incorporation by reference in New Rule II of 40 CFR 61.145(2) and (4) is not in accordance with the DEQ's mission statement, the Montana Constitution or the Montana Code Annotated.

RESPONSE: The department intended to adopt and incorporate by reference 40 CFR 61.145(4). The department has corrected the citation in New Rule II(1)(a)(i). The incorrect citation was an inadvertent drafting error.

In addition, the department has decided not to repeal ARM 17.74.303. Please see the response to comment no. 3.

COMMENT NO. 12: A commentor stated that, if the department repeals ARM 17.74.303, it would result in loss of revenue for the asbestos abatement industry, which would result in higher costs for consumers.

RESPONSE: Please see the response to comment no. 3.

COMMENT NO. 13: A commentor stated that communication between the state's Asbestos Control Program and other levels of government is poor and that superiors and department heads are not sufficiently trained in asbestos-related disciplines.

The commentor asked whether the department is planning on dissolving its asbestos control program and turning responsibility for asbestos over to EPA.

RESPONSE: The comments are outside the scope of this rulemaking. However, the department responds as follows.

Department supervisors are expected to have working knowledge of the program(s) they manage. The type and degree of training needed depends upon the supervisor's experience and the number of programs managed. The department has no plans to return asbestos regulatory primacy to EPA.

The department made every effort to identify and notify interested parties of the proposed rulemaking.

COMMENT NO. 14: A commentor asked who is going to bear the litigation costs against the state and the asbestos industry with the repeal of ARM 17.74.303. The commentor stated that some homeowners have incurred great expense hiring asbestos abatement contractors to perform projects in residential property, whereas, under the proposed repeal of ARM 17.74.303 and incorporation by reference of the federal exemption for four or fewer residential dwelling units, the homeowners would not have been required to hire an asbestos abatement contractor to perform the work.

RESPONSE: Please see the response to comment no. 3.

COMMENT NO. 15: A commentor asked why the department already has adopted the new rules and the repeal of ARM 17.74.303. The commentor stated that he thought that the rulemaking process required a hearing prior to adoption or repeal of rules.

RESPONSE: After notice in the Montana Administrative Register and a separate notice to persons on the department's interested persons list, the

department conducted a public rulemaking hearing on March 6, 2006. The department also accepted written comments through March 13, 2006. The department made several revisions to the proposed rulemaking based on comments, and the department decided not to repeal ARM 17.74.303. Please see the response to comment no. 3. The department had not finalized the rulemaking as of the date of the comment. Pursuant to Montana law, adoption of the proposed new rules will be effective one day after this Notice of Amendment, Adoption, and Repeal has been published in the Montana Administrative Register by the Secretary of State.

COMMENT NO. 16: A commentor stated that, if the department repealed ARM 17.74.303, it would lose a business opportunity. The commentor said that the state should conduct a survey or other research to see how much money could be generated by enforcement of the existing requirements, which could allow hiring of more enforcement staff.

RESPONSE: All funds collected from asbestos-related enforcement activities are deposited in the state's general fund. As of this date, the legislature has not given the department authority to hire additional staff. Also, the department has decided not to repeal ARM 17.74.303. Please see the response to comment no. 3.

COMMENT NO. 17: A commentor asked whether previously-approved training courses will be grandfathered under the new rules.

RESPONSE: Previously-approved training courses will be valid under the new rules.

COMMENT NO. 18: A commentor stated that New Rule XIV, concerning renewal of accreditation, should allow a training provider to obtain renewal of accreditation as an instructor by presenting a refresher course rather than having to attend a refresher course taught by another instructor.

RESPONSE: The department agrees with the comment and has amended New Rule XIV.

COMMENT NO. 19: A commentor stated that New Rule XV should be revised to allow a training provider who is accredited as a contractor/supervisor to teach the worker course without accreditation in that occupation.

RESPONSE: The department agrees with the comment and has amended New Rule XV.

COMMENT NO. 20: The department commented that the edition of the United States Code in New Rule I(1)(b) is outdated, the incorporation by reference of the Administrative Rules of Montana in New Rule I(1)(d) is unnecessary, and the e-mail address for Government Printing Office in New Rule II(2) has been changed.

RESPONSE: The department has amended New Rules I and II.

Reviewed by:

DEPARTMENT OF ENVIRONMENTAL  
QUALITY



/s/ David Rusoff  
DAVID RUSOFF  
Rule Reviewer

By: /s/ Richard H. Opper  
RICHARD H. OPPER  
Director

Certified to the Secretary of State, June 12, 2006.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY,  
BOARD OF ALTERNATIVE HEALTH CARE, BOARD OF ARCHITECTS, BOARD  
OF ATHLETICS, BOARD OF BARBERS AND COSMETOLOGISTS, BOARD OF  
CHIROPRACTORS, BOARD OF CLINICAL LABORATORY SCIENCE  
PRACTITIONERS, BOARD OF DENTISTRY, STATE ELECTRICAL BOARD,  
BOARD OF FUNERAL SERVICE, BOARD OF HEARING AID DISPENSERS,  
BOARD OF MEDICAL EXAMINERS, BOARD OF NURSING, BOARD OF NURSING  
HOME ADMINISTRATORS, BOARD OF OCCUPATIONAL THERAPY PRACTICE,  
BOARD OF OPTOMETRY, BOARD OF OUTFITTERS, BOARD OF PHARMACY,  
BOARD OF PHYSICAL THERAPY EXAMINERS, BOARD OF PLUMBERS, BOARD  
OF PRIVATE SECURITY PATROL OFFICERS AND INVESTIGATORS, BOARD OF  
PROFESSIONAL ENGINEERS AND PROFESSIONAL LAND SURVEYORS,  
BOARD OF PSYCHOLOGISTS, BOARD OF PUBLIC ACCOUNTANTS, BOARD OF  
RADIOLOGIC TECHNOLOGISTS, BOARD OF REAL ESTATE APPRAISERS,  
BOARD OF REALTY REGULATION, BOARD OF RESPIRATORY CARE  
PRACTITIONERS, BOARD OF SANITARIANS, BOARD OF SOCIAL WORK  
EXAMINERS AND PROFESSIONAL COUNSELORS, BOARD OF SPEECH-  
LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS, BOARD OF VETERINARY  
MEDICINE, BOILER OPERATING ENGINEERS PROGRAM, CONSTRUCTION  
BLASTERS PROGRAM, CRANE AND HOISTING OPERATING ENGINEERS  
PROGRAM, FIRE PREVENTION AND FIREWORKS WHOLESALERS PROGRAM,  
AND LICENSED ADDICTION COUNSELORS PROGRAM  
OF THE STATE OF MONTANA

In the matter of the transfer and amendment of	) NOTICE OF TRANSFER
ARM 8.2.208, adoption of NEW RULES I through	) AND AMENDMENT,
XIV, amendment of ARM 8.11.101, 8.11.114,	) ADOPTION,
8.11.115, 8.11.118, 8.32.306, 8.32.402, 8.32.410,	) AMENDMENT, AND
8.32.411, 8.32.425, 8.32.426, 8.32.1501, 8.32.1509,	) REPEAL
8.32.1510, 24.111.401, 24.111.2101, 24.111.2102,	)
24.111.2103, 24.111.2301, 24.114.401, 24.114.406,	)
24.114.2101, 24.117.402, 24.117.406, 24.121.401,	)
24.121.603, 24.121.2101, 24.122.401, 24.122.515,	)
24.126.401, 24.126.2101, 24.129.401, 24.129.602,	)
24.129.610, 24.131.405, 24.131.501, 24.135.402,	)
24.135.2101, 24.138.301, 24.138.402, 24.138.517,	)
24.138.518, 24.138.530, 24.141.405, 24.141.2101,	)
24.141.2102, 24.144.404, 24.144.502, 24.144.2102,	)
24.147.401, 24.147.505, 24.147.1313, 24.150.301,	)
24.150.401, 24.150.505, 24.150.2101, 24.150.2201,	)
24.156.601, 24.156.615, 24.156.617, 24.156.805,	)
24.156.808, 24.156.1002, 24.156.1004, 24.156.1302,	)
24.156.1305, 24.156.1402, 24.156.1411,	)
24.156.1605, 24.156.2717, 24.156.2719,	)
24.156.2731, 24.162.420, 24.162.2101, 24.165.401,	)
24.165.407, 24.168.401, 24.168.2101, 24.171.401,	)
24.171.2101, 24.174.401, 24.174.1402, 24.174.2103,	)

24.174.2107, 24.177.401, 24.177.410, 24.177.504, )  
24.177.2101, 24.180.401, 24.180.410, 24.180.607, )  
24.180.707, 24.180.2101, 24.182.401, 24.182.511, )  
24.182.513, 24.183.404, 24.183.2101, 24.183.2103, )  
24.189.401, 24.189.407, 24.189.2107, 24.201.410, )  
24.201.2101, 24.204.401, 24.204.404, 24.204.2102, )  
24.207.401, 24.207.517, 24.207.520, 24.207.2101, )  
24.210.401, 24.210.635, 24.210.661, 24.210.667, )  
24.210.801, 24.210.825, 24.210.835, 24.210.836, )  
24.210.1020, 24.213.401, 24.213.403, 24.213.412, )  
24.213.2121, 24.216.402, 24.216.2101, 24.219.401, )  
24.219.405, 24.219.615, 24.222.401, 24.222.2102, )  
24.225.401, 24.225.510, 24.225.511, 24.225.550, )  
24.225.709, 24.225.750, and 24.225.925, and )  
repeal of 24.121.609, 24.156.602, 24.183.2104, )  
and 24.225.515 )

TO: All Concerned Persons

1. On February 23, 2006, the Department of Labor and Industry (department) and the above-stated boards (board) published MAR Notice No. 24-101-202 regarding the public hearing on the proposed transfer and amendment, adoption, amendment, and repeal of the above-stated rules, at page 383 of the 2006 Montana Administrative Register, issue no. 4.

2. On March 20, 2006, a public hearing was held on the proposed transfer and amendment, adoption, amendment, and repeal of the above-stated rules in Helena. In addition to department staff, two individuals appeared at the hearing. One individual presented testimony. Several written comments were received by the March 28, 2006 deadline.

3. Comments and testimony received pertained to the department rules only. No board rules received comments or testimony. The department has thoroughly considered the comments and testimony received. A summary of the comments received and the department's responses are as follows:

COMMENT 1: Three comments regarding New Rule III(1)(b) license lists or rosters were received. The commenters opposed the \$50 fee for license lists or rosters, stating this increase ranged from 166% to 20,000%. Commenters would like to see a lower price for lists that are e-mailed since this is a faster, simpler process. Comments also request an across the board fee, that is lower than the regular fee, when lists can be e-mailed to the requestors.

The commenters support efforts to streamline the process and make rules that are easier for everyone to understand but cannot support astronomical cost increases.

RESPONSE 1: The department appreciates the comments and regrets that in the

information supplied to the commenter, the fees for the Board of Realty Regulation were inadvertently listed in the wrong columns. The Board of Realty Regulation charges \$.25 for photocopies and \$20 for lists and rosters for 1 - 700 names, \$.03 per name for 701 names and over, or \$125 for all licensees, not \$.25 for lists and rosters and \$20 for photocopies. Therefore, the percentage range for the proposed \$50 fee for lists and rosters would be 166% to 1000%. The department apologizes for this error.

The department has reexamined the methodology used to determine the proposed fee of \$50 for lists and rosters and has determined this fee should be reduced to \$20. This reduced fee would also be appropriate for any list or roster supplied through electronic mail.

COMMENT 2: One commenter stated streamlining of administrative matters makes sense, given the variety and scope of the various boards within the Department of Labor and Industry. If uniformity and standardization have any positive effect on the cost of license renewal and since licenses will be issued continually throughout the year, penalty fees cannot be justified, as in the past, as necessary to offset the cost of additional staff time to 'break out' of their routine to issue a late license.

Absent the cost factor of issuing a license, justification settles on punitive action. Certainly, there is a remedial effect attached to punitive fees - to remind and urge the licensee to renew on time in the future.

The commenter suggests a tiered penalty fee schedule, applying a 50% late penalty fee for the 45-day lapse period and 100% penalty fee for the two-year expired period. A reduced penalty fee creates an incentive to renew within the 45 days. Full punitive charge should be applied for those who choose to renew after their license has expired.

RESPONSE 2: The department appreciates the comments. The incentive to avoiding punitive measures is completing the renewal process in a timely manner thereby eliminating the need to pay any late penalty fee.

A tiered penalty fee schedule has the potential to cause confusion among licensees and create additional work on department staff. If a tiered penalty fee schedule were used, a licensee would have three varying amounts that could be submitted in order to renew a license: renewal fee, 45-day lapse penalty fee, and two-year expired penalty fee. Most licensees are currently aware that they will pay the renewal fee or the renewal fee plus a late penalty fee. Introducing differing levels of penalty fees could make the renewal process more cumbersome. If a licensee is late renewing the license, they may now question is the 45 days calendar days or business days? Without knowing the provisions of Title 1, chapter 1, part 3, MCA, this could be confusing. The renewal dates are clearly stated and the licensee makes the choice of ensuring that the renewal is submitted on or prior to the renewal date. Additional staff time and resources could be required if a license renewal is late and the correct late penalty fee is not submitted. Also, if the license renewal process were not

completed during the 45-day lapse penalty fee period, the two-year expired penalty fee would now be required, adding additional delay and work needed to complete the renewal process. Staff members are not able to complete the renewal filing until the correct payment is received. Having multiple late penalty fees is a hardship on both the licensee and department staff and makes the use of a tiered penalty fee schedule impractical.

The department's online renewal system provides a fast and convenient method of renewing licenses. As the number of licensees who renew using the online renewal system increases, the number of late penalty fees charged should decrease. Online renewal is normally available 24 hours per day, seven days per week. This opportunity provides a handy way to avoid the common excuses for submitting renewals after the renewal date. While it is the licensee's responsibility to renew the license in a timely manner, the department will continue to make the license renewal process as easy as possible and encourage licensees to renew prior to the renewal date. The late penalty fee will be adopted as proposed.

COMMENT 3: A commenter affected by the proposed changes to ARM 8.2.208 (24.101.413) fully supports the changes as currently published.

RESPONSE 3: The department appreciates the comment.

COMMENT 4: A board member from a board overseeing a small number of licensees was concerned about retaining board authority over fees. The commenter is opposed to any changes that shift or decrease current fiscal authority and oversight from the board and is also opposed to any changes that make it even more difficult for small boards to exist due to financial concerns.

RESPONSE 4: The department appreciates the comment and understands the concerns of the board member. However, the rules of this board are not included in this notice because of the board's current situation and their fees will not change at this time.

COMMENT 5: A comment was received regarding changing the renewal time to one year for Licensed Addiction Counselors; and questioned what the requirements for continuing education units will be for one year and what the fee will be for renewal each year.

RESPONSE 5: The department appreciates the comment. ARM 8.2.208 (24.101.413), 8.11.115, and 8.11.118 as proposed to be amended do not impact the renewal frequency or date for Licensed Addiction Counselors who will continue to renew biennially on June 30. Therefore, the questions regarding annual continuing education units and renewal fees are outside the scope of this rulemaking.

COMMENT 6: Suggestions were received regarding the addition of several items to the definition rule.

RESPONSE 6: The department agrees that these additions further clarify the intent of the rules and has added the suggested language.

4. Numerous rules proposed in MAR Notice No. 24-101-202 have also had a concurrent amendment or adoption in other rulemaking notices. In order to aid the user and clearly identify how the amendments and adoptions impact each other, additional information is included as applicable in rules with concurrent rulemaking. In instances where a concurrent amendment is self-explanatory, no mention is made to the concurrent amendment.

5. On February 9, 2006, the department (Boiler Operating Engineers Program) published MAR Notice No. 24-122-01 regarding the public hearing on the proposed amendment of ARM 8.2.208 at page 300 of the 2006 Montana Administrative Register, issue no. 3 and amended ARM 8.2.208 as proposed at page 1277 of the 2006 Montana Administrative Register, issue no. 10. ARM 8.2.208(5)(e) and Table (f) are being shown to delete language that was added into (5)(e) and not removed in MAR Notice No. 24-101-202, and incorporate the changes adopted from MAR Notice No. 24-122-01 into the table format of the rule that is being amended in this rulemaking notice.

On November 23, 2005, the department published MAR Notice No. 24-142-1 regarding the public hearing on the proposed adoption of new rules regarding the elevator services occupational licensing program at page 2293 of the 2005 Montana Administrative Register, issue no. 22 and adopted these rules at page 553 of the 2006 Montana Administrative Register, issue no. 4. NEW RULE XVII (24.142.2101) regarding renewals was adopted as proposed. This renewal rule sets elevator program licensing renewal on a biennial cycle commencing on April 1, 2008. ARM 8.2.208(5)(l) is amended to conform to the adoption of this renewal rule.

The department has transferred and amended ARM 8.2.208 (24.101.413) with the following changes, stricken matter interlined, new matter underlined:

8.2.208 (24.101.413) RENEWAL DATES AND REQUIREMENTS

- (1) through (5) remain as proposed.
- (a) through (d) deleted as proposed.
- (e) ~~, and the boiler operator program~~
- (f) through (r) deleted as proposed.

Table (a) through (e) remain as proposed.

<u>(f)</u>	Boiler Operating Engineers	Agriculture Class Boiler Engineer	Annually	Anniversary Date of License <u>April 1</u>
		First Class Boiler Engineer	Annually	Anniversary Date of License <u>April 1</u>
		Low Pressure Boiler Engineer	Annually	Anniversary Date of License <u>April 1</u>

		Second Class Boiler Engineer	Annually	<del>Anniversary Date of License</del> <u>April 1</u>
		Third Class Boiler Engineer	Annually	<del>Anniversary Date of License</del> <u>April 1</u>
		Traction Boiler Engineer	Annually	<del>Anniversary Date of License</del> <u>April 1</u>

(g) through (k) remain as proposed.

(l)	Elevator Program	Contractor	<del>Annually</del> <u>Biennially</u>	April 1
		Inspector	<del>Annually</del> <u>Biennially</u>	April 1
		Mechanic	<del>Annually</del> <u>Biennially</u>	April 1

(m) through (7) remain as proposed.

AUTH: 37-1-101, 37-1-141, MCA

IMP: 37-1-101, 37-1-141, MCA

6. The department has adopted NEW RULE I (24.101.401), NEW RULE IV (24.101.407), NEW RULE V (24.101.414), and NEW RULE VI (24.101.408), exactly as proposed.

7. The department has adopted NEW RULE II (24.101.402) and NEW RULE III (24.101.403), with the following changes, stricken matter interlined, new matter underlined:

NEW RULE II (24.101.402) DEFINITIONS As used in conjunction with Title 37, MCA, the following definitions apply:

(1) through (9) remain as proposed.

(10) "License history" means the progression of the license record from original licensure to the current status of the license provided to any requestor.

(11) "License verification" means the documentation provided to another licensing entity that may include information supplied for original licensure or the license history information.

(10) remains as proposed but is renumbered (12).

(11) (13) "Nonroutine application" means an application submitted to the division in which the application is defined as nonroutine either by the specific licensing entity's rules or by these rules. In conflicts between the specific licensing entity's rules and these rules, the specific licensing entity's rules govern.

(a) A nonroutine application means that the applicant has one or more of the following:

(i) has pending or completed disciplinary action in this state, or pending or completed disciplinary action in another state, territory, or jurisdiction;

(ii) is restricted by the terms and conditions of a final order in a disciplinary matter;

(iii) is required to submit materials that require professional evaluation by another licensee or licensing entity; or

(iv) has loss of documentation due to natural disaster or national emergency;

or

~~(iv)~~ (v) is foreign-educated, except for those foreign-educated applicants applying for licensure from the following:

(A) Board of Medical Examiners;

(B) Board of Professional Engineers and Professional Land Surveyors; or

(C) Board of Realty Regulation.

(14) "Original license" means the initial license issued to a licensee by the department after successfully fulfilling all licensure requirements for the first time.

(12) through (15) remain as proposed but are renumbered (15) through (18).

~~(16)~~ (19) "Routine application" means an application submitted to the division in which the application is defined as routine either by the specific licensing entity's rules or by these rules. In conflicts between the specific licensing entity's rules and these rules, the specific licensing entity's rules govern.

(a) A routine application means that the applicant does not have one or more of the following:

(i) pending or completed disciplinary action in this state, or pending or completed disciplinary action in another state, territory, or jurisdiction;

(ii) is not restricted by the terms and conditions of a final order in a disciplinary matter;

(iii) is not required to submit materials that require professional evaluation by another licensee or licensing entity; or

(iv) loss of documentation due to natural disaster or national emergency; or

~~(iv)~~ (v) is foreign-educated, except for those foreign-educated applicants applying for licensure from the following:

(A) Board of Medical Examiners;

(B) Board of Professional Engineers and Professional Land Surveyors; or

(C) Board of Realty Regulation.

(17) through (19) remain as proposed but are renumbered (20) through (22).

AUTH: 37-1-101, MCA

IMP: 37-1-130, 37-1-131, 37-1-141, MCA

NEW RULE III (24.101.403) FEES (1) Standardized fees, in addition to those fees charged by a specific licensing entity, are as follows:

(a) remains as proposed.

(b) licensee lists or rosters

50 20

(c) through (3) remain as proposed.

(4) When a military reservist renews a professional or occupational license after being discharged from active duty, the renewal fee will be the current renewal fee. No past fees accrued while the reservist was on active duty will be charged pursuant to 37-1-138, MCA.

(5) remains as proposed.



AUTH: 37-1-101, MCA

IMP: 27-1-717, 37-1-130, 37-1-134, 37-1-138, MCA

8. Each board or program that is promulgating rules implementing changes from HB 182 follow. Board rules appear first, by boards being listed in alphabetical order, followed by program rules, with programs being listed in alphabetical order. New, amended, and repealed rules are intermingled in this section instead of being lumped together by action type. This format is being used to keep all rule changes pertaining to a specific board or program together to aid licensees, the public, board members, and department staff.

#### BOARD OF ALTERNATIVE HEALTH CARE

9. No comments or testimony were received.

10. The board has amended ARM 24.111.401, 24.111.2101, 24.111.2102, 24.111.2103, and 24.111.2301 exactly as proposed.

BOARD OF ALTERNATIVE HEALTH CARE  
MICHAEL BERGKAMP, N.D., CHAIRPERSON

/s/ VIVIAN V. HAMMILL  
Vivian V. Hammill  
Rule Reviewer

/s/ KEITH KELLY  
Keith Kelly, Commissioner  
DEPARTMENT OF LABOR AND INDUSTRY

#### BOARD OF ARCHITECTS

11. No comments or testimony were received.

12. The board has amended ARM 24.114.2101 exactly as proposed.

13. On March 9, 2006, the board published MAR Notice No. 24-114-27 regarding the proposed amendment of ARM 24.114.401 at page 620 of the 2006 Montana Administrative Register, issue no. 5 and has amended ARM 24.114.401 from MAR Notice No. 24-114-27 at page 1381 of the 2006 Montana Administrative Register, issue no. 11. The proposed text from MAR Notice No. 24-101-202 remains as proposed and is shown with its interlining and underlining, but in order to correctly identify the earmarking as a result of the concurrent amendments, the board has amended ARM 24.114.401 with the following earmarking changes, stricken matter interlined, new matter underlined:

24.114.401 FEE SCHEDULE (1) The following fees apply:  
(1) and (2) remain as proposed but were renumbered (a) and (b) in MAR issue no. 11.  
(3) deleted as proposed in MAR Notice No. 24-101-202.

~~(4)~~ (3) remains as proposed but was renumbered (d) in MAR issue no. 11, and is now renumbered (c).

~~(5)~~ (4) deleted as proposed in MAR Notice No. 24-114-27.

(6) and (7) renumbered (e) and (f) in MAR issue no. 11, are now deleted.

~~(8)~~ (6) remains as proposed but was renumbered (2) in MAR issue no. 11.

(5) remains as proposed but is renumbered (3).

AUTH: 37-1-131, 37-1-134, 37-65-204, MCA

IMP: 37-1-134, 37-1-141, 37-65-307, MCA

14. The board is not amending ARM 24.114.406 because this rule was amended in MAR Notice No. 24-114-27 published in MAR issue no. 11 which included the same amendment as proposed in MAR Notice No. 24-101-202.

BOARD OF ARCHITECTS  
TOM WOOD, PRESIDENT

/s/ VIVIAN V. HAMMILL  
Vivian V. Hammill  
Rule Reviewer

/s/ KEITH KELLY  
Keith Kelly, Commissioner  
DEPARTMENT OF LABOR AND INDUSTRY

BOARD OF ATHLETICS

15. No comments or testimony were received.

16. The board has amended ARM 24.117.406 exactly as proposed.

17. On January 26, 2006, the board published MAR Notice No. 24-117-30 regarding the proposed amendment of ARM 24.117.402 at page 157 of the 2006 Montana Administrative Register, issue no. 2 and has amended ARM 24.117.402 at page 1161 of the 2006 Montana Administrative Register, issue no. 9. The proposed text from MAR Notice No. 24-101-202 remains as proposed, but in order to correctly identify the earmarking as a result of the concurrent amendments, the board has amended ARM 24.117.402 as proposed, earmarking is clarified as follows:

24.117.402 FEES (1) through (10) remain as amended in MAR issue no. 9. (11) remains as proposed.

AUTH: 23-3-405, 37-1-134, MCA

IMP: 23-3-405, 23-3-501, 37-1-134, 37-1-141, MCA

BOARD OF ATHLETICS  
KEVIN MCCARL, CHAIRPERSON

/s/ VIVIAN V. HAMMILL  
Vivian V. Hammill  
Rule Reviewer

/s/ KEITH KELLY  
Keith Kelly, Commissioner  
DEPARTMENT OF LABOR AND INDUSTRY

BOARD OF BARBERS AND COSMETOLOGISTS

18. No comments or testimony were received.

19. The board has repealed ARM 24.121.609 exactly as proposed.

20. The board has amended ARM 24.121.603 and 24.121.2101 exactly as proposed.

21. On March 9, 2006, the board published MAR Notice No. 24-121-3 regarding the proposed amendment of ARM 24.121.401 at page 629 of the 2006 Montana Administrative Register, issue no. 5 and has amended ARM 24.121.401 at page 1383 of the 2006 Montana Administrative Register, issue no. 11. The proposed text from MAR Notice No. 24-101-202 remains as proposed and is shown with its interlining and underlining, but in order to correctly identify the earmarking as a result of the concurrent amendments, the board has amended ARM 24.121.401 with the following earmarking changes, stricken matter interlined, new matter underlined:

24.121.401 FEES AND RENEWALS (1) through (9) remain as proposed.

~~(10)~~ Late renewal penalty 75

~~(11)~~ (10) Out-of-state license by endorsement 45

~~(12)~~ Duplicate license 15

(12) Additional standardized fees are specified in ARM 24.101.403.

~~(13)~~ Document 20

~~(14)~~ (11) Variance request 20

~~(14)~~ (13) Renewal notices will be sent as specified in ARM 24.101.414.

~~(15)~~ (14) Examination fees must be paid to the examination administration service as contracted by the board. If the board does not contract examination services, the fees must be paid to the board.

(15) through (20) remain as proposed.

AUTH: 37-1-131, 37-1-134, 37-1-141, 37-31-203, MCA

IMP: 37-1-134, 37-1-141, 37-31-302, 37-31-304, 37-31-305, 37-31-311, 37-31-312, 37-31-323, MCA

BOARD OF BARBERS AND COSMETOLOGISTS  
WENDELL PETERSEN, CHAIRPERSON

/s/ VIVIAN V. HAMMILL  
Vivian V. Hammill  
Rule Reviewer

/s/ KEITH KELLY  
Keith Kelly, Commissioner  
DEPARTMENT OF LABOR AND INDUSTRY

BOARD OF CHIROPRACTORS

22. No comments or testimony were received.

23. On April 6, 2006, the board published MAR Notice No. 24-126-28 regarding the proposed amendment of ARM 24.126.401 and 24.126.2101 at page 845 of the 2006 Montana Administrative Register, issue no. 7 and has amended ARM 24.126.401 and 24.126.2101 elsewhere in this issue of the Montana Administrative Register. The proposed text from MAR Notice No. 24-101-202 remains as proposed, but in order to correctly identify the earmarking as a result of the concurrent amendments, the board has amended ARM 24.126.401 and 24.126.2101 as proposed, earmarking is clarified as shown:

24.126.401 FEE SCHEDULE (1) through (3) remain as proposed.

(4) deleted as proposed.

(5) deleted in MAR Notice No. 24-126-28.

(6) and (7) renumbered (4) and (5) in MAR Notice No. 24-126-28.

(8) and (9) deleted in MAR Notice No. 24-126-28.

(10) and (11) renumbered (6) and (7) in MAR Notice No. 24-126-28.

(11) remains as proposed in MAR Notice No. 24-101-202 but is renumbered

(9).

(12) renumbered (8) in MAR Notice No. 24-126-28.

AUTH: 37-1-134, 37-12-201, MCA

IMP: 37-1-134, 37-1-141, 37-12-201, 37-12-302, 37-12-304, MCA

24.126.2101 RENEWALS - CONTINUING EDUCATION REQUIREMENTS

(1) through (3) remain as proposed.

(2)(a) amended elsewhere in this issue of the Montana Administrative Register remains the same but is renumbered (3)(a).

(4) through (8) remain as proposed.

AUTH: 37-1-134, 37-1-319, 37-12-201, MCA

IMP: 37-1-134, 37-1-141, 37-1-306, 37-1-319, MCA

BOARD OF CHIROPRACTORS

DANIEL PRIDEAUX, D.C., PRESIDENT

/s/ VIVIAN V. HAMMILL

Vivian V. Hammill

Rule Reviewer

/s/ KEITH KELLY

Keith Kelly, Commissioner

DEPARTMENT OF LABOR AND INDUSTRY

BOARD OF CLINICAL LABORATORY SCIENCE PRACTITIONERS

24. No comments or testimony were received.

25. The board has amended ARM 24.129.401, 24.129.602, and 24.129.610 exactly as proposed.

BOARD OF CLINICAL LABORATORY SCIENCE  
PRACTITIONERS  
KAREN MCNUTT, CHAIRPERSON

/s/ VIVIAN V. HAMMILL

Vivian V. Hammill  
Rule Reviewer

/s/ KEITH KELLY

Keith Kelly, Commissioner  
DEPARTMENT OF LABOR AND INDUSTRY

BOARD OF DENTISTRY

26. No comments or testimony were received.

27. The board has amended ARM 24.138.301, 24.138.402, 24.138.517, 24.138.518, and 24.138.530 exactly as proposed.

BOARD OF DENTISTRY  
PAUL SIMS, D.D.S., PRESIDENT

/s/ VIVIAN V. HAMMILL

Vivian V. Hammill  
Rule Reviewer

/s/ KEITH KELLY

Keith Kelly, Commissioner  
DEPARTMENT OF LABOR AND INDUSTRY

STATE ELECTRICAL BOARD

28. No comments or testimony were received.

29. The board has amended ARM 24.141.405 and 24.141.2101 exactly as proposed.

30. On January 12, 2006, the board published MAR Notice No. 24-141-31 regarding the proposed amendment of ARM 24.141.2102 at page 17 of the 2006 Montana Administrative Register, issue no. 1 and has amended ARM 24.141.2102 at page 1278 of the 2006 Montana Administrative Register, issue no. 10. A corrected notice appears elsewhere in this issue of the Montana Administrative Register. The board has amended ARM 24.141.2102 with the following changes, stricken matter interlined, new matter underlined:

24.141.2102 CONTINUING EDUCATION (1) Each master, journeyman, and residential electrician license shall not be renewed unless the continuing education requirements imposed by this rule have been met, prior to the renewal date set by ~~administrative rule~~ ARM 24.101.413. Any licensee who fails to fulfill the continuing education requirements imposed by this rule, ~~within 31 days following the renewal date,~~ shall cause the license to lapse ~~not be renewed~~. It is unlawful for a person whose license has lapsed ~~not been renewed~~ to perform electrical work in this state. For reinstatement after the license has lapsed, ~~before the end of the current renewal period,~~ the applicant shall have completed the continuing education

requirements, certified that fact to the board, and met all other renewal requirements.

(2) through (4) remain as amended in MAR issue no. 10.

AUTH: 37-1-131, 37-1-319, 37-68-201, MCA

IMP: 37-1-131, 37-1-306, 37-1-319, 37-68-201, MCA

STATE ELECTRICAL BOARD  
TONY MARTEL, PRESIDENT

/s/ VIVIAN V. HAMMILL

Vivian V. Hammill  
Rule Reviewer

/s/ KEITH KELLY

Keith Kelly, Commissioner  
DEPARTMENT OF LABOR AND INDUSTRY

#### BOARD OF FUNERAL SERVICE

31. No comments or testimony were received.

32. The board has amended ARM 24.147.1313 exactly as proposed.

33. On March 9, 2006, the board published MAR Notice No. 24-147-32 regarding the proposed amendment of ARM 24.147.401 and 24.147.505 at page 642 of the 2006 Montana Administrative Register, issue no. 5 and has amended ARM 24.147.401 and 24.147.505 at page 1169 of the 2006 Montana Administrative Register, issue no. 9. The proposed text from MAR Notice No. 24-101-202 remains as proposed, but in order to correctly identify the earmarking as a result of the concurrent amendments, the board has amended ARM 24.147.401 as proposed, earmarking is clarified as shown:

24.147.401 FEE SCHEDULE (1) through (6) remain as amended in MAR issue no. 9.

(i) and (j) renumbered (7) and (8) in MAR issue no. 9, are deleted.

(9) and (10) remain as amended in MAR issue no. 9 but are renumbered (7) and (8).

(19) remains as proposed but is renumbered (9).

AUTH: 37-1-131, 37-1-134, 37-19-202, 37-19-301, 37-19-303, 37-19-304, 37-19-403, 37-19-702, 37-19-703, 37-19-808, 37-19-814, 37-19-815, 37-19-816, MCA

IMP: 37-1-134, 37-1-141, 37-19-301, 37-19-303, 37-19-304, 37-19-402, 37-19-403, 37-19-702, 37-19-703, 37-19-808, 37-19-814, 37-19-815, 37-19-816, MCA

34. The board has amended ARM 24.147.505 with the following changes. Earmarking and other changes are needed because the board has amended this rule as described in paragraph 33. In combining the amendments from both MAR Notice No. 24-147-32 and 24-101-202, the remaining language in (2) would not be a

complete sentence, therefore the language that was to be used with the proposed language to be added in MAR Notice No. 24-147-32 is amended back into this section. Also, the word annually that was retained by the MAR Notice No. 24-147-32 amendment is removed in keeping with the intent of MAR Notice No. 24-101-202 where it was proposed to be deleted. This does not impact the frequency of license renewals. The licenses must be renewed annually pursuant to ARM 8.2.208 (24.101.413).

24.147.505 RENEWALS (1) remains as proposed.

(2) All licenses, whether individual or establishment, with the exception of cemeteries, must be renewed annually pursuant to 37-1-141, MCA. The renewal date is set by ARM 24.101.413.

(3) and (4) remain as proposed.

(5) deleted in MAR issue no. 9.

(6) remains as proposed but is renumbered (5).

AUTH: 37-1-141, 37-19-202, 37-19-301, MCA

IMP: 37-1-141, 37-19-301, MCA

BOARD OF FUNERAL SERVICE  
R. J. BROWN, CHAIRPERSON

/s/ VIVIAN V. HAMMILL  
Vivian V. Hammill  
Rule Reviewer

/s/ KEITH KELLY  
Keith Kelly, Commissioner  
DEPARTMENT OF LABOR AND INDUSTRY

#### BOARD OF HEARING AID DISPENSERS

35. No comments or testimony were received.

36. The board has amended ARM 24.150.301, 24.150.401, 24.150.505, 24.150.2101, and 24.150.2201 exactly as proposed.

BOARD OF HEARING AID DISPENSERS  
BECKIE HOFFMAN, SECRETARY

/s/ VIVIAN V. HAMMILL  
Vivian V. Hammill  
Rule Reviewer

/s/ KEITH KELLY  
Keith Kelly, Commissioner  
DEPARTMENT OF LABOR AND INDUSTRY

#### BOARD OF MEDICAL EXAMINERS

37. No comments or testimony were received.

38. The board has adopted NEW RULE VII (24.156.1619) exactly as proposed.

39. The board has amended ARM 24.156.601, 24.156.615, 24.156.617, 24.156.805, 24.156.808, 24.156.1002, 24.156.1004, 24.156.1302, 24.156.1305, 24.156.1402, 24.156.1411, 24.156.1605, 24.156.2717, 24.156.2719, and 24.156.2731 exactly as proposed.

40. The board has repealed ARM 24.156.602 exactly as proposed.

BOARD OF MEDICAL EXAMINERS  
DR. MICHAEL LAPAN, D.P.M., PRESIDENT

/s/ VIVIAN V. HAMMILL  
Vivian V. Hammill  
Rule Reviewer

/s/ KEITH KELLY  
Keith Kelly, Commissioner  
DEPARTMENT OF LABOR AND INDUSTRY

BOARD OF NURSING

41. No comments or testimony were received.

42. The board has amended ARM 8.32.306, 8.32.402, 8.32.410, 8.32.411, 8.32.425, 8.32.426, 8.32.1501, 8.32.1509, and 8.32.1510 exactly as proposed.

BOARD OF NURSING  
KAREN POLLINGTON, R.N., CHAIRPERSON

/s/ VIVIAN V. HAMMILL  
Vivian V. Hammill  
Rule Reviewer

/s/ KEITH KELLY  
Keith Kelly, Commissioner  
DEPARTMENT OF LABOR AND INDUSTRY

BOARD OF NURSING HOME ADMINISTRATORS

43. No comments or testimony were received.

44. The board has amended ARM 24.162.420 and 24.162.2101 exactly as proposed.

BOARD OF NURSING HOME  
ADMINISTRATORS  
DEBORAH WILSON, CHAIRPERSON

/s/ VIVIAN V. HAMMILL  
Vivian V. Hammill  
Rule Reviewer

/s/ KEITH KELLY  
Keith Kelly, Commissioner  
DEPARTMENT OF LABOR AND INDUSTRY

BOARD OF OCCUPATIONAL THERAPY PRACTICE

45. No comments or testimony were received.



46. The board has adopted NEW RULE VIII (24.165.2115) exactly as proposed.

47. The board is not amending ARM 24.165.407 because on March 23, 2006, the board published MAR Notice No. 24-165-17 regarding the proposed amendment of ARM 24.165.407 at page 710 of the 2006 Montana Administrative Register, issue no. 6 and has amended ARM 24.165.407 elsewhere in this issue of the Montana Administrative Register. This amendment makes similar changes as proposed in MAR Notice No. 24-101-202; therefore, there is no need to amend this rule.

48. On February 23, 2006, the board published MAR Notice No. 24-165-16 regarding the proposed amendment of ARM 24.165.401 at page 495 of the 2006 Montana Administrative Register, issue no. 4 and has amended ARM 24.165.401 at page 1049 of the 2006 Montana Administrative Register, issue no. 8. The proposed text from MAR Notice No. 24-101-202 remains as proposed, but in order to correctly identify the earmarking as a result of the concurrent amendments, the board has amended ARM 24.165.401 as proposed, earmarking is clarified as shown:

24.165.401 FEES (1) through (1)(d) remain as proposed.  
(e) and (f) renumbered as proposed.  
(g) and (h) deleted as proposed.  
(i) through (i)(iii) remain the same as amended in MAR issue no. 8 but are renumbered (f) through (f)(iii).  
(2) and (3) remain as proposed.

AUTH: 37-1-131, 37-1-134, 37-24-201, 37-24-202, MCA  
IMP: 37-1-134, 37-1-141, 37-24-310, MCA

BOARD OF OCCUPATIONAL THERAPY  
PRACTICE  
DEB AMMONDSON, O.T., CHAIRPERSON

/s/ VIVIAN V. HAMMILL  
Vivian V. Hammill  
Rule Reviewer

/s/ KEITH KELLY  
Keith Kelly, Commissioner  
DEPARTMENT OF LABOR AND INDUSTRY

BOARD OF OPTOMETRY

49. No comments or testimony were received.

50. The board has amended ARM 24.168.401 and 24.168.2101 exactly as proposed.

51. The board has adopted NEW RULE IX (24.168.2115) exactly as proposed.

BOARD OF OPTOMETRY  
DOUG MCBRIDE, O.D., PRESIDENT

/s/ VIVIAN V. HAMMILL  
Vivian V. Hammill  
Rule Reviewer

/s/ KEITH KELLY  
Keith Kelly, Commissioner  
DEPARTMENT OF LABOR AND INDUSTRY

BOARD OF OUTFITTERS

52. No comments or testimony were received.

53. The board has amended ARM 24.171.401 and 24.171.2101 exactly as proposed.

BOARD OF OUTFITTERS  
KELLY FLYNN, CHAIRPERSON

/s/ VIVIAN V. HAMMILL  
Vivian V. Hammill  
Rule Reviewer

/s/ KEITH KELLY  
Keith Kelly, Commissioner  
DEPARTMENT OF LABOR AND INDUSTRY

BOARD OF PHARMACY

54. No comments or testimony were received.

55. The board has amended ARM 24.174.1402, 24.174.2103, and 24.174.2107 exactly as proposed.

56. On January 12, 2006, the board published MAR Notice No. 24-174-54 regarding the proposed amendment of ARM 24.174.401 at page 23 of the 2006 Montana Administrative Register, issue no. 1 and has amended ARM 24.174.401 elsewhere in this issue of the Montana Administrative Register. The proposed text from MAR Notice No. 24-101-202 remains as proposed, but in order to correctly identify the earmarking as a result of the concurrent amendments, the board has amended ARM 24.174.401 as proposed, earmarking is clarified as shown:

24.174.401 FEE SCHEDULE (1) through (4) remain as proposed.  
(5) and (6) renumbered as proposed.  
(7) deleted as proposed.  
(8) through (18) renumbered as proposed.  
(19) deleted as proposed.  
(20) and (21) renumbered as proposed.  
(22) deleted as proposed.  
(23) renumbered as proposed.  
(24) and (25) amended elsewhere in this issue of the Montana Administrative Register are renumbered (20) and (21).  
(20) remains as proposed but is renumbered (22).

AUTH: 37-1-134, 37-7-201, 50-32-314, MCA

IMP: 37-1-134, 37-1-141, 37-7-201, 37-7-302, 37-7-321, 37-7-703, 50-32-314, MCA

BOARD OF PHARMACY  
WILLIAM BURTON, R. Ph., CHAIRPERSON

/s/ VIVIAN V. HAMMILL

Vivian V. Hammill  
Rule Reviewer

/s/ KEITH KELLY

Keith Kelly, Commissioner  
DEPARTMENT OF LABOR AND INDUSTRY

BOARD OF PHYSICAL THERAPY EXAMINERS

57. No comments or testimony were received.

58. The board has amended ARM 24.177.401, 24.177.410, 24.177.504, and 24.177.2101 exactly as proposed.

BOARD OF PHYSICAL THERAPY EXAMINERS  
BRUCE LAMB, P.T., CHAIRPERSON

/s/ VIVIAN V. HAMMILL

Vivian V. Hammill  
Rule Reviewer

/s/ KEITH KELLY

Keith Kelly, Commissioner  
DEPARTMENT OF LABOR AND INDUSTRY

BOARD OF PLUMBERS

59. No comments or testimony were received.

60. The board has amended ARM 24.180.401, 24.180.410, 24.180.607, 24.180.707, and 24.180.2101 exactly as proposed.

BOARD OF PLUMBERS  
TIM REGAN, PRESIDING OFFICER

/s/ VIVIAN V. HAMMILL

Vivian V. Hammill  
Rule Reviewer

/s/ KEITH KELLY

Keith Kelly, Commissioner  
DEPARTMENT OF LABOR AND INDUSTRY

PRIVATE SECURITY PATROL OFFICERS AND INVESTIGATORS

61. No comments or testimony were received.

62. The board has amended ARM 24.182.401, 24.182.511, and 24.182.513, exactly as proposed.

BOARD OF PRIVATE SECURITY PATROL  
OFFICERS AND INVESTIGATORS  
LINDA SANEM, CHAIRPERSON

/s/ VIVIAN V. HAMMILL

Vivian V. Hammill

Rule Reviewer

/s/ KEITH KELLY

Keith Kelly, Commissioner

DEPARTMENT OF LABOR AND INDUSTRY

BOARD OF PROFESSIONAL ENGINEERS  
AND PROFESSIONAL LAND SURVEYORS

63. No comments or testimony were received.

64. The board has amended ARM 24.183.2103 exactly as proposed.

65. The board has repealed ARM 24.183.2104 exactly as proposed.

66. On February 9, 2006, the board published MAR Notice No. 24-183-31 regarding the proposed amendment of ARM 24.183.404 at page 303 of the 2006 Montana Administrative Register, issue no. 3 and has amended ARM 24.183.404 elsewhere in this issue of the Montana Administrative Register. The proposed text from MAR Notice No. 24-101-202 remains as proposed, but in order to correctly identify the earmarking as a result of the concurrent amendments, the board has amended ARM 24.183.404 as proposed, earmarking is clarified as shown:

24.183.404 FEE SCHEDULE (1) through (3)(f)(iv) remain as adopted elsewhere in this issue of the Montana Administrative Register.

(g) through (iv) deleted as proposed.

(h) through (h)(iv) renumbered as proposed.

(v) through (4) remain as proposed.

AUTH: 37-1-134, 37-67-202, MCA

IMP: 37-1-134, 37-1-141, 37-1-319, 37-67-303, 37-67-312, 37-67-313, 37-67-320, 37-67-321, MCA

67. On March 23, 2006, the board published MAR Notice No. 24-183-32 regarding the proposed amendment of ARM 24.183.2101 at page 713 of the 2006 Montana Administrative Register, issue no. 6 and has amended ARM 24.183.2101 elsewhere in this issue of the Montana Administrative Register. In combining the amendments from both MAR Notice No. 24-183-32 and 24-101-202, the remaining language in (2) would not be a complete sentence, therefore this remaining language from MAR Notice No. 24-183-32 is deleted from this section. The word "form" from MAR Notice No. 24-183-32 is deleted and "notice" from 24-101-202 is retained in order to keep with the intent of standardization among licensing entities and to identify that licensees will be notified of the need to renew the license. Notification may be in another format, not that of the actual renewal form.

The board would also like to acknowledge that MAR Notice No. 24-101-202 inadvertently included an extra "renewal" in the interlined portion of (2). The board has amended ARM 24.183.2101 with the following changes, stricken matter interlined, new matter underlined:

24.183.2101 RENEWALS (1) remains as proposed.

(2) ~~renewal form most current on file.~~ Renewal notices will be sent as specified in ARM 24.101.414. The renewal notice ~~form~~ will specify the fees for renewal ~~and~~.

(3) remains as proposed.

AUTH: 37-67-202, MCA

IMP: 37-1-141, MCA

BOARD OF PROFESSIONAL ENGINEERS AND  
PROFESSIONAL LAND SURVEYORS  
DENIS APPLEBURY, CHAIRPERSON

/s/ VIVIAN V. HAMMILL  
Vivian V. Hammill  
Rule Reviewer

/s/ KEITH KELLY  
Keith Kelly, Commissioner  
DEPARTMENT OF LABOR AND INDUSTRY

#### BOARD OF PSYCHOLOGISTS

68. No comments or testimony were received.

69. The board has amended ARM 24.189.401, 24.189.407, and 24.189.2107 exactly as proposed.

BOARD OF PSYCHOLOGISTS  
JAY PALMATIER, Ph.D., CHAIRPERSON

/s/ VIVIAN V. HAMMILL  
Vivian V. Hammill  
Rule Reviewer

/s/ KEITH KELLY  
Keith Kelly, Commissioner  
DEPARTMENT OF LABOR AND INDUSTRY

#### BOARD OF PUBLIC ACCOUNTANTS

70. No comments or testimony were received.

71. The board has amended ARM 24.201.410 and 24.201.2101 exactly as proposed.

BOARD OF PUBLIC ACCOUNTANTS  
KATHLEEN M. VANDYKE, CHAIRPERSON

/s/ VIVIAN V. HAMMILL  
Vivian V. Hammill  
Rule Reviewer

/s/ KEITH KELLY  
Keith Kelly, Commissioner  
DEPARTMENT OF LABOR AND INDUSTRY

BOARD OF RADIOLOGIC TECHNOLOGISTS

72. No comments or testimony were received.

73. The board has adopted NEW RULE X (24.204.2115) exactly as proposed.

74. The board has amended ARM 24.204.401, 24.204.404, and 24.204.2102 exactly as proposed.

BOARD OF RADIOLOGIC TECHNOLOGISTS  
JOHN ROSENBAUM, R.T., CHAIRPERSON

/s/ VIVIAN V. HAMMILL  
Vivian V. Hammill  
Rule Reviewer

/s/ KEITH KELLY  
Keith Kelly, Commissioner  
DEPARTMENT OF LABOR AND INDUSTRY

BOARD OF REAL ESTATE APPRAISERS

75. No comments or testimony were received.

76. The board has amended ARM 24.207.517 exactly as proposed.

77. On January 12, 2006, the board published MAR Notice No. 24-207-25 regarding the proposed amendment of ARM 24.207.401 and 24.207.2101 at page 52 of the 2006 Montana Administrative Register, issue no. 1 and has amended ARM 24.207.401 and 24.207.2101 at page 765 of the 2006 Montana Administrative Register, issue no. 6. The proposed text from MAR Notice No. 24-101-202 remains as proposed, but in order to correctly identify the earmarking as a result of the concurrent amendments, the board has amended ARM 24.207.401 and 24.207.2101 as proposed, earmarking is clarified as shown:

24.207.401 FEES (1) through (1)(m) remain as proposed.  
(2) deleted in MAR issue no. 6.

AUTH: 37-1-131, 37-1-134, 37-54-105, MCA

IMP: 37-1-131, 37-1-134, 37-1-141, 37-54-105, 37-54-112, 37-54-201, 37-54-202, 37-54-212, 37-54-302, 37-54-310, 37-54-403, MCA

24.207.2101 CONTINUING EDUCATION (1) through (4) remain as proposed.

(5) through (9) remain as proposed but were renumbered (6) through (10) in MAR issue no. 6.

AUTH: 37-1-131, 37-1-319, 37-54-105, 37-54-303, MCA

IMP: 37-1-131, 37-1-141, 37-1-306, 37-54-105, 37-54-303, 37-54-310, MCA

78. No comments or testimony were received regarding NEW RULE XI. The board is not adopting NEW RULE XI because a similar rule (ARM 24.207.520) was adopted in MAR Notice No. 24-207-25 at page 765 of the 2006 Montana Administrative Register, issue no. 6. Instead of adopting similar rules, the board has determined it is more appropriate to amend the existing rule to include the provisions from NEW RULE XI. It is reasonable and necessary to amend ARM 24.207.520 to comply with the enactment of Chapter 467, L. 2005, (HB 182). This legislation set uniform standards for license renewal including renewal periods. Amending ARM 24.207.520 to eliminate the specific renewal date and the reference to the duration of the license will standardize the language used for license entities of the Business Standards Division. In order to avoid duplication, avoid confusion to licensees and the public, and minimize the number of rules, NEW RULE XI will be incorporated into ARM 24.207.520 instead of adopting an additional renewal rule. Adding the proposed language from NEW RULE XI to ARM 24.207.520 does not change the requirements of either rule, only consolidates the language into an existing rule. Section (3) is deleted because it is redundant of language included in NEW RULE V (24.101.414) from MAR Notice No. 24-101-202. The board has amended ARM 24.207.520 with the following changes, stricken matter interlined, new matter underlined:

24.207.520 RENEWALS (1) All active and inactive licensees will be required to renew ~~for a period of one year by March 31.~~ The renewal date for real estate appraiser licensure is the date set by ARM 24.101.413.

~~(2) Renewal forms will be mailed to all real estate licensees at the address of record with the board~~ notices will be sent as specified in ARM 24.101.414.

~~(3) Failure to receive a renewal form does not eliminate the renewal requirement.~~

~~(4)~~ (3) At the end of their education cycle, licensees shall complete and submit an education reporting form at the time of renewal.

~~(5)~~ (4) Incomplete renewal and education reporting forms will not be accepted and will be returned to the licensee. Any form returned to the licensee must be properly completed and resubmitted before the ~~March 31 renewal deadline~~ date set by ARM 24.101.413.

(5) The provisions of ARM 24.101.408 apply.

AUTH: 37-1-131, 37-1-319, 37-54-105, MCA

IMP: 37-1-131, 37-1-319, 37-54-105, 37-54-310, MCA

BOARD OF REAL ESTATE APPRAISERS  
TIM MOORE, CHAIRPERSON

/s/ VIVIAN V. HAMMILL  
Vivian V. Hammill  
Rule Reviewer

/s/ KEITH KELLY  
Keith Kelly, Commissioner  
DEPARTMENT OF LABOR AND INDUSTRY

BOARD OF REALTY REGULATION

79. No comments or testimony were received.

80. The board is not amending ARM 24.210.667 because the sections to be amended were deleted in MAR Notice No. 24-210-27 published in MAR issue no. 9.

81. The board has amended ARM 24.210.401, 24.210.635, 24.210.801, 24.210.825, 24.210.835, 24.210.836, and 24.210.1020 exactly as proposed.

82. On December 12, 2005, the board published MAR Notice No. 24-210-27 regarding the proposed amendment of ARM 24.210.661 at page 2546 of the 2005 Montana Administrative Register, issue no. 24 and has amended ARM 24.210.661 at page 1171 of the 2006 Montana Administrative Register, issue no. 9. The board has amended ARM 24.210.661 with the following changes, stricken matter interlined, new matter underlined:

24.210.661 NEW LICENSEE MANDATORY CONTINUING EDUCATION -- SALESPERSONS (1) remains as amended in MAR issue no. 9.

(2) New sales licensees issued in 2006 will receive an interim license that will expire December 31, 2006 ~~end on the date set by ARM 8.2.208~~. Effective January 1, 2007, all new sales licensees will receive an interim license that will expire October 31 of the year of the initial license date.

(3) remains as proposed.

(4) deleted in MAR issue no. 9.

(5) remains as proposed but was renumbered (4) in MAR issue no. 9.

(6) All licensees are required to submit the renewal form and renewal fee by ~~October 31~~ the date set by ARM 24.101.413 of their license renewal year.

AUTH: 37-1-131, 37-1-306, 37-1-319, 37-51-203, MCA

IMP: 37-1-131, 37-1-141, 37-1-306, 37-1-319, 37-51-202, 37-51-204, MCA

BOARD OF REALTY REGULATION  
TEDDY BEEBE, CHAIRPERSON

/s/ VIVIAN V. HAMMILL  
Vivian V. Hammill  
Rule Reviewer

/s/ KEITH KELLY  
Keith Kelly, Commissioner  
DEPARTMENT OF LABOR AND INDUSTRY



BOARD OF RESPIRATORY CARE PRACTITIONERS

83. No comments or testimony were received.

84. The board has amended ARM 24.213.401, 24.213.403, 24.213.412, and 24.213.2121 exactly as proposed.

BOARD OF RESPIRATORY CARE  
PRACTITIONERS  
EILEEN CANEY, CHAIRPERSON

/s/ VIVIAN V. HAMMILL  
Vivian V. Hammill  
Rule Reviewer

/s/ KEITH KELLY  
Keith Kelly, Commissioner  
DEPARTMENT OF LABOR AND INDUSTRY

BOARD OF SANITARIANS

85. No comments or testimony were received.

86. The board has amended ARM 24.216.402 and 24.216.2101 exactly as proposed.

BOARD OF SANITARIANS  
TED KYLANDER, CHAIRPERSON

/s/ VIVIAN V. HAMMILL  
Vivian V. Hammill  
Rule Reviewer

/s/ KEITH KELLY  
Keith Kelly, Commissioner  
DEPARTMENT OF LABOR AND INDUSTRY

BOARD OF SOCIAL WORK EXAMINERS AND PROFESSIONAL COUNSELORS

87. No comments or testimony were received.

88. The board has adopted NEW RULE XII (24.219.515) exactly as proposed.

89. The board has amended ARM 24.219.401, 24.219.405, and 24.219.615 exactly as proposed.

BOARD OF SOCIAL WORK EXAMINERS AND  
PROFESSIONAL COUNSELORS  
SHERRY MEADOR, CHAIRPERSON

/s/ VIVIAN V. HAMMILL  
Vivian V. Hammill  
Rule Reviewer

/s/ KEITH KELLY  
Keith Kelly, Commissioner  
DEPARTMENT OF LABOR AND INDUSTRY

BOARD OF SPEECH-LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS

90. No comments or testimony were received.

91. The board has adopted NEW RULE XIII (24.222.2115) exactly as proposed.

92. The board has amended ARM 24.222.401 and 24.222.2102 exactly as proposed.

BOARD OF SPEECH-LANGUAGE  
PATHOLOGISTS AND AUDIOLOGISTS  
MARILYN THADDEN, S.L.P., CHAIRPERSON

/s/ VIVIAN V. HAMMILL  
Vivian V. Hammill  
Rule Reviewer

/s/ KEITH KELLY  
Keith Kelly, Commissioner  
DEPARTMENT OF LABOR AND INDUSTRY

BOARD OF VETERINARY MEDICINE

93. No comments or testimony were received.

94. The board has repealed ARM 24.225.515 as proposed.

95. The board has amended ARM 24.225.401, 24.225.510, 24.225.511, 24.225.550, 24.225.709, 24.225.750, and 24.225.925 exactly as proposed.

BOARD OF VETERINARY MEDICINE  
JACK NEWMAN, D.V.M., PRESIDENT

/s/ VIVIAN V. HAMMILL  
Vivian V. Hammill  
Rule Reviewer

/s/ KEITH KELLY  
Keith Kelly, Commissioner  
DEPARTMENT OF LABOR AND INDUSTRY

BOILER OPERATING ENGINEERS PROGRAM

96. No comments or testimony were received.

97. The department has amended ARM 24.122.401 and 24.122.515 exactly as proposed.

CONSTRUCTION BLASTERS PROGRAM

98. No comments or testimony were received.

99. The department has adopted NEW RULE XIV (24.131.402) exactly as proposed.

100. The department has amended ARM 24.131.405 and 24.131.501 exactly as proposed.

CRANE AND HOISTING OPERATING ENGINEERS PROGRAM

101. No comments or testimony were received.

102. The department has amended ARM 24.135.402 and 24.135.2101 exactly as proposed.

FIRE PREVENTION AND FIREWORKS WHOLESALERS PROGRAM

103. No comments or testimony were received.

104. The department has amended ARM 24.144.404, 24.144.502, and 24.144.2102 exactly as proposed.

LICENSED ADDICTION COUNSELORS PROGRAM

105. See COMMENT 5.

106. The department has amended ARM 8.11.101, 8.11.114, 8.11.115, and 8.11.118 exactly as proposed.

107. These rules will be effective July 1, 2006.

/s/ VIVIAN V. HAMMILL

Vivian V. Hammill  
Rule Reviewer

/s/ KEITH KELLY

Keith Kelly, Commissioner  
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State June 12, 2006

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

In the matter of the amendment of ARM	)	NOTICE OF AMENDMENT
24.126.301 definitions, 24.126.401	)	AND ADOPTION
fee schedule, 24.126.501, 24.126.507,	)	
24.126.510, and 24.126.511 licensing and	)	
scope of practice, 24.126.701 and	)	
24.126.704 licensing and board specific	)	
rules, 24.126.910 impairment evaluators,	)	
24.126.2101 renewals-continuing education)	)	
requirements, 24.126.2301 unprofessional	)	
conduct, and the adoption of NEW RULE I	)	
fee abatement, and NEW RULE II	)	
participation in disaster and emergency	)	
care-liability of chiropractor	)	

TO: All Concerned Persons

1. On April 6, 2006, the Board of Chiropractors (board) published MAR Notice No. 24-126-28 regarding the public hearing on the proposed amendment and adoption of the above-stated rules, at page 845 of the 2006 Montana Administrative Register, issue no. 7.

2. On April 27, 2006, a public hearing was held on the proposed amendment and adoption of the above-stated rules. Two individuals testified at the hearing and written comments were received by the May 5, 2006, deadline.

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

COMMENT 1: Several commenters opposed the proposed fee increases at ARM 24.126.401. The reasons in opposition to the proposed amendments were generally because of what commenters viewed as too great a percentage increase in the fees for students, interns, and preceptors and all fees in general, a perception that fees are increasing while the board's workload decreases, and concerns regarding a surplus of board funds several years ago and a shortage now. Commenters questioned whether the proposed increases were warranted, suggested the board explore cost cutting measures, and requested more information supporting the need for the proposed increases.

RESPONSE 1: The board acknowledges all the comments and concerns regarding the proposed fee increases. However, following receipt of budgetary information from the department and discussions at previous board meetings, the board determined that, to meet their financial obligations and adhere to their statutory fiscal responsibility, the fees must be increased in the amounts proposed. The board

determined that the proposed fee increases are necessary to ensure that all board fees remain commensurate with associated costs as required by 37-1-134, MCA. In addition, the board followed all statutory requirements of the administrative rulemaking process as outlined in the Montana Administrative Procedure Act at 2-4-302, MCA, et seq., including provisions for public notice and public participation in the board's rulemaking.

COMMENT 2: Two commenters opposed the amendment to ARM 24.126.2101(3) requiring all licensed chiropractors to take four hours of professional boundaries and ethics continuing education every four years. The commenters stated this requirement penalizes all practicing chiropractors for the poor behavior of only a few.

RESPONSE 2: The board determined that it is important to the ongoing protection of the public to continually expose licensees to ethics and professional boundary education. The board noted that, even though this education is received in school, many of the complaints reviewed by the screening panel deal with ethics violations. The board is committed to being proactive regarding ethics and boundary issues and has concluded this requirement is a positive step toward this goal.

COMMENT 3: Several commenters opposed the amendment to ARM 24.126.2301(1)(f) clarifying that it is unprofessional conduct for a chiropractor to charge a patient a different fee than that submitted to a third-party payer. The reasons offered in opposition to the amendment included that it infringes upon free competition and is possibly price fixing, a perception that the rule requires chiropractors to charge all insurance companies the same fees even when required to charge some insurers their limiting fees, and that the rule interferes with a businessperson's right to charge the fees they want. Commenters further stated that the proposed amendment does not further clarify the rule and that it would eliminate a chiropractor's opportunity to create agreements with local businesses and organizations for the exclusive provision of chiropractic services, sometimes for reduced fees.

RESPONSE 3: The board considered the comments and decided not to proceed with the proposed amendment of the rule at this time. The board will gather additional information and discuss the relevant issues and commenters' concerns at future board meetings to determine if new or additional language would better clarify the rule and further the board's intent.

COMMENT 4: Commenters also expressed concern that the proposed amendment to ARM 24.126.2301(1)(f) permitting chiropractors to offer free services only to the indigent or economically deprived would restrict humanitarian efforts by chiropractors. The commenters stated they have a right to give away whatever services they choose and suggested alternative language based upon the fees rule of the Oregon Board of Chiropractic Examiners.

RESPONSE 4: See response 3.

COMMENT 5: Several commenters suggested the board review and perhaps incorporate language from the fees rule of the Oregon Board of Chiropractic Examiners to amend and better clarify unprofessional conduct at ARM 24.126.2301(1)(f).

RESPONSE 5: See response 3.

4. The board has amended ARM 24.126.301, 24.126.401, 24.126.501, 24.126.507, 24.126.510, 24.126.511, 24.126.701, 24.126.704, 24.126.910, and 24.126.2101 exactly as proposed.

5. The board is not amending ARM 24.126.2301.

6. The board has adopted NEW RULE I (24.126.402) and NEW RULE II (24.126.415) exactly as proposed.

BOARD OF CHIROPRACTORS  
Daniel Prideaux, D.C., President

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

/s/ KEITH KELLY  
Keith Kelly, Commissioner  
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State June 12, 2006

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

In the matter of the amendment of ) CORRECTED NOTICE OF  
ARM 24.141.405 fee schedule, and ) AMENDMENT AND ADOPTION  
ARM 24.141.2102 continuing )  
education, and the adoption of )  
NEW RULE I licensee responsibilities, )  
and NEW RULE II fee abatement )

TO: All Concerned Persons

1. On January 12, 2006, the State Electrical Board (board) published MAR Notice No. 24-141-31 regarding the public hearing on the proposed amendment and adoption of the above-stated rules, at page 17 of the 2006 Montana Administrative Register, issue no. 1. On May 18, 2006, the board published the notice of amendment and adoption at page 1278 of the 2006 Montana Administrative Register, issue no. 10.

2. In the notice of amendment and adoption, ARM 24.141.2102 was identified as being amended exactly as proposed. The board did not intend to amend this rule as proposed, it should have been shown with the following changes, stricken matter interlined, new matter underlined:

24.141.2102 CONTINUING EDUCATION (1) Each master, journeyman, and residential electrician license shall not be renewed unless the continuing education requirements imposed by this rule have been met, prior to the renewal date set by administrative rule. Any licensee who fails to fulfill the continuing education requirements, imposed by this rule, ~~within 45 days of the renewal date,~~ shall cause the license to lapse. It is unlawful for a person whose license has lapsed to perform electrical work in this state. For reinstatement after the license has lapsed, the applicant shall have completed the continuing education requirements, certified that fact to the board, and met all other renewal requirements.

(2) through (4) remain as amended.

AUTH: 37-1-131, 37-1-319, 37-68-201, MCA

IMP: 37-1-131, 37-1-306, 37-1-319, 37-68-201, MCA

STATE ELECTRICAL BOARD

12-6/22/06

Montana Administrative Register

TONY MARTEL, PRESIDENT

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

/s/ KEITH KELLY  
Keith Kelly, Commissioner  
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State June 12, 2006



BEFORE THE BOARD OF OCCUPATIONAL THERAPY PRACTICE  
DEPARTMENT OF LABOR AND INDUSTRY  
STATE OF MONTANA

In the matter of the amendment of ARM        ) NOTICE OF AMENDMENT  
24.165.404 application for licensure,        )  
24.165.407 examinations, and 24.165.2101    )  
continuing education                         )

TO: All Concerned Persons

1. On March 23, 2006, the Board of Occupational Therapy Practice (board) published MAR Notice No. 24-165-17 regarding the public hearing on the proposed amendment of the above-stated rules, at page 710 of the 2006 Montana Administrative Register, issue no. 6.

2. On April 13, 2006, a public hearing was held on the proposed amendment of the above-stated rules in Helena. No members of the public appeared at the hearing and no comments were received by the April 21, 2006, deadline.

3. The board has amended ARM 24.165.404, 24.165.407, and 24.165.2101 exactly as proposed.

BOARD OF OCCUPATIONAL THERAPY  
PRACTICE  
DEB AMMONDSON, CHAIRPERSON

/s/ MARK CADWALLADER  
Mark Cadwallader  
Alternate Rule Reviewer

/s/ KEITH KELLY  
Keith Kelly, Commissioner  
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State June 12, 2006

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

In the matter of the amendment of ARM 24.174.301	)	NOTICE OF AMENDMENT
and 24.174.303 definitions, 24.174.401 and	)	AND ADOPTION
24.174.403 general provisions, 24.174.503,	)	
24.174.514, 24.174.521, 24.174.522, 24.174.523,	)	
and 24.174.524 licensing, 24.174.603 and	)	
24.174.612 internship regulations, 24.174.705 and	)	
24.174.711 pharmacy technicians, 24.174.801,	)	
24.174.806, and 24.174.814 certified pharmacies,	)	
24.174.1002 mail service pharmacies, 24.174.1107	)	
and 24.174.1111 institutional pharmacies,	)	
24.174.1201, 24.174.1202, 24.174.1211, and	)	
24.174.1212 wholesale drug distributors licensing,	)	
24.174.1401 dangerous drugs, 24.174.2101 renewals	)	
and continuing education, 24.174.2401 screening	)	
panel, and the adoption of NEW RULE I inactive	)	
license, NEW RULE II telepharmacy operations,	)	
NEW RULE III remote telepharmacy dispensing	)	
machine sites, NEW RULE IV central filling by hub	)	
pharmacies, NEW RULE V ambulatory surgical	)	
facilities, and NEW RULE VI fee abatement	)	

TO: All Concerned Persons

1. On January 12, 2006, the Board of Pharmacy (board) published MAR Notice No. 24-174-54 regarding the public hearing on the proposed amendment and adoption of the above-stated rules, at page 23 of the 2006 Montana Administrative Register, issue no. 1.

2. On February 2, 2006, a public hearing was held on the proposed amendment and adoption of the above-stated rules in Helena. Four individuals testified at the hearing and written comments were received by the February 10, 2006, deadline.

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

COMMENT 1: Several comments were received supporting specific rules in this rulemaking notice.

RESPONSE 1: The board acknowledges the comments.

COMMENT 2: A commenter requested an extension of the comment period because the board did not provide him with documentation of studies that failed to link incidence of medication errors to pharmacist-to-technician ratios.

RESPONSE 2: The commenter was provided with the information the board had reviewed in changing this rule prior to the comment period ending and was offered the opportunity to present comments, but no further comments were received from that commenter.

COMMENT 3: One commenter stated that the board is required to give 60 days' notice prior to rule changes and requested the board respect the requirement.

RESPONSE 3: The Montana Administrative Procedure Act (MAPA) requires all executive agencies proposing administrative rule changes give a minimum of 20 days' notice of a public hearing, 28 days' notice for public comments, and 30 days between notice and the agency or board's final action. These timelines all begin with the publication date of the rule notice in the Montana Administrative Register. The board does not have different rulemaking notice requirements than those provided by MAPA. The board's notices have fulfilled the statutory requirements. The board notes that approximately five months have elapsed between the publication of the proposed rule changes and the publication of this notice of final action.

COMMENT 4: A comment was received regarding several terms. "Externship" should be replaced with "introductory pharmacy practice experiences" and "clerkship" which is proposed to be deleted, but the replacement term of "advanced practice" is incomplete and should be replaced with "advanced pharmacy practice experiences."

RESPONSE 4: The board agrees with the suggestion and has amended the rule to place those terms in ARM 24.174.303.

COMMENT 5: A comment was received asking the board to amend ARM 24.174.303(6) to not require 20 internship hours per week and instead set some monthly hour requirement and allow hours to be split among sites.

RESPONSE 5: Because the board did not propose changing the 20-hour per week internship provisions, the board believes that it cannot properly make the suggested change as part of this rulemaking project. All substantive changes to the board's rules must go through the publication and comment process required by MAPA for rulemaking. The board will consider the request when contemplating future rulemaking projects.

COMMENT 6: A question was received regarding ARM 24.174.503 as to who would be certifying interns for administering immunizations. The commenter asked if the board would acknowledge the School of Pharmacy's process for certifying, or if the board would just have its own process.

RESPONSE 6: The board believes that with the current level of pharmacy education, virtually all students are coming out of their training immunization certified. Immunizations being administered by pharmacies are done so under a collaborative practice agreement with a physician that must be approved by the board annually. The interns are working under the direct supervision of the pharmacist in charge involved in the collaborative practice agreement.

COMMENT 7: Comments were received requesting amending ARM 24.174.521 so that only pharmacies "certified" by the board to take back medications may reuse them.

RESPONSE 7: Making the changes to this rule as proposed by the commenter would need to be noticed for public comment in a future rule notice. The board will consider the request when contemplating future rulemaking projects.

COMMENT 8: A comment was received that the term "certified pharmacy" should not be stricken in ARM 24.174.522.

RESPONSE 8: The board acknowledges the comment. Although the term "certified pharmacy" is used in statute, the board does not have a different license classification for a "certified" pharmacy versus any other pharmacy. The word "certified" was used in some areas of board rules but not others and is not included in the definitions. Removal of the term in rules addresses those disparities.

COMMENT 9: A commenter expressed concern at a dichotomy between the board's responsibility in ARM 24.174.603 and the proposed shift of school responsibilities in ARM 24.174.612.

RESPONSE 9: In light of the comments received, the board has decided not to amend ARM 24.174.612.

COMMENT 10: Comments were received that the handling of internship forms should remain a board requirement/function and not that of the School of Pharmacy. The comments indicated that educational institutions would not accept responsibility for tracking and handling of internship hours, that those institutions were not staffed to track such time, and that the institutions would be unable to verify certain aspects of the information required to be included in the internship documents.

RESPONSE 10: In light of the comments received, the board has decided not to amend ARM 24.174.612.

COMMENT 11: A comment was received on the existence of the approved utilization plan as it ties to the ratio amendments proposed in ARM 24.174.711.

RESPONSE 11: If a pharmacy currently has a Technician Utilization Plan that is stricter than board rule, it may keep those restrictions in place. In any case, the proposed change in ratio does not change the requirement that a pharmacy

complete a Technician Utilization Plan for board review in order to implement the use of pharmacy technicians.

COMMENT 12: Comments were received from both proponents and opponents regarding the proposed amendment of the ratio of pharmacy technicians to supervising pharmacists in ARM 24.174.711.

Comments received in favor of the change stated that:

- (a) the 1:4 pharmacist to technician ratio is just fine;
- (b) to preserve patient safety and public trust, the 1:4 pharmacist to technician ratio should include any technicians, interns and/or externs; and
- (c) that a pharmacist should never supervise more than four people.

Opponents stated that:

- (a) the 4:1 technician to pharmacist ratio is not in the best interest of public safety and stated that the board already has a process in place that allows for variation of the 1:1 ratio;
- (b) the majority of other state boards do not allow a 4:1 ratio; and
- (c) the 4:1 ratio goes too far and is not in the public's best interest.

One pharmacist felt he could not supervise four techs at one time and believes the increased ratio will decrease pharmacy school applications and ultimately lead to prescription dispensing by technicians alone and feels the public will suffer as a result. Three commenters suggest a ratio of 2:1, or no greater than 3:1.

RESPONSE 12: The board acknowledges the comments. Following discussion of the comments and upon deliberation, the board has amended the rule to decrease the ratio to one pharmacist to three pharmacy technicians on the basis of the testimony from licensed pharmacists as to the likely harm to the public health and safety and in consideration of the regulatory decisions of sister boards in other states.

COMMENT 13: There were several comments received concerning the proposed amendments to ARM 24.174.801 pertaining to pharmacy benefits managers.

RESPONSE 13: During final preparation of this Notice of Amendment and Adoption, board staff noticed a potentially significant ambiguity in the language of proposed (7). In order to clarify the board's intent with respect to proposed (7), the board will meet via telephone conference call to discuss the impact of the apparent ambiguity and decide upon final action with respect to proposed (7) in light of the apparent ambiguity. Accordingly, the board is not taking final action on ARM 24.174.801 at this time. The board will, at a later date, give separate notice of its final decision with respect to the proposed amendments to ARM 24.174.801, and provide a more detailed summary of the comments received on that rule.

COMMENT 14: A comment was received cautioning against striking "certified" from the catchphrase of ARM 24.174.814, and suggested the board create a common

definition for what is intended as a "perpetual inventory," and address what must be done if the count is off.

RESPONSE 14: Please see Response 8 regarding the term "certified". The board appreciates the comment on perpetual inventory. The board believes that pharmacies should have some latitude in how they practice. The board notes that the term "perpetual inventory" means the practice of maintaining some quantity of drugs of a particular class that the pharmacy will make sure that it has on hand at all times, regardless of the typical or expected demand for that particular drug. It also includes the breadth of the range of drugs within that schedule which the pharmacy strives to keep in stock at all times. The board also notes that the term "perpetual inventory" can be used to describe the process of conducting a count of the units of a given drug on hand, and comparing that number to the number of units that the pharmacy's records indicate should be present. In ARM 24.174.814, the term refers to the inventory (counting) process. The board has concluded that it is not necessary to require that all pharmacies conduct such an inventory on a schedule mandated by the board, and that individual pharmacies are in the best position to determine the appropriate timing of those counts. The board's inspector is charged with reviewing inventory each inspection. The board has asked the inspector to keep a log of visits and the various types and time frames involved in inventories at present, and will review that log to determine the need for any future adjustments to the rule. The board is comfortable with the present definition of perpetual inventory and with pharmacists using their professional judgment.

With respect to the question of what to do if there is an unexplained discrepancy detected during an inventory of scheduled drugs, the pharmacy has an obligation to disclose that fact to the appropriate regulatory agencies, such as the board and the DEA.

COMMENT 15: A comment was received that perpetual inventories are a recognized standard of "practice" not "care," as was stated in the reasonable necessity statement for this rule.

RESPONSE 15: The board acknowledges the comment and agrees with the point raised. The board regrets its inadvertent erroneous use of terminology.

COMMENT 16: Comments were received regarding ARM 24.174.1107. A commenter suggested clarifying whether nonpharmacy personnel are allowed in a closed pharmacy, or if those persons can only access a night cabinet.

RESPONSE 16: The rule is specifically addressing the absence of a pharmacist in an institutional setting and the use of "night cabinets" or nonpharmacy storage areas of medications. The board acknowledges that the absence of a pharmacist in institutional settings is difficult during night hours and weekends. The board agreed to alter the 48-hour reference for consulting with a pharmacist to 72 hours in order to give more time for consulting with a pharmacist, especially for those facilities in rural areas. However, the board does not believe that the standard of care should be less

in one part of the state than another. Good patient care dictates that verification audits and chart review for any changes to a patient's medication be reviewed by a pharmacist as soon as possible following the administration of drugs obtained from a night cabinet.

COMMENT 17: A commenter expressed confusion on the definition of "institutional pharmacy" and questioned whether an "institutional pharmacy" is a medication room or a closet/cabinet/medication cart.

RESPONSE 17: The board acknowledges that many institutions, such as detention facilities, do not have an institutional pharmacy per se. Some of those institutions use other methods for storing medication such as medication carts, closets, and locked boxes for storing medications that are inaccessible to unauthorized personnel.

COMMENT 18: A commenter requested clarification of ARM 24.174.1107(2) on prepackaged contents of night cabinets and whether it means packaged as a unit-of-use, versus packaged into a bottle or container containing the appropriate number of doses being dispensed.

RESPONSE 18: The board believes most use of night cabinets is for inpatient use after hours, with the exception of rural outpatient emergency rooms. To the greatest extent possible anything for outpatient use should be prepackaged, while anything intended for inpatient use should be packaged in the unit-of-use. The intent of prepackaging is to assure labeling as well as directions for use, which is especially important when being given to an outpatient for the off-premises administration of dosages of the drug. The intent is that a person obtaining drugs from a night cabinet not have to "count pills" and divide the contents of a package in order to dispense the correct dosage or number of doses. The board notes that anything removed from a night cabinet needs to be accounted for by a verification audit conducted by the contracting pharmacist.

COMMENT 19: A suggestion was received amending ARM 24.174.1107(3) to require audits completion within 72 hours of drug removal, instead of the currently required 48 hours, to accommodate weekends.

RESPONSE 19: The board accepts the suggestion and has amended the rule accordingly.

COMMENT 20: A commenter stated that for inpatients, a "medication administration record" is the document a nurse will use, not the patient medication profile.

RESPONSE 20: The board acknowledges the comment, but declines to make any changes to the proposal because the characteristics of the patient medical profile specified in ARM 24.174.1107(6) provide a licensee of the board of pharmacy with the information that licensee needs to appropriately conduct the required review. The board's rules are directed to the board's licensees, not the licensees of other

health care professions. The board recognizes that other health care providers may refer to certain documents by other names, which may vary from setting to setting, and thus concludes that specifying the elements of required information, rather than the type of document, is the more important aspect of the rule.

COMMENT 21: Comments were received suggesting making ARM 24.174.1111 applicable to all institutional facilities, including half-way houses, nursing homes, long-term care facilities, hospices, and residential assisted living facilities.

RESPONSE 21: It is appropriate for policies and procedures to be in place for any facility or institution that handles drugs for patient or resident use. The board is making these rules based on its charge of overseeing the safety of medications for the citizens of Montana. The Department of Public Health and Human Services (DPHHS) licenses most of the facilities mentioned in the comment and violations found by DPHHS are reported to the board and to other professional licensing boards involved.

COMMENT 22: A commenter also asked for a distinction to be made between requirements for dispensing devices at remote telepharmacy locations and those installed at facilities where individuals licensed to administer or prescribe medications are the ones accessing the dispensing devices.

RESPONSE 22: ARM 24.174.1111 is not applicable to telepharmacy locations or in settings other than those described in the rule. Remote telepharmacy sites are specific in their intent to provide services to rural areas that are underserved due to the absence of a pharmacy. Further distinction of the rules for remote sites versus other facilities will need to be addressed by the board in a future rule project.

COMMENT 23: A commenter requested the board consider accepting the current Securities and Exchange Commission (SEC) filing of wholesale distributors owned by publicly-held corporations, in lieu of "address, telephone number, and ownership percentage" requested by the proposed amendments to ARM 24.174.1202. The commenter stated that a copy of the SEC filing would preserve the security of the corporate officers and still assure Montanans of a dependable supplier.

RESPONSE 23: To the extent that the commenter is concerned about the personal safety of corporate officers because of the disclosure of the address and telephone number of each corporate officer, the board notes that nothing in the proposed amendments requires that the home address or home telephone number of an officer be disclosed. Because the sole objection to providing the information appears to be based on a concern for personal safety, the board concludes that because a business address and telephone number for each officer can be provided, there is no substantial reason to exempt publicly traded corporations from complying with the rule.

COMMENT 24: A commenter suggested amending ARM 24.174.1211(8) to read [new matter underlined]: (w)ithin any calendar month, a wholesaler, not owned by a



publicly-traded manufacturer, may not sell, distribute, transfer, or otherwise provide more than 10% of the total amount distributed of each prescription drug or drug product to another wholesaler, distributor, or manufacturer." The commenter stated that the suggested seems to preserve the rule's intent while allowing the company to move products in large volumes through a few vaccine distributors on seasonal basis.

RESPONSE 24: The board considered the possibility of vaccines for instance, needing to be shipped in great quantities. If there were an emergency need of flu vaccine for instance, rules could be waived under such circumstances by the appropriate authorities in dealing with what it is in the best interest of the public. However, based upon the comments received, the board has decided not to include sections (8) and (9) in the final version of ARM 24.174.1211.

COMMENT 25: A commenter suggested amending ARM 24.174.1211(8) to read [new matter underlined]: "(w)ithin any calendar month, a wholesaler may not sell, distribute, transfer, or otherwise provide more than 10% of the total amount distributed of each prescription drug or drug product to another wholesaler, distributor, or manufacturer. This provision does not apply to distributions, sales or transfers between wholesalers under common ownership." The commenter stated that the suggested language would clarify that the restriction does not apply to intracompany transfers.

RESPONSE 25: The board acknowledges the comment. Based upon the comments received, the board has decided not to include sections (8) and (9) in the final version of ARM 24.174.1211.

COMMENT 26: A commenter suggested amending ARM 24.174.1211(9) to read [new matter underlined]: "(a) wholesaler may not purchase or receive back from a pharmacy a greater quantity of any prescription drug than was originally sold by the wholesaler except that when a pharmacy changes wholesalers, the new wholesaler may accept returns of product sold to the pharmacy by the previous wholesaler for a period of 60 days." This would address the initial returns following the change of wholesalers.

RESPONSE 26: The board acknowledges the comment. Based upon the comments received, the board has decided not to include sections (8) and (9) in the final version of ARM 24.174.1211.

COMMENT 27: A commenter stated that ARM 24.174.2401 should be amended to provide a specific procedure to be used if a board member is accused of wrongdoing, to provide for the specific appointment of an impartial panel composed of at least 50% nonboard members, and to allow the complainant and/or the licensee who is the subject of the complaint an opportunity to speak at the panel, if desired.

RESPONSE 27: As noted in Response 5, suggested substantive changes outside the scope of the proposed amendments must themselves be formally proposed by the board, appropriate notice given to interested persons and the public, and comment be allowed before the board can take final action on change. The board will keep the suggestions of the commenter in mind when it is contemplating future rule changes.

The board notes that it believes it is constrained by 37-1-307 and 37-1-131, MCA, to limit membership on a screening panel to persons who are board members. The board also notes that its members are subject to the ethical obligations of Title 2, chapter 2, part 1, MCA, as a public official or employee whenever serving in that person's official capacity as a board member. The board believes that it would be improper for a board member who has been named in a complaint to serve either on a screening panel or adjudication panel concerning a matter in which the member is named as the respondent.

COMMENT 28: The same commenter raised additional concerns that have been previously submitted to the board, namely the commenter's belief that screening panel meetings should be open to the public, and that complainants have a right to address the screening panel. The commenter also expressed the opinion that a public comment period should be part of every agenda.

RESPONSE 28: The board respectfully notes that the comments are not germane to the proposed amendments or new rules, and thus are outside the scope of this rulemaking proposal. However, the board offers the following general response:

The board believes that public participation is an essential feature of good government. At every public meeting conducted by the board, the board provides an opportunity for public comment, and the comment period is a regular agenda item. The board does not believe that meetings of the screening panel are public meetings, however. The screening panel has a function similar to that of a grand jury, namely deciding on whether there is reasonable cause to for the department to prosecute a complaint and proceed toward a formal disciplinary hearing. The board believes that unless the person named in a complaint as the respondent waives the right of individual privacy, that person's constitutional right of privacy, linked with a property interest as the holder of a professional license, outweighs the public right to know about the complaint, until such time as the screening panel makes a determination of "reasonable cause." In addition, there may be other circumstances present, especially in complaints related to health care professionals, to justify closing portions of a proceeding when the privacy rights of other involved individuals are concerned.

COMMENT 29: A commenter stated that once a screening panel was convened that did not meet the requirements of this rule, and the board was never "taken to task" for that, and questioned the need for the rule if it is being ignored. The commenter stated that the board needs to follow its own rules. The commenter also supports an additional panel to handle complaints against board members.

RESPONSE 29: Because the board recognized that the existing version of the rule did not provide for enough flexibility to adapt to unusual circumstances, the board proposed the amendments to ARM 24.174.2401. The board concludes that the proposed amendment adequately addresses the issue of flexibility to handle unusual circumstances where a panel member needs to be recused. As noted in Response 27, the board will keep the commenter's suggestions in mind when considering future amendments to this rule.

COMMENT 30: Comments were received regarding NEW RULE II stating the pharmacist to technician ratio should remain at 1:1 or be more stringent at telepharmacy sites.

RESPONSE 30: The board believes that it is not likely that there will be a need for more than one technician at a time in a telepharmacy location, but it agrees that if telepharmacy becomes a predominant form of delivery of prescriptions in the state, it will reconsider the wording of the rule. The board concludes that the present wording of "a registered pharmacy technician" means one technician.

COMMENT 31: A commenter suggested clarifying that NEW RULE II applies only to noninstitutional pharmacies.

RESPONSE 31: Because the board does not believe that NEW RULE II should apply only to noninstitutional pharmacies, the board is presently unwilling to make the suggested change. The board believes that there is no logical or legal basis to categorically exempt institutional pharmacies from application of the rule.

COMMENT 32: A commenter stated that the board lacks any authority to regulate competition and stated NEW RULE II should not have the ten-mile radius prohibition, which the commenter believes may prevent larger health care organizations from providing cost-effective telepharmacy service support, 24/7, to smaller hospitals and critical access hospitals and nursing homes.

RESPONSE 32: The board believes that it is not regulating competition by the adoption of NEW RULE II. The board believes that it is reasonable and appropriate to establish a set definition of what constitutes a "remote area" that is not served by a traditional pharmacy with a pharmacist present on-site. By establishing a ten-mile radius around an existing pharmacy, the board has made that definition by providing that the area within ten miles of an existing pharmacy is not eligible for a remote telepharmacy location. The board concludes that because its goal in allowing remote telepharmacy sites is to improve consumer access in unserved or underserved areas in Montana, NEW RULE II does not improperly limit competition. The board notes that the ten-mile restriction is unlikely to adversely affect a large hospital's relationship with a smaller hospital or critical access facility if that smaller facility is not already served by a nearby pharmacy.

COMMENT 33: A commenter suggested amending NEW RULE II(4)(g) to require that reports be generated upon request and that (4)(t) should clearly state that new prescriptions should be counseled and refills counseled if the pharmacist and patient feel it is necessary.

RESPONSE 33: The board agrees with comment regarding counseling and has amended NEW RULE II(4)(t) to clarify that requirement. With respect to (4)(g), the board's rule constitutes a request that reports be generated daily. The board believes that until such time as a clear history of remote location use and accuracy is established, daily reports are appropriate tools for both the provider and the board to use to determine the safety and effectiveness of the remote telepharmacy location.

COMMENT 34: A commenter stated that NEW RULE II does not address smaller hospitals' need to enhance provision of care and patient safety through remote pharmacist order reviewing during "off" hours of the pharmacy.

RESPONSE 34: The board agrees with the comment that NEW RULE II does not address smaller hospital's needs. To the extent that the commenter suggests that the board's rules be modified to take into account the desires of "smaller hospitals", the board will keep that request in mind when contemplating future rule changes.

COMMENT 35: The same commenter expressed the belief that computer, audio, and video links are not necessary for an inpatient order review in a telepharmacy setting.

RESPONSE 35: The board acknowledges the comment, but the board has not been presented with any evidence to demonstrate that less robust communication protocols are as safe and effective as the tri-modal communications systems required by the rule. In the absence of such evidence, the board respectfully declines the commenter's implied suggestion to allow elimination of one or more of the required components of the communication system between a parent location and the remote location.

COMMENT 36: The commenter stated that the requirements for maintenance of prescription records are not applicable to institutional pharmacies.

RESPONSE 36: The requirement of prescription record maintenance under NEW RULE II applies only in a telepharmacy relationship. If an institution operates a telepharmacy location, pursuant to the rule, then the rule applies. If the institution is not operating a telepharmacy location, the rule's requirements do not apply.

COMMENT 37: The commenter also asked that a rule be written to take into consideration non-24 hour pharmacies that use lock boxes and emergency dispensing provisions.

RESPONSE 37: The board will keep the request in mind when it considers additional rulemaking projects in the future.

COMMENT 38: Several comments were received regarding NEW RULE III. One commenter requested an exemption for remote institutional sites, such as hospitals, nursing homes, critical access hospitals, and detention facilities.

RESPONSE 38: The board will consider specific requests for a waiver for any particular facility on a case-by-case basis.

COMMENT 39: A commenter asked whether an independent pharmacy could place a dispensing machine at a physicians' clinic.

RESPONSE 39: Yes, if the clinic was not within a ten-mile radius of an existing pharmacy, and the clinic was willing to accept the dispensing machine on the premises.

COMMENT 40: A commenter suggested that the pharmacist in charge of a remote dispensing machine pursuant to NEW RULE III be responsible for ensuring monthly inspections are conducted and that different requirements for passwords be designed to keep up with current technology.

RESPONSE 40: The board believes facilities should develop security policies that fit their specific needs, but it declines to add the specific technological requirements suggested by the commenter. The board agrees that the pharmacist in charge is responsible for making sure that the remote dispensing machine is operated in a manner consistent with the rule.

COMMENT 41: A commenter stated she was reserving her comments on central fills (NEW RULE IV) until a later date when any ramifications are observable.

RESPONSE 41: The board acknowledges the diligence of the commenter and looks forward to future communication regarding the commenter's observations. The board notes, however, that comments received outside of the official comment period on these proposed rule changes cannot be acted upon by the board in this rulemaking project.

COMMENT 42: In reference to NEW RULE V, a commenter questioned how the board is held accountable to making rules in an expeditious fashion if it has had the authority (to make this rule change) since April 6, 1999, and questions what has taken so long to create this rule.

RESPONSE 42: The board agrees that the legislative requirement for rulemaking should have been addressed earlier. The current board does not have a ready answer as to why previous boards did not undertake rulemaking on this topic. Each individual board member is appointed by the Governor to serve a five-year term. A board member may be removed by the Governor "for cause" pursuant to 2-15-124, MCA. The board notes that dereliction of duty may constitute "cause" for a governor to remove a board member.

COMMENT 43: Also in reference to NEW RULE V, a commenter stated concern with a physician director, as the facility would be board licensed, but the physician would not be. The commenter questioned whether the board could compel any changes in practice/compliance with this arrangement.

RESPONSE 43: The board notes that it merely registers ambulatory surgical facilities, and does not license them. The commenter is correct that the board does not have any direct regulatory authority over physicians (unless the physician also is licensed as a pharmacist). The board believes it has the authority to report diversions of drugs to the appropriate authorities. If the board has reason to believe that drugs are being diverted by a licensed health care provider, the board may report that information to the licensing board of that provider. If the facility is being operated in a manner inconsistent with the public health and safety, the board may report that to any governmental authority that regulates or licenses the facility.

COMMENT 44: A commenter proposed adoption of several new rules to address remote medication order processing, and provided suggested language for several new rules.

RESPONSE 44: New rules, as proposed by the commenter, would need to be noticed for public comment in a future rule notice. The board will consider including the requested rules when engaging in a future rulemaking project.

4. After consideration of the comments made, the board has amended ARM 24.174.301, 24.174.401, 24.174.403, 24.174.503, 24.174.514, 24.174.521, 24.174.522, 24.174.523, 24.174.524, 24.174.603, 24.174.705, 24.174.806, 24.174.814, 24.174.1002, 24.174.1111, 24.174.1201, 24.174.1202, 24.174.1212, 24.174.1401, 24.174.2101, and 24.174.2401 exactly as proposed.

5. After consideration of the comments made, the board has adopted NEW RULE I (24.174.504), NEW RULE III (24.174.1303), NEW RULE IV (24.174.822), NEW RULE V (24.174.1122), and NEW RULE VI (24.174.404), exactly as proposed.

6. After consideration of the comments made, the board has decided not to amend ARM 24.174.612.

7. After consideration of the comments made, the board has amended ARM 24.174.303, 24.174.711, 24.174.1107, 24.174.1211 with the following changes, stricken matter interlined, new matter underlined:

24.174.303 INTERNSHIP PROGRAM DEFINITIONS (1) through (5) remain as proposed.

(6) "Internship period" means 1500 hours of practical experience in an approved pharmacy, hospital, or other facility. The intern must acquire a minimum of 20 hours experience per calendar week and may acquire a maximum of 48 hours experience per calendar week. The student may acquire up to 1500 hours

concurrently with school attendance in approved courses, ~~externships~~ introductory pharmacy practice experience, and advanced pharmacy practice experience, or demonstration projects in the Pharm.D. program.

(7) through (9) remain as proposed.

AUTH: 37-7-201, MCA

IMP: 37-7-201, MCA

24.174.711 RATIO OF PHARMACY TECHNICIANS TO SUPERVISING PHARMACISTS (1) A registered pharmacist in good standing may supervise the services of no more than ~~four~~ three technicians at any time. The ~~4:4~~ 1:3 pharmacist to pharmacy technician ratio may be revised by the board at any time for good cause.

(2) Registered pharmacists in good standing in the state of Montana may supervise a maximum of ~~four~~ three registered pharmacy technicians, provided:

(a) through (c) remain as proposed.

(3) If a pharmacy desires more than ~~four~~ three technicians to work under the supervision, direction, and control of one pharmacist, the pharmacy shall obtain the prior written approval of the board. To apply for approval, the pharmacist-in-charge shall submit a pharmacy services plan to the board. The pharmacy services plan submitted shall demonstrate how the plan facilitates the provision of pharmaceutical care and shall include, but shall not be limited to the following:

(a) through (6) remain as proposed.

AUTH: 37-7-201, MCA

IMP: 37-7-101, 37-7-201, 37-7-307, 37-7-308, 37-7-309, MCA

24.174.1107 ABSENCE OF PHARMACIST IN INSTITUTIONAL SETTINGS

(1) and (2) remain as proposed.

(3) A complete verification audit of all inpatient orders and activity concerning the night cabinet or after-hours pharmacy entry must be conducted by a pharmacist, pharmacy technician, or other licensed designee of that pharmacist within ~~48~~ 72 hours of the drugs having been removed from the night cabinet or pharmacy.

(4) and (5) remain as proposed.

(6) A copy of the original drug order with the NDC number or other identifying code of the drug(s) provided may be faxed to the pharmacist. If the patient is an inpatient, a patient profile containing the patient's name, location, allergies, current medication regimen, and relevant laboratory values must be reviewed by a pharmacist within ~~48~~ 72 hours.

AUTH: 37-7-201, MCA

IMP: 37-7-201, MCA

24.174.1211 MINIMUM REQUIREMENTS FOR STORAGE AND HANDLING OF DRUGS (1) through (7) remain as proposed.

~~(8) Within any calendar month, a wholesaler may not sell, distribute, transfer, or otherwise provide more than 10% of the total amount distributed of each prescription drug or drug product to another wholesaler, distributor, or manufacturer.~~

~~(9) A wholesaler may not purchase or receive back from a pharmacy a greater quantity of any prescription drug than was originally sold by the wholesaler.~~

AUTH: 37-7-201, 37-7-610, MCA

IMP: 37-7-604, MCA

8. After consideration of the comments made, the board has adopted NEW RULE II (24.174.1302) with the following changes, stricken matter interlined, new matter underlined:

NEW RULE II (24.174.1302) TELEPHARMACY OPERATIONS

(1) through (4)(s) remain as proposed.

(t) The pharmacist shall counsel the patient or the patient's agent via video and audio link on all new prescriptions, and but may provide counseling on refills only if when the pharmacist deems additional counseling necessary.

(u) through (z) remain as proposed.

AUTH: 37-7-201, MCA

IMP: 37-7-101, 37-7-201, 37-7-321, MCA

9. As noted in Response 13, the board has not yet taken final action with respect to the proposed amendments to ARM 24.174.801. The board will provide notice of its final action concerning the proposed amendments to ARM 24.174.801 at a later date.

BOARD OF PHARMACY  
WILLIAM BURTON, R. Ph., CHAIRPERSON

/s/ MARK CADWALLADER

Mark Cadwallader  
Alternate Rule Reviewer

/s/ KEITH KELLY

Keith Kelly, Commissioner  
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State June 12, 2006



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

In the matter of the amendment of ARM ) NOTICE OF AMENDMENT  
24.183.404 fee schedule, 24.183.511 license ) AND ADOPTION  
seal, 24.183.702 classification of experience )  
for engineering applicants, 24.183.2105 )  
continuing education, 24.183.2202 safety, )  
health, and welfare of the public and the )  
adoption of NEW RULES I-III pertaining to )  
classification of experience, branch offices, )  
and fee abatement )

TO: All Concerned Persons

1. On February 9, 2006, the Board of Professional Engineers and Professional Land Surveyors (board) published MAR Notice No. 24-183-31 regarding the public hearing on the proposed amendment and adoption of the above-stated rules, at page 303 of the 2006 Montana Administrative Register, issue no. 3.

2. On March 7, 2006, a public hearing was held on the proposed amendment and adoption of the above-stated rules in Helena. No comments or testimony were received at the hearing. Two written comments were received by the March 15, 2006, deadline.

3. While department staff was working with the fee rule, it was noticed that the word "exam" was inadvertently left out of ARM 24.183.404(3)(d)(ii). The word will be inserted to make this subsection consistent with the language used in ARM 24.183.404(3)(d)(iii). The rule will be further amended to correct the board name in (1). Also, board counsel questioned the board's authority for ARM 24.183.404(3)(g)(iv), suggesting that the board may not have statutory authority to renew the certificate and charge a renewal fee. In light of the board's discussion of the issue, the board decided not to increase the certificate of authority renewal fee as proposed.

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

COMMENT 1: A commenter stated he would like to see the fee structure in laws written with a maximum rather than an absolute number. This should be set above the current cost then the board could be allowed to make increases to cover cost without a change in the law.

RESPONSE 1: The board appreciates the comment. The dollar amount of the various fees is not established in statute; instead, the Legislature has delegated the fee setting process to each respective licensing board, pursuant to 37-1-134, MCA. The board agrees that while it would be convenient to list a fee as "an amount not to exceed 'x' dollars", and let the exact amount float as needed, the board does not have that option under Montana law. The board believes that it is required to establish the specific amount of its various fees via the administrative rulemaking process. The board notes that using the rulemaking process allows both the Legislature and the public to have advance notice and an opportunity to comment on proposed changes to the fees charged by the board.

COMMENT 2: A commenter submitted a written comment that referred to typographical errors and suggested the following corrections:

Under ARM 24.183.702(1)(a) "Subprofessional experience gained before graduation. This experience shall be credited to the required preprofessional experience at a maximum of one-half the period of experience. Subprofessional experience shall be limited to no more than one year of preprofessional experience. Credible subprofessional experience may include one or more of the following:"

In NEW RULE I(4) "Subprofessional experience shall be credited to the required preprofessional experience at a maximum of one-half the period of experience. Subprofessional experience shall be limited to no more than two years of preprofessional experience. Credible subprofessional experience may include one or more of the following:"

RESPONSE 2: The board agrees that the omitted language should be included in the rules and has amended the rules as suggested.

5. The board has amended ARM 24.183.511, 24.183.2105, and 24.183.2202 exactly as proposed.

6. The board has adopted NEW RULE II (24.183.406) and NEW RULE III (24.183.405) exactly as proposed.

7. The board has amended ARM 24.183.404 and 24.183.702 with the following changes, stricken matter interlined, new matter underlined:

24.183.404 FEE SCHEDULE (1) Fees shall be transmitted to the Board of Professional Engineers and Professional Land Surveyors. Fees for examinations administered by third party vendors must be paid directly to the vendor approved by the board. The board assumes no responsibility for loss in transit of such remittances. Applicants not submitting the proper fees will be notified by the department.

(2) through (3)(d)(i) remain as proposed.

(ii) Reexamination only for Montana law specific exam

50

(iii) through (g)(iii) remain as proposed.

- (iv) Certificate of authority  
(h) through (h)(iv) remain as proposed.

25 12.50

AUTH: 37-1-134, 37-67-202, MCA

IMP: 37-1-134, 37-1-319, 37-67-303, 37-67-312, 37-67-313, 37-67-315, 37-67-320, 37-67-321, MCA

24.183.702 CLASSIFICATION OF ENGINEERING EXPERIENCE

(1) remains as proposed.

(a) Subprofessional experience gained before graduation. This experience shall be credited to the required preprofessional experience at a maximum of one-half the period of experience. Subprofessional experience shall be limited to no more than one year of preprofessional experience. Credible subprofessional experience may include one or more of the following:

(i) through (4) remain as proposed.

AUTH: 37-67-202, MCA

IMP: 37-67-306, 37-67-309, MCA

8. The board has adopted NEW RULE I (24.183.802) with the following changes, stricken matter interlined, new matter underlined:

NEW RULE I (24.183.802) CLASSIFICATION OF EXPERIENCE FOR LAND SURVEYING APPLICANTS (1) through (3) remain as proposed.

(4) Subprofessional experience shall be credited to the required preprofessional experience at a ~~minimum~~ maximum of one-half the period of experience. Subprofessional experience shall be limited to ~~a maximum of four years to be credited as~~ no more than two years of preprofessional experience. Credible subprofessional experience may include one or more of the following:

(a) through (d) remain as proposed.

AUTH: 37-67-202, MCA

IMP: 37-67-306, 37-67-309, MCA

BOARD OF PROFESSIONAL ENGINEERS  
AND PROFESSIONAL LAND SURVEYORS  
DENIS APPLEBURY, PRESIDING OFFICER

/s/ MARK CADWALLADER  
Mark Cadwallader  
Alternate Rule Reviewer

/s/ KEITH KELLY  
Keith Kelly, Commissioner  
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State June 12, 2006

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

In the matter of the amendment	)	NOTICE OF AMENDMENT
of ARM 24.183.2101 pertaining to	)	
expiration of license - renewal, and	)	
24.183.2105 pertaining to expired	)	
certificate - renewal grace period	)	

TO: All Concerned Persons

1. On March 23, 2006, the Board of Professional Engineers and Professional Land Surveyors (board) published MAR Notice No. 24-183-32 regarding the public hearing on the proposed amendment of the above-stated rules, at page 713 of the 2006 Montana Administrative Register, issue no. 6.

2. On April 14, 2006, a public hearing was held on the proposed amendment of the above-stated rules in Helena. No members of the public appeared at the hearing and no comments or testimony were received.

3. The board has amended ARM 24.183.2101 and 24.183.2105 exactly as proposed.

BOARD OF PROFESSIONAL ENGINEERS  
AND PROFESSIONAL LAND SURVEYORS  
DENIS APPLEBURY, PRESIDING OFFICER

/s/ MARK CADWALLADER  
Mark Cadwallader  
Alternate Rule Reviewer

/s/ KEITH KELLY  
Keith Kelly, Commissioner  
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State June 12, 2006

BEFORE THE BOARD OF REAL ESTATE APPRAISERS  
DEPARTMENT OF LABOR AND INDUSTRY  
STATE OF MONTANA

In the matter of the amendment of ARM ) NOTICE OF AMENDMENT  
24.207.505 qualifying education requirements )  
for licensed real estate appraisers, 24.207.506 )  
qualifying education requirements for residential )  
certification, 24.207.507 qualifying education )  
requirements for general certification, and )  
24.207.517 trainee requirements )

TO: All Concerned Persons

1. On March 23, 2006, the Board of Real Estate Appraisers (board) published MAR Notice No. 24-207-26 regarding the notice of public hearing on the proposed amendment of the above-stated rules, at page 716 of the 2006 Montana Administrative Register, issue no. 6.

2. On April 13, 2006, a public hearing was held on the proposed amendment of the above-stated rules in Helena. No members of the public appeared at the hearing and no comments or testimony were received.

3. The board has amended ARM 24.207.505, 24.207.506, 24.207.507, and 24.207.517 exactly as proposed.

BOARD OF REAL ESTATE APPRAISERS  
TIM MOORE, CHAIRPERSON

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

/s/ KEITH KELLY  
Keith Kelly, Commissioner  
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State June 12, 2006

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

In the matter of the adoption of Rule I	)	NOTICE OF ADOPTION AND
and amendment of ARM 37.37.101,	)	AMENDMENT
37.86.2207, 37.88.907, and 37.88.1133	)	
pertaining to implementation of a	)	
Children's Mental Health Direct Care	)	
Worker Wage Increase	)	
	)	

TO: All Interested Persons

1. On April 6, 2006, the Department of Public Health and Human Services published MAR Notice No. 37-375 pertaining to the public hearing on the proposed adoption and amendment of the above-stated rules, at page 863 of the 2006 Montana Administrative Register, issue number 7.

2. The department has adopted New Rule I (37.88.1111) as proposed.

3. The department has amended ARM 37.37.101, 37.86.2207, 37.88.907, and 37.88.1133 as proposed.

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

COMMENT #1: We support the proposed rules and testified in their favor at the public hearing held on April 26, 2006. We are very grateful to the Montana Legislature for supporting this direct care wage increase and thank the Department of Public Health and Human Services for working with children's mental health providers to determine qualifications, reporting, and monitoring mechanisms.

RESPONSE: The department worked diligently with providers and association representatives in order to implement the Children's Mental Health Direct Care Wage Supplement on time. The department thanks the providers and association representatives for their cooperation. The industry provided feedback to the department on the proposed new rule and rule amendments and we are grateful for their assistance. We believe that the supplement for direct care worker wage and benefit increases implemented through the department will help providers recruit and retain qualified direct care staff.

COMMENT #2: It is somewhat of an administrative burden for providers who qualified for a direct care wage add on to track and account for data collected by the department, but the burden is offset by the increased wages for their staff.

RESPONSE: The department recognizes the additional administrative burden experienced by qualified providers who choose to receive a direct care wage add on. However, the legislative appropriation in the 2005 General Appropriations Act, 2005 Laws of Montana Chapter 607 (commonly referred to as "HB 2") requires the department to document that the money was used solely for direct care worker wage and benefit increases. HB 2 specifies the data that must be reported. No other options were open to or considered by the department. The department worked closely with providers to minimize the burden created by the data reporting requirements.

COMMENT #3: It has been somewhat difficult to separate the duties of staff who work with Medicaid or non-Medicaid youth or with both. Currently these funds are only available for staff working with Medicaid youth and services. To achieve equity for all direct care staff, we will recommend the 2007 Montana Legislature adopt an additional appropriation to cover those direct care staff working with non-Medicaid youth.

RESPONSE: We welcome the providers' support for this rate increase. The legislature, not the department, will determine future availability of funding and how that funding will be applied. As long as the legislature matches the funding with federal Medicaid funds to implement the wage increase, we will continue to limit allocation of funds to Medicaid patients.

COMMENT #4: Even though the rationale language suggests a sunset of the rules by mentioning the July 2007 sunset several times, we recommend that the sunset language be specifically included in the rule language.

RESPONSE: The department decided not to put additional sunset language in the rules at this time. The department believes the language it proposed is sufficiently clear. If the legislature does not provide continued funding for this wage increase, the rule provisions will be repealed. If continued funding is appropriated by the legislature for state fiscal year (SFY) 2009 and SFY 2011, the rule provision will remain in place and will be amended, if necessary.

COMMENT #5: As stated at the hearing by Peter Surdock, any funds allocated to a provider that remain after the direct care staff raises may be used to increase wages for support staff (housekeeping, etc). This is written into the contract language, not in the rule itself. Most providers did not understand this. We ask that you revisit your decision regarding this. We recommend that this option be written in the actual rule.

RESPONSE: The department declines to accept the recommendation to include this in the rule. This provision was developed in response to provider questions and was discussed with providers as the process for implementation of the wage supplement was developed. Because the rule requires a contract between the department and the provider as a condition of implementation of the wage increase, we do not believe adding the requested change to the rule is necessary. The

contract provides accountability as well as flexibility, if needed, that is not available through rulemaking. Changes in the contract are possible with an agreement by both parties. The department believes it is not necessary to include administrative details in the rules because this can and does result in difficulty with implementation of cumbersome regulations and increases confusion. If contractors have any questions about this allowance, the department continues to be available to meet with the contractors individually or as a group to clarify the contract terms and expectations.

COMMENT #6: We strongly recommend that the Department of Public Health and Human Services and the Montana Legislature maintain this appropriation as a priority and secure this funding in the future as a component of the base budget. We are also interested in how adjustments to this appropriation will be made over time including but not limited to changes in direct care staff numbers, inflation, and cost of living.

RESPONSE: We appreciate the support of providers for the continuation of this wage increase. If the legislature approves an appropriation for SFY 2008 through SFY 2009, the department anticipates it could use the same approach to allocate the funding. All eligible providers would report the information necessary to allocate funds. This would allow for the addition of qualified providers as well as the accommodation of changes in staff numbers or other circumstances for providers already participating in this wage supplement. The department would also have the opportunity to evaluate other methods of implementation that may provide improvements in the process.

5. This new rule and rule amendments are applied retroactively to October 1, 2005. There is no negative impact to providers or employees.

/s/ John Koch  
Rule Reviewer

/s/ Russell Cater for  
Director, Public Health and  
Human Services

Certified to the Secretary of State June 12, 2006.



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

In the matter of the amendment of ARM        )  
37.40.307, 37.40.311, and 37.40.361        )  
pertaining to Medicaid reimbursement        )  
of nursing facilities                                )

NOTICE OF AMENDMENT

TO: All Interested Persons

1. On April 20, 2006, the Department of Public Health and Human Services published MAR Notice No. 37-378 pertaining to the public hearing on the proposed amendment of the above-stated rules, at page 1024 of the 2006 Montana Administrative Register, issue number 8.

2. The department has amended ARM 37.40.307 and 37.40.311 as proposed.

3. The department has amended the following rule as proposed with the following changes from the original proposal. Matter to be added is underlined. Matter to be deleted is interlined.

37.40.361 DIRECT CARE WAGE REPORTING/ADDITIONAL PAYMENTS  
FOR DIRECT CARE WAGE AND BENEFITS INCREASES (1) through (2)(c)  
remain as proposed.

~~(d) The department shall make retroactive adjustment to the facility payment rate established on July 1, 2005 that will reduce the Medicaid per day payment amount by the amount of funds that have been designated for the direct care wage add-on for any nonparticipating or nonqualifying facility. Any amount paid by the department up to that time for the direct care wage add-on shall be recovered by the department.~~

(3) remains as proposed.

AUTH: 53-2-201, 53-6-113, MCA

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

4. The department is taking this opportunity to delete obsolete language from ARM 37.40.361. In the first year of implementation, 1999, the department increased the nursing facility reimbursement rates to all providers beginning July 1, 1999. A provision for retroactive adjustment was included in case a facility was later found to be unqualified or elected not to participate. Now that additional payments have been implemented, the department no longer needs authority to make retroactive adjustments. It has elected to delete ARM 37.40.361(2)(d) rather than amend it.

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

COMMENT #1: Since the acuity index used to reimburse providers is at least ten years old and no longer reflects the level of acuity experienced in nursing facilities, the department should update RUG groupings to reflect the new 53 RUG level groupings which took effect on January 1, 2006. The case mix weights for the 34 RUG III groupings is dated from 1995 through 1997. The time studies used as a criteria date from the same period. Since the Administrative Rules of Montana state: "the department may update the classification methodology to reflect advances in resident assessment or classification subject to federal requirements," I am assuming the department has the authority to change reimbursement criteria without legislative approval.

RESPONSE: The department's authority to adopt rules, and authority to set rates of reimbursement for Medicaid services is granted in 53-6-113, MCA. The Centers for Medicare and Medicaid Services (CMS) has undertaken a nursing facility staff time measurement study to recalibrate the Resource Utilization Groups (RUG-III) case mix weights, which support the Skilled Nursing Facility Prospective Payment System (SNF PPS). A new study, the Staff Time and Resource Intensity Verification (STRIVE), will be conducted onsite in nursing facilities starting this fall. The state of Montana will participate in this study.

The department declines to adopt the suggestion that it use the 53 RUG level grouper to set nursing facility reimbursement rates. The changes to the Medicare SNF PPS, effective on October 1, 2005, were based on 53 RUG groupings. The new Medicare SNF PPS is a refinement and expansion of the RUGs used to determine payments for Medicare beneficiaries in SNFs. The Medicare RUG changes were intended to more accurately pay SNFs for the care of residents with medically complex conditions by creating new payment categories that more closely match the kinds of services provided to them. However, they were not intended for Medicaid reimbursement and the department does not use them.

CMS will use the STRIVE time study to update the earlier studies and to recalibrate the Medicare RUG case mix weights based on the study results. Afterward, the department will review the results of the study, and if necessary will propose appropriate changes to the Montana case mix weights.

6. These amendments are effective July 1, 2006.

/s/ John Koch  
Rule Reviewer

/s/ Russell Cater for  
Director, Public Health and  
Human Services

Certified to the Secretary of State June 12, 2006.

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

In the matter of the adoption of Rules I	)	NOTICE OF ADOPTION AND
through VII, and the amendment of	)	AMENDMENT
ARM 37.86.2901, 37.86.2907,	)	
37.86.3002, and 37.86.3005 pertaining	)	
to Medicaid reimbursement for inpatient	)	
and outpatient hospital services	)	
	)	

TO: All Interested Persons

1. On April 20, 2006, the Department of Public Health and Human Services published MAR Notice No. 37-379 pertaining to the public hearing on the proposed adoption and amendment of the above-stated rules, at page 1030 of the 2006 Montana Administrative Register, issue number 8.

2. The department has adopted New Rules I (37.86.3101), II (37.86.3103), III (37.86.3105), V (37.86.3109), VI (37.86.2903), and VII (37.86.3003) as proposed.

3. The department has amended ARM 37.86.2901, 37.86.3002, and 37.86.3005 as proposed.

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

RULE IV (37.86.3107) OUTPATIENT ~~HOSPITAL~~ HOSPITAL SERVICES,  
CARDIAC AND PULMONARY REHABILITATION, WAIVER OF SERVICE  
LIMITATIONS (1) remains as proposed.

AUTH: 53-2-201, 53-6-111, MCA

IMP: 53-2-201, 53-6-101, MCA

5. The department has amended the following rule as proposed with the following changes from the original proposal. Matter to be added is underlined. Matter to be deleted is interlined.

37.86.2907 INPATIENT HOSPITAL PROSPECTIVE REIMBURSEMENT,  
DRG PAYMENT RATE DETERMINATION (1) through (2)(c) remain as proposed.

(3) The Montana Medicaid DRG relative weight values, average length of stay (ALOS), and outlier thresholds are contained in the DRG Table of Weights and Thresholds (~~March 4~~ effective July 1, 2006) published by the department. The department adopts and incorporates by reference the DRG Table of Weights and Thresholds (~~March 4~~ effective July 1, 2006). Copies may be obtained from the

Department of Public Health and Human Services, Health Resources Division, 1400  
Broadway, P.O. Box 202951, Helena, MT 59620-2951.

AUTH: 2-4-201, 53-2-201, 53-6-113, MCA

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

6. The department has added additional text in Rule IV (37.86.2907) to correct an error in the Notice of Public Hearing published at page 1030 of the 2006 Montana Administrative Register. In paragraph 5 of the notice the department stated the changes to Rule IV (37.86.2907) were to become effective July 1, 2006. Unfortunately, the effective date was not correctly reflected in the text of proposed Rule IV (37.86.2907). If the department does not make this change, confusion about the effective date of the DRG Table of Weight of Weights and Measures will unnecessarily complicate the Medicaid inpatient and outpatient hospital reimbursement process.

7. The amendments to ARM 37.86.2907(1)(c), 37.86.3002, 37.86.3005, and Rules I, II, III, IV, and V are applied retroactively to January 1, 2006. The amendments to ARM 37.86.2901, 37.86.2907(1)(b) and (c), 37.86.2907(3), and Rules VI and VII are effective July 1, 2006.

8. No comments or testimony were received.

/s/ John Koch  
Rule Reviewer

/s/ Russell Cater for  
Director, Public Health and  
Human Services

Certified to the Secretary of State June 12, 2006.

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

In the matter of the amendment of ARM     )  
37.108.507 pertaining to Components     )  
of Quality Assessment Activities     )  
   )

NOTICE OF AMENDMENT

TO: All Interested Persons

1. On February 23, 2006, the Department of Public Health and Human Services published MAR Notice No. 37-371 pertaining to the proposed amendment of the above-stated rule, at page 520 of the 2006 Montana Administrative Register, issue number 4.
2. The department has amended ARM 37.108.507 as proposed.
3. No comments or testimony were received.
4. These rule changes will be applied retroactively to January 1, 2006.

/s/ Geralyn Driscoll  
Rule Reviewer

/s/ Russell Cater for  
Director, Public Health and  
Human Services

Certified to the Secretary of State June 12, 2006.

## **NOTICE OF FUNCTION OF ADMINISTRATIVE RULE REVIEW COMMITTEE**

### **Interim Committees and the Environmental Quality Council**

Administrative rule review is a function of interim committees and the Environmental Quality Council (EQC). These interim committees and the EQC have administrative rule review, program evaluation, and monitoring functions for the following executive branch agencies and the entities attached to agencies for administrative purposes.

#### **Economic Affairs Interim Committee:**

- Department of Agriculture;
- Department of Commerce;
- Department of Labor and Industry;
- Department of Livestock;
- Office of the State Auditor and Insurance Commissioner; and
- Office of Economic Development.

#### **Education and Local Government Interim Committee:**

- State Board of Education;
- Board of Public Education;
- Board of Regents of Higher Education; and
- Office of Public Instruction.

#### **Children, Families, Health, and Human Services Interim Committee:**

- Department of Public Health and Human Services.

#### **Law and Justice Interim Committee:**

- Department of Corrections; and
- Department of Justice.

#### **Energy and Telecommunications Interim Committee:**

- Department of Public Service Regulation.

**Revenue and Transportation Interim Committee:**

- Department of Revenue; and
- Department of Transportation.

**State Administration and Veterans' Affairs Interim Committee:**

- Department of Administration;
- Department of Military Affairs; and
- Office of the Secretary of State.

**Environmental Quality Council:**

- Department of Environmental Quality;
- Department of Fish, Wildlife, and Parks; and
- Department of Natural Resources and Conservation.

These interim committees and the EQC have the authority to make recommendations to an agency regarding the adoption, amendment, or repeal of a rule or to request that the agency prepare a statement of the estimated economic impact of a proposal. They also may poll the members of the Legislature to determine if a proposed rule is consistent with the intent of the Legislature or, during a legislative session, introduce a bill repealing a rule, or directing an agency to adopt or amend a rule, or a Joint Resolution recommending that an agency adopt, amend, or repeal a rule.

The interim committees and the EQC welcome comments and invite members of the public to appear before them or to send written statements in order to bring to their attention any difficulties with the existing or proposed rules. The mailing address is PO Box 201706, Helena, MT 59620-1706.

## HOW TO USE THE ADMINISTRATIVE RULES OF MONTANA AND THE MONTANA ADMINISTRATIVE REGISTER

Definitions: Administrative Rules of Montana (ARM) is a looseleaf compilation by department of all rules of state departments and attached boards presently in effect, except rules adopted up to three months previously.

Montana Administrative Register (MAR or Register) is a soft back, bound publication, issued twice-monthly, containing notices of rules proposed by agencies, notices of rules adopted by agencies, and interpretations of statutes and rules by the attorney general (Attorney General's Opinions) and agencies (Declaratory Rulings) issued since publication of the preceding register.

### Use of the Administrative Rules of Montana (ARM):

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



## ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through December 31, 2005. This table includes those rules adopted during the period January 1 through March 31, 2006 and any proposed rule action that was pending during the past six-month period. (A notice of adoption must be published within six months of the published notice of the proposed rule.) This table does not, however, include the contents of this issue of the Montana Administrative Register (MAR or Register).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through December 31, 2005, this table, and the table of contents of this issue of the MAR.

This table indicates the department name, title number, rule numbers in ascending order, catchphrase or the subject matter of the rule, and the page number at which the action is published in the 2005 and 2006 Montana Administrative Registers.

To aid the user, the Accumulative Table includes rulemaking actions of such entities as boards and commissions listed separately under their appropriate title number.

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## BOARD APPOINTEES AND VACANCIES

Section 2-15-108, MCA, passed by the 1991 Legislature, directed that all appointing authorities of all appointive boards, commissions, committees and councils of state government take positive action to attain gender balance and proportional representation of minority residents to the greatest extent possible.

One directive of 2-15-108, MCA, is that the Secretary of State publish monthly in the ***Montana Administrative Register*** a list of appointees and upcoming or current vacancies on those boards and councils.

In this issue, appointments effective in May 2006 appear. Vacancies scheduled to appear from July 1, 2006, through September 30, 2006, are listed, as are current vacancies due to resignations or other reasons. Individuals interested in serving on a board should refer to the bill that created the board for details about the number of members to be appointed and necessary qualifications.

Each month, the previous month's appointees are printed, and current and upcoming vacancies for the next three months are published.

### IMPORTANT

Membership on boards and commissions changes constantly. The following lists are current as of June 1, 2006.

For the most up-to-date information of the status of membership, or for more detailed information on the qualifications and requirements to serve on a board, contact the appointing authority.

## BOARD AND COUNCIL APPOINTEES FROM MAY 2006

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Board of Architects</b> (Labor and Industry)			
Mr. Jim Shepard	Governor	Stapleton	5/18/2006
Billings			3/27/2009
Qualifications (if required): registered architect with three years continuous practice			
<b>Board of Dentistry</b> (Labor and Industry)			
Dr. Mark Colonna	Governor	Johnson	5/30/2006
Whitefish			3/29/2011
Qualifications (if required): licensed dentist with at least 5 years experience			
Ms. Laura Germann	Governor	Hagan	5/30/2006
Glendive			3/29/2011
Qualifications (if required): public representative			
Ms. Jennifer Porter	Governor	Standley	5/30/2006
Bozeman			3/29/2009
Qualifications (if required): dental hygienist with at least 5 years experience			
<b>Board of Horseracing</b> (Livestock)			
Ms. Mary Ogdahl	Governor	Donnelly	5/30/2006
Miles City			1/20/2009
Qualifications (if required): resident of district 1			
Mr. Mike Tatsey	Governor	Cole	5/30/2006
Valier			1/20/2009
Qualifications (if required): resident of district 3			

## BOARD AND COUNCIL APPOINTEES FROM MAY 2006

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Board of Nursing Home Administrators</b> (Labor and Industry)			
Ms. Polly Nikolaisen	Governor	Miller	5/28/2006
Kalispell			5/28/2011
Qualifications (if required): public representative 55 years of age or older			
<b>Board of Plumbers</b> (Labor and Industry)			
Mr. Timothy E. Regan	Governor	reappointed	5/4/2006
Miles City			5/4/2010
Qualifications (if required): master plumber			
Mr. Olaf Stimac	Governor	Tatchell	5/4/2006
Great Falls			5/4/2010
Qualifications (if required): journeyman plumber			
<b>Board of Real Estate Appraisers</b> (Labor and Industry)			
Mr. Darwin Ernst	Governor	Heine	5/31/2006
Hamilton			5/1/2009
Qualifications (if required): real estate appraiser			
Ms. Kathleen Susan Gallaher	Governor	Martin	5/31/2006
Bozeman			5/1/2009
Qualifications (if required): public representative			
<b>Board of Regents</b> (Education)			
Mr. Clayton Christian	Governor	Mercer	5/15/2006
Missoula			2/1/2008
Qualifications (if required): resident of District 1			



## BOARD AND COUNCIL APPOINTEES FROM MAY 2006

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Board of Veterans' Affairs</b> (Military Affairs)			
Ms. Teresa Bell	Governor	Logan	5/30/2006
Fort Harrison			8/1/2006
Qualifications (if required): Veterans Administration representative			
<b>Burial Preservation Board</b> (Administration)			
Mr. Carl Fourstar	Governor	reappointed	5/16/2006
Poplar			8/22/2008
Qualifications (if required): representative of the Assiniboine-Sioux Tribes			
Mr. Ed Lavenger	Governor	not listed	5/16/2006
Havre			8/22/2008
Qualifications (if required): representative of the Little Shell Tribe			
Mr. Reuben Mathias	Governor	Incashola	5/16/2006
Pablo			8/22/2008
Qualifications (if required): representative of the Salish-Kootenai Tribes			
Mr. Steve Platt	Governor	reappointed	5/16/2006
Helena			8/22/2008
Qualifications (if required): representative of the State Historic Preservation Office			
Ms. Katherine Rink	Governor	Murray	5/16/2006
East Glacier			8/22/2008
Qualifications (if required): representative of the Blackfeet Tribe			

## BOARD AND COUNCIL APPOINTEES FROM MAY 2006

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Burial Preservation Board</b> (Administration) cont.			
Dr. Randall Skelton	Governor	reappointed	5/16/2006
Missoula			8/22/2008
Qualifications (if required): physical anthropologist			
Mr. Loren Stiffarm	Governor	not listed	5/30/2006
Harlem			8/22/2008
Qualifications (if required): representative of the Fort Belknap Indian Community			
Ms. Sara Young	Governor	Eaglefeathers	5/16/2006
Lame Deer			8/22/2008
Qualifications (if required): public representative			
<b>Interstate Oil and Gas Compact Commission</b> (Natural Resources and Conservation)			
Mr. Donald D. Bradshaw	Governor	Richmond	5/12/2006
Fort Benton			0/0/0
Qualifications (if required): Official Representative			
Mr. Thomas P. Richmond	Governor	Halvorson	5/12/2006
Billings			0/0/0
Qualifications (if required): Associate Official Representative			
<b>Library Commission</b> (State Library)			
Mr. Donald Allen	Governor	reappointed	5/22/2006
Billings			5/22/2009
Qualifications (if required): public representative			

## BOARD AND COUNCIL APPOINTEES FROM MAY 2006

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Library Commission</b> (State Library) cont.			
Mr. Ron Moody	Governor	reappointed	5/22/2006
Lewistown			5/22/2009
Qualifications (if required): public representative			
<b>Vocational Rehabilitation Council</b> (Public Health and Human Services)			
Ms. Maureen Kenneally	Governor	Miles	5/4/2006
Butte			10/1/2008
Qualifications (if required): representative of the Workforce Investment Board			

## VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2006 through SEPTEMBER 30, 2006

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Aging Advisory Council</b> (Public Health and Human Services) Ms. Eloise England, Heart Butte Qualifications (if required): public member	Governor	7/18/2006
Ms. Wesleta Branstetter, Billings Qualifications (if required): public member	Governor	7/18/2006
Mr. George Erickson, Great Falls Qualifications (if required): public member	Governor	7/18/2006
<b>Board of Alternative Health Care</b> (Labor and Industry) Ms. Eloise Hargrove, Belgrade Qualifications (if required): public member	Governor	9/1/2006
<b>Board of Banking</b> (Administration) Mr. Jon Redlin, Lambert Qualifications (if required): state bank officer of a large size bank	Governor	7/1/2006
<b>Board of Landscape Architects</b> (Labor and Industry) Mr. Robert Broughton, Victor Qualifications (if required): licensed landscape architect	Governor	7/1/2006
<b>Board of Medical Examiners</b> (Labor and Industry) Dr. Michael D. LaPan, Sidney Qualifications (if required): licensed podiatrist	Governor	9/1/2006
Dr. Arthur K. Fink, Glendive Qualifications (if required): doctor of osteopathy	Governor	9/1/2006

## VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2006 through SEPTEMBER 30, 2006

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Board of Medical Examiners</b> (Labor and Industry) cont. Dr. Anna Earl, Chester Qualifications (if required): doctor of medicine	Governor	9/1/2006
<b>Board of Nursing</b> (Labor and Industry) Rev. Steven Rice, Miles City Qualifications (if required): public member	Governor	7/1/2006
Ms. Jeanine Thomas, Ronan Qualifications (if required): licensed practical nurse	Governor	7/1/2006
Ms. Lorena Erickson, Corvallis Qualifications (if required): public member	Governor	7/1/2006
Ms. Karen Pollington, Havre Qualifications (if required): registered professional nurse	Governor	7/1/2006
<b>Board of Pharmacy</b> (Labor and Industry) Mr. William D. Burton, Helena Qualifications (if required): licensed pharmacist	Governor	7/1/2006
<b>Board of Physical Therapy Examiners</b> (Labor and Industry) Ms. Brenda T. Mahlum, Missoula Qualifications (if required): physical therapist	Governor	7/1/2006
Ms. Judy Cole, Forsyth Qualifications (if required): public member	Governor	7/1/2006

**VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2006 through SEPTEMBER 30, 2006**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Board of Physical Therapy Examiners</b> (Labor and Industry) cont. Dr. Paul Melvin, Helena Qualifications (if required): physician	Governor	7/1/2006
<b>Board of Private Security Patrol Officers and Investigators</b> (Labor and Industry) Sheriff Ronald Rowton, Lewistown Qualifications (if required): representative of a county sheriff's department	Governor	8/1/2006
Ms. Linda Sanem, Bozeman Qualifications (if required): private investigator	Governor	8/1/2006
Ms. Mori Woods, Columbus Qualifications (if required): representative of a city police department	Governor	8/1/2006
<b>Board of Professional Engineers and Professional Land Surveyors</b> (Labor and Industry) Ms. Janet Markle, Glasgow Qualifications (if required): public member	Governor	7/1/2006
Mr. Steve Wright, Columbia Falls Qualifications (if required): professional engineer	Governor	7/1/2006
Mr. Denis Applebury, Victor Qualifications (if required): professional surveyor	Governor	7/1/2006
<b>Board of Psychologists</b> (Labor and Industry) Dr. Jay Palmatier, Missoula Qualifications (if required): psychologist licensed in public health	Governor	9/1/2006

## VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2006 through SEPTEMBER 30, 2006

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Board of Public Accountants</b> (Labor and Industry) Mr. Wayne Hoffman, Billings Qualifications (if required): licensed public accountant	Governor	7/1/2006
Mr. Gary Kasper, Fairfield Qualifications (if required): licensed public accountant	Governor	7/1/2006
<b>Board of Radiologic Technologists</b> (Labor and Industry) Mr. Thomas A. Carter, Shelby Qualifications (if required): radiologic technologist	Governor	7/1/2006
Ms. Anne Delaney, Missoula Qualifications (if required): radiologic technologist	Governor	7/1/2006
<b>Board of Research and Commercialization Technology</b> (Governor) Mr. Michael Dolson, Hot Springs Qualifications (if required): Native American	Governor	7/1/2006
<b>Board of Sanitarians</b> (Board of Sanitarians) Ms. Denise Moldroski, Livingston Qualifications (if required): registered sanitarian	Governor	7/1/2006
<b>Board of Veterans' Affairs</b> (Military Affairs) Mr. Donald Bogut, Kalispell Qualifications (if required): veteran	Governor	8/1/2006
Ms. Teresa Bell, Fort Harrison Qualifications (if required): Veterans Administration representative	Governor	8/1/2006

## VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2006 through SEPTEMBER 30, 2006

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Board of Veterinary Medicine</b> (Commerce) Dr. Jack Newman, Great Falls Qualifications (if required): licensed veterinarian	Governor	7/31/2006
<b>Board of Water Well Contractors</b> (Natural Resources and Conservation) Mr. Kevin Haggerty, Bozeman Qualifications (if required): water well contractor	Governor	7/1/2006
<b>Commission on Community Service</b> (Labor and Industry) Ms. Nancy Coopersmith, Helena Qualifications (if required): representative of K-12 education	Governor	7/1/2006
Mr. George Dennison, Missoula Qualifications (if required): representative of higher education	Governor	7/1/2006
Lt. Col. John Walsh, Helena Qualifications (if required): representative of Military Affairs	Governor	7/1/2006
Mr. Donald Kettner, Glendive Qualifications (if required): representative of private citizens	Governor	7/1/2006
<b>Committee on Telecommunications Access Services</b> (Public Health and Human Services) Ms. Lynn Harris, Missoula Qualifications (if required): audiologist	Governor	7/1/2006
Mr. David Davis, Great Falls Qualifications (if required): nondisabled senior citizen	Governor	7/1/2006



## VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2006 through SEPTEMBER 30, 2006

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Committee on Telecommunications Access Services</b> (Public Health and Human Services) cont. Ms. Christy Keto, Havre Qualifications (if required): representative of an interLATA interexchange carrier	Governor	7/1/2006
<b>Community Service Commission</b> (Labor and Industry) Mr. John Ilgenfritz, Helena Qualifications (if required): representative of disaster and emergency services	Governor	7/1/2006
<b>Economic Development Advisory Council</b> (Commerce) Mr. Steve Holland, Bozeman Qualifications (if required): public member	Governor	7/23/2006
Mr. Jim Atchison, Colstrip Qualifications (if required): public member	Governor	7/23/2006
Ms. Erin Lutts, Glendive Qualifications (if required): public member	Governor	7/23/2006
Ms. Elizabeth Harris, Whitefish Qualifications (if required): public representative	Governor	7/23/2006
<b>Family Education Savings Oversight Committee</b> (Commissioner of Higher Education) Mr. Frank D'Angelo, Missoula Qualifications (if required): public member	Governor	7/1/2006
<b>Historical Records Advisory Board</b> (Historical Society) Mr. Kim Allen Scott, Bozeman Qualifications (if required): Public Representative	Governor	9/7/2006

## VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2006 through SEPTEMBER 30, 2006

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Historical Records Advisory Board</b> (Historical Society) cont. Ms. Jodie Foley, Helena Qualifications (if required): State Archivist	Governor	9/7/2006
<b>Information Technology Managers Council</b> (Administration) Mr. Mike Boyer, Glasgow Qualifications (if required): none specified	Director	7/1/2006
Mr. Barney Benkelman, Helena Qualifications (if required): none specified	Director	7/1/2006
Mr. David Nagel, Helena Qualifications (if required): none specified	Director	7/1/2006
Mr. Hank Trenk, Helena Qualifications (if required): none specified	Director	7/1/2006
Ms. Karen Hruska, Helena Qualifications (if required): none specified	Director	7/1/2006
Ms. Kathy James, Helena Qualifications (if required): none specified	Director	7/1/2006
Mr. Homer Young, Helena Qualifications (if required): none specified	Director	7/1/2006
Ms. Dulcy Hubbert, Helena Qualifications (if required): none specified	Director	7/1/2006

# **VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2006 through SEPTEMBER 30, 2006**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Information Technology Managers Council</b> (Administration) cont.		
Mr. Bob Morris, Helena Qualifications (if required): none specified	Director	7/1/2006
Mr. Mike Jacobson, Helena Qualifications (if required): none specified	Director	7/1/2006
Mr. Ken Kops, Helena Qualifications (if required): none specified	Director	7/1/2006
Mr. Dan Chelini, Helena Qualifications (if required): none specified	Director	7/1/2006
Ms. Edwina Dale, Helena Qualifications (if required): none specified	Director	7/1/2006
Mr. Steve Tesinsky, Helena Qualifications (if required): none specified	Director	7/1/2006
Mr. Paul Gilbert, Helena Qualifications (if required): none specified	Director	7/1/2006
Mr. Mark Sheehan (city not listed) Qualifications (if required): none specified	Director	7/1/2006
Mr. Dan Forbes, Helena Qualifications (if required): none specified	Director	7/1/2006

# **VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2006 through SEPTEMBER 30, 2006**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Information Technology Managers Council</b> (Administration) cont.		
Mr. Dick Clark, Helena Qualifications (if required): none specified	Director	7/1/2006
Mr. Robin Trenbeath, Helena Qualifications (if required): none specified	Director	7/1/2006
Mr. John Daugherty, Helena Qualifications (if required): none specified	Director	7/1/2006
Mr. Mike Walsh, Helena Qualifications (if required): none specified	Director	7/1/2006
Mr. Damon Murdo, Helena Qualifications (if required): none specified	Director	7/1/2006
Ms. Karen Nelson, Helena Qualifications (if required): none specified	Director	7/1/2006
Mr. Aaron Mook, Helena Qualifications (if required): none specified	Director	7/1/2006
Ms. Kristin Han, Helena Qualifications (if required): none specified	Director	7/1/2006
Mr. Jack Zanto, Helena Qualifications (if required): none specified	Director	7/1/2006

# **VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2006 through SEPTEMBER 30, 2006**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Information Technology Managers Council</b> (Administration) cont. Mr. David de Gil, Helena Qualifications (if required): none specified	Director	7/1/2006
Ms. Margaret Kauska, Helena Qualifications (if required): none specified	Director	7/1/2006
Mr. James Thomas, Helena Qualifications (if required): none specified	Director	7/1/2006
Ms. Stacy Ripple, Helena Qualifications (if required): none specified	Director	7/1/2006
<b>Montana Historical Society Board of Trustees</b> (Historical Society) Mr. Robert Morgan, Clancy Qualifications (if required): public member	Governor	7/1/2006
Mr. Larry McRae, Missoula Qualifications (if required): public member	Governor	7/1/2006
Ms. Judy Cole, Forsyth Qualifications (if required): public member	Governor	7/1/2006

**VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2006 through SEPTEMBER 30, 2006**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Montana Mint Committee</b> (Agriculture) Mr. Ken Smith, Kalispell Qualifications (if required): mint grower	Governor	7/1/2006
Mr. Charlie Jaquette, Kalispell Qualifications (if required): mint grower	Governor	7/1/2006
<b>Montana Wheat and Barley Committee</b> (Agriculture) Mr. Dan DeBuff, Shawmut Qualifications (if required): representative of District V and a Republican	Governor	8/20/2006
Mr. Brian Kaae, Dagmar Qualifications (if required): representative of District I and a Democrat	Governor	8/20/2006
Ms. Karen Schott, Broadview Qualifications (if required): representative of District VI and a Democrat	Governor	8/20/2006
<b>Public Defender Commission</b> (Administration) Mr. Doug Kaercher, Havre Qualifications (if required): public representative nominated by the Senate President	Governor	7/1/2006
Mr. Stephen Nardi, Kalispell Qualifications (if required): attorney nominated by the Montana State Bar	Governor	7/1/2006
Ms. Theda New Breast, Babb Qualifications (if required): member of an organization advocating on behalf of racial minorities	Governor	7/1/2006

## VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2006 through SEPTEMBER 30, 2006

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>State Banking Board</b> (Administration) Mr. Russ Ritter, Helena Qualifications (if required): public member	Governor	7/1/2006
<b>State Electrical Board</b> (Commerce) Mr. Tony Martel, Bozeman Qualifications (if required): public member	Governor	7/1/2006
<b>Teachers' Retirement Board</b> (Administration) Ms. Mona Bilden, Miles City Qualifications (if required): teacher who is active in the retirement system	Governor	7/1/2006
Mr. Darrell Layman, Glendive Qualifications (if required): retired teacher	Governor	7/1/2006
<b>Telecommunications Access Services</b> (Public Health and Human Services) Mr. Eric Eck, Helena Qualifications (if required): representative of the Montana Public Service Commission	Governor	7/1/2006
<b>Tourism Advisory Council</b> (Commerce) Mr. Clark Whitehead, Lewistown Qualifications (if required): representative of Russell County and a federal agency	Governor	7/1/2006
Mr. Richard J. Young, Brockton Qualifications (if required): representative of Missouri River Country and Tribal Government	Governor	7/1/2006
Ms. Mary Ellen Schnur, Townsend Qualifications (if required): representative of Gold West Country	Governor	7/1/2006

**VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2006 through SEPTEMBER 30, 2006**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Tourism Advisory Council</b> (Commerce) cont. Mr. Mark Browning, Miles City Qualifications (if required): representative of Custer Country	Governor	7/1/2006
Mr. Michael Morrison, Great Falls Qualifications (if required): representing Russell Country	Governor	7/1/2006
Ms. Dyani Bingham, Billings Qualifications (if required): public member from Custer Country	Governor	7/1/2006