

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 23

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 The notice section contains state agencies' proposed new, amended or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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

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BEFORE THE DEPARTMENT OF COMMERCE  
STATE OF MONTANA

|                                  |                           |
|----------------------------------|---------------------------|
| In the matter of the proposed )  | NOTICE OF PROPOSED REPEAL |
| repeal of ARM 8.2.102, )         |                           |
| 8.2.103, 8.2.104, 8.2.105, and ) |                           |
| 8.2.106 relating to model )      |                           |
| rules exceptions of the board )  | NO PUBLIC HEARING         |
| of milk control and state )      | CONTEMPLATED              |
| banking board )                  |                           |

TO: All Concerned Persons

1. On January 20, 2004, the department proposes to repeal the above-stated rules relating to procedures for the Board of Milk Control and the State Banking Board.

2. The Department of Commerce will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Commerce no later than 5:00 p.m. on January 5, 2004, to advise us of the nature of the accommodation that you need. Please contact Marty Tuttle, 301 South Park Ave., 2nd Floor, P.O. Box 200501, Helena, MT 59620-0501; telephone (406) 841-2706; Fax (406) 841-2701; e-mail matuttle@state.mt.us.

3. The department proposes to repeal the following rules:

8.2.102 EXCEPTION - MILK CONTROL - NOTICE OF HEARING on page 8-19 of the Administrative Rules of Montana.

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

8.2.103 EXCEPTION - MILK CONTROL - PERSONAL SERVICE on page 8-19 of the Administrative Rules of Montana.

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

REASON: During the 1995 Legislative Session, the Fifty-Fourth Legislature enacted House Bill 280 which generally revised the laws relating to milk control and reallocated the board of milk control from the department of commerce to the department of livestock. Therefore, these procedural rules are no longer applicable and should be repealed.

8.2.104 EXCEPTION - STATE BANKING BOARD - CONTESTED CASES on page 8-19 of the Administrative Rules of Montana.

AUTH: Sec. 2-4-202, MCA

IMP: Sec. 2-4-201, MCA

8.2.105 EXCEPTION - STATE BANKING BOARD - NOTICE OF INTENDED AGENCY ACTION on page 8-20 of the Administrative Rules of Montana.

AUTH: Sec. 2-4-202, MCA

IMP: Sec. 2-4-201, MCA

8.2.106 EXCEPTION - STATE BANKING BOARD - PRE-HEARING DISCOVERY on page 8-20 of the Administrative Rules of Montana.

AUTH: Sec. 2-4-202, MCA

IMP: Sec. 2-4-201, MCA

REASON: During the 2001 Legislative Session, the Fifty-Seventh Legislature enacted Senate Bill 445 which generally revised the laws governing the department of commerce and reassigned certain functions of the department of commerce to other entities. Therefore, these procedural rules are no longer applicable and should be repealed.

4. Concerned persons may submit their data, views or arguments concerning the proposed action in writing to the Department of Commerce, 301 South Park Ave., 2nd Floor, P.O. Box 200501, Helena, MT 59620-0501, by facsimile to (406) 841-2701, or by e-mail to matuttle@state.mt.us to be received no later than 5:00 p.m., January 12, 2004.

5. If persons who are directly affected by the proposed action wish to express their data, views or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit the request along with any comments they have to the Department of Commerce, 301 South Park Ave., 2nd Floor, P.O. Box 200501, Helena, MT 59620-0501, by facsimile to (406) 841-2701, or by e-mail to matuttle@state.mt.us to be received no later than 5:00 p.m., January 12, 2004.

6. If the department receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of those persons who are directly affected by the proposed action, from the appropriate administrative rule committee of the legislature, from a governmental agency or subdivision, or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be five persons based on the number of people within procedural rules of the department.

7. The Department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by

the Department. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding any specific topic or topics over which the department has rulemaking authority. The written request may be mailed or delivered to the Department of Commerce, P.O. Box 200501, Helena, MT 59620-0501, faxed to the Department at (406) 841-2701, e-mailed to lholm@state.mt.us, or submitted at any rules hearing held by the Department.

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

DEPARTMENT OF COMMERCE

By: /s/ MARK A. SIMONICH  
MARK A. SIMONICH, DIRECTOR  
DEPARTMENT OF COMMERCE

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

Certified to the Secretary of State, December 1, 2003.

BEFORE THE FISH, WILDLIFE AND PARKS COMMISSION  
OF THE STATE OF MONTANA

In the matter of the adoption of ) NOTICE OF PUBLIC HEARING  
new rule I, and the amendment of ) ON PROPOSED ADOPTION AND  
ARM 12.11.501 and 12.11.2205, ) AMENDMENT  
pertaining to a no wake zone )  
adjacent to Yellow Bay on )  
Flathead Lake )

TO: All Concerned Persons

1. On January 17, 2004, at 3:30 p.m. a public hearing will be held at the Region One Fish, Wildlife and Parks Headquarters, 490 North Meridian Road, Kalispell, Montana, to consider the adoption of new rule I, and the amendment of ARM 12.11.501 and 12.11.2205 pertaining to a no wake zone adjacent to Yellow Bay on Flathead Lake.

2. The Fish, Wildlife and Parks Commission (commission) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m. on December 24, 2003, to advise us of the nature of the accommodation that you need. Please contact Edward Kelly, Fish, Wildlife and Parks, 490 North Meridian Road, Kalispell, MT 59901; telephone (406) 751-4561; fax (406) 257-0349; email ekelly@state.mt.us.

3. The proposed new rule provides as follows:

NEW RULE I FLATHEAD LAKE (1) Flathead Lake is located in Flathead and Lake counties.

(2) In Lake County, Flathead Lake is limited to a controlled no wake speed, as defined in ARM 12.11.101(1), in the following area:

(a) Yellow Bay from the north side of the Yellow Bay state boat ramp, southwest across Yellow Bay to the southernmost extent of the peninsula known as Yellow Bay Point, as marked by signed buoys.

(3) In Flathead County, Flathead Lake is limited to a controlled no wake speed, as defined in ARM 12.11.101(1), in the following area:

(a) Bigfork Bay to a point approximately 100 yards west of the Highway 35 bridge as marked by signed buoys.

AUTH: 23-1-106, 87-1-303, MCA

IMP: 23-1-106, 87-1-303, MCA

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

12.11.501 LIST OF WATER BODIES (1) The following is a list of specific regulations on bodies of water with the reference where the rules regarding those bodies of water are located:

(a) through (ag) remain the same.

(ah) Flathead Lake

ARM 12.11.2205 &  
[New Rule I]

(ai) through (co) remain the same.

AUTH: 23-1-106, 87-1-303, MCA

IMP: 23-1-106, 87-1-303, MCA

12.11.2205 FLATHEAD LAKE (1) Flathead Lake is located in Flathead ~~County~~ and Lake counties.

(2) In Flathead County, Flathead Lake is limited to a controlled no wake speed, as defined in ARM 12.11.101(1), in the following areas:

(a) Bigfork Bay to a point approximately 100 yards west of the Highway 35 bridge as marked by signed buoys.

(3) In Lake County, Flathead lake is limited to a controlled no wake speed, as defined in ARM 12.11.101(1), in the following area:

(a) Yellow Bay from the north side of the Yellow Bay state boat ramp, southwest across Yellow Bay to the southernmost extent of the peninsula known as Yellow Bay Point, as marked by signed buoys.

AUTH: 23-1-106, 87-1-303, MCA

IMP: 23-1-106, 87-1-303, MCA

5. This rulemaking proposal is in response to a petition from the University of Montana which was presented at the November 13, 2003 commission meeting. The commission concluded that public input was necessary before new restrictions were adopted and directed this notice be filed for that purpose.

The University of Montana stated the following reasons for proposing that the commission adopt no wake restrictions at Yellow Bay: Yellow Bay is occasionally used by jet boats and water skiers that are a hazard to the Flathead Lake bio station's research and teaching activities. Both scientific equipment and personnel are deployed from small boats and platforms in the proposed no-wake zone. Ski boats, jet skis, and similar rapidly moving watercraft have been and will continue to be a hazard to themselves, the researchers, and students, and to expensive scientific equipment.

Section (3) of new rule I is not new material. This restriction is in effect and already appears in ARM 12.11.2205. This material appears in the proposed new rule also because of the organization of department and commission rules.

6. Concerned persons may present their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to Edward Kelly, Fish, Wildlife and Parks, 490 North Meridian Road, Kalispell, MT; telephone (406) 751-4561; fax (406) 257-0349; or email at ekelly@state.mt.us and must be received no later than January 30, 2004.

7. Rebecca Dockter, or another hearing officer appointed by the department, has been designated to preside over and conduct the hearing.

8. The department maintains a list of interested persons who wish to receive notice of rulemaking actions proposed by this department or commission. Persons who wish to have their name added to the list shall make written request which includes the name and mailing address of the person to receive the notice and specifies the subject or subjects about which the person wishes to receive notice. Such written request may be mailed or delivered to Fish, Wildlife and Parks, Legal Unit, P.O. Box 200701, 1420 East Sixth Avenue, Helena, MT 59620-0701, faxed to the office at (406) 444-7456, or may be made by completing the request form at any rules hearing held by the department.

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

/s/ M. Jeff Hagener  
M. Jeff Hagener, Secretary  
Fish, Wildlife and Parks  
Commission

/s/ Rebecca Dockter  
Rebecca Dockter  
Rule Reviewer

Certified to the Secretary of State December 1, 2003



BEFORE THE FISH, WILDLIFE AND PARKS COMMISSION  
OF THE STATE OF MONTANA

In the matter of the amendment            ) AMENDED NOTICE OF PUBLIC  
of ARM 12.11.640 pertaining to a        ) HEARING ON PROPOSED  
no wake zone on the Swan River        ) AMENDMENT

TO: All Concerned Persons

1. On October 30, 2003, the Fish, Wildlife and Parks Commission (commission) published MAR Notice No. 12-297 at page 2348 of the 2003 Montana Administrative Register, Issue Number 20 regarding a public hearing on the proposed amendment of the above-stated rule. The notice of proposed agency action is amended as follows because the time and date of the hearing has been changed to January 17, 2004 at 3:30 p.m. at the Region One Fish, Wildlife and Parks Headquarters, 490 North Meridian Road, Kalispell, Montana.

2. The commission will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m. on December 26, 2003, to advise us of the nature of the accommodation that you need. Please contact Edward Kelly, Fish, Wildlife and Parks, 490 North Meridian Road, Kalispell, MT 59901; telephone (406) 751-4561; fax (406) 257-0349; email [ekelly@state.mt.us](mailto:ekelly@state.mt.us).

3. 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 Edward Kelly, Fish, Wildlife and Parks, 490 North Meridian Road, Kalispell, MT 59901; telephone (406) 751-4561; fax (406) 257-0349; or email at [ekelly@state.mt.us](mailto:ekelly@state.mt.us) and must be received no later than January 30, 2004.

4. Rebecca Dockter, or another hearing officer appointed by the department, has been designated to preside over and conduct the hearing.

5. The department maintains a list of interested persons who wish to receive notice of rulemaking actions proposed by this department or commission. Persons who wish to have their name added to the list shall make written request which includes the name and mailing address of the person to receive the notice and specifies the subject or subjects about which the person wishes to receive notice. Such written request may be mailed or delivered to Fish, Wildlife and Parks, Legal Unit, P.O. Box 200701, 1420 East Sixth Avenue, Helena, MT 59620-0701, faxed to the office at (406) 444-7456, or may be made by completing the request form at any rules hearing held by the department.

/s/ M. Jeff Hagener  
M. Jeff Hagener, Secretary  
Fish, Wildlife and Parks  
Commission

/s/ Rebecca Dockter  
Rebecca Dockter  
Rule Reviewer

Certified to the Secretary of State December 1, 2003

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

|                                 |                          |
|---------------------------------|--------------------------|
| In the matter of the proposed ) | NOTICE OF PUBLIC HEARING |
| amendment of ARM 24.29.902, )   | ON PROPOSED AMENDMENT,   |
| 24.29.929, 24.29.954, )         | ADOPTION, AND REPEAL     |
| 24.29.956, 24.29.966 and )      |                          |
| 24.29.971; the proposed )       |                          |
| adoption of NEW RULE I )        |                          |
| through NEW RULE III, and the ) |                          |
| proposed repeal of ARM )        |                          |
| 24.29.905, 24.29.921 through )  |                          |
| 24.29.928, 24.29.951, )         |                          |
| 24.29.955 and 24.29.961, )      |                          |
| relating to workers' )          |                          |
| compensation assessments )      |                          |

TO: All Concerned Persons

1. On January 9, 2004, at 1:00 p.m. the Department of Labor and Industry will hold a public hearing in the first floor conference room (Room 104) of the Walt Sullivan Building, 1327 Lockey, Helena, Montana, to consider the proposed amendment, adoption and repeal of the above-stated rules.

2. The Department of Labor and Industry will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department no later than 5:00 p.m., January 5, 2004, to advise us of the nature of the accommodation that you need. Please contact the Employment Relations Division, Workers' Compensation Regulation Bureau, Attn: Jeanne Johns, P.O. Box 8011, Helena, Montana 59624-8011; telephone (406) 444-7710, fax (406) 444-3465, TDD (406) 444-5549, or email jjohns@state.mt.us.

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

24.29.902 DEFINITIONS For the purpose of this subchapter, the following definitions apply, unless the context of the rule clearly indicates otherwise:

~~(1) "Allocation" means the manner in which direct and indirect costs are distributed to an individual plan.~~

(2) ~~(1) "Administrative assessment"~~ "Administration fund assessment" means the workers' compensation ~~administrative~~ administration fund assessment provided for by 39-71-201, MCA.

(2) "Advisory organization" means the workers' compensation advisory organization designated by the insurance commissioner as defined by 33-16-1023, MCA. The current advisory organization is the national council on compensation insurance.

~~(3) "Associated entity" means a governmental body, other than the department, which has statutory duties related to workers' compensation and occupational disease matters, occupational safety acts, and from July 1, 1995 through April 24, 1997 boiler inspections, and which is funded by the administrative assessment. The workers' compensation court is an example of an "associated entity". The term does not include the state fund or the self insurers guaranty fund, or any other entity not funded in whole or in part by the administrative assessment.~~

~~(4) "Cost object" means any activity for which a separate measurement of costs is desired for distribution to the plans.~~

~~(5) "Department" means the department of labor and industry.~~

~~(6) "Direct costs identifiable to a plan" means those costs that can be identified specifically with a particular program and also identified with an individual plan without further allocation.~~

~~(7) "Direct costs identifiable to a program" means those costs that can be identified specifically with a particular program, and which are allocated to the plans.~~

~~(8) "Indirect costs" means those costs incurred for a common or joint purpose benefiting more than one program, and which are not readily assignable to the program specifically benefited without effort disproportionate to the results achieved.~~

~~(9) "Plans" or "the plans" means plan No. 1, plan No. 2, and plan No. 3, under which workers' compensation insurance is to be provided in accordance with Title 39, chapter 71, MCA. It is distinguished from the phrase "individual plan", which means a particular plan, such as plan No. 1, plan No. 2, or plan No. 3.~~

~~(10) "Program" means one or more regulatory, adjudicatory, informational, or service functions performed by the department or an associated entity in carrying out statutory directives related to workers' compensation and occupational safety matters. The term does not include the uninsured employers' fund, established by 39-71-502, MCA, the subsequent injury fund, as defined in 39-71-901, MCA, or any other function which is not funded by the administrative assessment.~~

(3) "Industrial accident rehabilitation account" or "IARA" has the same meaning as provided by 39-71-1004, MCA.

(4) "Indemnity" means all payments made to a claimant or beneficiary, other than medical benefits and the miscellaneous expense costs described in ARM 24.29.954 which are not included in the paid losses used for calculating the assessment and surcharge rate.

(5) "Insurer" has the same meaning as provided by 39-71-116, MCA. The term does not include the uninsured employers' fund as provided for by 39-71-503, MCA, or the subsequent injury fund as provided for by 39-71-901, MCA.

(6) "New fund claims" means claims administered by the plan No. 3 insurer, where the claims arise from an injury or occupational disease that occurred on or after July 1, 1990.

(7) "Old fund claims" means claims administered by the plan No. 3 insurer, where the claims arose from an injury or occupational disease that occurred before July 1, 1990.

(8) "Other income" means any revenue account that has an offsetting cash deposit or withdrawal which includes, but is not limited to, revenue accounts such as long term bond income, short term investment pool (STIP) participant earnings, or STIP security lending items, but expressly does not include any surcharge or assessment amounts.

(9) "Paid losses" are as defined in 39-71-915, MCA.

(10) "Payment" means the tender of funds to the department for a monetary obligation due directly from an insurer. In the context of this subchapter, the term is used when an insurer is directly liable for the underlying obligation.

(11) "Remittance" means the tender of funds to the department, where the funds are collected by an insurer from a policyholder. In the context of this subchapter, the term is used to refer to an insurer's tender to the department of surcharges collected by an insurer from its policyholders, where the underlying obligation rests on a policyholder, not the insurer.

(12) "SIF" means the subsequent injury fund as defined by 39-71-901, MCA.

~~(11) "Year" means the state government fiscal year, beginning July 1 and ending the following June 30 of the year indicated.~~

AUTH: 39-71-203, MCA

IMP: 39-71-201, 39-71-915, 39-71-1004 and 39-71-2352, MCA

REASON: There is reasonable necessity to amend this rule in order to consolidate definitions for this subchapter into a single rule for the convenience of the public, and to conform definitions to statute in light of statutory changes made in 2001 by SB 164 (Chapter 214, L. 2001). Additional definitions have been revised or eliminated in order to avoid unnecessary repetition of statutory language, and to remove obsolete terminology no longer used by the department.

The term "indemnity" has been defined because it replaces the term "compensation," in several instances. This language change is made because the Montana Supreme Court decision Lockhart v. New Hampshire Ins. Co., 1999 MT 205, 295 Mont. 467, 984 P.2d 744, and related case law, has stated that the term "compensation" includes medical benefits. Therefore the term "indemnity" is used to include all payments made to a claimant or beneficiary other than medical benefits, and the miscellaneous expense costs described in ARM 24.29.954 that are not included in paid losses used for calculating the assessment and surcharge rate.

24.29.929 ASSESSMENTS OTHER THAN ADMINISTRATIVE THE ADMINISTRATION FUND ASSESSMENT ~~(1) In addition to the administrative assessment provided by 39-71-201, MCA, the~~

~~department may levy other assessments on the plans as permitted by law.~~

~~(a) As provided by 39-71-902, MCA, for years 1992 through 1997, the department may assess each insurer an amount not to exceed 5% of compensation paid in the preceding fiscal year by each plan No. 1 self insurer, plan No. 2 private insurer, or plan No. 3, the state fund, for the purpose of funding the subsequent injury fund. The assessment will not be made when there is a surplus above and beyond projected liabilities and administrative expenditures necessary to fund the liabilities and administrative expenditures of the subsequent injury fund based on the most current actuarial study.~~

~~(b) As provided by 39-71-1004, MCA, the department may make an assessment of not more than 1% of compensation paid by each plan No. 1 self insurer, plan No. 2 private insurer, or plan No. 3, the state fund, for the purpose of funding the industrial accident rehabilitation account.~~

~~(c) Beginning January 1, 1998, assessments for the subsequent injury fund will be made as provided by 39-71-915, MCA.~~

~~(2)(1) The department may combine the billing for any or all of the other assessments described in this rule with the billing for the administrative assessment. administration fund, SIF, and IARA assessments into one bill.~~

~~(3) Payment of the bill for the assessments described in (1)(a) and (1)(b) is due 30 days from the date of the bill.~~

AUTH: 39-71-203, MCA

IMP: ~~39-71-902~~ 39-71-201, 39-71-915 and 39-71-1004, MCA

REASON: There is reasonable necessity to amend this rule in order to conform the language to statute, and to remove references to assessment methodology used for fiscal years 1992 through 1999, which is no longer needed or used by the department because assessments have been billed and paid for those years. Additional changes have been made to eliminate repealed statutory references and to avoid unnecessary repetition of statutory language, particularly because many stricken provisions in this rule have now become a part of statute at 39-71-201, MCA.

24.29.954 CALCULATION OF AMOUNT OF INSURER'S ADMINISTRATIVE ADMINISTRATION FUND ASSESSMENT (1) The ~~administrative~~ administration fund assessment ~~on each insurer~~ is calculated on the total amount of ~~compensation benefits paid each year by the insurer for Montana claims and the total amount of medical benefits paid each year by the insurer for Montana claims subject to a limit of \$200,000 per claim for medical benefits.~~ paid losses as described at 39-71-201, MCA.

(2) Compensation Indemnity benefits paid include periodic and lump-sum payments for:

(a) through (d) remain the same.

(e) ~~compensation for~~ loss of hearing, whether under the Workers' Compensation or Occupational Disease Acts;

- (f) through (h) remain the same.
- (i) ~~compensation benefits in subsequent injury fund SIF~~ cases, to the extent paid by the insurer and not reimbursed by the SIF;
- (j) remains the same.
- (k) ~~compensation~~ benefits paid pursuant to 39-71-608, MCA; and
  - (1) remains the same.
  - (3) Medical benefits paid include payments for:
    - (a) medical and dental ~~services~~ treatment;
    - (b) through (4) remain the same.
  - (5) Benefits paid include any amount paid by the insurer or the employer, ~~irrespective regardless~~ of any deductible paid by the employer or reimbursements to the insurer from reinsurance or excess insurance other than by the claimant. Co-payments actually made by the claimant are not considered to be "benefits paid" for the purposes of this rule.
  - (6) Each insurer must report, in the format required by the department, the ~~compensation paid and the indemnity and~~ medical benefits paid in the preceding year ~~by not no~~ later than March 1 of each year. ~~The insurer must multiply, by the statutory rate of 3%, the total compensation paid and total medical benefits paid by the insurer, up to an aggregate total of \$200,000 per claim, to calculate the amount of that insurer's administrative assessment.~~
    - (a) The Plan plan No. 3 insurer, ~~the state fund~~, must report the amount of compensation benefits and medical benefits paid on old fund claims separately from those amounts expended on new fund claims.
    - (7) The administration fund assessment is payable directly to the department by the following entities:
      - (a) all plan No. 1 insurers;
      - (b) a plan No. 2 insurer that has paid indemnity or medical benefits in the prior year, and has reported no premium earned in that prior year, must pay directly to the department an administration fund assessment pursuant to 39-71-201, MCA; and
      - (c) the plan No. 3 insurer for old fund claims.
    - ~~(7)(8)~~ The minimum amount of the administrative administration fund assessment for an insurer is calculated as outlined in 39-71-201, MCA. \$500.00, regardless of the amount of benefits paid or length of time that the insurer has been authorized to act as an insurer in Montana.
    - ~~(8)(9)~~ The following costs or expenses of administering a claim are not included in the calculation of the administrative assessment: Miscellaneous expense costs are not included in the calculation of the administration fund assessment. Miscellaneous expense costs are all workers' compensation or occupational disease costs incurred by an insurer other than indemnity or medical benefits paid. These costs include, but are not limited to:
      - (a) through (d) remain the same.

(e) various other miscellaneous costs that do not constitute ~~a compensation~~ an indemnity benefit or medical benefit provided to the claimant or beneficiary.

~~(9)~~(10) In the event an insurer submits an amended report identifying ~~compensation paid~~ indemnity and medical benefits paid after the time specified in (6), the department will compare the amended report with the initial report ~~and~~:

(a) ~~If~~ if the amended report results in a change in the amount of ~~administrative administration fund~~ assessment owed by the ~~insurer~~ insurers identified in (7) of ~~\$50.00~~ \$100.00 or more, ~~the insurer will have to adjust its next payment to the department accordingly~~ the department will bill each affected insurer for the additional amount owed;

(b) if the amended report indicates the insurers identified in (7) have overpaid their administration fund assessment by more than \$100.00, the department may credit the overpayment to each affected insurer's following year's assessment period; or

(c) if the amended report results in a change in the amount of the administration fund assessment surcharge, the department will adjust the following year's administration fund assessment surcharge to reflect that change.

(10) remains the same but is renumbered (11).

(12) In determining the amount to be collected through the administration fund assessment, after considering the adjustments made in ARM 24.29.956, the department shall compare the amount actually collected for the administration fund in a given fiscal year to the actual amounts expended from the workers' compensation administration fund for that fiscal year.

(a) As described in 39-71-201, MCA, the "amount collected for a given fiscal year" includes monies intended to cover that fiscal year's assessment, which include:

(i) payment or remittance received by July 1 of the prior fiscal year;

(ii) payment, remittance, or other income received during the current fiscal year; and

(iii) payment or remittance received in the following fiscal year which arrives after the due date but prior to the calculation of the following year's assessment.

(b) The comparison must be done after the due date for the final premium surcharge payments applicable to that fiscal year to be received by the department.

(c) Any amount that is greater than the actual expenditures for the given fiscal year must be allocated to each plan on a proportionate basis toward the following year's calculation of the administration assessment.

(d) Any monies received after the following year's assessment surcharge has been calculated will be credited for the year in which those monies were received.

AUTH: 39-71-203, MCA

IMP: 39-71-201, 39-71-203 and 39-71-209, MCA



REASON: There is reasonable necessity to amend this rule in order to conform language to statute in light of statutory changes made in 2001 by SB 164 (Chapter 214, L. 2001). The term "indemnity" has replaced the term "compensation" in these rules in light of the Montana Supreme Court decision Lockhart v. New Hampshire Ins. Co., 1999 MT 205, 295 Mont. 467, 984 P.2d 744, and related case law, which has stated that the term "compensation" includes medical benefits. The term "indemnity" is used to include all payments made to a claimant or beneficiary other than medical benefits.

24.29.956 COMPUTATION AND COLLECTION OF THE ADMINISTRATION FUND ASSESSMENT PREMIUM SURCHARGE RATE FOR THE ADMINISTRATIVE ASSESSMENT FOR PLAN NO. 2 AND NO. 3 (1) ~~The department will compute the premium surcharge rate for the administrative assessment to be paid by all employers insured by plan No. 2 insurers and by the plan No. 3 insurer in the manner provided by statute 39-71-201, MCA. for the Plan No. 2 insurers. The premium surcharge rate will apply to all Plan No. 2 insurers. The premium surcharge rate will apply to all Plan No. 2 insurers.~~

(a) In calculating the total administration fund assessment premium surcharge rate, the department will use premium reported to the insurance commissioner pursuant to 33-2-705, MCA, and premium reported by the plan No. 3 insurer.

(b) If premium has not been reported to the insurance commissioner by the date the surcharge is computed, the department will use the premiums reported on the quarterly surcharge forms in computing the surcharge rate.

(c) A plan No. 2 insurer who has failed to report premium earned to the insurance commissioner, pursuant to 33-2-705, MCA, as of the date the surcharge is computed must pay an assessment of \$500.00 and the department will use an estimated premium amount for purposes of the surcharge calculation.

(d) The resulting single premium surcharge rate will apply to all employers being insured by plan No. 2 insurers and the plan No. 3 insurer.

(2) ~~The department will compute the premium surcharge rate for the administrative assessment in the manner provided by statute for Plan No. 3, the state fund. Pursuant to 39-71-2352, MCA, old fund claims can not be paid using premiums collected on wages paid on or after July 1, 1990, and the administrative assessment attributable to the old fund claims must be paid from such funds as are available for that purpose. Accordingly, the premium surcharge rate for Plan No. 3, the state fund, will be calculated only with regards to the portion of the administrative assessment attributable to new fund claims. In determining the premium surcharge for the coming fiscal year, the department shall compare the total amount of premium surcharge remitted by all plan No. 2 insurers and the plan No. 3 insurer for the most recently completed fiscal year to the amount of the administration fund assessment that the premium surcharge was calculated to fund.~~

(a) If the amount actually collected is greater than 3% of paid losses from the prior assessment, the department shall subtract the excess amount from the 3% of paid losses for the next assessment. If the amount actually collected is less than the 3% of paid losses from the prior assessment, the department shall add the underfunded amount to the 3% of paid losses for the next assessment.

(b) For the purpose of calculating the surcharge, late payments and remittances will not be considered if received after the new surcharge rate has been calculated. Instead, the payments and remittances will be considered for the purpose of surcharge calculation as if made for the fiscal year in which they were received.

(3) The administration fund assessment premium surcharge rate is effective for policies written or renewed on or after July 1 of each year. For policies written or renewed during the fiscal year, the current surcharge rate will apply to all payments made during the policy year regardless of any changes in the surcharge rate effective as of the next fiscal year.

(4) Insurers may address over-collections or overpayments in the following manner:

(a) Any over-collection of the administration fund assessment premium surcharge from a policyholder by the insurer may be refunded by the insurer, or applied to premium or future surcharge payments due from the policyholder to the insurer. An accounting of the payment shall be provided by the insurer to the policyholder.

(b) If a surcharge remittance from an insurer to the department is later determined to include an overpayment, the insurer may deduct the amount overpaid from the next surcharge remittance due from the insurer to the department. The insurer shall maintain records documenting any surcharge amounts refunded to its policyholders.

(5) If an insurer uses a deposit placed by a policyholder for payment of premium, the deposit must also be used for payment of the administration fund assessment premium surcharge. If the amount of the deposit is insufficient to cover both the cost of the premium and the surcharge, the deposit must first be applied to the surcharge and the remaining amount to the premium due.

~~(3)~~(6) Each ~~Plan~~ plan No. 2 insurer and ~~Plan~~ the plan No. 3, ~~the state fund insurer~~ is responsible for correctly calculating the amount of the authorized premium surcharge for the ~~administrative~~ administration fund assessment that the insurer is to collect from each of its insured employers using the rate established by the department. Because the insurer, not the department, calculates the amount of premium due from the employer, disputes between the insurer and the insured regarding the amount of the premium surcharge are not disputes over which the department has jurisdiction.

~~(4)~~(7) Each ~~Plan~~ plan No. 2 insurer and ~~Plan~~ the plan No. 3, ~~the state fund insurer~~ shall maintain reasonable records showing the total amount of premium surcharge billed ~~to its insureds~~ for each policyholder and the total amount of premium

surcharge actually collected from each policyholder. The department may inspect those records.

(8) All uninsured employers may be assessed a penalty surcharge based on what would have been charged had the employer been enrolled by the plan No. 3 insurer.

AUTH: 39-71-203, MCA

IMP: 39-71-201, 39-71-203, and 39-71-2352, MCA

REASON: There is reasonable necessity to amend this rule in order to conform language to statute in light of statutory changes made in 2001 by SB 164 (Chapter 214, L. 2001), and to clarify the process the department will use to calculate and bill the assessments when implementing the basic assessment methodology provided for in 39-71-201, MCA.

24.29.966 INDUSTRIAL ACCIDENT REHABILITATION ACCOUNT ASSESSMENT (1) and (2) remain the same.

(3) All insurers operating in the same plan will be assessed the same percentage rate, regardless of whether or not that particular insurer requested funds pursuant to 39-71-1003, MCA. Because the IARA assessments paid by each of the three compensation plans are segregated by plan, the department may assess ~~Plan~~ plan No. 1 insurers at a different rate than ~~Plan~~ plan No. 2 insurers or ~~Plan~~ the plan No. 3, ~~the state fund insurer~~.

(4) The IARA assessment may be billed at the same time as the ~~administrative~~ administration fund assessment and the SIF assessment. Payment of the IARA assessment is due by July 1 of the year it is billed. In the event that there is a supplemental IARA assessment, it will be due within 30 days of the billing date.

AUTH: 39-71-203, MCA

IMP: 39-71-1004, MCA

REASON: There is reasonable necessity to amend this rule in order to make the terminology and style of language in this rule consistent with statute and with the terminology used throughout this subchapter.

24.29.971 FAILURE OF INSURER TO TIMELY REPORT PAID LOSSES--DEPARTMENT ESTIMATE OF PAID LOSSES--RECALCULATION OF ASSESSMENT AND PREMIUM SURCHARGE (1) remains the same.

(2) The estimate will be used to bill the insurer for the assessments and may also be used to compute the percentage rate of premium surcharges ~~for the insurer by March 31, as required by statute by April 30.~~ The estimate will be used for April 30th calculations to bill the insurer.

(3) remains the same.

AUTH: 39-71-203, MCA

IMP: 39-71-201, 39-71-915 and 39-71-1004, MCA

REASON: There is reasonable necessity to amend this rule in order to conform its language to the provisions of 39-71-201, MCA.

4. The rules proposed for adoption provide as follows:

NEW RULE I BILLING AND PAYMENT OF THE ADMINISTRATION FUND ASSESSMENT (1) In calculating the administration fund assessment the department shall:

(a) deduct any outstanding credits a plan No. 1 insurer may have to arrive at the final amount due from that insurer;

(b) deduct any outstanding credits the plan No. 3 insurer may have for old fund claims to arrive at the final amount due with respect to old fund claims; or

(c) deduct the aggregate of any outstanding credits that plan No. 2 insurers and that the plan No. 3 insurer (with respect to plan No. 3 new fund claims) may have to arrive at the final amount due via the administration fund assessment premium surcharge.

AUTH: 39-71-203, MCA

IMP: 39-71-201 and 39-71-408, MCA

REASON: There is reasonable necessity to adopt this rule in order to implement the assessment methodology in 39-71-201, MCA and to explain the process the department will use to handle any credits that may exist at the time an assessment bill or surcharge rate is being calculated.

NEW RULE II COMPUTATION OF THE SUBSEQUENT INJURY FUND ASSESSMENT SURCHARGE (1) The SIF assessment premium surcharge is computed using the same general premium surcharge methodology as provided by ARM 24.29.956. As with the administration fund assessment premium surcharge, the department will compute a single surcharge rate for use by all plan No. 2 insurers and the plan No. 3 insurer for new and renewed policies.

(2) The requirements for remittance of the SIF assessment premium surcharge are the same as for the administration fund assessment premium surcharge. Payment of the SIF assessment is due July 1 of each year.

AUTH: 39-71-203, MCA

IMP: 39-71-915, MCA

REASON: There is reasonable necessity to adopt this rule in order to implement statutory changes to 39-71-915, MCA adopted in 2001 by SB 164 (Chapter 214, L. 2001) regarding methodology for calculation of the SIF assessment.

NEW RULE III PENALTIES, ADMINISTRATIVE FINES AND INTEREST

(1) Any assessment payment, surcharge remittance, or quarterly expenditure report received by the department more than five days past the due date is considered to be late.

AUTH: 39-71-203, MCA  
IMP: 39-71-201, 39-71-306, and 39-71-915, MCA

REASON: There is reasonable necessity to adopt this rule in order to clarify that, to allow for differences in mail service and workweek days, the department allows five days past the due date for receipt of assessment payments, surcharge remittances, and quarterly expenditure.

5. The Department proposes to repeal the following rules:

24.29.905 ADMINISTRATIVE ASSESSMENT METHODOLOGY IN GENERAL  
found at ARM pages 24-2114 through 24-2115.

AUTH: 39-71-203, MCA  
IMP: 39-71-201, MCA

24.29.921 RECALCULATION OF ADMINISTRATION FUND ASSESSMENTS MADE IN FISCAL YEARS 1992 - 1995 found at ARM pages 24-2116 through 24-2117.

AUTH: 39-71-203, MCA  
IMP: 39-71-201, MCA

24.29.922 ADMINISTRATION FUND ASSESSMENT METHODOLOGY FOR FISCAL YEAR 1992 found at ARM pages 24-2117 through 24-2118.

AUTH: 39-71-203, MCA  
IMP: 39-71-201, MCA

24.29.923 ADMINISTRATION FUND ASSESSMENT METHODOLOGY FOR FISCAL YEAR 1993 found at ARM pages 24-2118 through 24-2120.

AUTH: 39-71-203, MCA  
IMP: 39-71-201, MCA

24.29.924 ADMINISTRATION FUND ASSESSMENT METHODOLOGY FOR FISCAL YEAR 1994 found at ARM pages 24-2120 through 24-2122.

AUTH: 39-71-203, MCA  
IMP: 39-71-201, MCA

24.29.925 ADMINISTRATION FUND ASSESSMENT METHODOLOGY FOR FISCAL YEAR 1995 found at ARM pages 24-2122 through 24-2123.

AUTH: 39-71-203, MCA  
IMP: 39-71-201, MCA

24.29.926 ADMINISTRATION FUND ASSESSMENT METHODOLOGY FOR FISCAL YEAR 1996 found at ARM pages 24-2124 through 24-2125.

AUTH: 39-71-203, MCA  
IMP: 39-71-201, MCA

24.29.927 ADMINISTRATION FUND ASSESSMENT METHODOLOGY FOR FISCAL YEAR 1997 found at ARM pages 24-2125 through 24-2127.

AUTH: 39-71-203, MCA  
IMP: 39-71-201, MCA

24.29.928 ASSESSMENT METHODOLOGY FOR FISCAL YEARS 1998 AND 1999 found at ARM pages 24-2127 through 24-2129.

AUTH: 39-71-203, MCA  
IMP: 39-71-201, MCA

REASON: There is reasonable necessity to repeal these rules because they deal with assessment methodologies for fiscal years 1992 through 1999, which are no longer needed or used by the department because assessments have been billed and paid for those years.

24.29.951 DEFINITIONS found at ARM pages 24-2130 through 24-2131.

AUTH: 39-71-203, MCA  
IMP: 39-71-201, 39-71-915, 39-71-1004 and 39-71-2352, MCA

REASON: There is reasonable necessity to repeal this rule because its substantive provisions have been amended into ARM 24.29.902, thus consolidating all definitions into the same rule. Definitions that unnecessarily repeat statutory language have also been removed.

24.29.955 BILLING FOR AND PAYMENT OF THE ADMINISTRATIVE ASSESSMENT found at ARM page 24-2133.

AUTH: 39-71-203, MCA  
IMP: 39-71-201 and 39-71-408, MCA

24.29.961 THE SUBSEQUENT INJURY FUND ASSESSMENTS FOR YEARS BEGINNING ON OR AFTER JULY 1, 2000 found at ARM pages 24-2134 through 24-2135.

AUTH: 39-71-203, MCA  
IMP: 39-71-915, MCA

REASON: There is reasonable necessity to repeal these rules because the methodologies for assessment described therein have been superseded by statutory changes made in 2001 by SB 164 (Chapter 214, L. 2001). NEW RULE I and NEW RULE II are proposed to replace these repealed rules. There is reasonable necessity to repeal these rules because they deal with assessment methodologies for fiscal years 1992 through 1999, which are no longer needed or used by the department because assessments have been billed and paid for those years.

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

Keith Messmer, Bureau Chief  
Workers' Compensation Regulation Bureau  
Employment Relations Division  
Department of Labor and Industry  
PO Box 8011  
Helena, Montana 59624-8011

and must be received by no later than 5:00 p.m., January 16, 2004. Comments may also be submitted electronically as noted in the following paragraph.

7. An electronic copy of this Notice of Public Hearing is available through the Department's site on the World Wide Web at <http://dli.state.mt.us/calendar.htm>, under the Calendar of Events, Administrative Rules Hearings section. Interested persons may make comments on the proposed rules via the comment forum, <http://forums.dli.state.mt.us>, linked to the Notice of Public Hearing, but those comments must be posted to the comment forum by 5:00 p.m., January 16, 2004. The Department strives to make the electronic copy of this Notice of Public Hearing conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the Department strives to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems, and that a person's technical difficulties in accessing or posting to the comment forum do not excuse late submission of comments.

8. The Department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the mailing list shall make a written request which includes the name and mailing address of the person to receive notices and any specific topic or topics over which the Department has rulemaking authority. Such written request may be delivered to Mark Cadwallader, 1327 Lockey St., Room 412, Helena, Montana, mailed to Mark Cadwallader, P.O. Box 1728, Helena, MT 59624-1728, faxed to the office at (406) 444-1394, e-mailed to [mcadwallader@state.mt.us](mailto:mcadwallader@state.mt.us), or made by completing a request form at any rules hearing held by the Department.

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

10. The Hearings Bureau of the Centralized Services Division of the Department has been designated to preside over and conduct the hearing.

/s/ KEVIN BRAUN  
Kevin Braun,  
Rule Reviewer

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

Certified to the Secretary of State: December 1, 2003.



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

|                               |   |                          |
|-------------------------------|---|--------------------------|
| In the matter of the proposed | ) | NOTICE OF PUBLIC HEARING |
| amendment of ARM 24.301.131,  | ) | ON PROPOSED AMENDMENT,   |
| 24.301.138, 24.301.146,       | ) | ADOPTION, AND REPEAL     |
| 24.301.154, 24.301.201,       | ) |                          |
| 24.301.301, 24.301.351,       | ) |                          |
| 24.301.501, 24.301.513,       | ) |                          |
| 24.301.515, 24.301.521,       | ) |                          |
| 24.301.525, 24.301.563,       | ) |                          |
| 24.301.601, 24.301.622,       | ) |                          |
| 24.301.710, 24.301.901,       | ) |                          |
| 24.301.903 and 24.301.904,    | ) |                          |
| the proposed adoption of      | ) |                          |
| NEW RULES I, II and III,      | ) |                          |
| and the proposed repeal of    | ) |                          |
| ARM 24.301.101 through        | ) |                          |
| 24.301.108, 24.301.151,       | ) |                          |
| 24.301.158, 24.301.170,       | ) |                          |
| 24.301.180, and 24.301.190,   | ) |                          |
| pertaining to building codes, | ) |                          |
| boilers and pressure vessels  | ) |                          |

TO: All Concerned Persons

1. On January 8, 2004, at 10:00 a.m., a public hearing will be held in Room B07, 301 South Park Avenue, Helena, Montana, to consider the proposed amendment, adoption, and repeal of the above-stated rules.

2. The Building Codes Bureau of the Department of Labor and Industry (BCB/DOLI) 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., January 2, 2004, to advise us of the nature of the accommodation that you need. Please contact Ms. Traci Smith at P.O. Box 200517, Helena, Montana 59620-0517; (406) 841-2040 (telephone); (406) 841-2050 (fax); (406) 841-0532 (TTD); or trasmith@state.mt.us (e-mail).

3. GENERAL STATEMENT OF REASONABLE NECESSITY: A majority of the proposed changes addressed in this rulemaking notice are related to the proposed updating of the International Building Code from the 2000 edition to the 2003 edition. The International Building Code (IBC) is scheduled to be updated every three years, and takes into account new building materials and construction techniques. The new editions also incorporate advances in safety standards relative to building construction. The state building code officials have historically updated references to track with the periodic changes to model building codes. Although the Department incorporates by reference the IBC, it is modified

to better suit Montana's needs for various regional factors, such as snow loads on roofs, to address issues not otherwise covered by the IBC, or to conform the IBC and related codes to specific requirements of Montana law.

The Department also proposes to incorporate by reference other model codes, such as the International Mechanical Code and the International Fuel Gas Code. Incorporation by reference of these other model codes make it possible for greater uniformity with industry-wide standards in the building construction trades and help minimize special Montana exceptions to the IBC. As part of the updating of the various model building codes, the Department is proposing to repeal rules that relate to certain outdated codes no longer in use in Montana, such as the Uniform Building Code and the Uniform Mechanical Code. The transition period from the use of the Uniform Building Code to use of the IBC has recently expired, and use of the Uniform Building Code is no longer authorized.

Accordingly, the Department concludes that there is reasonable necessity to amend, adopt and repeal these rules in order to maintain the public health, safety and welfare by using the most recent edition of the modern building codes adopted by the Department. Except where otherwise noted, this general statement of reasonable necessity is applicable to the rule actions proposed below.

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

24.301.131 INCORPORATION BY REFERENCE OF INTERNATIONAL BUILDING CODE (1) The department of labor and industry, referred to as the department in this rule and all subsequent rules in ARM Title 24, chapter 301, adopts and incorporates by reference ~~herein~~ the International Building Code, ~~2000~~ 2003 Edition, referred to as the International Building Code or IBC, unless another edition is specifically stated, together with ~~the following appendix chapters:~~

~~(a) Appendix Chapter C (Group U - Agricultural Buildings); and~~

~~(b) Appendix Chapter J (Supplementary Accessibility Requirements for Qualified Historic Buildings and Facilities).~~

(2) remains the same.

(3) A copy of the International Building Code may be obtained from the Department of Labor and Industry, Building Codes Bureau, P.O. Box 200517, 301 South Park, Helena, Montana 59620-0517, at cost plus postage and handling. A copy may also be obtained by contacting the International ~~Conference of Building Officials~~ Code Council, ~~5360 Workman Mill Road, Whittier, California 90601-2298~~ 4051 West Flossmoor Road, Country Club Hills, Illinois 60478-5795.

AUTH: 50-60-203, MCA

IMP: 50-60-203, MCA

24.301.138 CALCULATION OF FEES (1) through (7) remain the same.

~~(8) For the period between July 1, 2000, and December 31, 2002, both the building permit fee and plan review fees shall be reduced by 35%. Upon written application to the department, on forms which may be prescribed by the department, a refund of the 35% reduction shall be given to the person or persons who paid the fee or fees to the department during this period and was not reduced by 35%.~~

~~(9) The "International Conference of Building Officials Building Standards" is published by the International Conference of Building Officials, 5360 South Workman Mill Road, Whittier, California 90601.~~

(10) remains the same but is renumbered (8).

AUTH: 50-60-104, 50-60-203, MCA

IMP: 50-60-104, 50-60-203, MCA

REASON: In addition to the general statement of reasonable necessity contained in paragraph 3 of this Notice, there is reasonable necessity to strike section (8) of ARM 24.301.138 because by its own terms, it has passed the sunset date of December 31, 2002.

24.301.146 MODIFICATIONS TO THE INTERNATIONAL BUILDING CODE APPLICABLE TO BOTH THE DEPARTMENT'S AND LOCAL GOVERNMENT CODE ENFORCEMENT PROGRAMS (1) through (3) remain the same.

~~(4) Subsection 101.4.2, Gas, is modified by deleting "International Fuel Gas Code" and replacing with "Uniform Mechanical Code (ICBO version)."~~

~~(5) Subsection 101.4.3, Mechanical, is modified by deleting "International Mechanical Code" and replacing with "Uniform Mechanical Code (ICBO version)."~~

(6) through (11) remain the same but are renumbered (4) through (9).

~~(12) Subsection 307.9, Exceptions (11), is modified by adding the following: "Ventilation shall be provided in an approved manner in battery charging areas to prevent a dangerous accumulation of flammable gases. Ventilation shall be provided for stationary lead acid battery systems and shall be designed to limit the maximum concentration of hydrogen to 1.0 percent of the total volume of the room. Continuous ventilation shall be provided at a rate of not less than 1 cubic foot per minute per square foot of floor area of the room."~~

(13) remains the same but is renumbered (10).

~~(14) Subsection 406.4.2, Ventilation, is modified by adding the following: "Mechanical ventilation systems for enclosed parking garages are not required to operate continuously where the system is arranged to operate automatically upon detection of a concentration of carbon monoxide of 25 parts per million by approved automatic detection devices. Automatic operation of the system shall~~

~~not reduce the ventilation below 5 cubic feet per minute per person and the system shall be capable of producing a ventilation rate of 1.5 cubic feet per minute per square foot of floor area. Connecting offices, waiting rooms, ticket booths and similar uses that are accessory to a public garage shall be maintained at a positive pressure to outside and shall be provided with ventilation in accordance with Table 406.4.2."~~

~~(15) Subsection 406.6.3, Ventilation, is modified by adding the following: "In areas where motor vehicles operate, mechanical ventilation shall be provided in accordance with Table 406.4.2. In areas where stationary motor vehicles are operated, a source capture system shall be provided that connects directly to the motor vehicle exhaust system. These requirements do not apply to electrically powered vehicles, one and two family dwelling garages or where motor vehicles are operated inside a building only for the duration necessary to move the motor vehicle in or out of the building. Where Class I liquids or LP gas are stored or used within a repair garage having a basement or pit wherein flammable vapors could accumulate, the basement or pit shall be provided with ventilation designed to prevent the accumulation of flammable vapors therein."~~

~~(16) Subsection 409.3.1.2, Exhaust Air, is modified by adding the following: "Projectors equipped with an exhaust discharge shall be directly connected to a mechanical exhaust system that operates at an exhaust rate as indicated by the manufacturer's installation instructions. Projectors without an exhaust connection shall have contaminants exhausted through a mechanical exhaust system. The exhaust rate for electric arc projectors shall be a minimum of 200 cubic feet per minute per lamp. Xenon projector exhaust shall be at a rate of 300 cubic feet per minute per lamp with the exterior temperature of the lamp housing not to exceed 130 degrees F."~~

~~(17) Subsection 412.4.6, Ventilation, is modified by deleting in its entirety and replacing with the following: "Aircraft paint hangars shall be provided with ventilation as required by the mechanical code and the fire code."~~

~~(18) remains the same but is renumbered (11).~~

~~(19) Subsection 416.3, Spraying spaces, is modified by deleting and replacing with the following: "Spraying spaces shall be ventilated with an exhaust system to prevent the accumulation of flammable mist or vapors in accordance with the mechanical code and the fire code. Where such spaces are not separately enclosed, noncombustible spray curtains shall be provided to restrict the spread of flammable vapors."~~

~~(20) Subsection 603.1(2) (Exception 10) is modified by deleting and replacing with the following: "Materials meeting the flame spread index and smoke developed rating for use within ducts and plenums as established in the mechanical code."~~

~~(21) Subsection 716.5 (Exception 2) is modified by deleting and replacing with the following: "Materials meeting the flame spread index and smoke developed rating for use~~

~~within ducts and plenums as established in the mechanical code."~~

(22) through (24)(b) remain the same but are renumbered (12) through (14)(b).

(c) Notwithstanding any other provisions or references to the contrary within the NFPA standards, the authority having jurisdiction over any fire protection system required by ~~Chapter 9~~ of the International Building Code shall be the building official.

(15) Delete subsection 903.2.7 and replace with the following:

"1. An approved automatic sprinkler system installed in accordance with Section 903.3 shall be provided in all Group R buildings meeting any of the following criteria:

"a. 20 or more transient quests or 10 or more transient questrooms;

"b. 20 or more occupants in other than dwelling units;

"c. 16 or more dwelling units; or

"d. more than 2 stories.

"2. In lieu of the above required automatic sprinkler system in buildings not more than three stories above the lowest level of exit discharge, each transient questroom may be provided with at least one door leading directly to an exterior exit access that leads directly to approved exits.

"3. "Transient quest" for the purpose of this subsection shall mean an occupant who is primarily transient in nature, staying at one location for 30 days or less."

(16) Subsection 907.2.8.1, Manual fire alarm system, is amended with the addition of the following: "Exception 3: A manual fire alarm system is not required in buildings with five or fewer questrooms or 10 or fewer quests where the building does not exceed two stories in height and is equipped with multiple-station smoke alarms installed in accordance with subsection 907.2.10.1."

~~(25) Subsection 908.6, Refrigerant detector, is modified by deleting and replacing with the following: "Machinery rooms shall contain a refrigerant detector with an audible and visual alarm. The detector, or a sampling tube that draws air to the detector, shall be located in an area where refrigerant from a leak will concentrate. The alarm shall be activated whenever the refrigerant vapor permissible exposure level (PEL) is exceeded as established by the mechanical code. Detectors and alarms shall be placed in approved locations. Exception: Detectors are not required in ammonia system machinery rooms equipped with a vapor detector in accordance with the mechanical code."~~

~~(26)~~ (17) Subsection ~~1004.3.2~~ 1016.1 is amended by addition of the following: "Upgrading of corridors in existing E occupancies serving an occupant load of 30 or more, may have walls and ceilings of not less than one-hour fire-resistive construction as required by this code. Existing walls surfaced with wood lathe and plaster in good condition or 1/2-inch gypsum wallboard or openings with fixed wired glass set in steel frames are permitted for corridor walls and

ceilings and occupancy separations when approved. Doors opening into such corridors shall be protected by 20-minute fire assemblies or solid wood doors not less than 1 3/4 inches (45 mm) thick. Where the existing frame will not accommodate the 1 3/4-inch-thick door, a 1 3/8-inch-thick solid bonded wood-core door or equivalent insulated steel door shall be permitted. Doors shall be self-closing or automatic closing by smoke detection. Transoms and openings other than doors from corridors to rooms shall comply with this code or shall be covered with a minimum of 3/4-inch plywood or 1/2-inch gypsum wallboard or equivalent material on the room side. Exception: Existing corridor walls, ceilings and opening protection not in compliance with the above may be continued when such buildings are protected with an approved automatic sprinkler system throughout. Such sprinkler system may be supplied from the domestic water system if it is of adequate volume and pressure."

~~(27) Subsection 1202.1, General, is modified by deleting and replacing with the following: "Buildings shall be provided with natural ventilation in accordance with subsection 1202.4 or shall be provided with mechanical ventilation in accordance with Table 406.4.2."~~

~~(28) Subsection 1202.4.2.1, Bathrooms, is modified by deleting and replacing with the following: "Rooms containing bathtubs, showers, spas and similar bathing fixtures shall be mechanically ventilated in accordance with Table 406.4.2."~~

(29) and (30) remain the same but are renumbered (18) and (19).

~~(31)~~ (20) Subsection 2902.1, Minimum number of fixtures, is modified by deleting and replacing with the following: "Plumbing fixtures shall be provided as established in ARM 24.301.303 24.301.351."

~~(32)~~ (21) Table 2902.1, MINIMUM NUMBER OF PLUMBING FIXTURES, is modified by deleting and replacing with ARM 24.301.303 24.301.351.

(33) and (34) remain the same but are renumbered (22) and (23).

(24) Delete section 3107 in its entirety.

(25) Delete section 3109 in its entirety.

(26) Delete chapter 32 in its entirety.

(27) Delete chapter 33 in its entirety.

~~(35)~~ (28) Community residential facilities are subject to this rule as follows:

(a) remains the same.

(b) A community residential facility does not include a ~~personal care~~ an assisted living facility as defined in 50-5-101, MCA, ~~regardless of the number of~~ with eight or fewer persons for which the building is designed or for which it is licensed.

(c) remains the same.

(36) through (46) remain the same but are renumbered (29) through (39).

~~(47)~~ (40) Notwithstanding any other provisions within the International Building Code, the following adult group

residential facilities, licensed by the department of public health and human services will be classified and treated as follows:

(a) ~~category A personal care~~ Category A assisted living facilities with one to 19 residents, as referenced in 50-5-226, MCA, will be classified as an R-4 occupancy for building permit and construction standard purposes. Automatic fire sprinkler systems are not required.

(b) ~~category B personal care~~ Category B assisted living facilities with one to 19 residents, as referenced in 50-5-226, MCA, will be classified as an R-4 occupancy for building permit and construction standards purposes. In addition, a category B ~~personal care~~ assisted living facility shall have an automatic fire sprinkler system and provide an accessible sleeping room or space for each category B resident.

(c) ~~A personal care~~ An assisted living facility with 20 or more residents, in any combination of category A or category B, will be classified as an R-2 occupancy for building permit and construction standards and shall meet accessibility standards as provided in subsection 1103 of the International Building Code. Automatic fire sprinkler systems are required. A fire wall cannot be used to isolate and reduce occupant loads in order to avoid an R-2 classification.

(48) remains the same but is renumbered (41).

~~(49)~~ (42) The exemptions in 50-60-102(1)(a), MCA, do not apply to any building used as or in conjunction with a hotel, motel, inn, motor court, guest or dude ranch, tourist home, public lodging house, youth camp, church camp, dormitory, youth living quarters, adult pre-release centers, bed and breakfast establishment or other places where sleeping accommodations are furnished for a fee to a transient guest. "Transient guest" means a guest ~~for only a brief stay, such as the traveling public staying at one location for 30 days or less.~~

~~TABLE 406.4.2~~  
~~VENTILATION TABLE~~  
~~REQUIRED OUTDOOR VENTILATION AIR~~

| <del>OCCUPANCY CLASSIFICATION</del>    | <del>ESTIMATED<br/>MAXIMUM<br/>OCCUPANT LOAD,<br/>PERSONS PER<br/>1,000 SQUARE<br/>FEET<sup>a</sup></del> | <del>OUTDOOR AIR<br/>[cubic feet per<br/>minute (cfm)<br/>per person]<br/>UNLESS NOTED<sup>e</sup></del> |
|--|---|--|
| <del>Correctional Facilities</del>     |   |  |
| <del>— Cells</del>                     | <del>20</del>   | <del>20</del>  |
| <del>— Dining halls</del>              | <del>100</del>  | <del>15</del>  |
| <del>— Guard stations</del>            | <del>40</del>   | <del>15</del>  |
| <del>Dry cleaners, laundries</del>     |   |  |
| <del>— Coin-operated dry cleaner</del> | <del>20</del>   | <del>15</del>  |
| <del>— Coin-operated laundries</del>   | <del>20</del>   | <del>15</del>  |
| <del>— Commercial dry cleaner</del>    | <del>30</del>   | <del>30</del>  |

|  |                |                                    |
|--|----------------|------------------------------------|
| <del>Commercial laundry</del>                        | <del>10</del>  | <del>25</del>                      |
| <del>Storage, pick up</del>                          | <del>30</del>  | <del>35</del>                      |
| <del>Education</del>                                 |                |                                    |
| <del>Auditoriums</del>                               | <del>150</del> | <del>15</del>                      |
| <del>Classroom</del>                                 | <del>50</del>  | <del>15</del>                      |
| <del>Corridors</del>                                 | <del>—</del>   | <del>0.10 cfm/ft<sup>2</sup></del> |
| <del>Laboratories</del>                              | <del>30</del>  | <del>20</del>                      |
| <del>Libraries</del>                                 | <del>20</del>  | <del>15</del>                      |
| <del>Locker rooms</del>                              | <del>—</del>   | <del>0.50 cfm/ft<sup>2</sup></del> |
| <del>Music rooms</del>                               | <del>50</del>  | <del>15</del>                      |
| <del>Smoking lounges<sup>b, g</sup></del>            | <del>70</del>  | <del>60</del>                      |
| <del>Training shops</del>                            | <del>30</del>  | <del>20</del>                      |
| <del>Food and beverage service</del>                 |                |                                    |
| <del>Bars, cocktail lounges</del>                    | <del>100</del> | <del>30</del>                      |
| <del>Cafeteria, fast foods</del>                     | <del>100</del> | <del>20</del>                      |
| <del>Dining rooms</del>                              | <del>70</del>  | <del>20</del>                      |
| <del>Kitchens (cooking)<sup>e, g</sup></del>         | <del>20</del>  | <del>15</del>                      |
| <del>Hospitals, nursing and convalescent homes</del> |                |                                    |
| <del>Autopsy rooms<sup>b</sup></del>                 | <del>—</del>   | <del>0.50 cfm/ft<sup>2</sup></del> |
| <del>Medical procedure rooms</del>                   | <del>20</del>  | <del>15</del>                      |
| <del>Operating rooms</del>                           | <del>20</del>  | <del>30</del>                      |
| <del>Patient rooms</del>                             | <del>10</del>  | <del>25</del>                      |
| <del>Physical therapy</del>                          | <del>20</del>  | <del>15</del>                      |
| <del>Recovery and ICU</del>                          | <del>20</del>  | <del>15</del>                      |
| <del>Hotels, motels, resorts and dormitories</del>   |                |                                    |
| <del>Assembly rooms</del>                            | <del>120</del> | <del>15</del>                      |
| <del>Bathrooms<sup>b, g</sup></del>                  | <del>—</del>   | <del>35 cfm per room</del>         |
| <del>Bedrooms</del>                                  | <del>—</del>   | <del>30 cfm per room</del>         |
| <del>Conference rooms</del>                          | <del>50</del>  | <del>20</del>                      |
| <del>Dormitory sleeping areas</del>                  | <del>20</del>  | <del>15</del>                      |
| <del>Gambling casinos</del>                          | <del>120</del> | <del>30</del>                      |
| <del>Living rooms</del>                              | <del>—</del>   | <del>30 cfm per room</del>         |
| <del>Lobbies</del>                                   | <del>30</del>  | <del>15</del>                      |
| <del>Offices</del>                                   |                |                                    |
| <del>Conference rooms</del>                          | <del>50</del>  | <del>20</del>                      |
| <del>Office spaces</del>                             | <del>7</del>   | <del>20</del>                      |
| <del>Reception areas</del>                           | <del>60</del>  | <del>15</del>                      |
| <del>Telecommunications and data Entry</del>         | <del>60</del>  | <del>20</del>                      |
| <del>Theaters</del>                                  |                |                                    |
| <del>Auditoriums</del>                               | <del>150</del> | <del>15</del>                      |
| <del>Lobbies</del>                                   | <del>150</del> | <del>20</del>                      |
| <del>Stages, studios</del>                           | <del>70</del>  | <del>15</del>                      |
| <del>Ticket booths</del>                             | <del>60</del>  | <del>20</del>                      |
| <del>Transportation</del>                            |                |                                    |
| <del>Platforms</del>                                 | <del>100</del> | <del>15</del>                      |
| <del>Vehicles</del>                                  | <del>150</del> | <del>15</del>                      |
| <del>Waiting rooms</del>                             | <del>100</del> | <del>15</del>                      |
| <del>Workrooms</del>                                 |                |                                    |
| <del>Bank vaults</del>                               | <del>5</del>   | <del>15</del>                      |



|  |  |   |
|--|--|---|
| <del>Darkrooms</del>                                       | <del>—</del>   | <del>0.50 cfm/ft<sup>2</sup></del>  |
| <del>Duplicating, printing</del>                           | <del>—</del>   | <del>0.50 cfm/ft<sup>2</sup></del>  |
| <del>Meat processing<sup>e</sup></del>                     | <del>10</del>  | <del>15</del>   |
| <del>Pharmacy</del>  | <del>20</del>  | <del>15</del>   |
| <del>Photo studios</del>                                   | <del>10</del>  | <del>15</del>   |
| <del>Sports and amusement</del>                            |  |   |
| <del>Ballrooms and discos</del>                            | <del>100</del>   | <del>25</del>   |
| <del>Bowling alleys (seating areas)</del>                  | <del>70</del>  | <del>25</del>   |
| <del>Game rooms</del>                                      | <del>70</del>  | <del>25</del>   |
| <del>Ice arenas</del>                                      | <del>—</del>   | <del>0.50 cfm/ft<sup>2</sup></del>  |
| <del>Playing floors (gymnasiums)</del>                     | <del>30</del>  | <del>20</del>   |
| <del>Spectator areas</del>                                 | <del>150</del>   | <del>15</del>   |
| <del>Swimming pools (pool and deck Area)</del>             | <del>—</del>   | <del>0.50 cfm/ft<sup>2</sup></del>  |
| <del>Storage</del>   |  |   |
| <del>Repair garages, enclosed</del>                        | <del>—</del>   | <del>1.5 cfm/ft<sup>2</sup></del>   |
| <del>Parking garages<sup>a</sup></del>                     | <del>—</del>   | <del>0.05 cfm/ft<sup>2</sup></del>  |
| <del>Warehouses</del>                                      | <del>—</del>   | <del>0.05 cfm/ft<sup>2</sup></del>  |
| <del>Private dwellings, single and multiple</del>          |  |   |
| <del>Living areas<sup>e</sup></del>                        | <del>Based upon number of bedrooms. First bedroom: 2; each additional bedroom: 1</del> | <del>0.35 air charges per hour<sup>a</sup> or 15 cfm per person, whichever is greater</del> |
| <del>Kitchens</del>  | <del>—</del>   | <del>100 cfm intermittent or 25 cfm continuous</del>  |
| <del>Toilet rooms and bathrooms<sup>f</sup></del>          | <del>—</del>   | <del>Mechanical exhaust capacity of 50 cfm intermittent or 20 cfm continuous</del>          |
| <del>Garages, separate for each Dwelling</del>             | <del>—</del>   | <del>100 cfm per car</del>  |
| <del>Garages, common for multiple units<sup>b</sup></del>  | <del>—</del>   | <del>1.5 cfm/ft<sup>2</sup></del>   |
| <del>Public spaces</del>                                   |  |   |
| <del>Corridors and utilities</del>                         | <del>—</del>   | <del>0.05 cfm/ft<sup>2</sup></del>  |
| <del>Elevators<sup>g</sup></del>                           | <del>—</del>   | <del>1.00 cfm/ft<sup>2</sup></del>  |
| <del>Locker and dressing rooms<sup>b</sup></del>           | <del>—</del>   | <del>0.5 cfm/ft<sup>2</sup></del>   |
| <del>Toilet rooms<sup>b, g</sup></del>                     | <del>—</del>   | <del>75 cfm per water closet or urinal</del>  |
| <del>Smoking lounges<sup>b, g</sup></del>                  | <del>70</del>  | <del>60</del>   |
| <del>Retail stores, sales floors and showroom floors</del> |  |   |

|  |               |                                    |
|--|---------------|------------------------------------|
| <del>Basement and street</del>         | <del>—</del>  | <del>0.30 cfm/ft<sup>2</sup></del> |
| <del>Dressing rooms</del>              | <del>—</del>  | <del>0.20 cfm/ft<sup>2</sup></del> |
| <del>Malls and arcades</del>           | <del>—</del>  | <del>0.20 cfm/ft<sup>2</sup></del> |
| <del>Shipping and receiving</del>      | <del>—</del>  | <del>0.15 cfm/ft<sup>2</sup></del> |
| <del>Smoking lounges<sup>b</sup></del> | <del>70</del> | <del>60</del>                      |
| <del>Storage rooms</del>               | <del>—</del>  | <del>0.15 cfm/ft<sup>2</sup></del> |
| <del>Upper floors</del>                | <del>—</del>  | <del>0.20 cfm/ft<sup>2</sup></del> |
| <del>Warehouses</del>                  | <del>—</del>  | <del>0.05 cfm/ft<sup>2</sup></del> |
| <del>Specialty shops</del>             |               |                                    |
| <del>Automotive service stations</del> | <del>—</del>  | <del>1.5 cfm/ft<sup>2</sup></del>  |
| <del>Barber</del>                      | <del>25</del> | <del>15</del>                      |
| <del>Beauty</del>                      | <del>25</del> | <del>25</del>                      |
| <del>Clothiers, furniture</del>        | <del>—</del>  | <del>0.30 cfm/ft<sup>2</sup></del> |
| <del>Florists</del>                    | <del>8</del>  | <del>15</del>                      |
| <del>Hardware, drugs, fabrics</del>    | <del>8</del>  | <del>15</del>                      |
| <del>Pet shops</del>                   | <del>—</del>  | <del>1.00 cfm/ft<sup>2</sup></del> |
| <del>Reducing salons</del>             | <del>20</del> | <del>15</del>                      |
| <del>Supermarkets</del>                | <del>8</del>  | <del>15</del>                      |

For SI:

1 cubic foot per minute = 0.0004719 m<sup>3</sup>/s, 1 ton = 908 kg.

1 cubic foot per minute per square foot = 0.00508 m<sup>3</sup>/(s m<sup>2</sup>).

Notes:

a. Based upon net floor area.

b. Mechanical exhaust required and the recirculation of air from such space is prohibited.

c. Spaces unheated or maintained below 50°F are not covered by these requirements unless the occupancy is continuous.

d. Ventilation systems in enclosed parking garages shall comply with Section 406.4, IBC. A mechanical ventilation system shall not be required in garages having a floor area not exceeding 850 square feet and used for storage of not more than four vehicles or trucks of 1 ton maximum capacity.

e. Where ventilation rate is expressed in cfm/ft<sup>2</sup>, such rate is based upon cubic feet per minute per square foot of the floor area being ventilated.

f. The sum of the outdoor and transfer air from adjacent spaces shall be sufficient to provide an exhaust rate of not less than 1.5 cfm/ft<sup>2</sup>.

g. Transfer air permitted in accordance with Section 1202, IBC.

AUTH: 50-60-203, MCA

IMP: 50-60-101, 50-60-102, 50-60-104, 50-60-201, 50-60-203, 50-60-205, MCA

REASON: In addition to the general statement of reasonable necessity contained in paragraph 3 of this Notice, there is reasonable necessity to amend sections (30) and (42) of this rule to reflect a terminology change made by Chapter 54, Laws of 2003 (House Bill 51). House Bill 51 revised the licensure

of personal-care facilities and changed the name of such operations from "personal-care facility" to "assisted living facility". Although this rule tracks with that change in nomenclature, the rule does not purport to implement any portion of Chap. 54, L. of 2003.

A portion of subsection 1016.1 of the IBC amended in section (17) of this rule had been inadvertently omitted in a prior version. It has therefore been inserted to complete the wording of the subsection.

24.301.154 INCORPORATION BY REFERENCE OF INTERNATIONAL RESIDENTIAL CODE (1) The International Residential Code (IRC) is a nationally recognized model code setting forth minimum standards and requirements for ~~the construction, prefabrication, alteration and repair, of~~ detached one or two family dwellings and multiple single-family dwellings (townhouses) not more than three stories in height, and their accessory structures. The IRC also provides a framework for program administration.

(2) The department of labor and industry, ~~by and through the building codes bureau,~~ adopts and incorporates by reference ~~herein~~ the International Residential Code, ~~2000~~ 2003 Edition, referred to as the International Residential Code or IRC.

(3) ~~IRC chapters~~ Chapters 11 through 43, inclusive, are deleted in their entirety.

(4) ~~IRC Subsection R301.5~~ R301.6, Roof Load, is deleted and replaced with the following: "Snow loads shall be determined by the building official. In areas of the state outside of certified ~~local government~~ city, county, or town jurisdictions, the design snow load shall be based on the ground snow loads developed in "Snow Loads for Structural Design in Montana", authored by F.F. Videon and J.P. Schilke, Civil & Agricultural Engineering, Montana State University, August 1989. The minimum design roof snow load after allowed reductions shall be 30 psf. Note: Other coefficients and factors may be used when justified by a Montana licensed design professional to the satisfaction of the building official."

(5) ~~IRC Subsection R314.2~~ R311.5.3, ~~Treads and Risers~~ Riser Height, is amended to allow a maximum riser height of 8 1/4 inches. ~~and a minimum tread depth of 9 inches.~~

~~(6) IRC Subsection R315.1 Handrails, is amended to read as follows: "Handrails having minimum and maximum heights of 34 and 38 inches (864 mm and 965 mm), respectively, measured vertically from the nosing of the treads, shall be provided on at least one side of stairways. All required handrails shall be continuous the full length of the stairs with three or more risers from a point directly above the top riser of a flight to a point directly above the lowest riser of the flight. Ends shall be returned or shall terminate in newel posts or safety terminals. Handrails adjacent to a wall shall have a~~

~~space of not less than 1.5 inches (38 mm) between the wall and the handrail.~~

~~"Exceptions:~~

~~1. Handrails shall be permitted to be interrupted by a newel or post at a turn.~~

~~2. The use of a volute, turnout or starting easing shall be allowed over the lowest tread."~~

(6) Subsection R311.5.3.2, Tread Depth, is amended to allow a minimum tread depth of nine inches (229 mm).

(7) IRC Subsection R315.2, Handrail grip size, is amended to read as follows: "Handrails shall have either circular cross section with a diameter of 1 1/4 inches (32mm) to 2 inches (51mm), or a non circular cross section with a perimeter dimension of at least 4 inches (102mm) but not more than 6 1/4 inches (159mm) and a largest cross section dimension not exceeding 2 1/4 inches (28.6mm), or provide equivalent grasp ability. Edges shall have a minimum radius of 1/8 inch (3.2mm)."

(7) Subsection R311.5.4, Landings for Stairways, is amended by adding an exception to read as follows: "Exception: A floor or landing is not required at the top of an interior flight of stairs, including stairs in an enclosed garage, provided a door does not swing over the stairs."

(8) Subsection R312.1, Guards required, is amended in the first paragraph to read as follows: "Porches, balconies, ramps or raised floor surfaces located more than 30 inches (762 mm) above the floor or grade below shall have guards not less than 36 inches (914 mm) in height. Open sides of stairs with a total rise of more than 30 inches (762 mm) above the floor or grade below shall have guards not less than 34 inches (864 mm) in height measured vertically from the nosing of the treads."

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

(9) (10) A copy of the International Residential Code may be obtained from the Department of Labor and Industry, Building Codes Bureau, P.O. Box 200517, 301 South Park, Helena, Montana 59620-0517, at cost plus postage and handling. A copy may also be obtained by writing to the International Council of Building Officials Code Council, 5360 Workman Mill Road, Whittier, California 90601-2298 4051 West Flossmoor Road, Country Club Hills, Illinois 60478-5795.

AUTH: 50-60-203, MCA

IMP: 50-60-102, 50-60-201, 50-60-203, MCA

24.301.201 EXTENT OF LOCAL PROGRAMS (1) A city, county, or town, as provided by 50-60-102, MCA, may adopt codes to cover all buildings within their respective jurisdictional areas. However, as provided by 50-60-102, MCA, a city, county, or town may not cover residential buildings containing less than five dwelling units or their attached-to structures, any farm or ranch building and any private garage or private storage structure used only for the owner's own use unless the local legislative body or board of county

commissioners by ordinance or resolution makes the building code specifically applicable to those structures. A city, county, or town may accomplish this by making its building codes applicable to all non-exempt building construction within the respective jurisdiction.

~~(2) Exceptions to permit requirements listed in 50-60-506(2) and 50-60-506(4), MCA, apply only to state plumbing permits, and a city, county, or town may issue plumbing permits for such work in accordance with section 103 of the Uniform Plumbing Code as amended.~~

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

AUTH: 50-60-203, 50-60-302, 50-60-504, 50-60-603, MCA

IMP: 50-60-202, 50-60-203, 50-60-301, 50-60-302, 50-60-504, 50-60-603, MCA

REASON: There is reasonable necessity to amend ARM 24.301.201 in response to comments and suggestions made to the Department at a September 9, 2003, public hearing. The specific changes requested by the commenter were not accommodated at that time, in part in error, and in part because the public had not been given notice of the requested changes. The Department agrees that the suggested changes should be made, and thus brings the proposed amendments at this time.

24.301.301 INCORPORATION BY REFERENCE OF UNIFORM PLUMBING CODE (1) ~~The building codes bureau of the~~ department of labor and industry adopts and incorporates by reference ~~herein~~ the Uniform Plumbing Code, ~~2000~~ 2003 Edition, referred to as the Uniform Plumbing Code, unless another edition is specifically stated, together with the following appendix chapters and amendments:

(a) and (b) remain the same.

~~(c) Appendix C, Sizing of Category I Venting Systems is adopted.~~

(d) through (o) remain the same but are renumbered (c) through (n).

(o) Subsection 701.1 is amended to read as follows:  
"Drainage piping shall be cast iron, galvanized steel, galvanized wrought iron, lead, copper, brass, Schedule 40 ABS DWV, Schedule 40 ABS DWV cellular core, Schedule 40 PVC DWV, Schedule 40 PVC DWV cellular core, extra strength vitrified clay pipe, or other approved materials having a smooth and uniform bore, except that:

"(1) Galvanized wrought iron or galvanized steel pipe shall not be used underground, and it shall be kept at least six inches (152 mm) above ground.

"(2) ABS and PVC DWV piping installations must be installed in accordance with IS 5, IS 9 and Chapter 15 "Firestop Protection for DWV and Stormwater Application." Except for individual single family dwelling units, materials exposed within ducts or plenums shall have a flame-spread index of not more than 25 and a smoke-developed index of not more than 50, when tested in accordance with the Test for

Surface-Burning Characteristics of the Building Materials (See the building code standards based on ASTM E-84 and ANSI/UL 723).

"(3) Vitrified clay pipe and fittings shall not be used above ground or where pressurized by a pump or ejector. They shall be kept at least 12 inches (305 mm) below ground.

"(4) Copper tube for drainage and vent piping shall have a weight not less than that of copper drainage tube type DWV."

(p) through (aa) remain the same.

(ab) Chapter 12, Fuel Piping, is deleted and replaced with ~~Chapter 13, Fuel Gas Piping, of the Uniform Mechanical Code, international conference of building code officials version the International Fuel Gas Code.~~

(ac) Chapter 13, Health Care Facilities and Medical Gas and Vacuum Systems, is deleted. In lieu of Chapter 13, the department of labor and industry, ~~by and through the building codes bureau,~~ adopts and incorporates by reference ~~herein,~~ the national fire protection association's standard NFPA 99C, Gas and Vacuum Systems, ~~1999~~ 2002 Edition, referred to as NFPA 99C, unless a different edition date is specifically stated, as the standard for the installation of medical gas and vacuum systems. The requirements of this rule shall not be construed as to replace or supersede any additional requirements for testing and certification of medical gas and vacuum systems, including independent third party certification of systems, as may be applicable. NFPA 99C is a nationally recognized standard setting forth minimum standards and requirements for medical gas and vacuum systems. A copy of NFPA 99C may be obtained from the National Fire Protection Association, One Batterymarch Park, P.O. Box 9101, Quincy, MA 02269-9101.

(2) remains the same.

AUTH: 50-60-201, 50-60-203, 50-60-504, 50-60-508, MCA

IMP: 50-60-203, 50-60-504, 50-60-508, MCA

REASON: In addition to the general statement of reasonable necessity contained in paragraph 3 of this Notice, there is reasonable necessity to amend ARM 24.301.301(1)(ac) to correct the name of the referenced chapter 13 to accurately reflect how it appears in the UPC. The Department also proposes to adopt the national fire protection association's standard NFPA 99C, Gas and Vacuum Systems, 2002 Edition, which is the most current version of the NFPA 99C. Updating this administrative rule by adopting the current NFPA 99C will keep the Montana construction industry current with changes made in the NFPA 99C since 1999.

24.301.351 MINIMUM REQUIRED PLUMBING FIXTURES (1) The following table will be used to determine the minimum number of plumbing fixtures to be installed in new buildings:

MINIMUM NUMBER OF PLUMBING FACILITIES<sup>a, n, q</sup>  
Fixtures (Number of fixtures per number of occupants)

| Occupancy   |   | Water Closets<br>(Urinals - see<br>footnotes g &<br>m) |                     | Lavatories   | Bathtubs/<br>Showers  | Drinking<br>Fountains <sup>r</sup> |
|---|---|--|---------------------|--|-----------------------|------------------------------------|
|   |   | Male   | Female              |  |                       |                                    |
| A<br>S<br>S<br>E<br>M<br>B<br>L<br>Y                          | Theaters  | 1 per<br>125   | 1 per<br>65         | <del>USE<br/>SECTION<br/>2902,<br/>UBC</del><br><br><u>1 per 2 water<br/>closets</u> |                       | 1 per 1,000                        |
|   | Nightclubs <sup>g,h,p</sup>   | 1 per<br>40  | 1 per<br>40         |  |                       |                                    |
|   | Restaurants <sup>g,h,p</sup>  | 1 per<br>75  | 1 per<br>75         |  |                       |                                    |
|   | Halls, museums,<br>coliseums, <del>A</del> arenas <sup>o</sup> ,<br>stadiums, pools, etc.                 | 1 per<br>125   | 1 per<br>75         |  |                       | 1 per 1,000                        |
|   | Churches <sup>b</sup>   | 1 per<br>150   | 1 per<br>75         |  |                       | 1 per 1,000                        |
|   | Business <sup>i,j,l,p</sup>   | 1 per<br>25  | 1 per<br>25         |  |                       |                                    |
| Educational <u>Elementary</u>                                 |   | <del>SEE SECTION 2902.4 UBC</del>                      |                     |  |                       |                                    |
|   |   | <u>1 per<br/>100</u>                                   | <u>1 per<br/>35</u> | <u>1 per 2 water<br/>closets</u>   |                       | <u>1 per floor</u>                 |
| <u>Educational Secondary</u>                                  |   | <u>1 per<br/>100</u>                                   | <u>1 per<br/>45</u> | <u>1 per 2 water<br/>closets</u>   |                       | <u>1 per floor</u>                 |
| Factory and industrial  |   | 1 per<br>100   | 1 per<br>100        | 1 per 100  |                       | 1 per 400                          |
| High hazard   |   | 1 per<br>100   | 1 per<br>100        | 1 per 100  |                       | 1 per 1,000                        |
| I<br>N<br>S<br>T<br>I<br>T<br>U<br>T<br>I<br>O<br>N<br>A<br>L | Residential care  | 1 per<br>10  | 1 per<br>10         | 1 per 10   | 1 per 8               |                                    |
|   | Hospitals, ambulatory<br>nursing home patients <sup>c</sup>   | 1 per room   |                     | 1 per room <sup>e</sup>  | 1 per 15              | 1 per 100                          |
|   | Day nurseries <sup>k</sup> ,<br>sanitariums,<br>nonambulatory nursing<br>home patients, etc. <sup>c</sup> | 1 per<br>15  | 1 per<br>15         | 1 per 15   | 1 per 15 <sup>f</sup> | 1 per 100                          |
|   | Employees, other than<br>residential care <sup>c</sup>  | 1 per<br>25  | 1 per<br>25         | 1 per 35   |                       | 1 per 100                          |
|   | Visitors, other than<br>residential care  | 1 per<br>75  | 1 per<br>75         | 1 per 100  |                       | 1 per 500                          |
|   | Prisons <sup>c</sup>  | 1 per cell   |                     | 1 per cell   | 1 per 15              | 1 per 100                          |
|   | Asylums,<br>reformatories, etc. <sup>c</sup>  | 1 per<br>15  | 1 per<br>15         | 1 per 15   | 1 per 15              | 1 per 100                          |
| Mercantile <sup>i</sup>                                       |   | 1 per<br>500   | 1 per<br>500        | 1 per 750  |                       |                                    |

|   |  |                     |          |                     |                     |           |
|---|--|---------------------|----------|---------------------|---------------------|-----------|
| R<br>E<br>S<br>I<br>D<br>E<br>N<br>T<br>I<br>A<br>L | Hotels, motels                           | 1 per guestroom     |          | 1 per guestroom     | 1 per guestroom     |           |
|   | Lodges                                   | 1 per 10            | 1 per 10 | 1 per 10            | 1 per 8             |           |
|   | Multiple family                          | 1 per dwelling unit |          | 1 per dwelling unit | 1 per dwelling unit |           |
|   | Dormitories                              | 1 per 10            | 1 per 10 | 1 per 10            | 1 per 8             | 1 per 100 |
|   | One and two-family dwelling <sup>a</sup> | 1 per dwelling unit |          | 1 per dwelling unit | 1 per dwelling unit |           |

Table footnotes a. through m. remain the same.

- n. When calculating number of male and female occupants, the occupant load of the building shall be considered half male and half female, and the occupant load shall be calculated in accordance with ~~Sec. 1002 of the Uniform Building Code~~.

Table footnotes o. through r. remain the same.

AUTH: 50-60-203, 50-60-504, MCA

IMP: 50-60-203, 50-60-504, MCA

24.301.501 APPLICABILITY OF STATE STATUTES AND ADOPTED ADMINISTRATIVE RULES (1) remains the same.

(2) Factory-built buildings shall meet the requirements of:

(a) the latest adopted edition of the Uniform International Building Code or International Residential Code as applicable, as drafted by the international conference of building officials code council;

(b) remains the same.

(c) the latest adopted edition of the Uniform International Mechanical Code as drafted by the international conference of building officials code council;

(d) the latest adopted edition of the Uniform Plumbing Code as drafted by the international association of plumbing and mechanical officials; and

(e) the latest adopted edition of the Model Energy Code.

(3) remains the same.

AUTH: 50-60-203, 50-60-401, MCA

IMP: 50-60-203, 50-60-401, MCA

24.301.513 USE OF MOBILE HOMES AND RECREATIONAL VEHICLES FOR COMMERCIAL OR BUSINESS OCCUPANCY PROHIBITED--EXCEPTION

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

(e) meets the exiting sign requirements imposed by Section 1003.2.8, Uniform the International Building Code; and

(f) is provided with a handicap accessible entrance pursuant to the requirements imposed by Section 1103.2, Uniform the International Building Code.



AUTH: 50-60-203, 50-60-401, MCA  
IMP: 50-60-402, MCA

24.301.515 BUREAU INSPECTORS (1) All inspectors of the bureau shall have a working knowledge of the ~~Uniform Building Code, the Uniform Mechanical Code, the Uniform Plumbing Code, the National Electrical Code~~ specified editions of the adopted model codes and shall not be under the control of any listing agency, testing agency, third party inspection agency, dealer or manufacturer.

AUTH: 50-60-203, 50-60-401, MCA  
IMP: 50-60-203, 50-60-401, MCA

REASON: It is reasonably necessary to amend ARM 24.301.515 in order to remove references to specific codes and to instead use general terms to include all adopted codes. As the Department regularly updates to the most current edition of adopted codes, the change will prevent the need to amend this rule every time new editions of codes are published.

24.301.521 APPROVAL OF MANUFACTURER (1) Every manufacturer of units subject to these rules shall be reviewed and obtain an insignia for each approved unit ~~by requesting an inspection pursuant to the provisions of ARM 8.70.519,~~ by the systems review method pursuant to the provisions of ARM 24.301.544 or by the model plan review method pursuant to the provisions of ARM 24.301.535.

AUTH: 50-60-203, 50-60-401, MCA  
IMP: 50-60-203, 50-60-401, MCA

REASON: It is reasonably necessary to amend ARM 24.301.521 to remove a cross-reference to ARM 8.70.519, which was previously repealed.

24.301.525 REQUIREMENTS FOR DATA PLATE (1) All factory-built ~~single family dwelling~~ units manufactured or delivered prior to sale or sold or offered for sale in this state must bear a data plate giving the model, serial number, date of completion and design load maximums: i.e., wind, snow, floor live load and seismic ~~zone~~ design category D or D1 as applicable.

(2) remains the same.

(3)~~(a)~~ The minimum loads acceptable for factory-built ~~single family dwelling~~ units manufactured or delivered prior to sale or sold or offered for sale in this state are:

(i) through (iii) remain the same but are renumbered (a) through (c).

~~(iv)~~(d) seismic ~~zone~~ design category = #3 D or D1 as applicable.

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

AUTH: 50-60-203, 50-60-401, MCA

IMP: 50-60-402, MCA

REASON: It is reasonably necessary to amend ARM 24.301.525 to clarify that all factory-built buildings are not single-family dwellings and to correct the seismic requirements and seismic design references to reflect the requirements and references found in the currently adopted building codes. In addition, there is reasonable necessity to amend the AUTH citation to appropriately reflect an additional source of rulemaking authority.

24.301.563 ALTERATION OR CONVERSION OF UNIT BEARING INSIGNIA (1) remains the same.

(2) Upon completion of the alteration or conversion, the applicant shall request the bureau to ~~make~~ perform an inspection ~~pursuant to ARM 8.70.519.~~

AUTH: 50-60-203, 50-60-401, MCA

IMP: 50-60-203, 50-60-401, MCA

REASON: It is reasonably necessary to amend ARM 24.301.521 to remove a cross-reference to ARM 8.70.519, which was previously repealed.

24.301.601 INCORPORATION BY REFERENCE OF ELEVATOR CODE

(1) The department of labor and industry, referred to as department in this and all subsequent rules, adopts and incorporates by reference ~~herein:~~

(a) Safety Code for Elevators and Escalators, ASME A17.1 2000;

(b) Safety Code for Existing Elevators and Escalators, ASME A17.3-~~1996~~ 2002; ~~and~~

(c) Safety Standard for Platform Lifts and Stairway Chairlifts, ASME A18.1-1999 and A18.1a-2001 Addenda; ~~and~~

(d) ASME A17.1 2000, Appendix N, Table N1, Recommended Inspection And Test Intervals In Months.

~~(d)(2)~~ (2) The ~~above-referenced~~ codes, ~~and~~ standard ~~and~~ appendix referenced in (1) are collectively referred to as the elevator code. A copy of the elevator code may be obtained from the American Society of Mechanical Engineers, 345 East 47th Street, New York, NY 10017.

(2) through (5) remain the same but are renumbered (3) through (6).

AUTH: 50-60-203, 50-60-701, 50-60-702, MCA

IMP: 50-60-203, 50-60-701, 50-60-702, MCA

REASON: There is reasonable necessity to amend ARM 24.301.601 to adopt the 2002 Edition of the Safety Code for Existing Elevators and Escalators, which is the most current version of the Safety Code for Existing Elevators and Escalators. Updating this administrative rule by adopting the current Safety Code for Existing Elevators and Escalators will bring Montana current with changes made to this code since 1996.

There is reasonable necessity to propose the adoption by reference of Appendix Chapter N, Table N1, of the Safety Code for Existing Elevators and Escalators in order to establish inspection and test intervals for elevators, escalators, and lifts. Montana does not presently meet this safety code standard.

24.301.622 INSPECTIONS BY CERTIFIED MAINTENANCE OR INSURANCE COMPANIES (1) and (1)(a) remain the same.

(b) A detailed report of each unit inspected shall be filed with the department within 14 working days after inspection on a printed form approved by the department. Such report shall show all respects in which the installation fails to comply with the code requirements of Chapter 30 of the ~~Uniform~~ International Building Code, and the elevator code.

(c) through (f) remain the same.

AUTH: 50-60-203, 50-60-701, 50-60-702, MCA

IMP: 50-60-203, 50-60-701, 50-60-702, MCA

REASON: It is reasonably necessary to amend ARM 24.301.622 to clarify that the time interval for filing an inspection report is 14 working days rather than 14 calendar days. The Department is responding to recent requests for more time in which to file the inspection reports.

24.301.710 INCORPORATION BY REFERENCE OF BOILER AND PRESSURE VESSEL CODE (1) remains the same.

(2) The department of labor and industry, ~~by and through the building codes bureau,~~ adopts and incorporates by reference ~~herein~~, the American society of mechanical engineers publication CSD-1, Controls and Safety Devices for Automatically Fired Boilers, ~~1998~~ 2002 Edition, referred to as CSD-1, unless another edition is specifically stated.

(3) remains the same.

AUTH: 50-60-203, 50-74-101, MCA

IMP: 50-60-203, 50-74-101, MCA

REASON: There is reasonable necessity to amend ARM 24.301.710 to adopt the 2002 Edition of the American Society of Mechanical Engineers publication CSD-1, Controls and Safety Devices for Automatically Fired Boilers (CSD-1), which is the most current version of CSD-1. Updating this administrative rule by adopting the current CSD-1 will bring Montana current with changes made to this code since 1998.

24.301.901 SCOPE OF RULES (1) The access requirements established in the currently adopted edition of the state building code and ~~CABO~~ the joint international code committee/American national standards institute (ICC/ANSI) standard, ICC/ANSI A117.1, are utilized as the basis for

establishing the accessibility requirements and guidelines in this ~~rule~~ sub-chapter.

(2) and (3) remain the same.

AUTH: 50-60-203, MCA

IMP: 50-60-201, MCA

REASON: There is reasonable necessity to amend ARM 24.301.901 to correct the reference to the identity of the applicable standard for access requirements, since CABO (Council for American Building Officials) no longer exists. ICC and ANSI are now the joint authors of the standard.

24.301.903 BUILDING ACCESSIBILITY (1) Section ~~1105, UBC 1109, IBC~~, is amended to clarify that not every restroom installed in a building or structure is required to be accessible as long as the required facilities are accessible and reasonably available from all areas of the primary function areas of the building. Primary function area means an area of a building or facility in which a major activity for which the building or facility is designed is carried out.

(a) Subsection ~~1105.1 1109.1~~, General. ~~The first paragraph is amended to read as follows by adding the following:~~ "When buildings or portions of buildings are required to be accessible, required building facilities shall be accessible as provided in this section. A person or entity may not be required to meet fully the accessibility requirements for buildings, in those rare circumstances where the person or entity can demonstrate that it is structurally impracticable, due to unique characteristics of terrain and/or not practicable in relation to the proposed usage of the building, as determined on a case-by-case basis, at the discretion of the building official."

(b) Subsection ~~1105.2.2 1109.2~~, Toilet and Bathing Facilities. ~~The second paragraph is amended to read as follows:~~ ~~"In other occupancies, each required toilet room shall be accessible. At least one of each type of fixture or element in each required accessible toilet room shall be accessible. When six or more toilet stalls are provided in a toilet room, at least one ambulatory accessible toilet stall shall be provided in addition to the wheelchair accessible toilet stall. Required toilet rooms and bathing facilities shall be accessible. Where a floor level is not required to be connected by an accessible route, the only toilet rooms or bathing facilities provided within the facility shall not be located on the inaccessible floor. At least one of each type of fixture, element, control, or dispenser in each accessible toilet room and bathing facility shall be accessible."~~

(i) through (c)(ii) remain the same.

(d) In the new construction of establishments which serve food or beverages to be consumed on premises, on a case-by-case basis, the building official shall have the discretion to approve the installation of one unisex accessible restroom which includes a urinal, in lieu of one male and one female

accessible restroom, when it can be demonstrated that due to an occupant load which will not exceed 20 seated persons, it would not be reasonable to require two separate accessible restrooms. ~~Section 1003.2.2, Uniform~~ The International Building Code, shall be used to determine occupant load.

(e) and (f) remain the same.

AUTH: 50-60-203, MCA

IMP: 50-60-201, 50-60-214, MCA

REASON: In addition to the general statement of reasonable necessity contained in paragraph 3 of this Notice, there is reasonable necessity to amend the IMP citation to appropriately reflect which statutes the rule implements.

24.301.904 SITE ACCESSIBILITY (1) Section 50-60-213, MCA, requires that construction of a public building or alteration of primary function areas of a public building, which have not been issued a legal building permit prior to October 1, 1997, include compliance with the requirements of ~~Appendix Chapter 11 Division I Site Accessibility, UBC,~~ the IBC and the requirements established by ~~CABO ICC/ANSI~~ All 7.1, which include the building site, parking areas, passenger loading zones, private sidewalks and the accessibility from adjacent sidewalks, public streets and public transportation stops. Existing public buildings that are not undergoing an alteration to a primary function area are not subject to the accessibility requirements. ~~of Appendix Chapter 11 Division I Site Accessibility.~~ Primary function area means an area of building or facility in which a major activity for which the building or facility is designed is carried out.

(2) remains the same.

(3) ~~Appendix Chapter 11 of the Uniform Building Code, Site Accessibility is amended as follows:~~

~~(a) Subsection 1107.1, subsection 1108.1 and subsection 1109.1~~ Sections 1104, 1106 and 3409 are each amended by addition of the following sentence: "A person or entity may not be required to meet fully the accessible exterior route requirements for new buildings or alterations to existing buildings, where the person or entity can demonstrate that due to unique characteristics of the terrain, it is structurally impractical to fully comply, as determined on a case-by-case basis, at the discretion of the building official. Full compliance may be considered structurally impractical only in those rare circumstances when the unique characteristics of the terrain prevent the incorporation of accessibility features. The person or entity shall comply with the accessible facilities requirements to the extent that compliance is not structurally impractical."

(4) and (5) remain the same.

(6) Each new building or alteration to an existing building which provides off street parking shall provide at least one accessible parking space with required additional

parking spaces as established in Table ~~A-11-A~~ 1106.1 and Section ~~1108~~ 1106 of ~~Appendix Chapter 11 of the Uniform Building Code.~~ One van accessible parking space shall be provided for every eight accessible parking spaces, or fraction thereof. If only one accessible parking space is required, the space shall be a van accessible parking space.

AUTH: 50-60-203, MCA

IMP: 50-60-201, 50-60-213, MCA

REASON: In addition to the general statement of reasonable necessity contained in paragraph 3 of this Notice, there is reasonable necessity to amend the IMP citation to appropriately reflect which statutes the rule implements.

5. The proposed new rules provide as follows:

NEW RULE I INCORPORATION BY REFERENCE OF INTERNATIONAL EXISTING BUILDING CODE (1) The department of labor and industry adopts and incorporates by reference the International Existing Building Code (IEBC), 2003 edition, which may be used as an alternate prescriptive method(s) for the remodel, repair, alteration, change of occupancy, addition, and relocation of existing building.

(a) The owner of an existing building may follow the requirements of either the IEBC or the IBC, but the owner may not apply some of the requirements of the IEBC and other requirements from the IBC on the same project.

(2) Adoption of the IEBC must not be construed to require the upgrading of existing buildings.

(3) Any reference to a separate specialty building regulation by title in the IEBC shall be considered deleted and replaced with the title of the comparable model code that has been adopted by the department and is in effect at the time.

(4) A copy of the International Existing Building Code may be obtained from the Department of Labor and Industry, Building Codes Bureau, P.O. Box 200517, 301 South Park, Helena, Montana 59620-0517, at cost plus postage and handling. A copy may also be obtained by contacting the International Code Council, 4051 W. Flossmoor Road, Country Club Hills, Illinois 60478-5795.

AUTH: 50-60-203, MCA

IMP: 50-60-103, 50-60-109, 50-60-201, MCA

REASON: There is reasonable necessity to adopt NEW RULE I to adopt the 2003 Edition of the International Existing Building Code (IEBC), which is the most current version of the IEBC. The IEBC will replace the Uniform Code for Building Conservation (UCBC), previously adopted by the department. The UCBC which was adopted in rule 24.301.190 (proposed for repeal) is no longer published.

NEW RULE II INCORPORATION BY REFERENCE OF INTERNATIONAL MECHANICAL CODE

(1) The department of labor and industry adopts and incorporates by reference the international code council's International Mechanical Code, 2003 Edition, published by the international code council, referred to as the International Mechanical Code, unless another edition is specifically stated, together with the following amendments:

(a) Subsection 102.8, Referenced Codes and Standards, is modified by adding the following: "Any reference to a separate specialty building regulation, by title, either in this subsection or elsewhere in this code, shall be considered deleted and replaced with the title of the model code adopted by the department and in effect at the time."

(b) Subsection 101.2 is amended to delete exceptions 1 and 2 in their entirety.

(c) The fees established in subsection 106.5.2 are as follows:

"(1) The mechanical cost shall be the cost to the owner of all labor charges and all mechanical materials and equipment installed as part of the mechanical system. The cost of the plumbing system, which is covered by the Uniform Plumbing Code, is not to be included.

"(2) The mechanical permit fees are calculated as follows:

| Cost of Mechanical System | Mechanical Permit Fee   |
|---------------------------|---|
| \$0 - \$10,000            | \$40 for first \$1,000 plus<br>\$12 for each additional<br>\$1,000 or fraction thereof,<br>to and including \$10,000  |
| \$10,001 - \$50,000       | \$148 for first \$10,000 plus<br>\$7 for each additional \$1,000<br>or fraction thereof, to and<br>including \$50,000 |
| \$50,001                  | \$428 for first \$50,000<br>plus \$4 for each additional<br>\$1,000 or fraction thereof.                              |

"(3) The fee for a requested inspection is \$45, provided that the inspection does not take in excess of one hour, and then \$25 for each 30 minutes or fractional part in excess of one hour. Travel and per diem are charged as per the state of Montana's existing rates."

(d) Section 108 of the International Mechanical Code will be left as is for use by certified cities, counties, and towns. The department will use 50-60-109 and 50-60-110, MCA, in cases requiring prosecution, in lieu of section 108. When a person fails to submit required plans, obtain a permit, correct plans or comply with an order of the department, the department will, as authorized by 50-60-109, MCA, seek injunctive relief.

(e) Section 109 of the International Mechanical Code will be left as is for use by certified cities, counties, or towns, which by 50-60-303, MCA, must provide an appeal procedure. Cities, counties, and towns may use a board of appeals created in accordance with section 112 of the International Building Code to serve as their boards of appeal. The department and state of Montana, however, will use the applicable provisions of the Montana Administrative Procedure Act in all cases of appeal, in lieu of section 109.

(f) Chapter 10 is deleted in its entirety.

(2) The building codes bureau shall not enforce the International Mechanical Code in buildings exempted from state building codes by 50-60-102, MCA. Cities, counties, and towns that have made the state building regulations applicable to buildings exempt from state enforcement, except for mines and buildings on mine property regulated under Title 82, chapter 4, MCA, may enforce within their jurisdictional areas the International Mechanical Code as adopted by those units of government.

(3) As specified in 76-2-412, MCA, mechanical codes which are not applicable to residential occupancies may not be applied to a community residential facility serving eight or fewer persons or to a day care home serving 12 or fewer children.

(4) The purpose of this code is to provide minimum standards to safeguard life or limb, health, property and public welfare by regulating and controlling the design, construction, installation, quality of materials, location, operation and maintenance of heating, ventilating, cooling, refrigeration systems, incinerators and other miscellaneous heat-producing appliances.

(5) No mechanical permit shall be issued for a building or structure, under the jurisdiction of the department, until the building permit has first been issued for that building or structure.

(6) The International Mechanical Code adopted by reference in (1) is a nationally recognized model code setting forth minimum standards and requirements for certain mechanical installations. A copy of the International Mechanical Code may be obtained from the Department of Labor and Industry, Building Codes Bureau, P.O. Box 200517, Helena, Montana 59620-0517, at cost plus postage and handling. A copy may also be obtained by writing to the International Code Council, 4051 W. Flossmoor Road, Country Club Hills, Illinois 60478-5795.

AUTH: 50-60-203, MCA

IMP: 50-60-102, 50-60-103, 50-60-109, 50-60-201, 50-60-303, MCA

REASON: There is reasonable necessity to adopt NEW RULE II to adopt the 2003 Edition of the International Mechanical Code (IMC), which is the most current version of the IMC. The IMC will replace the Uniform Mechanical Code (UMC) previously



adopted by the department. The UMC, which was adopted in rule 24.301.170 (proposed for repeal), is no longer published.

NEW RULE III INCORPORATION BY REFERENCE OF INTERNATIONAL FUEL GAS CODE (1) The department of labor and industry adopts and incorporates by reference the international code council's International Fuel Gas Code, 2003 Edition, published by the international code council, referred to as the International Fuel Gas Code, unless another edition is specifically stated, together with the following amendments:

(a) Subsection 102.8, Referenced Codes and Standards, is modified by adding the following: "Any reference to a separate specialty building regulation, by title, either in this subsection or elsewhere in this code, shall be considered deleted and replaced with the title of the model code adopted by the department and in effect at the time."

(b) The permit fees for the fuel gas code are calculated the same way as provided in [NEW RULE II(1)(c)], and substituting the fuel gas system for the mechanical system. The inspection fees for the fuel gas code are the same as provided in [NEW RULE II(1)(c)].

(c) Section 108 of the International Fuel Gas Code will be left as is for use by certified cities, counties and towns. The department will use 50-60-109 and 50-60-110, MCA, in cases requiring prosecution, in lieu of section 108. When a person fails to submit required plans, obtain a permit, correct plans or comply with an order of the department, the department will, as authorized by 50-60-109, MCA, seek injunctive relief.

(d) Section 109 of the International Fuel Gas Code will be left as is for use by certified cities, counties, or towns, who by 50-60-303, MCA, must provide an appeal procedure. Cities, counties, and towns may use the board of appeals created in accordance with section 112 of the International Building Code to serve as the board of appeals. The department and state of Montana, however, will use the applicable provisions of the Montana Administrative Procedure Act in all cases of appeal, in lieu of section 109.

(2) The building codes bureau shall not enforce the International Fuel Gas Code on those buildings exempted from state building codes by 50-60-102, MCA. Cities, counties, and towns that have made the state building regulations applicable to buildings exempt from state enforcement, except for mines and buildings on mine property regulated under Title 82, chapter 4, MCA, may enforce within their jurisdictional areas the International Fuel Gas Code as adopted by those units of government.

(3) As specified in 76-2-412, MCA, fuel gas codes which are not applicable to residential occupancies may not be applied to a community residential facility serving eight or fewer persons or to a day care home serving 12 or fewer children.

(4) The purpose of this code is to provide minimum standards to safeguard life or limb, health, property and public welfare by regulating and controlling the design,

construction, installation, quality of materials, location, operation and maintenance of heating, ventilating, cooling, refrigeration systems, incinerators and other miscellaneous heat-producing appliances.

(5) No mechanical permit shall be issued for a building or structure, under the jurisdiction of the department, until the building permit has first been issued for that building or structure.

(6) The International Fuel Gas Code adopted by reference in (1) is a nationally recognized model code setting forth minimum standards and requirements for certain mechanical installations. A copy of the International Fuel Gas Code may be obtained from the Department of Labor and Industry, Building Codes Bureau, P.O. Box 200517, Helena, Montana 59620-0517, at cost plus postage and handling. A copy may also be obtained by writing to the International Code Council, 4051 W. Flossmoor Road, Country Club Hills, Illinois 60478-5795.

AUTH: 50-60-203, MCA

IMP: 50-60-102, 50-60-103, 50-60-109, 50-60-201, 50-60-303, MCA

REASON: There is reasonable necessity to adopt NEW RULE III, which adopts the 2003 Edition of the International Fuel Gas Code (IFGC), the most current version of the IFGC. The IFGC will replace the Uniform Mechanical Code (UMC), previously adopted by the department. The UMC, which was adopted in rule 24.301.170 (proposed for repeal), is no longer published.

6. The rules proposed for repeal are as follows:

24.301.101 INCORPORATION BY REFERENCE OF UNIFORM BUILDING CODE found at ARM pages 24-30225 and 24-30226.

AUTH: 50-60-104, 50-60-203, MCA

IMP: 50-60-103, 50-60-104, 50-60-108, 50-60-109, 50-60-201, 50-60-203, MCA

24.301.102 OPTIONAL APPENDIX CHAPTERS FOR LOCAL GOVERNMENT ADOPTION found at ARM page 24-30226.

AUTH: 50-60-203, MCA

IMP: 50-60-203, MCA

24.301.103 PURPOSE OF THE UNIFORM BUILDING CODE found at ARM page 24-30227.

AUTH: 50-60-203, MCA

IMP: 50-60-203, MCA

24.301.104 OBTAINING COPIES OF THE UNIFORM BUILDING CODE found at ARM page 24-30227.

AUTH: 50-60-203, MCA

IMP: 50-60-203, MCA

24.301.105 CALCULATION OF FEES found at ARM pages 24-30227 and 24-30228.

AUTH: 50-60-203, MCA

IMP: 50-60-104, MCA

24.301.106 OBTAINING PUBLICATIONS AND VALUATION TABLES found at ARM page 24-30229.

AUTH: 50-60-203, MCA

IMP: 50-60-203, MCA

24.301.107 MODIFICATIONS TO THE UNIFORM BUILDING CODE APPLICABLE ONLY TO THE DEPARTMENT'S CODE ENFORCEMENT PROGRAM found at ARM pages 24-30229 through 24-30232.

AUTH: 50-60-203, MCA

IMP: 50-60-203, MCA

24.301.108 MODIFICATIONS TO THE UNIFORM BUILDING CODE APPLICABLE TO BOTH DEPARTMENT'S AND LOCAL GOVERNMENT CODE ENFORCEMENT PROGRAMS found at ARM pages 24-30233 through 24-30239.

AUTH: 50-60-203, MCA

IMP: 50-60-203, MCA

24.301.151 EFFECTIVE DATE OF INTERNATIONAL BUILDING CODE found at ARM page 24-30371.

AUTH: 50-60-203, MCA

IMP: 50-60-203, MCA

24.301.158 EFFECTIVE DATE OF INTERNATIONAL RESIDENTIAL CODE found at ARM page 24-30373.

AUTH: 50-60-203, MCA

IMP: 50-60-203, MCA

24.301.170 INCORPORATION BY REFERENCE OF UNIFORM MECHANICAL CODE found at ARM pages 24-30417 through 24-30419.

AUTH: 50-60-104, 50-60-201, 50-60-203, 50-60-508, MCA

IMP: 50-60-103, 50-60-104, 50-60-201, 50-60-203, MCA

24.301.180 INCORPORATION BY REFERENCE OF CABO ONE & TWO FAMILY DWELLING CODE found at ARM pages 24-30445 and 24-30446.

AUTH: 50-60-203, 50-60-401, MCA

IMP: 50-60-103, 50-60-201, 50-60-402, MCA

24.301.190 INCORPORATION BY REFERENCE OF THE UNIFORM  
CODE FOR BUILDING CONSERVATION found at ARM page 24-30471.

AUTH: 50-60-203, 50-60-301, MCA  
IMP: 50-60-203, 50-60-301, MCA

REASON: There is reasonable necessity to repeal the above rules because the Department has adopted new international codes in order to bring the Montana construction industry current with contemporary construction trends, practices and standards. The family of "Uniform Codes" is no longer published; therefore, no updated editions of those codes will be available in the future. In addition, there is reasonable necessity to repeal ARM 24.301.151 and 24.301.158, as the transition period expired on September 27, 2003, and the rules are no longer needed.

There is reasonable necessity for the proposed repeal of ARM 24.301.105 to coordinate with the proposed adoption of NEW RULE II and III, which are replacing ARM 24.301.105. Information regarding the economic impact of the fees collected pursuant to ARM 24.301.105 is presented in paragraph 7, below, as the historic basis for the fee estimates for NEW RULE II and III.

7. NEW RULE II and NEW RULE III provide for permit fees and inspection fees. Based on fiscal year 2003 experience (July 1, 2002, through June 30, 2003), the Department estimates that approximately 700 permits will be issued a year, covering both mechanical permits and fuel gas permits. Because a single person could obtain multiple permits for multiple building projects, the Department is unable to estimate the number of individuals who will be obtaining the permits and paying the fees in the next year. In fiscal year 2003 (FY 03), \$119,949 in fees were paid for 691 permits. Based on that information, the Department estimates that approximately \$120,000 will be paid in permit fees in FY 04. The Department notes that there is no increase in the rates which are charged for permit fees, and that any increase in revenue is likely to be as the result of more expensive mechanical or fuel gas systems being installed than in previous years.

NEW RULES II and III also provide for fees paid when an individual specially requests an inspection be performed, unassociated with a construction project. Examples of such circumstances are often related to purchase agreements and issuance of food service licenses. The Department estimates that approximately 10 specially-requested inspections might be performed in FY 04. As with permits, because a single individual might request more than one inspection, the Department is unable to estimate the number of individuals who will be requesting inspections in FY 04. Based on the experience in FY 03, the Department estimates that

approximately \$600 will be paid in specially-requested inspection fees in FY 04, and that there will be no increase in the amount of those inspection fees paid. The Department notes that the proposed rates for a specially-requested inspection are identical to the existing rates for other forms of specially-requested inspections provided for by other building regulations, and that the estimated numbers apply to the aggregate number of specially-requested inspections for all areas covered by building regulations.

8. Concerned persons may present their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to William H. Jellison, chief of the Building Codes Bureau, at P.O. Box 200517, Helena, MT 59620-0571, by facsimile to (406) 841-2050, or by e-mail to [trasmith@state.mt.us](mailto:trasmith@state.mt.us), and must be received no later than 5:00 p.m., January 15, 2004.

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

10. The Department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the mailing list shall make a written request that includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding any specific topic or topics over which the Department has rulemaking authority. Such written request may be delivered to Mark Cadwallader, 1327 Lockey St., room 412, Helena, Montana, mailed to Mark Cadwallader, P.O. Box 1728, Helena, MT 59624-1728, faxed to the office at (406) 444-1394, by e-mail to [mcadwallader@state.mt.us](mailto:mcadwallader@state.mt.us), or made by completing a request form at any rules hearing held by the Department of Labor and Industry.

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

12. Mark Cadwallader, an attorney for the Department, has been designated to preside over and conduct the hearing.

/s/ MARK CADWALLADER  
Mark Cadwallader  
Alternate Rule Reviewer

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

Certified to the Secretary of State December 1, 2003.

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

|                               |   |                          |
|-------------------------------|---|--------------------------|
| In the matter of the adoption | ) | NOTICE OF PUBLIC HEARING |
| of Rules I through VIII and   | ) | ON PROPOSED ADOPTION AND |
| the amendment of ARM          | ) | AMENDMENT                |
| 37.88.101, 37.88.1101 and     | ) |                          |
| 37.88.1106 pertaining to      | ) |                          |
| reimbursement of inpatient    | ) |                          |
| psychiatric hospitals         | ) |                          |

TO: All Interested Persons

1. On January 6, 2004, 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 December 29, 2003, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970; Email dphhslegal@state.mt.us.

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

RULE I INPATIENT PSYCHIATRIC SERVICES, DEFINITIONS As used in this subchapter, the following definitions apply:

(1) "Continuity of care payment" means an annual payment made to qualifying hospital based residential treatment facilities according to the eligibility criteria and payment calculation methodology in [Rule VIII].

(2) "Devoted to the provision of inpatient psychiatric care for persons under the age of 21" means an inpatient psychiatric hospital facility or residential treatment facility whose goals, purpose and care are designed for and devoted exclusively to persons under the age of 21.

(3) "Hospital based residential psychiatric care" means residential psychiatric care that is provided in a hospital based residential treatment facility.

(4) "Hospital based residential treatment facility" means a residential treatment facility that meets the requirements of [Rule II].

(5) "Inpatient hospital psychiatric care" means hospital based active psychiatric treatment provided under the direction of a physician.

(6) "Inpatient psychiatric hospital facility" means a psychiatric facility devoted to the provision of inpatient psychiatric care for persons under the age of 21 licensed as a hospital by:

(a) the department; or  
(b) an equivalent agency in the state in which the facility is located.

(7) "Inpatient psychiatric services" means inpatient hospital psychiatric care, residential psychiatric care hospital based residential psychiatric care.

(8) "Patient day" means a whole 24-hour period in which a person is present and receiving inpatient psychiatric services. Even though a person may not be present for a whole 24-hour period, the day of admission and, subject to the limitations and requirements of ARM 37.88.1106, therapeutic home leave days are patient days. The day of discharge is not a patient day for purposes of reimbursement.

(9) "Residential psychiatric care" means active psychiatric treatment provided in a residential treatment facility to psychiatrically impaired individuals with persistent patterns of emotional, psychological or behavioral dysfunction of such severity as to require 24-hour supervised care to adequately treat or remediate their condition.

(10) "Residential treatment facility" means a psychiatric facility devoted to the provision of inpatient psychiatric care for persons under the age of 21 licensed by:

(a) the department as a residential treatment facility, or;

(b) the appropriate agency as a residential treatment facility or the equivalent in the state where the facility is located.

AUTH: Sec. 2-4-201, 53-2-201 and 53-6-113, MCA

IMP: Sec. 2-4-201, 53-2-201, 53-6-101, 53-6-111, 53-6-113 and 53-6-149, MCA

RULE II HOSPITAL BASED RESIDENTIAL TREATMENT FACILITY REQUIREMENTS (1) A hospital based residential treatment facility must meet the following requirements:

(a) the residential treatment facility must be in a hospital facility that includes inpatient psychiatric hospital beds and provides inpatient hospital psychiatric care to individuals under 21. The residential treatment facility beds and the hospital beds must be owned and operated by a single entity, and they must be located in an integrated facility;

(b) the residential treatment facility must be located in Montana;

(c) the inpatient psychiatric hospital beds and the residential treatment facility beds must be served by a common administrative and support staff;

(d) the residential treatment facility must be served by no less than one full-time equivalent psychiatrist for every 25 patients;

(e) both the hospital and the residential treatment



facility must have an organized medical staff that is on call and available within 20 minutes, 24 hours a day, seven days a week; and

(f) both the hospital and the residential treatment facility must have 24-hour nursing care by licensed registered nurses.

AUTH: Sec. 2-4-201, 53-2-201 and 53-6-113, MCA

IMP: Sec. 2-4-201, 53-2-201, 53-6-101, 53-6-111 and 53-6-113, MCA

#### RULE III INPATIENT HOSPITAL PSYCHIATRIC CARE

(1) Inpatient hospital psychiatric care is the briefest possible inpatient hospital stay necessary to provide the intensive psychiatric intervention and stabilization required to evaluate and/or stabilize the individual for discharge to the least restrictive appropriate setting for continuing care and treatment of the individual's psychiatric condition.

(2) The therapeutic intervention or evaluation must be designed to achieve the patient's discharge from inpatient hospital status to a less restrictive environment at the earliest possible time.

(3) The individual's psychiatric condition must be of such a nature as to pose a significant danger to self, others or the public safety.

AUTH: Sec. 2-4-201, 53-2-201 and 53-6-113, MCA

IMP: Sec. 2-4-201, 53-2-201, 53-6-101, 53-6-111 and 53-6-113, MCA

#### RULE IV INPATIENT PSYCHIATRIC SERVICES

(1) Inpatient psychiatric services are services that comply with the requirements of this subchapter and the applicable federal regulations and are provided in an inpatient psychiatric hospital facility or residential treatment facility that is devoted to the provision of inpatient psychiatric care for persons under the age of 21.

(2) 42 CFR 440.160 and 441.150 through 441.156 (1997), provide definitions and program requirements and are adopted and incorporated by reference. A copy of the regulations may be obtained through the Department of Public Health and Human Services, Addictive and Mental Disorders Division, 555 Fuller, P.O. Box 202905, Helena, MT 59620-2905.

AUTH: Sec. 2-4-201, 53-2-201 and 53-6-113, MCA

IMP: Sec. 2-4-201, 53-2-201, 53-6-101, 53-6-111 and 53-6-113, MCA

#### RULE V RESIDENTIAL PSYCHIATRIC CARE

(1) Residential psychiatric care must be individualized and designed to achieve the patient's discharge to a less restrictive level of care at the earliest possible time.

(2) Residential psychiatric care includes only treatment or services provided in accordance with all applicable

licensure, certification and accreditation requirements and these rules.

(3) Residential psychiatric care must be provided under the direction of a licensed physician.

AUTH: Sec. 2-4-201, 53-2-201 and 53-6-113, MCA

IMP: Sec. 2-4-201, 53-2-201, 53-6-101, 53-6-111 and 53-6-113, MCA

RULE VI RESIDENTIAL TREATMENT CENTERS, REIMBURSEMENT

(1) The rate provided in the department's mental health fee schedule for residential treatment facility providers located in the state of Montana is the final rate, and such rate will not be adjusted retrospectively based upon more recent cost data or inflation estimates. Cost settlements will not be performed.

(2) The rate is an all-inclusive bundled rate.

(3) Except as provided otherwise in this rule, the per diem payment rate covers and includes:

(a) all psychiatric services;

(b) all therapies required in the recipient's plan of care;

(c) all other services and items related to the psychiatric condition being treated that are provided while the recipient is admitted to the residential treatment facility;

(d) services provided by licensed psychologists, licensed clinical social workers, and licensed professional counselors; and

(e) lab and pharmacy services.

(4) These services must be reimbursed from the provider's all-inclusive rate except as provided otherwise in this rule, and are not separately billable.

(5) The professional component of physician services is separately billable according to the applicable rules governing billing for physician services.

(6) Services and items that are not related to the recipient's psychiatric condition being treated in the residential treatment facility and that are not provided by the residential treatment facility are separately billable in accordance with the applicable rules governing billing for the category of services or items.

(7) Reimbursement will be made to a residential treatment facility provider for reserving a bed while the recipient is temporarily absent only if:

(a) the recipient's plan of care documents the medical need for therapeutic home visits as part of a therapeutic plan to transition the recipient to a less restrictive level of care;

(b) the recipient is temporarily absent on a therapeutic home visit;

(c) the provider clearly documents staff contact and recipient achievements or regressions during and following the therapeutic home visit; and

(d) the recipient is absent from the provider's facility for no more than three patient days per absence.

(8) No more than 14 patient days per recipient in each rate year will be allowed for therapeutic home visits.

(9) Providers must bill for inpatient psychiatric services using the revenue codes designated by the department.

AUTH: Sec. 53-2-201 and 53-6-113, MCA

IMP: Sec. 53-2-201, 53-6-101, 53-6-111 and 53-6-113, MCA

RULE VII INPATIENT PSYCHIATRIC HOSPITALS, REIMBURSEMENT

(1) For inpatient psychiatric services provided by inpatient psychiatric hospital facilities located in the state of Montana, the Montana medicaid program will pay a provider according to the diagnosis related groups (DRG) prospective payment system described in ARM 37.86.2905. In addition to the prospective DRG rate, providers will be reimbursed for the following:

- (a) capital-related costs;
- (b) cost or day outliers;
- (c) catastrophic case payments;
- (d) disproportionate share hospital (DSH) payments and supplemental DSH payments as provided; and
- (e) continuity of care payments.

(2) Inpatient psychiatric hospital facilities will not be reimbursed for inpatient psychiatric services in addition to the prospective DRG rate for medical education costs, certified registered nurse anesthetist costs or other costs or components.

AUTH: Sec. 53-2-201 and 53-6-113, MCA

IMP: Sec. 53-2-201, 53-6-101, 53-6-111 and 53-6-113, MCA

RULE VIII CONTINUITY OF CARE PAYMENT (1) Hospital based residential treatment facilities as defined in [Rule II] qualify for a continuity of care payment.

(a) The amount of the continuity of care adjustor payment will be calculated and paid annually.

(b) The amount will be determined by the department according to the following formula:  $CCA = [M/D] * P$ :

(i) "CCA" represents the calculated continuity of care payment;

(ii) "M" is the number of medicaid inpatient residential days provided by the facility for which the continuity of care payment is being calculated;

(iii) "D" is the total number of medicaid inpatient residential days provided by all eligible facilities; and

(iv) "P" is the total amount available for distribution via the continuity of care payments. P equals 4% of the revenue generated by the Montana hospital utilization fee, plus federal financial participation.

(2) The number of medicaid days shall be determined from the department's medicaid claim data for the most recent calendar year that ended at least 12 months prior to the calculation of the continuity of care payment.

AUTH: Sec. 53-2-201 and 53-6-113, MCA

IMP: Sec. 53-2-201, 53-6-101, 53-6-111, 53-6-113 and 53-6-149, MCA

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

37.88.101 MEDICAID MENTAL HEALTH SERVICES, AUTHORIZATION REQUIREMENTS (1) Mental health services ~~may be medically necessary~~ for a medicaid recipient under the Montana medicaid program ~~if the recipient will be reimbursed only if the following requirements are met:~~

(a) the recipient is a youth who has been determined to have a serious emotional disturbance as defined in ARM 37.86.3702, ~~or;~~

(b) ~~determined by~~ the department has determined prior to treatment on a case-by-case basis that treatment is medically necessary for early intervention and prevention of a more serious emotional disturbance; or

~~(b)~~ (c) the recipient is 18 or more years of age and has been determined to have a severe disabling mental illness as defined in ARM 37.86.3502.

(2) For all mental health services provided to a medicaid recipient under the age of 18, ~~under the Montana medicaid program for which~~ prior authorization is not required, ~~for~~ the first 24 visits in the 12-month period beginning July 1, 2002 and each 12-month period thereafter for outpatient mental health counseling services billed under Current Procedure Terminology, 4th edition (CPT4) codes 90804, 90806, 90810, 90812, 90846 and 90847 only.

(a) For purposes of this rule, the term "visit" does not include a session with a physician for the purpose of medication management.

(b) Practitioners who believe that more than 24 sessions are medically necessary for youth under the age of 18 years may request prior authorization for additional sessions.

(3) For all mental health services provided to an adult medicaid recipient under the Montana medicaid program, ~~for which prior authorization is required, the following exceptions apply:~~

~~(a) prior authorization is not required for the first sixteen 16~~ visits in the 12-month period beginning July 1, 2003 and each 12-month period thereafter for outpatient mental health counseling services billed under Current Procedure Terminology 4th Edition (CPT4) codes 90804, 90806, 90810, 90812, 90846 and 90847 only. ~~For purposes of this rule, the term "visit" does not include a session with a physician for the purpose of medication management; and~~

~~(b) eight visits in the period from January 1, 2003 through June 30, 2003 for outpatient mental health counseling services billed under CPT4 codes 90804, 90806, 90810, 90812, 90846 and 90847 only.~~

(4) The department may waive a requirement for prior authorization when the provider can document that:

(a) there was a clinical reason why the request for prior

authorization could not be made at the required time; or

(b) a timely request for prior authorization was not possible because of a failure or malfunction of equipment that prevented the transmittal of the request at the required time.

(5) The prior authorization requirement shall not be waived except as provided in this rule.

(6) Under no circumstances may a waiver under (4) be granted more than 30 days after the initial date of service.

~~(7) The department or its designee will notify providers and recipients of applicable authorization procedures and requirements, and applicable grievance and reconsideration procedures.~~

~~(8)~~ (7) Review of authorization requests by the department or its designee will be made with consideration of the clinical management guidelines (2003) published in advance by the department or its designee. A copy of the clinical management guidelines (2003) can be obtained from the department by a request in writing to the Department of Public Health and Human Services, Addictive and Mental Disorders Division, 555 Fuller, P.O. Box 202905, Helena, MT 59620-2905 or can be viewed on the department's website at [www.dphhs.state.mt.us](http://www.dphhs.state.mt.us).

~~(9)~~ (8) The department may review the medical necessity of services or items at any time either before or after payment in accordance with the provisions of ARM 37.85.410. If the department determines that services or items were not medically necessary or otherwise in compliance with applicable requirements, the department may deny payment or may recover any overpayment in accordance with applicable requirements.

~~(10)~~ (9) The department or its designee may require providers to report outcome data or measures regarding mental health services, as determined in consultation with providers and consumers.

AUTH: Sec. 53-6-113, MCA

IMP: Sec. 53-2-201, 53-6-101, 53-6-111 and 53-6-113, MCA

37.88.1101 INPATIENT PSYCHIATRIC SERVICES, PURPOSE AND DEFINITIONS (1) The purpose of ARM 37.88.1101, ~~through 37.88.1116~~ 37.88.1105, 37.88.1106, 37.88.1107, 37.88.1110, 37.88.1115 and 37.88.1116 is to specify provider participation and program requirements and to define the basis and procedure the department will use to pay for inpatient psychiatric services for individuals under age 21. Facilities in which these services are available are ~~hereinafter~~ referred to as providers.

~~(2) As used in this subchapter, the following definitions apply:~~

~~(a) "Devoted to the provision of inpatient psychiatric care for persons under the age of 21" means an inpatient psychiatric hospital facility or residential treatment facility whose goals, purpose and care are designed for and devoted exclusively to persons under the age of 21.~~

~~(b) "Inpatient hospital psychiatric care" means hospital based active psychiatric treatment provided under the direction~~

~~of a physician. The individual's psychiatric condition must be of such a nature as to pose a significant danger to self, others or the public safety. Inpatient hospital psychiatric care is the briefest possible inpatient hospital stay necessary to provide the intensive psychiatric intervention and stabilization required to evaluate and/or stabilize the individual for discharge to the least restrictive appropriate setting for continuing care and treatment of the individual's psychiatric condition. The therapeutic intervention or evaluation must be designed to achieve the patient's discharge from inpatient hospital status to a less restrictive environment at the earliest possible time.~~

~~(c) "Inpatient psychiatric hospital facility" means a psychiatric facility licensed by the department, or the equivalent agency in the state in which the facility is located, as a hospital and devoted to the provision of inpatient psychiatric care for persons under the age of 21.~~

~~(d) "Patient day" means a whole 24 hour period that a person is present and receiving inpatient psychiatric services. Even though a person may not be present for a whole 24 hour period, the day of admission and, subject to the limitations and requirements of ARM 37.88.1106, therapeutic home leave days are patient days. The day of discharge is not a patient day for purposes of reimbursement.~~

~~(e) "Residential psychiatric care" means active psychiatric treatment provided in a residential treatment facility, under the direction of a physician, to psychiatrically impaired individuals with persistent patterns of emotional, psychological or behavioral dysfunction of such severity as to require 24 hour supervised care to adequately treat or remediate their condition. Residential psychiatric care must be individualized and designed to achieve the patient's discharge to a less restrictive level of care at the earliest possible time. Residential psychiatric care includes only treatment or services provided in accordance with all applicable licensure, certification and accreditation requirements and these rules.~~

~~(f) "Residential treatment facility" means a psychiatric facility licensed by the department, or the equivalent agency in the state in which the facility is located, as a residential treatment facility as defined in 50-5-101, MCA or the equivalent category in the state where the facility is located, and devoted to the provision of inpatient psychiatric care for persons under the age of 21.~~

~~(g) "Inpatient psychiatric services" means inpatient hospital psychiatric care or residential psychiatric care provided in accordance with these rules and applicable state and federal requirements, including but not limited to 42 CFR 440.160 and 441.150 through 441.156 (1997), which provide definitions and program requirements and which the department hereby adopts and incorporates by reference. A copy of the cited regulations may be obtained through the Department of Public Health and Human Services, Addictive and Mental Disorders Division, 555 Fuller, P.O. Box 202905, Helena, MT 59620-2905. Inpatient psychiatric services are services that comply with the~~

~~requirements of these rules and the above cited federal regulations and are provided in an inpatient psychiatric hospital facility or residential treatment facility that is devoted to the provision of inpatient psychiatric care for persons under the age of 21.~~

~~(h) Intensive day treatment is a program which is operated by a licensed residential treatment facility and which:~~

~~(i) operates in a self contained facility;~~

~~(ii) offers integrated mental health services appropriate to the individual's needs as identified in an individualized treatment plan;~~

~~(iii) provides psychotherapy services consisting of at least three group sessions per week and five individual and/or family sessions per month;~~

~~(iv) encourages and supports parent and family involvement;~~

~~(v) provides services in a supervised environment by a well integrated, multi disciplinary team of professionals which includes but is not limited to program therapists, behavioral specialists, teachers and ancillary staff;~~

~~(A) a program therapist must be a licensed mental health professional who is site based;~~

~~(B) a program therapist must have an active caseload that does not exceed 10 program clients;~~

~~(C) a behavioral specialist must be site based and have a bachelor's degree in a behavioral science field or commensurate experience working with children with serious emotional disturbance. There must be one behavioral specialist for each five youth in the intensive day treatment program; and~~

~~(D) all staff responsible for implementing the treatment plan must have a minimum of 24 hours orientation training and 12 additional hours of continuing education each year relating to serious emotional disturbance in children and its treatment. Training must include specific instruction on recognizing the effects of medication.~~

~~(vi) provides education services through one of the following:~~

~~(A) full collaboration with a school district;~~

~~(B) certified education staff within the program; or~~

~~(C) interagency agreements with education agencies.~~

~~(vii) provides crisis intervention and management, including response outside of the program setting;~~

~~(viii) provides psychiatric evaluation, consultation, and medication management on a regular basis. Psychiatric consultation to the program treatment staff is provided at least twice each month and includes at least one face to face evaluation with each youth each month;~~

~~(ix) serves children or youth with a serious emotional disturbance being discharged from inpatient psychiatric treatment, residential treatment, or acute partial hospitalization, or who would be admitted to such treatment in the absence of intensive day treatment;~~

~~(x) is designed to stabilize patients sufficiently to allow discharge to a less intensive level of care, on average,~~

~~after 60 or fewer treatment days;~~

~~(xi) provides full day intensive day treatment programs services a minimum of 6 hours per day, 5 days per week;~~

~~(xii) provides half day intensive day treatment programs services at least 4 hours but less than 6 hours per day, 4 days per week.~~

~~(3) Intensive day treatment is not medically necessary for a youth who is a patient in an acute psychiatric hospital or a residential treatment facility.~~

AUTH: Sec. 53-2-201 and 53-6-113, MCA

IMP: Sec. 53-2-201, 53-6-101, 53-6-111 and 53-6-113, MCA

37.88.1106 INPATIENT PSYCHIATRIC SERVICES, REIMBURSEMENT

(1) For inpatient psychiatric services provided on or after July 1, 1999, the Montana medicaid program will pay a provider for each patient day as provided in these rules.

(a) Medicaid payment is not allowable for treatment or services provided in a residential treatment facility that are not within the definition of residential psychiatric care in ~~ARM 37.88.1101~~ [Rule I] and ~~unless~~ all other applicable requirements are met.

(b) Medicaid payment is not allowable for treatment or services provided in an inpatient psychiatric hospital facility that are not within the definition of inpatient hospital psychiatric care in ~~ARM 37.88.1101~~ [Rule I] and unless all other applicable requirements are met.

(2) For inpatient psychiatric services provided by a residential treatment facility in the state of Montana, the Montana medicaid program will pay a provider, for each medicaid patient day, a bundled per diem rate as specified in (3), less any third party or other payments.

(3) The statewide bundled per diem rate for inpatient psychiatric services ~~provided by all Montana providers~~ is the lesser of:

(a) the amount specified in the department's medicaid mental health fee schedule; or

(b) the provider's usual and customary charges (billed charges).

~~(4) The rate provided in (3) for residential treatment facility providers located in the state of Montana is the final rate, and such rate will not be adjusted retrospectively based upon more recent cost data or inflation estimates. Cost settlements will not be performed.~~

~~(5) The rate provided in (3) is an all inclusive bundled rate. Except as provided in (5)(a) and (b), the per diem payment rate covers and includes all psychiatric services, all therapies required in the recipient's plan of care, and all other services and items related to the psychiatric condition being treated, that are provided while the recipient is admitted to the residential treatment facility, including but not limited to services provided by licensed psychologists, licensed clinical social workers, and licensed professional counselors, and lab and pharmacy services. These services must be~~



~~reimbursed from the provider's all inclusive rate except as provided in (5)(a) and (b), and are not separately billable.~~

~~(a) The professional component of physician services is separately billable according to the applicable rules governing billing for physician services.~~

~~(b) Services and items that are not related to the recipient's psychiatric condition being treated in the residential treatment facility and that are not provided by the residential treatment facility are separately billable in accordance with the applicable rules governing billing for the category of services or items.~~

~~(6) For inpatient psychiatric services provided by inpatient psychiatric hospital facilities located in the state of Montana, the Montana medicaid program will pay a provider according to the diagnosis related groups (DRG) prospective payment system described in ARM 37.86.2905. In addition to the prospective DRG rate, providers will be reimbursed for the following:~~

~~(a) capital related costs as set forth in ARM 37.86.2905(4);~~

~~(b) cost or day outliers as set forth in ARM 37.88.2905(6) and (7);~~

~~(c) catastrophic case payments as set forth in ARM 37.86.2905(8); and~~

~~(d) disproportionate share hospital payments as provided in ARM 37.86.2905(15) and (16).~~

~~(7) Inpatient psychiatric hospital facilities will not be reimbursed for inpatient psychiatric services in addition to the prospective DRG rate for medical education costs, certified registered nurse anesthetist costs or other costs or components.~~

~~(a) The provisions of ARM 37.86.2905(2)(d)(i), (2)(d)(ii), (9), (10) and (11) apply for purposes of reimbursement under (5).~~

~~(8) Payment for inpatient psychiatric services provided outside the state of Montana will be made only under the conditions specified in ARM 37.85.207(3) and these rules. The Montana medicaid program will not make payment according to ARM 37.85.207(3)(b) or (c) for inpatient psychiatric services provided by residential treatment facilities located outside the state of Montana unless the department or its designee determines, as provided in this rule, that the services were unavailable in the state of Montana.~~

~~(a) Residential psychiatric care will not be determined to be unavailable in the state of Montana unless:~~

~~(i) the recipient has been officially screened for placement by all enrolled in state residential treatment facility providers and denied admission because the facilities cannot meet the recipient's treatment needs; or~~

~~(ii) the recipient has been officially screened for placement by all enrolled in state residential treatment facility providers and denied admission because a bed is not available, and the recipient's psychiatric condition prevents the recipient from being temporarily and safely placed in another setting while awaiting placement in an in state~~

~~residential treatment facility.~~

~~(b) The department or its designee will not commence a preadmission review for or certify an admission to an out-of-state residential treatment facility until receiving from the prospective facility written verification that the recipient cannot be served within the state of Montana. Written verification must be provided in a form approved by the department or its designee, and must be completed and signed on behalf of in-state facilities indicating that the requirements of (8)(a)(i) or (8)(a)(ii) are met. In-state facilities that do not complete, sign and return the form by fax to the prospective out-of-state provider within 3 days after receipt will be deemed to be unable to serve the recipient.~~

~~(9) (4) Reimbursement for inpatient psychiatric services provided to Montana medicaid recipients in facilities located outside the state of Montana will be as provided in ARM 37.86.2905(1)(c).~~

~~(10) Reimbursement will be made to a residential treatment facility provider for intensive day treatment in the amount specified in the department's medicaid mental health fee schedule. The per diem rates specified in the department's medicaid mental health fee schedule are bundled prospective per diem rates for full day programs and half day programs as defined in ARM 37.88.1101. The department hereby adopts and incorporates herein by reference the department's medicaid mental health fee schedule dated January 1, 2003. A copy of the fee schedule may be obtained from the Department of Public Health and Human Services, Addictive and Mental Disorders Division, 555 Fuller, P.O. Box 202905, Helena, MT 59620-2905.~~

~~(11) Reimbursement will be made to a residential treatment facility provider for reserving a bed while the recipient is temporarily absent only if:~~

~~(a) the recipient's plan of care documents the medical need for therapeutic home visits as part of a therapeutic plan to transition the recipient to a less restrictive level of care;~~

~~(b) the recipient is temporarily absent on a therapeutic home visit;~~

~~(c) the provider clearly documents staff contact and recipient achievements or regressions during and following the therapeutic home visit; and~~

~~(d) the recipient is absent from the provider's facility for no more than three patient days per absence.~~

~~(12) No more than 14 patient days per recipient in each rate year will be allowed for therapeutic home visits.~~

~~(13) Providers must bill for inpatient psychiatric services using the revenue codes designated by the department.~~

AUTH: Sec. 53-2-201 and 53-6-113, MCA

IMP: Sec. 53-2-201, 53-6-101, 53-6-111, 53-6-113 and 53-6-149, MCA

4. The Department is proposing these amendments to implement a hospital utilization fee mandated by the 2003 Montana Legislature and to revise the definitions governing

medicaid inpatient psychiatric services reimbursement. These proposed new rules and amendments are in addition to those proposed for medicaid hospital reimbursement published November 26, 2003 on page 2580 in MAR issue number 22 implementing the same statute.

Over the past several years, the costs psychiatric hospitals incur for providing inpatient care have continually risen, as has the number of medicaid patients they serve. At the same time, providers have asserted that medicaid reimbursement for inpatient psychiatric hospital services has not kept pace with costs. These proposed amendments would increase medicaid reimbursement to hospitals in Montana that have both licensed hospital beds and licensed residential treatment facility beds in an integrated facility. The source of the new payment is revenue from the hospital utilization fee established in 15-66-102, MCA, which must be used to provide funding for increases in medicaid payments to hospitals.

Also, the proposed changes are necessary to maintain the quality of care medicaid recipients receive, to assure that they have reasonable access to care, and to mitigate the shifting of costs from medicaid patients to privately insured and privately paying individuals. Quality of care is maintained because the payments established under the proposed rules will allow facilities to hire an adequate number of direct care staff.

Proposed new Rules I and VIII contain new material necessary to implement the hospital utilization fee for inpatient bed days. Proposed new Rules II through VII contain no new substantive material. They are the result of removing unrelated provisions from existing rules and non-definitional material from definitions. Each proposed new rule and amended rule would contain only one subject. This would conform them to 2-4-302, MCA and would make them easier to read and find.

This proposed reorganization of rule provisions was requested by the Secretary of State to conform with their requirements and the Montana Administrative Procedure Act (MAPA).

#### Rule I

The Department is proposing a new rule containing definitions applicable to inpatient psychiatric services. It includes new definitions related to implementation of the continuity of care payment, as well as existing definition text that were formerly in ARM 37.88.1101.

#### Rule II

The Department is proposing a new rule reorganizing provisions governing hospital based residential treatment facilities. The text of this rule is currently in ARM 37.88.1101. No substantive change is intended.

Rule III

The Department is proposing to reorganize the provisions related to inpatient hospital psychiatric care. The text of this rule is currently in ARM 37.88.1101. No substantive change is intended.

Rule IV

The Department is proposing to reorganize the provisions related to inpatient psychiatric services. The text of this rule is currently found in ARM 37.88.1101. No substantive change is intended.

Rule V

The Department is proposing to reorganize the provisions related to residential psychiatric care. The text of this rule is currently in ARM 37.88.1101. No substantive change is intended.

Rule VI

The Department is proposing to reorganize the provisions related to residential treatment center reimbursement. The text of this rule is currently part of ARM 37.88.1106. No substantive change is intended.

Rule VII

The Department proposes to reorganize the provisions related to inpatient psychiatric hospital reimbursement. The text of this rule is currently part of ARM 37.88.1106. No substantive change is intended.

Rule VIII

The Department proposes this new rule to contain provisions governing eligibility for and computation of the continuity of care payment. All facilities that have both licensed hospital beds and licensed residential treatment facility beds in an integrated facility will be eligible for the payment. The adjustor represents reimbursement only for the residential care provided, not for the inpatient psychiatric care. The proposed rule lists the criteria used to calculate the payment and sets forth the formula for computing the payment. The amount of the payment will be based on medicaid residential utilization. The total amount available for these payments will be 4% of the revenue generated by the hospital utilization fee, plus federal financial participation.

ARM 37.88.101

The Department is proposing to amend this rule to conform it to the reorganization proposed for ARM 37.88.1101. The proposed

deletion of notification requirements is not intended to affect provider's or recipient's substantive rights. The material unnecessarily duplicates federal and state statutory provisions and can be removed without compromising individual rights.

ARM 37.88.1101

The Department is proposing amendment of this definitional rule to conform to the proposed new continuity of care rules and to remove non-definitional material. This amendment continues the Department's effort to place substantive rule material in their own rule rather than in a rule on definition of terms.

ARM 37.88.1106

The Department is proposing the amendment of this rule to conform to the proposed new rate structure. Each subject would have its own new rule as described above. This proposal is intended to make the provisions easier to read and find.

Fiscal Impact and Persons Affected

The proposed rules and amendments will not adversely affect psychiatric hospital patients or increase the rates they pay. Section 15-66-102, MCA specifically forbids taxed facilities from recouping the cost of the utilization fee by adding an amount to patients' bills. In 2003, there were approximately 192 admissions and approximately 17,828 inpatient days. Of those, 137 of the admissions and approximately 14,656 of the days were medicaid covered. In State Fiscal Year (SFY) 2003, approximately 63,304 people were eligible for medicaid inpatient psychiatric services, and none of them will be adversely affected by the proposed rules. The rules will potentially increase reimbursement to every licensed hospital based residential treatment facility (RTF) in Montana. The total net amount of the increase in reimbursement to hospital based RTFs statewide will be \$493,415, in SYF 03 and \$479,240 in SYF 2003.

5. The Department proposes that these new rules and amendments will be applied retroactively to January 1, 2004.

6. 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 January 8, 2004. Data, views or arguments may also be submitted by facsimile (406)444-1970 or by electronic mail via the Internet to dphhslegal@state.mt.us. The Department also maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. For placement on the mailing list, please write the person at the address above.

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

Dawn Sliva  
Rule Reviewer

/s/ Mike Billings for  
Director, Public Health and  
Human Services

Certified to the Secretary of State December 1, 2003.

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

|                              |   |                          |
|------------------------------|---|--------------------------|
| In the matter of the         | ) | NOTICE OF PUBLIC HEARING |
| amendment of ARM 37.78.102   | ) | ON PROPOSED AMENDMENT    |
| and ARM 37.82.101 pertaining | ) |                          |
| to temporary assistance for  | ) |                          |
| needy families (TANF),       | ) |                          |
| medical assistance, purpose  | ) |                          |
| and incorporation of policy  | ) |                          |
| manuals                      | ) |                          |

TO: All Interested Persons

1. On January 6, 2004, 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 December 29, 2003, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970; Email dphhslegal@state.mt.us.

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

37.78.102 TANF: FEDERAL REGULATIONS ADOPTED BY REFERENCE  
(1) remains the same.

(2) The Montana TANF cash assistance manual in effect ~~July 1, 2003~~ January 1, 2004 is ~~hereby~~ adopted and incorporated by ~~this~~ reference. A copy of the Montana TANF cash assistance manual is available for public viewing at each local office of public assistance, and at the Department of Public Health and Human Services, Human and Community Services Division, 1400 Broadway, P.O. Box 202952, Helena, MT 59620-2952. Manual updates are also available on the department's website at [www.dphhs.state.mt.us](http://www.dphhs.state.mt.us).

AUTH: Sec. 53-4-212, MCA  
IMP: Sec. 53-4-211 and 53-4-601, MCA

37.82.101 MEDICAL ASSISTANCE, PURPOSE AND INCORPORATION OF POLICY MANUALS (1) remains the same.

(2) The department hereby adopts and incorporates by this reference the state policy manuals governing the administration of the medicaid program effective ~~July 1, 2003~~ January 1, 2004. 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, 1400 Broadway, P.O. Box 202952, Helena, MT 59620-2952. The proposed manual updates are also available on the department's website at [www.dphhs.state.mt.us](http://www.dphhs.state.mt.us).

AUTH: Sec. 53-2-201 and 53-6-113, MCA

IMP: Sec. 53-6-101, 53-6-131 and 53-6-141, MCA

3. The proposed amendments to ARM 37.78.102 and 37.82.101 are necessary in order to incorporate into Administrative Rules of Montana the version of the policy manual effective January 1, 2004 and permit all interested parties as well as the public to comment on the Department's policies and to offer suggested changes. Many of these changes are being made in order to comply with federal law or regulations.

Section 53-6-101, MCA requires the Department of Public Health and Human Services to comply with federal law in order to receive federal matching funds. In accordance with 2-4-307, MCA of the Montana Administrative Procedure Act (MAPA), an agency may adopt by reference any model code, federal agency rule, rule of any agency of this state, or other similar publication if the publication of the model code, rule, or other publication would be unduly cumbersome, expensive, or otherwise inexpedient. The manuals incorporated by reference by these rule changes fit all three of these criteria. It would be unduly cumbersome, expensive, or otherwise inexpedient to attempt to place this information into rule format. In addition, the Secretary of State's publishing guidelines require that rules be short, readable and encompass a single idea. The TANF and Medicaid provisions set forth in these manuals are of such in-depth complexity, they can not be effectively or coherently reduced to fit these requirements.

Manuals and draft manual material are available for review in each local Office of Public Assistance. Following is a brief overview of the changes being made to each manual section for the Family Medicaid Manual, the Social Security Income (SSI) Medicaid Manual and the Temporary Assistance for Needy Families (TANF) Cash Assistance Manual.

#### Family Medicaid Manual

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

FMA 202-1 Adding New Household Members - Adds requirement that form HCS-261A (Adding a New TANF/Medicaid Household Member) be



completed anytime a new adult is added to the Medicaid assistance unit. This is necessary as the HCS-261A is considered an application for the new adult household member. 42 CFR 435.907 states that the department must require a written application from the applicant, their representative or someone acting responsibly for the applicant, and that the application must be signed under penalty of perjury. The HCS-261A meets these requirements. If the HCS-261A were not required, we could potentially open Medicaid for an individual who has never technically applied, therefore we would not be allowed to automatically assign to the State of Montana the applicant's rights to any health insurance or other third party payment, or their rights to medical support. We also would not be informing them of their reporting requirements, need to provide proof of their eligibility, use of their SSN, use and disclosure of confidential or protected health information, the lien and estate recovery program, and their right to request a fair hearing.

FMA 1302-1 HIPAA Release of Protected Health Information - This is a new section to the FMA manual which instructs office of public assistance staff to use only the HPS-402 release form when requested to release protected health information. This form is added in order to comply with the Health Insurance Portability and Accountability Act (HIPAA).

#### SSI-Medicaid Manual

Except for MA 904-2 - Income Disregards for Institutionalized Spouses - fiscal impact based on the 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 (defined below) and a statement of the SSI Standard Payment Amount, all of these standards are required to match the federal standards as published by the Social Security Administration. Increases will reflect the Social Security Administration's annual Cost of Living Allocation (COLA). These increases do not result in an increase in the number of eligible individuals, but only retain eligibility for those already receiving these benefits.

The following sections were updated to incorporate federal benefit standards related to the Supplemental Security Income program based on the Social Security Act:

- MA 001 Categorically Needy
- MA 005 Nursing Home Residents
- MA 011 Standard Payment Amounts (SPA)

The categorically needy standard has been updated from \$552 to \$564 for an individual and from \$829 to \$846 for a couple in MA 001, MA 005 and MA 011. These standards are required 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. Pickle-eligibles are those who are currently receiving Social Security benefits, who were eligible for both Old Age Survivor and Disability Insurance (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). A Pickle-eligible individual or couple's income is tested against an adjusted categorically needy standard which takes into account the cumulative increase in the Consumer Price Index since the time when the 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 (a.k.a. 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 chart is provided as an alternative to calculating each case individually by deducting the increase which caused closure of SSI and all COLA increases in that increase 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.

MA 402-4 Conditional Assistance - Adds policy from 20 CFR 416.1245 that property not sold during the conditional assistance period will be considered excluded after the end of the conditional assistance period as long as it remains continuously offered for sale. This is a change from previous policy interpretation which stated that each property was evaluated for accessibility at the end of the conditional assistance period. The reason for this change is to provide consistency with the federal regulation and ease of administration.

MA 404-2 Penalty Period for Asset Transfers - Increases the standard for determining length of transfer of assets penalty, based on an updated average of private pay nursing home rate, which must be updated annually, according to 42 U.S.C. 1396(p). The standard is increased from \$3684 to \$3813.

MA 404-6 Assets Transferred to Special Needs Trust - Statements in this section have been corrected to match mandatory federal policies at 42 U.S.C. 1396p (d)(4)(a) and interpretations of that policy by the Federal Centers for Medicare and Medicaid Services (CMS). Removes statement that a special needs trust may include assets of others besides the beneficiary, which appears to be in conflict with regulations cited above.

MA 903-1 Resource Assessments - The community spouse resource maintenance allowance standards have been changed as required by 42 U.S.C. 1396r-5. The minimum community spouse resource maintenance allowance has been increased from \$18,132 to \$18,552, and the maximum community spouse resource maintenance allowance has been increased from \$90,660 to \$92,760. We do not expect there to be a financial impact to the Medicaid program based on this change because this simply reduces by \$2100 the amount of resources to be spent down by an ineligible spouse prior to achieving Medicaid eligibility. Because Medicaid allows an individual to qualify for Medicaid for the full month if the individual is within the resource standard at any time during that month, this should not affect the number of months of Medicaid eligibility, but rather simply allow the community spouse to spend less prior to Medicaid eligibility being established.

MA 904-2 Income Disregards for Institutionalized Spouses - The community spouse income maintenance allowance standards have been changed as required by 42 U.S.C. 1396r through 5 (d)(3) and (4) and 42 U.S.C. 1396r through 5(g). The maximum monthly maintenance needs allowance has been increased from \$2267 to \$2319, the minimum monthly maintenance needs allowance has been increased from \$1493 to \$1515, and the excess shelter allowance has been increased from \$448 to \$455. Financial impact of these required changes is expected to be \$84,240 annually in general fund, with a total financial impact to the Medicaid program of \$312,000 annually.

MA 1302-1 HIPAA Release of Protected Health Information - new section to the MA manual. Instructs office of public assistance staff to use only the HPS-402 release form when requested to release protected health information, also provides a copy of the HPS-402, in compliance with the Health Insurance Portability and Accountability Act (HIPAA Federal Register April 8, 1997).

#### TANF Cash Assistance Manual

Fiscal impact of the proposed changes to the TANF Cash Assistance Manual is expected to be zero.

In TANF manual section 103-1 and 201-3, a requirement was added that form HCS-261A (Adding a New TANF/Medicaid Household Member) be completed anytime a new adult is added to the TANF assistance unit. This is necessary as the HCS-261A is considered an application for the new adult household member. If the HCS-261A were not required, we could potentially open TANF for an individual who has never technically applied, therefore we would not be allowed to automatically assign to the State of Montana the applicant's rights to child support. We also would not be informing them of their reporting requirements, need to provide proof of their eligibility, use of their SSN, use and disclosure of confidential or protected health information, the lien and estate recovery program, and their right to request a fair

hearing. New household members must also be aware that they are using time limited TANF benefit months.

TANF manual section 201-1 - clarification was added that once a child has been emancipated, his or her parents are not included in the filing or assistance unit even if the child is living with them. This was not previously included in the policy manual but was an understood policy based upon the fact that the filing unit must contain minor children and those that are financially responsible for them.

TANF manual section 302-1 has been updated to add that an individual who is receiving services outside of their county of residence must perform the majority of work participation activities in their county of service and that supportive services are not available to provide transportation from the county of residence to the county of service. The intention of the policy is that a participant can receive services in the county that is most convenient for them because they are already traveling there for other purposes. The policy is not intended for a participant to be able to avoid participation.

In TANF manual sections 801-2 and 801-3, the processing time frame was changed from 30 days to 45 days to match the processing time frame for regular applications. The reason for the policy change is to maintain consistency between regular benefits and extended benefits. The additional time also allows for a more thorough exploration of the need for extended benefits. Policy was changed that if a participant/applicant turns in an application for extended benefits without any verification attached the verification must be requested using TEAMS notice X-009. The requirement to request verification ensures that applicants who are not aware that they need to turn in additional information are informed in writing. This will help to make sure that applicants who are potentially eligible are not denied because of a lack of understanding of the requirements.

The proposed manual changes are available for public viewing at the same location where the policy manuals can be viewed and on the Department's website, [www.dphhs.state.mt.us/legal\\_section/proposed\\_manual\\_changes.htm](http://www.dphhs.state.mt.us/legal_section/proposed_manual_changes.htm). The policies or pages in the manuals that are being changed effective January 1, 2004 are clearly marked on the proposed manual replacement materials.

The incorporation and adoption of the manuals, including the proposed changes to the manuals, will not increase, decrease, or change the nature of any fees, costs, or benefits. There are approximately 5700 cases (approximately 16,000 individuals) presently receiving TANF cash assistance and all of which are impacted by the Department's administrative policies. There are approximately 79,454 individuals receiving medical care through the Medicaid program, all of which are impacted by the Department's administrative policies. The Department does not

expect these amendments to have any significant impact on families in Montana.

4. Interested persons may submit their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to Kathy Munson, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 202951, Helena, MT 59620-2951, no later than 5:00 p.m. on January 8, 2004. Data, views or arguments may also be submitted by facsimile (406)444-9744 or by electronic mail via the Internet to dphhslegal@state.mt.us. The Department also maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. For placement on the mailing list, please write the person at the address above.

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

Dawn Sliva  
Rule Reviewer

/s/ Mike Billings for  
Director, Public Health and  
Human Services

Certified to the Secretary of State December 1, 2003.

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

|                                |   |                    |
|--------------------------------|---|--------------------|
| In the matter of the repeal of | ) | NOTICE OF PROPOSED |
| ARM 37.106.1506 pertaining to  | ) | REPEAL             |
| licensure of health            | ) |                    |
| maintenance organizations      | ) | NO PUBLIC HEARING  |
| (HMO)                          | ) | CONTEMPLATED       |

TO: All Interested Persons

1. On January 10, 2004, the Department of Public Health and Human Services proposes to repeal the above-stated rule.

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. If you need to request an accommodation, contact the department no later than 5:00 p.m. on December 29, 2003, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970; Email [dphhslegal@state.mt.us](mailto:dphhslegal@state.mt.us).

2. The rule 37.106.1506 as proposed to be repealed is on page 37-26230 of the Administrative Rules of Montana.

AUTH: Sec. 50-5-103 and 50-5-404, MCA

IMP: Sec. 50-5-103, 50-5-204 and 50-5-404, MCA

3. Section 50-5-101, MCA, was amended by the 58th Legislature to remove the term "health maintenance organizations (HMO)" from the statutory definition of "health care facility". The effect of this legislation was to eliminate the authority of the Department of Public Health and Human Services to license HMOs as health care facilities under Title 50, chapter 5, part 2, MCA. HMOs are regulated by the State Auditor Commissioner of Insurance. This rule change is necessary to enact the provisions of the legislation. No other alternatives were considered.

4. Interested persons may submit their data, views or arguments concerning the proposed action in writing to Kathy Munson, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 202951, Helena, MT 59620-2951, no later than 5:00 p.m. on January 8, 2004. Data, views or arguments may also be submitted by facsimile (406)444-9744 or by electronic mail via the Internet to [dphhslegal@state.mt.us](mailto:dphhslegal@state.mt.us). The Department also maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. For placement on the mailing list, please write the person at the address above.

5. If a person who is directly affected by the proposed action wishes to express data, views and arguments orally or in writing at a public hearing, that person must make a written request for a public hearing and submit such request, along with any written comments to Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210, by facsimile (406)444-1970 or by electronic mail via the Internet to dphhslegal@state.mt.us no later than 5:00 p.m. on January 8, 2004.

6. If the Department of Public Health and Human Services receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of those who are directly affected by the proposed action, from the Administrative Rule Review Committee of the legislature, from a governmental agency or subdivision, or from an association having no less than 25 members who are directly affected, a hearing will be held at a later date and a notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be one based on the three HMOs affected by rules covering health maintenance organizations (HMO).

Dawn Sliva  
Rule Reviewer

/s/ Mike Billings for  
Director, Public Health and  
Human Services

Certified to the Secretary of State December 1, 2003.

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

|                              |   |                          |
|------------------------------|---|--------------------------|
| In the matter of the repeal  | ) | NOTICE OF PUBLIC HEARING |
| of ARM 37.106.313 pertaining | ) | ON PROPOSED REPEAL       |
| to minimum standards for all | ) |                          |
| health care facilities,      | ) |                          |
| communicable disease control | ) |                          |

TO: All Interested Persons

1. On January 6, 2004, at 11:00 a.m., a public hearing will be held in the auditorium of the Department of Public Health and Human Services Building, 111 N. Sanders, Helena, Montana to consider the proposed repeal of the above-stated rule.

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 December 29, 2003, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970; Email dphhslegal@state.mt.us.

2. The rule 37.106.313 as proposed to be repealed is on page 37-25993 of the Administrative Rules of Montana.

AUTH: Sec. 50-5-103 and 50-5-404, MCA

IMP: Sec. 50-5-103, 50-5-204 and 50-5-404, MCA

3. ARM 37.106.313 needs to be repealed in its entirety. This rule is unnecessary and does not offer any significant degree of safety to the public health. The standards in this rule were established in 1980 and are 23 years old. The Center for Disease Control no longer recommends the annual testing of employees or residents of long term care facilities for prevention of the transmission of Mycobacterium tuberculosis (TB). The TB testing of residents and staff adds unnecessary cost to the provision of health care services and does not contribute significantly to the public health. The rule is confusing to providers. Some providers end up testing year round because their staff and residents' annual date in each facility is different.

4. Interested persons may submit their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to Kathy Munson, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 202951, Helena, MT 59620-2951, no later than



5:00 p.m. on January 8, 2004. Data, views or arguments may also be submitted by facsimile (406)444-9744 or by electronic mail via the Internet to dphhslegal@state.mt.us. The Department also maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. For placement on the mailing list, please write the person at the address above.

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

Dawn Sliva  
Rule Reviewer

/s/ Mike Billings for  
Director, Public Health and  
Human Services

Certified to the Secretary of State December 1, 2003.

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

In the matter of the amendment ) NOTICE OF AMENDMENT  
of ARM 6.6.2203 pertaining to )  
rebates and inducements )

TO: All Concerned Persons

1. On July 17, 2003, the State Auditor and Commissioner of Securities published MAR Notice No. 6-145 regarding a public hearing on the proposed amendment of the above-stated rule relating to rebates and inducements, at page 1435 of the 2003 Montana Administrative Register, Issue No. 13.

2. A public hearing was held in Helena on August 13, 2003. Oral comments were received at the hearing, and written comments were received up to the closing of the comment period on August 21, 2003.

3. After considering the comments, the State Auditor has amended ARM 6.6.2203 as proposed but with the following changes, stricken matter interlined, new matter underlined.

6.6.2203 REBATES AND INDUCEMENTS (1) through (2)(d) remain as proposed.

(e) deferring any payment for insurance or services, including title commitments or preliminary reports, otherwise due or payable for more than ~~30~~ 60 days;

(f) through (f)(v) remain as proposed.

(g) renting or offering to rent as either landlord or tenant at a rental favorable to any producer of title business, ~~or to any title insurer, or title insurance producer, or any employee or agent of any of the~~ aformentioned, as compared with terms otherwise generally available;

(h) through (i) remain as proposed.

(3) ~~An~~ a title insurer or title insurance producer may furnish a single copy of a "property profile" relating to the ownership and status of title to real property.

(a) remains the same.

(i) the last vesting deed ~~appearing~~ of record;

(ii) deeds of trust or mortgages which ~~appear to be in full force and effect~~ have not been reconveyed or released;

(iii) a plat map reproduction and/or a ~~locator~~ map showing the location of the property with or without driving directions;

(iv) a copy of ~~applicable~~ restrictive covenants filed with the plat map;

(v) real estate tax information; and

(vi) remains as proposed.

(b) A property profile may include no more than the six above-described items of information and shall not include market value information, demographics, or additions, addenda,

or attachments which may be construed as conclusions reached by the title ~~entity insurer or title insurance producer~~ regarding matters of marketable ownership or encumbrances. A generic cover letter with the printed standard letterhead of the title ~~entity insurer or title insurance producer~~ must be attached to the property profile. The cover letter may include a brief statement identifying by name only, which of the six permitted items of information are attached thereto. The cover letter may also contain a disclaimer as to conclusions of marketable ownership or encumbrances. The content of the cover letter or property profile is strictly limited to the foregoing and shall specifically not include any advertising or marketing for the benefit of the recipient.

(c) Market value information, demographics, or other additions, addenda, or attachments ~~which may be construed as conclusions reached by the title entity regarding matters of marketable ownership or encumbrances~~ may be provided, but only upon receipt of a charge commensurate with the actual cost of the work performed and the material furnished.

(4) remains as proposed.

AUTH: 33-1-313, MCA

IMP: 33-18-210, 33-25-202 and 33-25-401, MCA

Comment 1: The commenter, a licensed title insurance producer, supported the proposed rule changes. Additionally, the commenter suggested that the rules should clearly state that paying for or providing advertising was also an inducement. The commenter suggested that advertising be added to the non-exclusive list of activities under ARM 6.6.2203(2)(h) that constitute inducements.

Response 1: The list of activities at (2)(h) is non-exclusive and the department has interpreted (2)(h) to include advertising.

Comment 2: The commenter, a licensed title insurance producer, believed that property profiles, that are provided free of charge, should not include ownership or lien information. The commenter currently provides this information to lenders for a fee and does not believe that the same information should be provided to real estate brokers and/or agents without a fee.

Response 2: The last deed of record and deeds of mortgage or trust in effect have historically been included in property profiles. The proposed change removes the reference to the form and instead lists the items that may be included as part of a property profile. The commenter is under no obligation to provide this information free of charge in a property profile.

Comment 3: The commenter, who is not a licensed title insurance producer, indicated that the proposed changed to

(3)(e) establishing 30 days as the maximum time for deferring payment for insurance or services was not long enough.

Response 3: The department has adopted 60 days as the maximum time for deferring payment for insurance or services. Any further deferment would appear to be intended to provide an inducement in the form of a title commitment before a buyer and sale price have been identified or in the form of an extension of credit.

Comment 4: The commenter, not a licensed title insurance producer, indicated that (2)(g) should be clarified to apply to title insurance producers and the agents of any title insurance producer.

Response 4: The department has interpreted this subsection to include agents or employees of title insurers or title insurance producers; however, the department has added language to clearly specify the same.

Comment 5: The commenter, not a licensed title insurance producer, indicated that (3)(h) was not clear and that (3)(i) should be a separate rule.

Response 5: Neither the original rule nor the proposed rule contain (3)(h) and (3)(i) and therefore the department believes that the commenter is referring to (2)(h) and (2)(i). The department has not proposed any substantive changes to (2)(h) and (2)(i) but is implementing a formatting change suggested by the Secretary of State's Office.

Comment 6: The commenter, not a licensed title insurance producer, agreed with the information to be provided in a property profile but suggested language changes to the list of possible property profile components at (3)(a) including "last vesting deed of record," "deeds of trust or mortgages which have not been reconveyed or satisfied," and "real estate tax information."

Response 6: The department agreed and the amended rule specifies "last vesting deed of record," "deeds of trust or mortgages which have not been reconveyed or released" and "real estate tax information."

Comment 7: The commenter, not a licensed title insurance producer, indicated that the cover letter format of the property profile specified in the proposed rule at (3)(b) was too specific and that the property profile information should be presented in a format selected by the title insurer or title insurance producer.

Response 7: The original rule provided that a specific form, and therefore a specific format, must be used for property profiles. Accordingly, the proposed rule is less restrictive

than the original. The cover letter is necessary to identify the source of the property profile and which of the six permitted property profile components are provided. Further, the cover letter may not contain any advertising or marketing for the benefit of the recipient.

Comment 8: The commenter, current President of the Montana Land Title Association and representing the same, suggested that (3)(a)(i) specify the deed showing the current owner because the last deed appearing of record as stated in the proposed rule may not be that of the current owner.

Response 8: The department agreed and amended the rule as stated in Response 6.

Comment 9: The commenter, current President of the Montana Land Title Association and representing the same, suggested that (3)(a)(ii) be revised to specify deeds of trust or mortgages which have not been released.

Response 9: The department agreed and amended the rule as stated in Response 6.

Comment 10: The commenter, current President of the Montana Land Title Association and representing the same, indicated that in (3)(a)(iii), "plat map" was clear but "locator map" was not clear because it could mean an aerial photograph or a star on a map showing the location and suggested that it be defined.

Response 10: The department has revised the language to clarify that the locator map should show the location of property with or without driving directions to the subject property. An aerial photograph or street map would be acceptable provided that the location of the subject property is identified.

Comment 11: The commenter, current President of the Montana Land Title Association and representing the same, indicated that (3)(a)(iv) regarding "applicable restrictive covenants" was not clear and could mean covenants filed with any conveyance. If the rule was meant to provide the subdivision covenants, the rule could state the covenants that were filed with the plat.

Response 11: The department has revised the rule to specify restrictive covenants filed with the plat map.

Comment 12: The commenter, current President of the Montana Land Title Association and representing the same, believed that (3)(a)(v) was not clear and could refer to any type of tax information associated with the property.

Response 12: The department agreed and amended the rule as

stated in Response 6.

Comment 13: The commenter, current President of the Montana Land Title Association and representing the same, believed that (3)(a)(vi), specifying that property characteristics such as number of rooms, square footage and year built may be provided, was not relevant to title insurance and should be stricken.

Response 13: The department disagrees. This information has historically been included in property profiles and is available from the state of Montana, Department of Revenue or the Department of Administration, and is typically included with the real estate tax information on the subject property.

Comment 14: The commenter, current President of the Montana Land Title Association and representing the same, believed that the word "encumbrances" in (3)(b) was confusing and contradicted the earlier rule because a mortgage in full force or restrictive covenants are encumbrances.

Response: 14: The department disagrees. The adopted rule at (3)(a) specifies the information and encumbrances, such as a mortgage in full force, that may be disclosed as part of a property profile. At (3)(b), the rule clarifies that any other information regarding marketable ownership or encumbrances may not be included in the property profile.

Comment 15: The commenter, current President of the Montana Land Title Association and representing the same, believed that requiring a "generic" cover letter on the "printed standard letterhead" of the title insurer or title insurance producer to be attached to the property profile was unclear and that any cover letter indicating the name of the entity providing the property profile constituted advertising.

Response 15: The department disagrees. The cover letter on printed standard letterhead of the title insurer or title insurance producer serves to identify the source of the property profile. The cover letter is generic in that it identifies by name which of the permitted property profile components are attached, although the cover letter may also include a disclaimer as to marketable ownership or encumbrances. The cover letter may not include any advertising for the benefit of the recipient of the property profile.

Comment 16: The commenter, current President of the Montana Land Title Association and representing the same, believed that (3)(c) was not clear and may contradict the filed rates and title insurance act with regard to providing conclusions about marketable ownership or encumbrances at charges commensurate with the actual cost of the work performed.

Response 16: The department agreed and has removed the proposed language regarding conclusions pertaining to matters of marketable ownership or encumbrances from the amended rule.

Comment 17: The commenter, current President of the Montana Land Title Association and representing the same, was concerned that entities, other than title insurers or title insurance producers, may provide similar information to that contained in property profiles and asked that the administrative rules apply to all entities providing similar information.

Response 17: If such entities are outside the jurisdiction of the department, the rule would not apply.

Comment 18: Two commenters, both licensed title insurance producers, supported the comments of the President of the Montana Land Title Association.

Response 18: The department has noted and addressed these comments in the foregoing comments and responses.

Comment 19: The commenter, a licensed title insurance producer, was concerned that unlicensed individuals may be selling a product that appears to be title insurance but is not underwritten by an authorized title insurer. The commenter would like the department to clarify that only properly licensed title insurance producers may transact title insurance business and that the underwriter must be an authorized title insurer.

Response 19: The department agrees that only properly licensed title insurance producers may transact title insurance business and that the underwriter must be an authorized title insurer. However, the present rule addresses rebates and inducements, not issues of licensure and certificates of authority.

Comment 20: Several commenters suggested that (2)(d), prohibiting charging a fee less than the reasonable cost of providing escrow, closing, or settlement services, be reviewed by the department because the escrow and closing services provided in title insurance business have grown over the past 10 to 15 years. One commenter suggested that some title insurance producers and title insurers may be providing escrow, closing and settlement services at less than actual cost presently which constitutes an inducement under the rule. Two commenters suggested that the department regulate escrow, closing and settlement services provided by authorized title insurers or licensed title insurance producers by requiring filing of the rates for these services similar to the filing of title insurance rates. One commenter suggested that the department form a committee of licensed title insurance producers to assist in clarifying and amending this rule.

Response 20: The department did not propose a substantive change to (2)(d), but may seek to further define reasonable cost in a subsequent rule amendment and may seek comments from a committee of licensed title insurance producers prior to proposing any such rule amendment.

JOHN MORRISON, State Auditor  
and Commissioner of Insurance

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

By: /s/ Christina L. Goe  
Christina L. Goe  
Rules Reviewer

Certified to the Secretary of State on December 1, 2003.



BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY  
OF THE STATE OF MONTANA

|                                    |                             |
|------------------------------------|-----------------------------|
| In the matter of the amendment )   | NOTICE OF AMENDMENT,        |
| of ARM 17.56.101, 17.56.121, )     | ADOPTION AND REPEAL         |
| 17.56.308, 17.56.309, 17.56.701 )  |                             |
| and 17.56.1001, adoption of new )  | (UNDERGROUND STORAGE TANKS) |
| rules I through III pertaining )   |                             |
| to underground storage tanks and ) |                             |
| the repeal of ARM 17.56.221 )      |                             |
| pertaining to issuance of )        |                             |
| compliance tags and certificates ) |                             |

TO: All Concerned Persons

1. On October 16, 2003, the Department of Environmental Quality published MAR Notice No. 17-198 regarding a notice of public hearing on the proposed amendment, adoption and repeal of the above-stated rules at page 2167, 2003 Montana Administrative Register, issue number 19.

2. The Department has amended ARM 17.56.101, 17.56.121, 17.56.308, 17.56.309, 17.56.701 and 17.56.1001, adopted new rules I (17.56.310), II (17.56.706) and III (17.56.903) and repealed ARM 17.56.221 exactly as proposed. However, in ARM 17.56.701, the interlined sections (4) through (5) were not a part of the original rule and should not have appeared.

3. The following comment was received and appears with the Department's response:

COMMENT NO. 1: Tank registration fees should not be increased because any fee increase, in addition to existing costs to comply with underground storage tank (UST) regulations, will have a significant economic impact on small business owners.

RESPONSE: House Bill (HB) 144 amended 75-11-505, MCA, by authorizing the Department to increase annual tank registration fees to a level that supports the costs of the UST program. Prior to HB 144, tank registration fees were set at the maximum amount authorized by 75-11-505, MCA, which was \$70.00 per year for each UST over 1,100 gallons and \$20.00 per year for each UST 1,100 gallons or less. This amount is no longer adequate to fund the current costs of the Department's UST program. Under 75-11-505(6), MCA, as amended by HB 144, the Department may assess an amount not to exceed \$108 per year for each tank over 1,100 gallons and \$36 per year for each tank 1,100 gallons or less. Although the Department is sensitive to the fact that this fee increase will have an economic impact on owners and operators, it is necessary for the Department to raise the annual tank registration fees to the amount allowed under 75-11-505, MCA, as amended by HB 144, in order to fully fund the Department UST program so that the Department can continue to provide UST licensing, permitting, inspection and enforcement of

UST statutory and regulatory requirements. The Department UST program also provides education and outreach to UST owners and operators. The Department UST program is essential to protect human health and the environment by preventing and mitigating leaks from USTs and remedying violations of UST requirements.

DEPARTMENT OF ENVIRONMENTAL QUALITY

By: Jan P. Sensibaugh  
JAN P. SENSIBAUGH, Director

Reviewed by:

James M. Madden  
JAMES M. MADDEN, Rule Reviewer

Certified to the Secretary of State, December 1, 2003.

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

In the matter of the transfer     )  
of ARM 8.12.101 through            )  
8.12.904, pertaining to the        )  
board of chiropractors             )

TO: All Concerned Persons

1. Pursuant to Chapter 483, Laws of Montana 2001, effective July 1, 2001, the Board of Chiropractors was transferred from the Department of Commerce to the Department of Labor and Industry ARM Title 24, Chapter 213.

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

| <u>OLD</u> | <u>NEW</u>  |   |
|------------|-------------|---|
| 8.12.101   | 24.126.101  | Board Organization  |
| 8.12.201   | 24.126.201  | Procedural Rules  |
| 8.12.202   | 24.126.202  | Public Participation Rules  |
| 8.12.614   | 24.126.301  | Definitions   |
| 8.12.615   | 24.126.401  | Fee Schedule  |
| 8.12.403   | 24.126.403  | Purpose Of The Board  |
| 8.12.401   | 24.126.405  | Board Meetings  |
| 8.12.402   | 24.126.406  | Record Of Minutes And Hearings  |
| 8.12.618   | 24.126.411  | Patient Records Retention   |
| 8.12.601   | 24.126.501  | Applications  |
| 8.12.603   | 24.126.504  | Examination Requirements  |
| 8.12.604   | 24.126.507  | Temporary Permit  |
| 8.12.617   | 24.126.510  | Endorsement   |
| 8.12.611   | 24.126.701  | Inactive Status   |
| 8.12.616   | 24.126.704  | Interns And Preceptors  |
| 8.12.901   | 24.126.901  | Applications For Certification Of<br>Impairment Evaluators  |
| 8.12.902   | 24.126.904  | Minimum Requirements For<br>Board-Approved Programs To Qualify<br>For Certification As Evaluators |
| 8.12.903   | 24.126.907  | Approval Of Training Programs   |
| 8.12.904   | 24.126.910  | Recertification - Denial - Revocation   |
| 8.12.606   | 24.126.2101 | Renewals - Continuing Education<br>Requirements   |
| 8.12.607   | 24.126.2301 | Unprofessional Conduct  |

3. The transfer of rules is necessary because this board was transferred from the Department of Commerce to the Department of Labor and Industry by the 2001 legislature by Chapter 483, Laws of Montana 2001.

BOARD OF CHIROPRACTORS  
GREGORY P. HOELL, CHAIRMAN

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

/s/ MARK CADWALLADER  
Mark Cadwallader  
Alternate Rule Reviewer

Certified to the Secretary of State December 1, 2003

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY  
STATE OF MONTANA

In the matter of the ) CORRECTED NOTICE  
amendment of ARM 24.301.201 ) OF AMENDMENT  
and 24.301.215, pertaining to )  
building codes )

TO: All Concerned Persons

1. On October 16, 2003, the Department of Labor and Industry published a Notice of Amendment and Adoption relating to MAR Notice No. 24-301-170, at page 2299 of the 2003 Montana Administrative Register, issue no. 19. The original Notice of Public Hearing for MAR Notice No. 24-301-170 was published on August 14, 2003, at page 1783 of the 2003 Montana Administrative Register, issue no. 15.

2. The Notice of Public Hearing purported to propose amendments to ARM 24.301.215, and the Notice of Amendment and Adoption purported to amend ARM 24.301.215. Neither action should have been taken with respect to ARM 24.301.215, due to the fact that the Department had previously repealed the rule effective December 27, 2002.

3. In the Notice of Amendment and Adoption, Comment 2 included a statement that local governments did not have to make "all" non-exempt buildings subject to local building codes. After further review of the tape recording of the comments made by the public, the Department concludes that it did not adequately respond to that aspect of the comment. The response should have read as follows:

RESPONSE 2: The Department agrees with the commenter's understanding of the rule. In order to clarify the rule, the Department is proposing to amend ARM 24.301.201(1) to delete the word "all" in the two places the word occurs in section (1) in MAR Notice No. 24-301-181 in this issue of the Register.

4. In the Notice of Amendment and Adoption, Comment 11 and Response 11 incorrectly referred to ARM 24.301.362(2), a rule not proposed for amendment. After further review of the tape recording of the comments made by the public, the Department concludes that it did not accurately summarize the comment. The comment and response should have read as follows:

COMMENT 11: A commenter stated that ARM 24.301.201(2) was contrary to the provisions of 50-60-506, MCA, to the extent that it purports to allow a city, town or county require a locally-issued (as opposed to state-issued) plumbing permit for certain owner-performed work in a residential structure.

RESPONSE 11: The Department agrees that ARM 24.301.201(2) appears to be contrary to 50-60-506(2) and (4), MCA. The Department is proposing to amend the rule by deleting ARM 24.301.201(2) in its entirety in MAR Notice No. 24-301-181 in this issue of the Register.

/s/ MARK CADWALLADER  
Mark Cadwallader  
Alternate Rule Reviewer

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

Certified to the Secretary of State December 1, 2003.

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

In the matter of the repeal of     ) NOTICE OF REPEAL  
ARM 42.35.101, 42.35.102,             )  
42.35.103, 42.35.104, 42.35.201,) )  
42.35.202, 42.35.203, 42.35.204,) )  
42.35.211, 42.35.212, 42.35.213,) )  
42.35.214, 42.35.221, 42.35.222,) )  
42.35.231, 42.35.241, 42.35.242,) )  
42.35.243, 42.35.244, 42.35.301,) )  
42.35.302, 42.35.311, 42.35.312,) )  
42.35.316, 42.35.317, 42.35.321,) )  
42.35.322, 42.35.323, 42.35.331,) )  
42.35.332, 42.35.333, 42.35.334,) )  
42.35.335, 42.35.336, 42.35.337,) )  
42.35.341, 42.35.342, 42.35.343,) )  
42.35.401, 42.35.405, 42.35.501,) )  
42.35.502, 42.35.503, 42.35.504,) )  
42.35.505, 42.35.506, 42.35.507,) )  
42.35.508, 42.35.509, 42.35.510,) )  
42.35.511, 42.35.512, 42.35.513,) )  
42.35.514, 42.35.515, 42.35.516,) )  
42.35.517, 42.35.518, 42.35.519,) )  
42.35.520, 42.36.101, 42.36.102,) )  
42.36.103, 42.36.104, 42.36.105,) )  
42.36.201, 42.36.202, 42.36.203,) )  
42.36.204, 42.36.205, 42.36.211,) )  
42.36.212, 42.36.301, 42.36.311,) )  
42.36.312, 42.36.313, 42.36.314,) )  
42.36.315, 42.36.401, 42.36.402,) )  
42.36.403, 42.36.404, 42.36.405,) )  
42.36.406, 42.36.407, 42.36.408,) )  
42.36.501, 42.36.502, 42.36.601,) )  
42.36.602, and 42.36.603             )  
relating to inheritance and         )  
estate taxes                             )

TO: All Concerned Persons

1. On October 16, 2003, the department published MAR Notice No. 42-2-723 regarding the proposed repeal of the above-stated rules relating to inheritance and estate taxes at page 2233 of the 2003 Montana Administrative Register, issue no. 19.

2. No comments were received. Therefore, the department repeals the rules as proposed.

3. An electronic copy of this Adoption Notice is available through the Department's site on the World Wide Web at <http://www.discoveringmontana.com/revenue>, under "for your reference;" "DOR administrative rules;" and "upcoming events and proposed rule changes." The Department strives to make

the electronic copy of this Adoption Notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the Department strives to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems.

/s/ Cleo Anderson  
CLEO ANDERSON  
Rule Reviewer

/s/ Linda M. Francis  
LINDA M. FRANCIS  
Director of Revenue

Certified to Secretary of State December 1, 2003



**NOTICE OF FUNCTION OF ADMINISTRATIVE RULE REVIEW COMMITTEE**

**Interim Committees and the Environmental Quality Council**

Administrative rule review is a function of interim committees and the Environmental Quality Council (EQC). These interim committees and the EQC have administrative rule review, program evaluation, and monitoring functions for the following executive branch agencies and the entities attached to agencies for administrative purposes.

**Economic Affairs Interim Committee:**

- Department of Agriculture;
- Department of Commerce;
- Department of Labor and Industry;
- Department of Livestock;
- Office of the State Auditor and Insurance Commissioner;

and

- Office of Economic Development.

**Education and Local Government Interim Committee:**

- State Board of Education;
- Board of Public Education;
- Board of Regents of Higher Education; and
- Office of Public Instruction.

**Children, Families, Health, and Human Services Interim Committee:**

- Department of Public Health and Human Services.

**Law and Justice Interim Committee:**

- Department of Corrections; and
- Department of Justice.

**Energy and Telecommunications Interim Committee:**

- Department of Public Service Regulation.

**Revenue and Transportation Interim Committee:**

- Department of Revenue; and
- Department of Transportation.

**State Administration, and Veterans' Affairs Interim Committee:**

- Department of Administration;
- Department of Military Affairs; and
- Office of the Secretary of State.

**Environmental Quality Council:**

- Department of Environmental Quality;
- Department of Fish, Wildlife, and Parks; and
- Department of Natural Resources and Conservation.

These interim committees and the EQC have the authority to make recommendations to an agency regarding the adoption, amendment, or repeal of a rule or to request that the agency prepare a statement of the estimated economic impact of a proposal. They also may poll the members of the Legislature to determine if a proposed rule is consistent with the intent of the Legislature or, during a legislative session, introduce a bill repealing a rule, or directing an agency to adopt or amend a rule, or a Joint Resolution recommending that an agency adopt, amend, or repeal a rule.

The interim committees and the EQC welcome comments and invite members of the public to appear before them or to send written statements in order to bring to their attention any difficulties with the existing or proposed rules. The mailing address is PO Box 201706, Helena, MT 59620-1706.

HOW TO USE THE ADMINISTRATIVE RULES OF MONTANA  
AND THE MONTANA ADMINISTRATIVE REGISTER

Definitions: Administrative Rules of Montana (ARM) is a looseleaf compilation by department of all rules of state departments and attached boards presently in effect, except rules adopted up to three months previously.

Montana Administrative Register (MAR) is a soft back, bound publication, issued twice-monthly, containing notices of rules proposed by agencies, notices of rules adopted by agencies, and interpretations of statutes and rules by the attorney general (Attorney General's Opinions) and agencies (Declaratory Rulings) issued since publication of the preceding register.

Use of the Administrative Rules of Montana (ARM):

- |                                     |   |
|-------------------------------------|---|
| Known<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<br>Number and<br>Department | 2. Go to cross reference table at end of each title which lists MCA section numbers and corresponding ARM rule numbers.   |

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through September 30, 2003. This table includes those rules adopted during the period October 1, 2003 through December 31, 2003 and any proposed rule action that was pending during the past six-month period. (A notice of adoption must be published within six months of the published notice of the proposed rule.) This table does not, however, include the contents of this issue of the Montana Administrative Register (MAR).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through September 30, 2003, 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 2002 and 2003 Montana Administrative Registers.

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