

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 4

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 The Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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

Page Number

TABLE OF CONTENTS

NOTICE SECTION

ADMINISTRATION, Department of, Title 2

2-2-368 Notice of Proposed Amendment - Dollar Amounts to Which Consumer Loan Rates are to be Applied. No Public Hearing Contemplated. 373-374

2-2-369 Notice of Public Hearing on Proposed Amendment and Adoption - Definitions - Application Procedure Required to Engage in Deposit Lending - Reports - Schedule of Charges - Employees' Character and Fitness - Electronic Deductions - Income Verification. 375-379

AGRICULTURE, Department of, Title 4

4-14-162 Notice of Proposed Amendment - Potato Assessment Fees. No Public Hearing Contemplated. 380-382

LABOR AND INDUSTRY, Department of, Title 24

24-101-202 (Department of Labor and Industry - Boards of: Alternative Health Care - Architects - Athletics - Barbers and Cosmetologists - Chiropractors - Clinical Laboratory Science Practitioners - Dentistry - State Electrical Board - Funeral Service - Hearing Aid Dispensers - Medical Examiners - Nursing - Nursing Home Administrators - Occupational Therapy Practice - Optometry - (Continued next page)

LABOR AND INDUSTRY, Continued

(24-101-202 continued)

Outfitters - Pharmacy - Physical Therapy Examiners - Plumbers - Private Security Patrol Officers and Investigators - Professional Engineers and Professional Land Surveyors - Psychologists - Public Accountants - Radiologic Technologists - Real Estate Appraisers - Realty Regulation - Respiratory Care Practitioners - Board of Sanitarians - Social Work Examiners and Professional Counselors - Speech-Language Pathologists and Audiologists - Veterinary Medicine - Boiler Operating Engineers Program - Construction Blasters Program - Crane and Hoisting Operating Engineers Program - Fire Prevention and Fireworks Wholesalers Program - Licensed Addiction Counselors Program) Notice of Public Hearing on Proposed Transfer and Amendment, Adoption, Amendment, and Repeal - Fees - Licensing - Renewals. 383-482

24-156-63 (Board of Medical Examiners) Notice of Public Hearing on Proposed Amendment, Adoption and Repeal - Physician Assistant Licensure. 483-494

24-165-16 (Board of Occupational Therapy Practice) Notice of Public Hearing on Proposed Amendment and Adoption - Fees - Fee Abatement. 495-498

NATURAL RESOURCES AND CONSERVATION, Department of, Title 36

36-22-113 Notice of Public Hearing on Proposed Amendment and Adoption - Equipment Operation in the SMZ - Retention of Trees and Clearcutting in the SMZ - Site-specific Alternative Practices - Definitions - Penalties for Violation of the Streamside Management Zone Law. 499-509

PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

37-369 Notice of Public Hearing on Proposed Amendment - Montana Telecommunications Access Program (MTAP). 510-512

37-370 Notice of Public Hearing on Proposed Adoption and Amendment - Mental Health Access Plan Prescription Drug Benefits for Persons Eligible for Medicare. 513-519

37-371 Notice of Proposed Amendment - Components of Quality Assessment Activities. No Public Hearing Contemplated. 520-523

37-372 Notice of Extension of Comment Period on Proposed Adoption, Amendment, and Repeal - Youth Foster Homes - Further Amendment of New Rule V. 524-525

RULE SECTION

ADMINISTRATION, Department of, Title 2

AMD REP	(State Lottery Commission) State Lottery's Procedures - Retailers - Licensing - Scratch Tickets - Prizes.	526-527
------------	--	---------

ENVIRONMENTAL QUALITY, Department of, Title 17

AMD NEW	(Board of Environmental Review and the Department of Environmental Quality) (Water Quality - Subdivisions - CECRA - Underground Storage Tanks) Department Circular WQB-7 - Outstanding Resource Waters.	528-531
------------	--	---------

AMD	(Board of Environmental Review) (Water Quality) Concentrated Animal Feeding Operations (CAFOs) - Department Circular DEQ-9 (Montana Technical Standards for CAFOs).	532-539
-----	--	---------

AMD	(Board of Environmental Review and the Department of Environmental Quality) (Public Water - Sewage System Requirements - Subdivisions) Adoption by Reference - Plans for Public Water Supply or Wastewater System - Fees - Treatment Requirements - Disinfection.	540-545
-----	---	---------

LABOR AND INDUSTRY, Department of, Title 24

AMD	Workers' Compensation Reporting Database.	546-552
-----	---	---------

NEW	Elevator Services Occupational Licensing Program.	553-566
-----	---	---------

AMD NEW REP	Building Codes.	567-573
-------------------	-----------------	---------

PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

AMD REP	Modification of Child Support Orders.	574
------------	---------------------------------------	-----

NEW	Medicare Part D Low Income Subsidies.	575
-----	---------------------------------------	-----

SPECIAL NOTICE AND TABLE SECTION

Function of Administrative Rule Review Committee.	576-577
How to Use ARM and MAR.	578
Accumulative Table.	579-590
Boards and Councils Appointees.	591-601
Vacancies on Boards and Councils.	602-613

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the proposed amendment) NOTICE OF PROPOSED
of ARM 2.59.307 regarding dollar) AMENDMENT
amounts to which consumer loan)
rates are to be applied) NO PUBLIC HEARING
) CONTEMPLATED

TO: All Concerned Persons

1. On March 27, 2006, the Division of Banking and Financial Institutions proposes to amend the above-stated rule.

2. The Department of Administration, Division of Banking and Financial Institutions, will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice. If you require an accommodation, contact the Division of Banking and Financial Institutions no later than 5:00 p.m. on March 22, 2005, to advise us of the nature of the accommodation that you need. Please contact Christopher Romano, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; telephone (406) 841-2928; TDD (406) 444-1421; facsimile (406) 841-2930; e-mail to cromano@mt.gov.

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

2.59.307 DOLLAR AMOUNTS TO WHICH CONSUMER LOAN RATES ARE TO BE APPLIED (1) The dollar amounts in the following statutory sections are changed to the new designated amounts as follows:

<u>Authority</u>	<u>Stated Amount</u>	<u>Changed Designated Amount</u>
32-5-201(4), MCA	\$1,000	\$2,000 <u>\$2,200</u>
32-5-306(7), MCA	\$ 300	\$ 600 <u>\$ 660</u>

AUTH: 32-5-104, MCA

IMP: 32-5-104, 32-5-201, 32-5-301, 32-5-302, 32-5-306, MCA

4. REASON: Section 32-5-104, MCA provides that certain dollar amounts contained within the Montana Consumer Loan Act will be subject to change based on changes which occur in the Consumer Price Index for Urban Wage Earners and Clerical Workers. Changes have occurred in this Consumer Price Index which therefore require adjustments to the dollar amounts contained in ARM 2.59.307.

5. Concerned persons may present their data, views or arguments concerning the proposed action in writing to Mark Prichard, Legal Counsel, Division

of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; faxed to the office at (406) 841-2930; e-mailed to mprichard@mt.gov, and must be received no later than March 24, 2006.

6. If the Division receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of those who are directly affected by the proposed amendment, from the appropriate administrative rule review committee of the legislature, from a governmental agency or subdivision or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 33 based on the number of consumer loan licensees issued as of publication of this notice.

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

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

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

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

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

Certified to the Secretary of State February 13, 2006.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the proposed	)	NOTICE OF PUBLIC HEARING
amendment of ARM 2.59.1501 pertaining	)	ON PROPOSED AMENDMENT
to definitions and ARM 2.59.1502	)	AND ADOPTION
pertaining to application procedure)	
required to engage in deposit lending,)	
and the proposed adoption of NEW)	
RULE I pertaining to reports, NEW)	
RULE II pertaining to schedule of charges,)	
NEW RULE III pertaining to employees')	
character and fitness, NEW RULE IV)	
pertaining to electronic deductions, and)	
NEW RULE V pertaining to income)	
verification)	

TO: All Concerned Persons

1. On March 22, 2006, at 10:00 a.m., a public hearing will be held in Room 342 of the Park Avenue Building, 301 S. Park, Helena, Montana, to consider the proposed amendment and adoption of the above-stated rules.

2. The Department of Administration, Division of Banking and Financial Institutions, will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice. If you require an accommodation, contact the Division of Banking and Financial Institutions no later than 5:00 p.m. on March 17, 2006, to advise us of the nature of the accommodation that you need. Please contact Christopher Romano, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; telephone (406) 841-2928; TDD (406) 444-1421; facsimile (406) 841-2930; e-mail to cromano@mt.gov.

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

2.59.1501 DEFINITIONS For the purposes of this subchapter, the following definitions apply:

(1) and (2) remain the same.

(3) "Fraud or financial dishonesty or civil judgments involving fraudulent or dishonest financial dealings" means embezzlement, money laundering, identity theft, theft, and other financial related crimes and judgments.

(4) "Monthly net income" means gross salary minus taxes and voluntary deductions. This term includes income from public assistance, child support, alimony, unemployment insurance payments, and workers' compensation.

AUTH: 31-1-702, MCA

IMP: 31-1-705, 31-1-722, MCA

2.59.1502 APPLICATION PROCEDURE REQUIRED TO ENGAGE IN DEPOSIT LENDING (1) through (3) remain the same.

(4) Except for those entities listed in (5), all persons or lenders must obtain a license under this rule in order to issue deferred deposit loans. Persons or lenders that are licensed under the Consumer Loan Act, 32-5-101, MCA, and the Title Loan Act, 31-1-801, MCA, are not exempt from the licensing requirements of 31-1-701, MCA.

(5) The following are exempt from the licensing requirements:

(a) federal and state chartered banks;

(b) federal and state chartered savings and loans;

(c) federal and state credit unions;

(d) trust companies; and

(e) investment companies.

AUTH: 31-1-702, MCA

IMP: 31-1-705, 31-1-722, MCA

REASON: The Montana Legislature enacted House Bill 526 in 1999, which created the Montana Deferred Deposit Loan Act. This Act has been codified in Title 32, chapter 1, part 7, MCA. Section 31-1-702, MCA allows the Department to adopt rules to implement the provisions of the Act. ARM 2.59.1501 is being amended to provide definitions for specific terms used throughout the proposed rules. ARM 2.59.1502 is being amended to clarify which regulated entities are exempt from the licensing provisions of the Montana Deferred Deposit Loan Act. The Division does not anticipate any financial impact from the proposed rules. There are currently 106 deferred deposit loan licensees.

4. The proposed new rules provide as follows:

NEW RULE I REPORTS (1) The following must be reported to the department:

(a) any instances of theft or missing funds within ten days of each occurrence;

(b) any change in managers within ten days of each occurrence; and

(c) all officer questionnaires must be answered within ten days of the end of any examination.

AUTH: 31-1-702, MCA

IMP: 31-1-702, MCA

NEW RULE II SCHEDULE OF CHARGES (1) Every licensee under the Montana Deferred Deposit Loan Act shall file with the commissioner in duplicate, at the time of filing application for such license or license renewal, a full and accurate schedule of all charges, fees, and costs as follows:

(a) interest rate;

- (b) nonsufficient fund fees; and
 - (c) examples of typical loan amounts including principal, interest, and fees.
- (2) Licensees shall display such schedule prominently in each licensed place of business where loans are made or negotiated so as to be easily readable by borrowers and prospective borrowers.

AUTH: 31-1-702, MCA

IMP: 31-1-721, MCA

NEW RULE III EMPLOYEES' CHARACTER AND FITNESS (1) Licensees are responsible for conducting appropriate background checks on all applicants for employment. At a minimum, each licensee shall:

- (a) require completion of employee criminal background questionnaire;
- (b) verify and document employment and personal references; and
- (c) within ten days of start of employment, request a Montana criminal records check from the Department of Justice.

(2) If the background check demonstrates any criminal convictions involving fraud or financial dishonesty or civil judgments involving fraudulent or dishonest financial dealings, the licensee cannot employ such person, or if already employed, must terminate employment.

(3) Verification of compliance with this rule shall occur during annual exams. Licensees are required to keep accurate employment records on each employee to ensure that the department is able to verify compliance.

AUTH: 31-1-702, MCA

IMP: 31-1-705, MCA

NEW RULE IV ELECTRONIC DEDUCTIONS (1) An electronic deduction for nonsufficient funds may be authorized by the borrower only on the original loan agreement.

(2) An electronic deduction for nonsufficient funds shall be separate and apart from an electronic deduction for the amount of the loan, interest, or any fees.

(3) An electronic deduction for nonsufficient funds authorized by the borrower under (1) may not be presented to the borrower's financial institution until the licensee has presented the check for payment at least twice.

AUTH: 31-1-702, MCA

IMP: 31-1-703, MCA

NEW RULE V INCOME VERIFICATION (1) Licensees shall verify a borrower's income prior to issuing any deferred deposit loan.

(2) Verification of income shall be in a form of most recent pay stubs for employment, or other official documents for public assistance, child support, alimony, unemployment insurance, and workers' compensation.

AUTH: 31-1-702, MCA

IMP: 31-1-722, MCA

REASON: The Montana Legislature enacted House Bill 526 in 1999, which created the Montana Deferred Deposit Loan Act. This Act has been codified in Title 32, chapter 1, part 7, MCA. Section 31-1-702, MCA allows the Department to adopt rules to implement the provisions of the Act. New Rules I and II are needed to clarify the specific reports and disclosures that deferred deposit loan licensees will be required to provide. New Rule III is needed to implement recent legislative enactment. New Rule IV is needed to clarify the procedures for utilizing electronic fund transfers for checks that are returned for nonsufficient funds. New Rule V is needed to clarify what is necessary in order to verify a borrower's income prior to issuing a deferred deposit loan. The Division does not anticipate any financial impact from the proposed rules. There are currently 106 deferred deposit loan licensees.

5. Concerned persons may present their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to Mark Prichard, Legal Counsel, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; faxed to the office at (406) 841-2930; e-mailed to mprichard@mt.gov, and must be received no later than March 27, 2006.

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

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

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

request form at any rules hearing held by the Division of Banking and Financial Institutions.

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

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

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

Certified to the Secretary of State February 13, 2006.

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the proposed
amendment of ARM 4.6.202 relating to
potato assessment fees

)
)
)
)

NOTICE OF PROPOSED
AMENDMENT

NO PUBLIC HEARING
CONTEMPLATED

TO: All Concerned Persons

1. On March 25, 2006, the Montana Department of Agriculture proposes to amend the above-stated rule relating to potato assessment fees.

2. The Department of Agriculture will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Agriculture no later than 5:00 p.m. on March 9, 2006, to advise us of the nature of the accommodation that you need. Please contact Joel A. Clairmont at the Montana Department of Agriculture, 303 North Roberts, P.O. Box 200201, Helena, MT, 59620-0201; Phone: (406) 444-3144; Fax: (406) 444-5409; or E-mail: agr@mt.gov.

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

4.6.202 ANNUAL POTATO COMMODITY ASSESSMENT-COLLECTION

(1) remains the same.

(2) The assessment shall be ~~\$.03~~ \$.02 per hundredweight on all potatoes grown and marketed commercially in Montana by those growers producing and marketing more than 50,000 pounds annually.

(3) remains the same.

AUTH: 80-11-504, MCA

IMP: 80-11-515, MCA

REASON: The Montana Department of Agriculture, upon a recommendation from the Montana Potato Advisory Committee, thinks there will be sufficient funding provided by a two-cent (\$.02) assessment to fund the Potato Research and Market Development Program. It is estimated that this reduction in assessment will impact 60-75 potato producers in Montana and will reduce the amount of funds collected by approximately \$25,000 per year for research and market development.

4. Concerned persons may submit their data, views or arguments concerning the proposed action in writing to Joel A. Clairmont at the Montana Department Agriculture, 303 North Roberts, P.O. Box 200201, Helena, MT, 59620-0201; Fax: (406) 444-5409; or E-mail: agr@mt.gov. Any comments must be received no later than March 23, 2006.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments they have to Joel A. Clairmont at the Montana Department of Agriculture, 303 North Roberts, P.O. Box 200201, Helena, MT 59620-0201; Fax: (406) 444-5409; or E-mail: agr@mt.gov. A written request for hearing must be received no later than March 23, 2006.

6. If the Department receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action; from the appropriate administrative rule review committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be seven based on 65-75 potato producers.

7. The Department of Agriculture maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person and specifies for which program the person wishes to receive notices. Such written request may be mailed or delivered to Montana Department of Agriculture, 303 North Roberts, P.O. Box 200201, Helena, MT, 59620-0201; Fax: (406) 444-5409; or E-mail: agr@mt.gov or may be made by completing a request form at any rules hearing held by the Department of Agriculture.

8. An electronic copy of this Notice of Proposed Amendment is available through the Department's website at www.agr.mt.gov, under the Administrative Rules section. The Department strives to make the electronic copy of the Notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the Department strives to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems.

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

DEPARTMENT OF AGRICULTURE

/s/ Nancy K. Peterson

Nancy K. Peterson, Director

/s/ Timothy J. Meloy

Timothy J. Meloy, Attorney
Rule Reviewer

Certified to the Secretary of State, February 13, 2006.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY,
BOARD OF ALTERNATIVE HEALTH CARE, BOARD OF ARCHITECTS, BOARD
OF ATHLETICS, BOARD OF BARBERS AND COSMETOLOGISTS, BOARD OF
CHIROPRACTORS, BOARD OF CLINICAL LABORATORY SCIENCE
PRACTITIONERS, BOARD OF DENTISTRY, STATE ELECTRICAL BOARD,
BOARD OF FUNERAL SERVICE, BOARD OF HEARING AID DISPENSERS,
BOARD OF MEDICAL EXAMINERS, BOARD OF NURSING, BOARD OF NURSING
HOME ADMINISTRATORS, BOARD OF OCCUPATIONAL THERAPY PRACTICE,
BOARD OF OPTOMETRY, BOARD OF OUTFITTERS, BOARD OF PHARMACY,
BOARD OF PHYSICAL THERAPY EXAMINERS, BOARD OF PLUMBERS, BOARD
OF PRIVATE SECURITY PATROL OFFICERS AND INVESTIGATORS, BOARD OF
PROFESSIONAL ENGINEERS AND PROFESSIONAL LAND SURVEYORS,
BOARD OF PSYCHOLOGISTS, BOARD OF PUBLIC ACCOUNTANTS, BOARD OF
RADIOLOGIC TECHNOLOGISTS, BOARD OF REAL ESTATE APPRAISERS,
BOARD OF REALTY REGULATION, BOARD OF RESPIRATORY CARE
PRACTITIONERS, BOARD OF SANITARIANS, BOARD OF SOCIAL WORK
EXAMINERS AND PROFESSIONAL COUNSELORS, BOARD OF SPEECH-
LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS, BOARD OF VETERINARY
MEDICINE, BOILER OPERATING ENGINEERS PROGRAM, CONSTRUCTION
BLASTERS PROGRAM, CRANE AND HOISTING OPERATING ENGINEERS
PROGRAM, FIRE PREVENTION AND FIREWORKS WHOLESALERS PROGRAM,
AND LICENSED ADDICTION COUNSELORS PROGRAM
OF THE STATE OF MONTANA

In the matter of the proposed transfer and	) NOTICE OF PUBLIC
amendment of ARM 8.2.208, adoption of NEW	) HEARING ON PROPOSED
RULES I through XIV, amendment of ARM 8.11.101,	) TRANSFER AND
8.11.114, 8.11.115, 8.11.118, 8.32.306, 8.32.402,	) AMENDMENT, ADOPTION,
8.32.410, 8.32.411, 8.32.425, 8.32.426, 8.32.1501,	) AMENDMENT, AND
8.32.1509, 8.32.1510, 24.111.401, 24.111.2101,	) REPEAL
24.111.2102, 24.111.2103, 24.111.2301, 24.114.401,)
24.114.406, 24.114.2101, 24.117.402, 24.117.406,)
24.121.401, 24.121.603, 24.121.609, 24.121.2101,)
24.122.401, 24.122.515, 24.126.401, 24.126.2101,)
24.129.401, 24.129.602, 24.129.610, 24.131.405,)
24.131.501, 24.135.402, 24.135.2101, 24.138.301,)
24.138.402, 24.138.517, 24.138.518, 24.138.530,)
24.141.405, 24.141.2101, 24.141.2102, 24.144.404,)
24.144.502, 24.144.2102, 24.147.401, 24.147.505,)
24.147.1313, 24.150.301, 24.150.401, 24.150.505,)
24.150.2101, 24.150.2201, 24.156.601, 24.156.615,)
24.156.617, 24.156.805, 24.156.808, 24.156.1002,)
24.156.1004, 24.156.1302, 24.156.1305,)
24.156.1402, 24.156.1411, 24.156.1605,)
24.156.2717, 24.156.2719, 24.156.2731,)
24.162.420, 24.162.2101, 24.165.401, 24.165.407,)
24.168.401, 24.168.2101, 24.171.401, 24.171.2101,)

24.174.401, 24.174.1402, 24.174.2103, 24.174.2107,)
24.177.401, 24.177.410, 24.177.504, 24.177.2101,)
24.180.401, 24.180.410, 24.180.607, 24.180.707,)
24.180.2101, 24.182.401, 24.182.511, 24.182.513,)
24.183.404, 24.183.2101, 24.183.2103, 24.189.401,)
24.189.407, 24.189.2107, 24.201.410, 24.201.2101,)
24.204.401, 24.204.404, 24.204.2102, 24.207.401,)
24.207.517, 24.207.2101, 24.210.401, 24.210.635,)
24.210.661, 24.210.667, 24.210.801, 24.210.825,)
24.210.835, 24.210.836, 24.210.1020, 24.213.401,)
24.213.403, 24.213.412, 24.213.2121, 24.216.402,)
24.216.2101, 24.219.401, 24.219.405, 24.219.615,)
24.222.401, 24.222.2102, 24.225.401, 24.225.510,)
24.225.511, 24.225.515, 24.225.550, 24.225.709,)
24.225.750, and 24.225.925, and REPEAL of)
24.121.609, 24.156.602, 24.183.2104, and)
24.225.515)

TO: All Concerned Persons

1. On March 20, 2006, at 10:00 a.m., a public hearing will be held in room 489, Park Avenue Building, 301 South Park, Helena, Montana to consider the proposed transfer and amendment, adoption, amendment, and repeal of the above-stated rules. ARM 8.2.208 which pertains to renewal dates and requirements is proposed to be transferred and amended. The proposed new rules pertain to purpose, definitions, fees, licensing, renewal notification, and renewed, lapsed, expired or terminated licenses. The proposed amendments generally pertain to fees, renewals, continuing education, licensing requirements, unprofessional conduct, duplicate or lost licenses, definitions, examinations, prescriptive authority, trainees, inactive status, out-of-state applicants, temporary licenses or practice permits, reinstatement, expired or lapsed license, requirements, lists, abatement of fee rules, and training programs. The rules proposed to be repealed pertain to lapsed licenses, nonrefundable fees, expired certificate - renewal of grace period, and forfeiture of license and restoration.

2. The Department of Labor and Industry (Department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Business Standards Division (Division) no later than 5:00 p.m. on March 13, 2006, to advise us of the nature of the accommodation that you need. Please contact Kathy Lubke, Business Standards Division, 301 South Park, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2349; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail klubke@mt.gov.

3. GENERAL STATEMENT OF REASONABLE NECESSITY: Montana's 59th Legislature enacted House Bill (HB) 182 (Chapter 467, L. 2005) that became

effective July 1, 2005. This legislation generally revised and consolidated professional and occupational licensing laws; provided distinction between Department and Board or Program duties regarding licensure, examination, and fees; required standardization of forms; set uniform standards for license renewal, including renewal periods; removed specific Board or Program references if duties are assigned to the Department or provided generally to all Boards; and repealed certain Board-specific or Program-specific references to licensure, examinations, and fees.

This rulemaking notice serves to implement the major changes created by this legislation. The Department has determined that in order to implement these major provisions of HB 182, it is most efficient, cost effective and timely, and will ensure consistency among rules to adopt one notice with changes impacting all Boards and Programs.

Amendments in this notice serve to reduce duplication throughout the rules by putting information that is applicable to all Boards and Programs into Division rules instead of listing them within the rules of each individual Board or Program. The basic functions of all Division licensing entities are the same, therefore the general rules of these entities should be similar. Having rules applicable to the Division provides standardization and consistency among licensing entities. Logically, with standardization and consistency as a goal, the impacted rules should all be dealt with at the same time.

The Department has determined that it is reasonable and necessary to transfer and amend ARM 8.2.208 as the first piece of implementing HB 182. Chapter 483, L. 2001, transferred Professional and Occupational Licensing from the Department of Commerce (Title 8) to the Department of Labor and Industry (Title 24). Transferring ARM 8.2.208 into Title 24 will aid users in locating the current renewal dates for all Division licensing Boards and Programs. The rule is being amended to change the format from a paragraph style into a more user friendly table format. This format allows for ease in locating the license type, renewal frequency and renewal date. This transfer and amendment is being completed at this time along with changing other renewal date references in individual Board and Program rules, to ensure that all Board and Program license renewal dates are set by department rule as specified in 37-1-141, MCA. Amending individual rules to eliminate specific renewal dates or the reference to the duration of the license will eliminate the need to amend various rules if the renewal date or frequency should change. Removing these references from numerous rules eliminates the possibility of having conflicting dates and timeframes between rules. Also, this consolidated rule creates standardization and consistency among Division licensing entities.

Board and Program fee rules are being amended at this time to remove various fees from individual Board and Program rules. The Department has determined there are numerous common services provided by most Boards and Programs. The fees vary greatly, and part of the directive of HB 182 is to standardize fees for administrative services such as license verification, duplicate licenses, late penalty renewals, and

licensee lists. These administrative type services are being removed from individual Board and Program rules and consolidated into a Division rule (NEW RULE III) applicable to all Boards and Programs. By having standardized fees applicable for the same services, the fee discrepancy between various Boards and Programs is eliminated. With the creation of the Division licensee database, the cost of providing duplicate licenses, license verification, and licensee lists is no longer variable between licensing entities. The costs associated with providing these services are now the same among licensing entities. All licensees will be charged the same amount for the same service. Amending all Board and Program fee rules through the same notice treats all licensees equitably by charging the same fees for all licensees at the same time. A reference to the standardized fee rule is included in each Board or Program fee rule to make rule users aware that there are other fees that may be charged for services provided by the Division.

Other common amendments deal with terminology changes. HB 182 has defined three terms in conjunction with license renewal. Expired, lapsed, and terminated licenses are now defined in statute. These terms have been used within the existing rules. However, the context may not be consistent with the new statutory definition. It is reasonable and necessary to amend the rules to use terms consistently between the statutes and rules, to avoid potential areas of confusion, and to provide clarity.

Generally, it is also reasonable and necessary to amend authority and implementing citations to reflect changes implementing HB 182 that impact rulemaking authority and the sections being implemented by statute changes. The most common changes to the authority and implementing citations are to remove references to statutes that have been repealed, to add 37-1-134 and 37-1-141, MCA, to fee rule authority and implementing cites as needed, and to add 37-1-141, MCA, to renewal rules as necessary.

Repealed MCA cites are being removed as rules are amended to reflect the laws that are in effect at the time of the amendment.

Section 37-1-134, MCA, provides for establishing standardized fees, therefore it is included as an authorizing and implementing statute in the fee rules. Section 37-1-141, MCA, provides for assessing a late penalty fee, therefore this statute has been added as an implementing cite. Also it is reasonable and necessary to amend fee rules to indicate the Division is removing the hyphen in "non-refundable". This change is being made to make the word consistent throughout the Division's rules, and to follow the MCA and standard usage of the word nonrefundable.

In each renewal rule, reference is made to a common renewal date rule (ARM 8.2.208) and two proposed new Division rules (NEW RULES V and VI). Section 37-1-141, MCA, was amended to require that the renewal date for a license be set by Department rule and states the requirements for license renewal. Instead of repeating this standard language in each renewal rule, references to Division rules have been included. This coincides with the intent of the legislation to create uniform standards for license renewals, and revising notification periods. It is

therefore appropriate to include 37-1-141, MCA, as authority and implementing citations.

Also, language suggesting that renewal forms would be sent to licensees is to be deleted, and a generic reference that renewal notices would be sent as specified in NEW RULE V was inserted. This wording change is proposed to indicate that renewal forms may not always be sent, but licensees will be notified of the deadline to renew their license. With the increased use of the Department's online renewal service, it may no longer be necessary to send renewal forms. Renewal forms may be downloaded from the online renewal service if it is necessary to complete a paper copy of the renewal form instead of using the online renewal service. The renewal notice would also state that renewal forms are available upon request.

Rule catchphrases are being amended as appropriate in order to standardize the catchphrase. References to the renewal frequency are being eliminated in order to prevent the need for future amendment to specific rules if the renewal frequency is modified. The standard renewal date rule, ARM 8.2.208, would be the only rule that would need to be amended to indicate the renewal date or frequency change. By eliminating this duplication within numerous rules, it eliminates the possibility of conflicting information between rules, decreases the need for numerous rule amendments thereby creating less regulation and more efficiency.

4. The rule proposed to be amended and transferred provides as follows, deleted matter interlined, new matter underlined:

8.2.208 (24.101.413) RENEWAL DATES AND REQUIREMENTS

(1) Specific procedures and grace periods for renewal are set forth by department or board rule, or statute applicable to a particular profession, or 37-1-141, MCA. Such procedures shall take account of, and be based upon, the renewal dates ~~set forth~~ in this rule. An existing license ~~expires~~ ends on the renewal date ~~set forth~~ specified for each profession and occupation listed and must be renewed on or before this date.

(2) If a timely and sufficient application is submitted on or prior to such date, the applicant's continued practice is governed under 2-4-631, MCA. In order for an application to be timely and sufficient it must be:

(a) it must be completed with truthful information;

(b) accompanied by other required information or documentation as applicable;

(c) accompanied by the appropriate fee; and

(d) submitted so that it bears a U.S. Postal Service post mark prior to or on the renewal date for the applicable profession; or

(e) submitted by using the online renewal service available on the department's website. Although the department strives to keep its website accessible at all times, licensees 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 the online renewal service do not excuse late renewals;

(i) online renewal transactions must be fully completed prior to midnight Mountain time on the renewal date.

(3) If the requirements of this rule are not met, a late penalty fee as specified in [NEW RULE III] will be required in order to renew.

(4) The provisions of [NEW RULES V and VI] are applicable to all license renewals.

(2) (5) The following are renewal dates for the professions and occupations listed:

~~(a) January 1 is the renewal date for licenses and other authorities granted by the boards of nursing home administrators and psychologists;~~

~~(b) February 1 is the renewal date for licenses and other authorities granted by the boards of radiological technologists and speech-language pathologists and audiologists;~~

~~(c) March 1 is the renewal date for licenses and other authorities granted by the board of dentistry;~~

~~(d) March 31 is the renewal date for licenses and other authorities granted by the boards of barbers, medical examiners and real estate appraisers;~~

~~(e) April 1 is the renewal date for licenses and other authorities granted by the board of physical therapy examiners, and is the renewal date for guides and professional guides (regulated by the board of outfitters);~~

~~(f) April 30 is the renewal date for licenses and other authorities granted by the board of alternative health care;~~

~~(g) May 1 is the renewal date for licenses and other authorities granted by the boards of respiratory care practitioners and clinical laboratory science practitioners;~~

~~(h) June 15 is the renewal date for licenses and other authorities granted by the board of occupational therapy practice;~~

~~(i) June 30 is the renewal date for licenses and other authorities granted by the boards of hearing aid dispensers, landscape architects, professional engineers and land surveyors (every even-numbered year), pharmacists and sanitarians;~~

~~(j) July 1 is the renewal date for licenses and other authorities granted by the boards of architects, funeral service, and is the renewal date for salons and booth rentals (regulated by the board of cosmetologists);~~

~~(k) July 2 is the renewal date for licenses and other authorities granted by the board of optometry;~~

~~(l) July 15 is the renewal date for licenses and other authorities granted by the state electrical board (every third year with the first renewal coming due on July 15, 1997);~~

~~(m) September 1 is the renewal date for licenses and other authorities granted by the boards of plumbers and chiropractors;~~

~~(n) October 31 is the renewal date for physician assistants-certified, nutritionists, acupuncturists and podiatrists (regulated by the board of medical examiners);~~

~~(o) November 1 is the renewal date for licenses and other authorities granted by the board of veterinary medicine;~~

~~(p) November 30 is the renewal date for pharmacy technicians, wholesale drug distributors, mail order pharmacies, certified pharmacies and dangerous drug act (regulated by the board of pharmacy);~~

~~(q) December 1 is the renewal date for licenses and other authorities granted by the board of private security patrol officers and investigators;~~

~~(r) December 31 is the renewal date for licenses and other authorities granted by the boards of nursing, public accountants, realty regulation, social work examiners and professional counselors, and is the renewal date for outfitters (regulated by the board of outfitters), property managers (regulated by the board of realty regulation), and cosmetology, manicuring, electrology and esthetic schools and cosmetologists, manicurists, electrologists, estheticians and instructors (regulated by the board of cosmetologists).~~

	<u>BOARD OR PROGRAM JURISDICTION</u>	<u>LICENSE CATEGORY</u>	<u>FREQUENCY</u>	<u>RENEWAL DATE</u>
<u>(a)</u>	<u>Alternative Health Care</u>	<u>Naturopathic Physician</u>	<u>Annually</u>	<u>April 30</u>
		<u>Naturopathic Physician - Childbirth</u>	<u>Annually</u>	<u>April 30</u>
		<u>Direct-entry Midwife</u>	<u>Annually</u>	<u>April 30</u>
		<u>Direct-entry Midwife Apprentice</u>	<u>Annually</u>	<u>April 30</u>
		<u>Architects</u>	<u>Biennially, Even Numbered Years</u>	<u>June 30</u>
<u>(b)</u>	<u>Architects</u>	<u>Boxer, Club</u>	<u>Nonrenewable, must reapply. License expires June 30.</u>	
		<u>Boxer, Professional</u>	<u>Nonrenewable, must reapply. License expires June 30.</u>	
		<u>Boxer, Semi-Professional</u>	<u>Nonrenewable, must reapply. License expires June 30.</u>	
		<u>Cornerperson/Second</u>	<u>Nonrenewable, must reapply. License expires June 30.</u>	
		<u>Judge</u>	<u>Nonrenewable, must reapply. License expires June 30.</u>	
<u>(c)</u>	<u>Athletics</u>	<u>Kickboxer</u>	<u>Nonrenewable, must reapply. License expires June 30.</u>	
		<u>Knockdown Judge</u>	<u>Nonrenewable, must reapply. License expires June 30.</u>	
		<u>Manager/Trainer</u>	<u>Nonrenewable, must reapply. License expires June 30.</u>	
		<u>Minimum Kicking Requirements Official</u>	<u>Nonrenewable, must reapply. License expires June 30.</u>	

		<u>Promoter/Matchmaker</u>	<u>Nonrenewable, must reapply.</u> <u>License expires June 30.</u>	
		<u>Referee</u>	<u>Nonrenewable, must reapply.</u> <u>License expires June 30.</u>	
		<u>Wrestler, Professional</u>	<u>Nonrenewable, must reapply.</u> <u>License expires June 30.</u>	
		<u>Wrestler, Semi-Professional</u>	<u>Nonrenewable, must reapply.</u> <u>License expires June 30.</u>	
(d)	<u>Athlete Agents</u>	<u>Athlete Agents</u>	<u>Biennially</u>	<u>Anniversary</u> <u>Date of</u> <u>Certificate</u> <u>December 31</u> <u>July 1</u> <u>December 31</u> <u>December 31</u> <u>July 1</u> <u>December 31</u> <u>December 31</u> <u>December 31</u> <u>December 31</u> <u>December 31</u> <u>December 31</u> <u>July 1</u> <u>December 31</u>
(e)	<u>Barbers and</u> <u>Cosmetologists</u>	<u>Barber</u> <u>Barber Shop</u> <u>Barber School or College</u> <u>Barbering Instructor</u> <u>Booth Rental</u> <u>Cosmetologist</u> <u>Electrologist</u> <u>Esthetician</u> <u>Instructor</u> <u>Manicurist</u> <u>Salon</u> <u>School or Course</u> <u>Agriculture Class Boiler</u> <u>Engineer</u> <u>First Class Boiler Engineer</u> <u>Low Pressure Boiler</u> <u>Engineer</u>	<u>Biennially</u> <u>Annually</u> <u>Annually</u> <u>Biennially</u> <u>Annually</u> <u>Biennially</u> <u>Biennially</u> <u>Biennially</u> <u>Biennially</u> <u>Biennially</u> <u>Annually</u> <u>Annually</u> <u>Annually</u> <u>Annually</u> <u>Annually</u> <u>Annually</u> <u>Annually</u> <u>Annually</u> <u>Annually</u>	<u>Anniversary</u> <u>Date of License</u> <u>Anniversary</u> <u>Date of License</u> <u>Anniversary</u> <u>Date of License</u> <u>Anniversary</u> <u>Date of License</u> <u>Anniversary</u> <u>Date of License</u> <u>Anniversary</u> <u>Date of License</u> <u>Anniversary</u> <u>Date of License</u> <u>Anniversary</u> <u>Date of License</u> <u>Anniversary</u> <u>Date of License</u> <u>Anniversary</u> <u>Date of License</u>
(f)	<u>Boiler Operating Engineers</u>			

		<u>Second Class Boiler Engineer</u>	<u>Annually</u>	<u>Anniversary Date of License</u>
		<u>Third Class Boiler Engineer</u>	<u>Annually</u>	<u>Anniversary Date of License</u>
		<u>Traction Boiler Engineer</u>	<u>Annually</u>	<u>Anniversary Date of License</u>
(g)	<u>Chiropractors</u>	<u>Chiropractors</u>	<u>Annually</u>	<u>September 1</u>
(h)	<u>Clinical Laboratory Science Practitioners</u>	<u>Clinical Laboratory Scientist</u>	<u>Annually</u>	<u>May 1</u>
		<u>Clinical Laboratory Specialist</u>	<u>Annually</u>	<u>May 1</u>
		<u>Clinical Laboratory Technician</u>	<u>Annually</u>	<u>May 1</u>
(i)	<u>Construction Blasters</u>	<u>Construction Blasters</u>	<u>Annually</u>	<u>January 1</u>
(j)	<u>Crane and Hoisting Operating Engineers</u>	<u>First Class Crane Operators</u>	<u>Annually</u>	<u>Anniversary Date of License</u>
		<u>Second Class Crane Operators</u>	<u>Annually</u>	<u>Anniversary Date of License</u>
		<u>Third Class Crane Oiler</u>	<u>Annually</u>	<u>Anniversary Date of License</u>
(k)	<u>Dentistry</u>	<u>Dental Hygienist</u>	<u>Annually</u>	<u>March 1</u>
		<u>Dentist</u>	<u>Annually</u>	<u>March 1</u>
		<u>Denturist</u>	<u>Annually</u>	<u>March 1</u>
		<u>General Anesthesia Administration Permit</u>	<u>Annually</u>	<u>March 1</u>
		<u>Volunteer Licensees</u>	<u>Annually</u>	<u>March 1</u>
(l)	<u>Elevator Program</u>	<u>Contractor</u>	<u>Annually</u>	<u>April 1</u>
		<u>Inspector</u>	<u>Annually</u>	<u>April 1</u>
		<u>Mechanic</u>	<u>Annually</u>	<u>April 1</u>
(m)	<u>Fire Prevention and</u>	<u>Company Hiring Entity (Sell, Install and Service)</u>	<u>Annually</u>	<u>May 31</u>

	<u>Investigation and Fireworks Wholesalers Program</u>	<u>Individual Endorsement (Sell, Install and Service)</u>	<u>Annually</u>	<u>May 31</u>
		<u>Fireworks Wholesaler</u>	<u>Nonrenewable</u>	
<u>(n)</u>	<u>Funeral Service</u>	<u>Crematory</u>	<u>Annually</u>	<u>July 1</u>
		<u>Crematory Operator</u>	<u>Annually</u>	<u>July 1</u>
		<u>Crematory Technician</u>	<u>Annually</u>	<u>July 1</u>
		<u>Mortician</u>	<u>Annually</u>	<u>July 1</u>
		<u>Mortuary</u>	<u>Annually</u>	<u>July 1</u>
		<u>Mortuary Branch Facility</u>	<u>Annually</u>	<u>July 1</u>
<u>(o)</u>	<u>Hearing Aid Dispenser</u>	<u>Hearing Aid Dispenser</u>	<u>Annually</u>	<u>June 30</u>
<u>(p)</u>	<u>Landscape Architects</u>	<u>Landscape Architects</u>	<u>Annually</u>	<u>June 30</u>
<u>(q)</u>	<u>Licensed Addiction Counselors</u>	<u>Licensed Addiction Counselor</u>	<u>Biennially</u>	<u>June 30</u>
<u>(r)</u>	<u>Medical Examiners</u>	<u>Acupuncturist</u>	<u>Biennially</u>	<u>October 31</u>
		<u>Emergency Medical Technician</u>	<u>Biennially</u>	<u>March 31</u>
		<u>Nutritionist</u>	<u>Biennially</u>	<u>October 31</u>
		<u>Physician</u>	<u>Biennially</u>	<u>March 31</u>
		<u>Physician Assistant</u>	<u>Biennially</u>	<u>October 31</u>
		<u>Podiatrist</u>	<u>Biennially</u>	<u>October 31</u>
		<u>Telemedicine Practitioners</u>	<u>Biennially</u>	<u>March 31</u>
<u>(s)</u>	<u>Nursing</u>	<u>Clinical Nurse Specialist</u>	<u>Biennially, Even Numbered Years</u>	<u>December 31</u>
		<u>Nurse Anesthetist</u>	<u>Biennially, Even Numbered Years</u>	<u>December 31</u>
		<u>Nurse Midwife</u>	<u>Biennially, Even Numbered Years</u>	<u>December 31</u>
		<u>Nurse Practitioner</u>	<u>Biennially, Even Numbered Years</u>	<u>December 31</u>

		<u>APRN Prescriptive Authority</u>	<u>Biennially, Even Numbered Years</u>	<u>December 31</u>
		<u>Practical Nurse - Licensed</u>	<u>Biennially, Even Numbered Years</u>	<u>December 31</u>
		<u>Professional Nurse - Registered</u>	<u>Biennially, Even Numbered Years</u>	<u>December 31</u>
		<u>Medication Aide</u>	<u>Annually</u>	<u>March 31</u>
(t)	<u>Nursing Home Administrators</u>	<u>Nursing Home Administrator</u>	<u>Annually</u>	<u>December 31</u>
(u)	<u>Occupational Therapy Practice</u>	<u>Occupational Therapist</u>	<u>Annually</u>	<u>June 15</u>
		<u>Occupational Therapist Assistant</u>	<u>Annually</u>	<u>June 15</u>
(v)	<u>Optometry</u>	<u>Optometrist</u>	<u>Annually</u>	<u>July 2</u>
(w)	<u>Outfitters</u>	<u>Outfitter</u>	<u>Annually</u>	<u>December 31</u>
(x)	<u>Pharmacy</u>	<u>Dangerous Drug License</u>	<u>Annually</u>	<u>November 30</u>
		<u>Mail Order Pharmacy</u>	<u>Annually</u>	<u>November 30</u>
		<u>Pharmacist</u>	<u>Annually</u>	<u>June 30</u>
		<u>Pharmacy</u>	<u>Annually</u>	<u>November 30</u>
		<u>Pharmacy Technician</u>	<u>Annually</u>	<u>June 30</u>
		<u>Pharmacy Technician in Training</u>	<u>Nonrenewable</u>	
		<u>Pharmacy Technician Utilization Plan</u>	<u>Annually</u>	<u>November 30</u>
		<u>Telepharmacies</u>	<u>Annually</u>	<u>November 30</u>
		<u>Wholesale Drug Distributor</u>	<u>Annually</u>	<u>November 30</u>
(y)	<u>Physical Therapy Examiners</u>	<u>Physical Therapist</u>	<u>Annually</u>	<u>April 1</u>
		<u>Physical Therapist Assistant</u>	<u>Annually</u>	<u>April 1</u>
(z)	<u>Plumbers</u>	<u>Journeyman Plumber</u>	<u>Annually</u>	<u>September 1</u>
		<u>Master Plumber</u>	<u>Annually</u>	<u>September 1</u>
		<u>Medical Gas Endorsement</u>	<u>Annually</u>	<u>September 1</u>

(aa)	<u>Private Security Patrol Officers and Investigators</u>	<u>Contract Security Company</u>	<u>Annually</u>	<u>March 1</u>
		<u>Electronic Security Company</u>	<u>Annually</u>	<u>March 1</u>
		<u>Proprietary Security Organization</u>	<u>Annually</u>	<u>March 1</u>
		<u>Branch Office</u>	<u>Annually</u>	<u>March 1</u>
		<u>Private Investigator</u>	<u>Annually</u>	<u>March 1</u>
		<u>Private Investigator Trainee</u>	<u>Annually</u>	<u>March 1</u>
		<u>Resident Manager</u>	<u>Annually</u>	<u>March 1</u>
		<u>Qualifying Agent</u>	<u>Annually</u>	<u>March 1</u>
		<u>Security Guard</u>	<u>Annually</u>	<u>March 1</u>
		<u>Alarm Installer</u>	<u>Annually</u>	<u>March 1</u>
		<u>Alarm Response Runner</u>	<u>Annually</u>	<u>March 1</u>
		<u>Firearms Instructor</u>	<u>Annually</u>	<u>March 1</u>
		<u>Armed Status</u>	<u>Annually</u>	
(ab)	<u>Professional Engineers and Professional Land Surveyors</u>	<u>Certificate of Authority</u>	<u>Biennially, Even Numbered Years</u>	<u>June 30</u>
		<u>Emeritus Status</u>		
		<u>Engineer Intern</u>	<u>Indefinite</u>	
		<u>Land Surveyor Intern</u>	<u>None, Indefinite</u>	
		<u>Professional Engineer</u>	<u>Biennially, Even Numbered Years</u>	<u>June 30</u>
		<u>Professional Engineer by Comity</u>	<u>Biennially, Even Numbered Years</u>	<u>June 30</u>
		<u>Professional Land Surveyor</u>	<u>Biennially, Even Numbered Years</u>	<u>June 30</u>
		<u>Professional Land Surveyor by Comity</u>	<u>Biennially, Even Numbered Years</u>	<u>June 30</u>
		<u>Psychologist</u>	<u>Annually</u>	<u>December 31</u>
		<u>Certified Public Accountant</u>	<u>Annually</u>	<u>December 31</u>
(ac)	<u>Psychologists</u>			
(ad)	<u>Public Accountants</u>			

<u>(ae)</u>	<u>Radiologic Technologists</u>	<u>Licensed Public Accountant</u> <u>Limited Permit X-Ray</u> <u>Procedures</u>	<u>Annually</u>	<u>December 31</u>
			<u>Annually</u>	<u>February 1</u>
<u>(af)</u>	<u>Real Estate Appraisers</u>	<u>Radiologic Technologists</u>	<u>Annually</u>	<u>February 1</u>
		<u>General Appraiser, Certified</u>	<u>Annually</u>	<u>March 31</u>
		<u>General Appraiser, Certified</u> <u>(Out-of-State)</u>	<u>Annually</u>	<u>March 31</u>
		<u>Licensed Appraiser</u>	<u>Annually</u>	<u>March 31</u>
		<u>Mentor</u>		
		<u>Residential Appraiser,</u> <u>Certified</u>	<u>Annually</u>	<u>March 31</u>
		<u>Residential Appraiser,</u> <u>Certified (Out-of-State)</u>	<u>Annually</u>	<u>March 31</u>
		<u>Trainee</u>	<u>Annually</u>	<u>March 31</u>
<u>(ag)</u>	<u>Realty Regulation</u>	<u>Property Manager</u>	<u>Annually</u>	<u>October 31</u>
		<u>Real Estate Broker</u>	<u>Biennially, Odd Numbered</u> <u>Years</u>	<u>October 31</u>
		<u>Real Estate Salesperson</u>	<u>Biennially, Odd Numbered</u> <u>Years</u>	<u>October 31</u>
		<u>Timeshare Broker</u>	<u>Annually</u>	<u>October 31</u>
		<u>Timeshare Salesperson</u>	<u>Annually</u>	<u>October 31</u>
		<u>Timeshare Offering</u>	<u>Annually</u>	<u>Anniversary</u> <u>Date of License</u> <u>May 1</u>
<u>(ah)</u>	<u>Respiratory Care</u> <u>Practitioners</u>	<u>Respiratory Care</u> <u>Practitioners</u>	<u>Biennially, Even Numbered</u> <u>Years</u>	<u>June 30</u>
<u>(ai)</u>	<u>Sanitarians</u>	<u>Sanitarians</u>	<u>Annually</u>	<u>December 31</u>
<u>(aj)</u>	<u>Social Workers and</u> <u>Professional Counselors</u>	<u>Professional Counselor -</u> <u>Clinical</u>	<u>Annually</u>	<u>December 31</u>
		<u>Social Worker - Clinical</u>	<u>Annually</u>	<u>December 31</u>

<u>(ak)</u>	<u>Speech-Language Pathologists and Audiologists</u>	<u>Audiologist</u>	<u>Annually</u>	<u>February 1</u>
		<u>Audiologist Aide*</u>	<u>Annually* Aides are not license type and do not renew, but must be registered by supervising licensee.</u>	<u>October 31</u>
		<u>Speech-Language Pathologist</u>	<u>Annually</u>	<u>February 1</u>
		<u>Speech-Language Pathologist Aide*</u>	<u>Annually* Aides are not license type and do not renew, but must be registered by supervising licensee.</u>	<u>October 31</u>
<u>(al)</u>	<u>State Electrical Board</u>	<u>Active Temporary Speech Pathologist or Audiologist</u>	<u>Nonrenewable</u>	
		<u>Electrical Contractor</u>	<u>Two-year license</u>	
			<u>Nonrenewable, must reapply. License expires July 15.</u>	
		<u>Journeyman Electrician</u>	<u>Biennially, Even Numbered Years</u>	<u>July 15</u>
		<u>Master Electrician</u>	<u>Biennially, Even Numbered Years</u>	<u>July 15</u>
		<u>Residential Electrician</u>	<u>Biennially, Even Numbered Years</u>	<u>July 15</u>
<u>(am)</u>	<u>Veterinary Medicine</u>	<u>Euthanasia Agency</u>	<u>Annually</u>	<u>May 30</u>
		<u>Embryo Transfer Technician</u>	<u>Annually</u>	<u>November 1</u>
		<u>Euthanasia Technician</u>	<u>Annually</u>	<u>May 30</u>
		<u>Veterinarian</u>	<u>Annually</u>	<u>November 1</u>

- (6) The following are nonrenewable licenses:
- (a) temporary licenses issued by a licensing entity unless that licensing entity's rules provide otherwise;
 - (b) fireworks wholesalers;
 - (c) real estate appraiser mentors;
 - (d) pharmacy technicians in training;
 - (e) active temporary speech pathologists and audiologists;
 - (f) land surveyor intern, engineer intern, emeritus status license issued by the Board of Professional Engineers and Professional Land Surveyors;
 - (g) all licenses issued by the Board of Athletics end on June 30 of each year and the licensee must reapply;
 - (h) guide and professional guide licenses issued by the Board of Outfitters end on December 31 of each year and the licensee must reapply; and
 - (i) electrical contractor licenses issued by the State Electrical Board end on July 15 biennially and the licensee must reapply.
- (7) The specific date by which each individual licensee is required to renew by can be obtained by contacting the licensing entity's office or by using the licensee lookup system available on the department's website.

AUTH: 37-1-101, 37-1-141, MCA
IMP: 37-1-101, 37-1-141, MCA

REASON: It is reasonable and necessary to amend this rule to identify the current renewal dates for professions and occupations licensed by the Division. It is also necessary to identify the duration of the license and the frequency of when a license needs to be renewed. This amendment and transfer will make information more readily accessible to licensees, Department staff and the public. The amendments also clarify what constitutes timely submission of renewal information. This provides clear direction to the licensee and describes the consequences for not renewing in a timely manner.

Also, it is reasonable to include (6) as a quick reference for those individuals who hold some sort of "license" which is unable to be renewed. This easily identifies those "license" holders that are mentioned within individual Board's or Program's rules who are accountable to the Board or Program, but whose license cannot be renewed. Section (7) is included to reassure licensees that there is help available if a licensee is unsure of the date to renew a specific license. See general statement of reasonable necessity for more detail.

5. The Division rules proposed to be adopted provide as follows:

NEW RULE I PURPOSE (1) The purpose of this subchapter is to standardize similar functions and processes within the division and administratively attached boards, including, but not limited to:

- (a) setting standardized fees;
- (b) standardizing forms;
- (c) eliminating the need for a licensing board to issue routine licenses; and

- (d) setting uniform standards for license renewal.

AUTH: 37-1-101, MCA

IMP: 37-1-101, 37-1-104, MCA

REASON: It is reasonable and necessary to promulgate this rule to provide users with a general overview of the subchapter contents. These rules are proposed in order to implement the changes enacted by HB 182.

NEW RULE II DEFINITIONS As used in conjunction with Title 37, MCA, the following definitions apply:

(1) "Active status" means the license holder is afforded the rights and privileges to practice under the license while complying with the requirements as set by the licensing entity.

(2) "Administrative fees" means a fee charged for products or services provided by the division.

(3) "Department" means the Department of Labor and Industry.

(4) "Disciplinary action" means the procedure by which unprofessional conduct is addressed by the licensing entity pursuant to the contested case hearing provisions of the Montana Administrative Procedure Act (MAPA).

(5) "Division" means the Business Standards Division of the Department of Labor and Industry.

(6) "Expired license" means a license for which the renewal requirements have not been met within 45 days to two years after the license renewal date. An expired license may be reactivated anytime within these two years.

(7) "Inactive status" means an option provided by some licensing entities in which a licensee may retain a license but the licensee does not intend to practice, nor will the licensee engage in licensed activities at any time during the duration of the inactive status license. The licensee may wish to reactivate the inactive status license in the future. An inactive license must be renewed as prescribed by the licensing entity.

(8) "Lapsed license" means a license that has not been renewed by the license renewal date. A lapsed license may be reactivated at anytime within 45 days following the license renewal date.

(9) "Late penalty fee" means the fee that is required to be paid by a licensee upon renewal of a license if the licensee failed to renew the license by the renewal date.

(10) "New original license" means a license issued to an individual whose previous original license terminated and was not reinstated. In order to receive a new original license, all current requirements for obtaining an original license must be met including, but not limited to, submitting required application materials, successfully passing the required examinations as applicable, and paying the appropriate fees. The new original license number will remain the same as the original license number.

(11) "Nonroutine application" means an application submitted to the division in which the application is defined as nonroutine either by the specific licensing

entity's rules or by these rules. In conflicts between the specific licensing entity's rules and these rules, the specific licensing entity's rules govern.

(a) A nonroutine application means that the applicant has one or more of the following:

(i) has pending or completed disciplinary action in this state, or pending or completed disciplinary action in another state, territory, or jurisdiction;

(ii) is restricted by the terms and conditions of a final order in a disciplinary matter;

(iii) is required to submit materials that require professional evaluation by another licensee or licensing entity; or

(iv) is foreign-educated, except for those foreign-educated applicants applying for licensure from the following:

(A) Board of Medical Examiners;

(B) Board of Professional Engineers and Professional Land Surveyors; or

(C) Board of Realty Regulation.

(12) "Probationary license" means a license, that due to discipline taken against the licensee, signifies the license holder is afforded the rights and privileges to practice under the license while complying with the terms and conditions of a final order as issued by the licensing entity.

(13) "Reactivated license" means a lapsed or expired license that is renewed between the renewal date and two years following the renewal date. In order to reactivate a license, all renewal requirements must be met.

(14) "Reactivation of license" means activating a lapsed or expired license.

(15) "Renewal date" means the date by which an existing license must be renewed as listed in ARM 8.2.208. Renewal information must be submitted on or before the renewal date in order for a license to be renewed without the assessment of the late penalty fee.

(16) "Routine application" means an application submitted to the division in which the application is defined as routine either by the specific licensing entity's rules or by these rules. In conflicts between the specific licensing entity's rules and these rules, the specific licensing entity's rules govern.

(a) A routine application means that the applicant does not have one or more of the following:

(i) pending or completed disciplinary action in this state, or pending or completed disciplinary action in another state, territory, or jurisdiction;

(ii) is not restricted by the terms and conditions of a final order in a disciplinary matter;

(iii) is not required to submit materials that require professional evaluation by another licensee or licensing entity; or

(iv) is not foreign-educated, except for those foreign-educated applicants applying for licensure from the following:

(A) Board of Medical Examiners;

(B) Board of Professional Engineers and Professional Land Surveyors; or

(C) Board of Realty Regulation.

(17) "Standardized fee" means an administrative fee for a common product or service that is charged to division customers.

(18) "Suspended license" means a license, that due to discipline taken against the licensee, signifies the license holder is no longer afforded the rights and privileges to practice under the license for a period of time specified by the final order issued by the licensing entity.

(19) "Terminated license" means a license that has not been renewed or reactivated within two years of the renewal deadline. A terminated license may not be reactivated.

AUTH: 37-1-101, MCA

IMP: 37-1-130, 37-1-131, 37-1-141, MCA

REASON: It is reasonable and necessary to promulgate this rule to indicate the context of words that are used throughout Division rules. The definition rule serves to clarify the meaning of frequently used words and provides consistent application throughout the rules.

Section 2-4-305(2), MCA, states "rules may not unnecessarily repeat statutory language. Whenever it is necessary to refer to statutory language in order to convey the meaning of a rule interpreting the language, the reference must clearly indicate the portion of the language that is statutory and the portion that is an amplification of the language." The terms "expire", "lapsed" and "terminated" have been defined in 37-1-130, MCA, as amended by HB 182, but are included in this notice for clarity. Usage of these terms throughout existing Board and Program rules may not be used in the same context as the new definitions. In order to ensure that the new meaning is conveyed to the licensees, it is necessary to include the substance of these statutory definitions in the rule.

NEW RULE III FEES (1) Standardized fees, in addition to those fees charged by a specific licensing entity are as follows:

- | | |
|---|------|
| (a) duplicate license | \$ 5 |
| (b) licensee lists or rosters | 50 |
| (c) photocopies per page (in excess of 20 pages) | .25 |
| (d) certified copies per page (in excess of ten pages) | .50 |
| (e) license history | 20 |
| (f) duplicate wall certificate | 20 |
| (g) returned check fee, including but not limited to, checks issued with nonsufficient funds, stop payment requests, or missing signatures | 30 |
| (h) license verification | 20 |
| (i) the license verification fee is waived for any licensing entity with a signed reciprocal agreement with another licensing entity and the licensing entities have agreed that no fees are to be charged; | |
| (j) status change fee from inactive to active during the licensure period is the difference between the cost of an inactive license and an active license renewal fee; | |
| (k) renewal fee for a suspended license is 50% of the renewal fee; and | |
| (l) renewal fee for a probationary license is the same as the renewal fee. | |

(2) The late penalty fee for each renewal period a license has not been renewed shall be 100% of the renewal fee. The penalty fee is in addition to the renewal fee and must be paid for each renewal period that the license has not been renewed. If the license has not been renewed on or before the date set by ARM 8.2.208, the late penalty fee must be paid.

(a) In the event a renewal fee has been abated, the late penalty fee still applies. The late penalty fee that must be paid is 100% of the renewal fee that would have been charged had the renewal fee not been abated.

(3) When converting an inactive status license to an active status license, the difference between the inactive status fee and the active status fee must be paid for the remainder of the current renewal period.

(4) When a military reservist renews a professional or occupational license after being discharged from active duty, the renewal fee will be the current renewal fee. No past fees accrued while the reservist was on active duty will be charged.

(5) All fees are nonrefundable.

AUTH: 37-1-101, MCA

IMP: 27-1-717, 37-1-130, 37-1-134, 37-1-138, MCA

REASON: It is reasonable and necessary to create a fee rule designating standard fees for those services provided by most licensing entities of the Division. Specific fiscal impact statements are included in the reasonable necessity statement for individual Board or Program fee rules. See general reasons for more detail.

NEW RULE IV LICENSING (1) The department will issue all licenses to those routine applicants who meet the licensing requirements and pay the required fees.

(2) The department will issue all licenses as directed by the governing board to those nonroutine applicants who meet the licensing requirements and pay the required fees. A nonroutine applicant may be asked to appear before the board prior to the final board decision regarding the granting of a nonroutine license.

AUTH: 37-1-101, MCA

IMP: 37-1-101, 37-1-130, MCA

REASON: It is reasonable and necessary to promulgate this rule to identify that the Department will review and process all routine applications. It is no longer necessary for individual Boards to approve all license applications. This streamlines the application process, decreases the amount of time Boards spend reviewing and approving applications that do not vary from the standard application requirements. This time savings will benefit both Board members and the public by allowing the Board to focus on more significant issues.

Also, it is reasonable and necessary to identify that the Department will issue licenses to all nonroutine applicants as directed by the governing Board. This rule clarifies that the decision to issue a license to a nonroutine applicant is left to the discretion of the licensing Board regulating that specific profession or occupation.

NEW RULE V RENEWAL NOTIFICATION (1) The department shall send renewal notices to all licensees. Renewal notices shall be sent to the last known address in the division's records. It is the responsibility of the licensee to keep the division timely informed of the licensee's current mailing address. Failure to receive notice for renewal in no way releases the licensee from the obligation to renew in a timely manner, and shall not constitute a defense to practicing without a license.

AUTH: 37-1-101, 37-1-141, MCA

IMP: 37-1-101, 37-1-130, 37-1-141, MCA

REASON: It is reasonable and necessary to adopt this rule to standardize the notification process for licensees. The process for sending renewal notices varied between licensing entities. This rule will provide equity by giving all licensees advance notice that their license needs to be renewed. See general reasons for more detail.

NEW RULE VI RENEWED, LAPSED, EXPIRED, OR TERMINATED LICENSES (1) All licenses must be renewed on or before the renewal date as listed in, and in accordance with ARM 8.2.208. Late renewals must be accompanied by the fees as specified in [NEW RULE III] and any other information required as if the renewal were submitted prior to the renewal date.

(a) A suspended license must be renewed in accordance with ARM 8.2.208 or the license will proceed to expire or terminate.

(2) If the license has not been renewed, the license shall be considered a lapsed, expired, or terminated license.

(a) A lapsed license may be reactivated within 45 days of the renewal date by submitting the required, completed renewal information and paying the required fees.

(b) Licenses not renewed within 45 days from the renewal date automatically expire. An expired license may be reactivated within two years of the renewal date by submitting the required, completed renewal information and paying the required fees.

(c) Licenses not renewed within two years from the renewal date automatically terminate. A terminated license may not be reactivated. A new original license must be obtained by completing the current requirements for a new application, including successfully passing the licensing examination if applicable.

(3) A licensee whose license has lapsed or expired, may not apply for a new license. A licensee must renew the license if it has lapsed or expired. All renewal requirements must be met and fees paid in order for a lapsed or expired license to be renewed. A new original license will be issued to a licensee whose license has terminated, provided all licensing requirements are met.

(4) A licensee who practices while a license is lapsed is not considered to be practicing without a license.

(5) A licensee who practices after a license has expired is considered to be practicing without a license and is subject to discipline provided by statute or rule.

(6) A former licensee who practices after a license is terminated is considered to be practicing without a license and is subject to cease and desist or a district court restraining order.

AUTH: 37-1-101, 37-1-141, MCA

IMP: 37-1-101, 37-1-130, 37-1-141, MCA

REASON: It is reasonable and necessary to adopt this rule to clarify the three variations in license status if a license is not renewed by the renewal date. This provides clear direction to the licensee and describes the consequences for not renewing in a timely manner. See general reasons for more detail.

6. Each Board or Program that is promulgating rules implementing changes from HB 182 follow. Board rules appear first, by Boards being listed in alphabetical order, followed by Program rules, with Programs being listed in alphabetical order. New, amended, and repealed rules are intermingled in this section instead of being lumped together by action type. This format is being used to keep all rule changes pertaining to a specific Board or Program together to aid licensees, the public, Board members and Department staff. The rules proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

BOARD OF ALTERNATIVE HEALTH CARE

24.111.401 FEES (1) through (2)(m) remain the same.

~~(n) administrative/copying requests~~

20

(3) Additional standardized fees are specified in [NEW RULE III].

AUTH: 37-1-134, 37-26-201, 37-27-105, MCA

IMP: 37-1-134, 37-1-141, 37-26-201, 37-27-205, 37-27-210, MCA

REASON: See general statement of reasonable necessity. Based on fiscal year 2005, it is estimated that the creation of standardized fees will have the following impact:

(1) three licensees will request license verification for a \$60 increase in revenue;

(2) five licensees will request duplicate licenses for a \$25 increase in revenue;

(3) two requests for licensee lists or rosters will be received for a \$60 increase in revenue; and

(4) three licensees will pay the late penalty fee for a \$1,237.50 increase in revenue.

24.111.2101 RENEWALS ~~(4)~~ (2) The renewal date for All naturopathic physician licenses, naturopathic specialty certificates, direct-entry midwife apprentice licenses, and direct-entry midwife licenses will expire each year, on is the date set by ARM 8.2.208, unless otherwise provided by statute.

(a) If a direct-entry midwife apprentice has held the initial apprentice license for less than one year on the first renewal date following such licensure, then the apprentice is not required to renew the initial apprentice license until the following renewal date.

~~(1) A renewal notice will be sent as specified in [NEW RULE VI] by the board to each license/certificate holder to the last address in the board's files. Failure to receive such notice shall not relieve the license/certificate holder of his/her obligation to pay renewal fees in such a manner that they are received by the department on or before the renewal date. All licensees must submit the proper renewal fee, proper documentation of completion of appropriate continuing education hours as required by statute or rule and any other forms or documents required by the board.~~

~~(2) A renewed license shall be valid for one year following the expiration date of the previously held license/certificate.~~

~~(3) The fee for any Any licensee who fails to renew or submit a renewal fee prior to on or before the expiration renewal date shall be increased by 50% of his renewal fee must pay the late penalty fee as specified in [NEW RULE III]. Renewals may not be processed until all fees are paid.~~

~~(4) Any person failing to renew a license within six months of the expiration date will be considered to have forfeited the license. The licensee shall reapply to the board in order to be relicensed to practice naturopathic medicine or direct-entry midwifery in this state The provisions of [NEW RULE VI] apply.~~

AUTH: 37-1-131, 37-1-141, 37-26-201, 37-27-105, 37-27-205, MCA

IMP: 37-1-131, 37-1-141, 37-26-201, 37-27-105, 37-27-205, MCA

REASON: See general statement of reasonable necessity. It is also reasonable and necessary to amend (2) by adding new subsection (a) because 37-27-205(2), MCA, states that a direct-entry midwife apprentice license can be renewed a maximum of four times. This statute precludes apprentices from engaging in the practice of midwifery indefinitely without taking the NARM exam and becoming fully licensed as a direct-entry midwife. An apprentice license can be issued at any time to a qualified applicant. There have been instances of people receiving their initial direct-entry midwife apprentice license in, for example, January and having to renew on April 1st of the same year, thereby using up one of the four renewals allowed by 37-27-205(2), MCA. That circumstance is problematic because of the extensive experience which must be obtained by apprentices pursuant to ARM 24.111.602 in order to qualify for licensure as a direct-entry midwife. Apprentices are having trouble fulfilling those experience requirements within the time allowed for them to be licensed as apprentices under 37-27-205(2), MCA. The problem is exacerbated when the first renewal occurs less than one year after initial apprentice licensure. Two apprentices recently requested that the board rectify the problem. The addition of (2)(a) is being made at this time in order to consolidate these changes with the changes implementing HB 182. By consolidating these changes, the number of times the same rule is amended over a short period of time is decreased, prevents running simultaneous amendments to the same rule, decreases the cost of promulgating rules by reducing the number of rulemaking notices required, and eliminates the misconception that licensees were over regulated.

The proposed amendment would also make the rule clearer, delete existing (2) that is redundant, and supplement the authority and implementation citations.

24.111.2102 NATUROPATHIC PHYSICIAN CONTINUING EDUCATION REQUIREMENTS (1) through (2)(b) remain the same.

(i) One continuing education credit shall be granted for each hour of participation in the continuing education activity excluding breaks and meals. A licensed naturopath must earn at least 15 continuing education credits within the 12 months prior to renewal on ~~April 30~~ the date set by ARM 8.2.208 of each year. (Five must be in naturopathic pharmacy, five additional in obstetrics if licensee has childbirth specialty certificate.) A maximum of two credits by cassette or videotape per renewal period ~~is will be~~ allowed. A certificate of completion or an outline of course content must be submitted by the licensee for each cassette or videotape ~~for the maximum two continuing education credits to be granted~~ allowed. The total number of continuing education credits obtained via the Internet and/or correspondence courses will be limited to three credits per renewal period.

(ii) remains the same.

(iii) All licensed naturopaths must either ~~submit attestation~~ to the board, on the ~~appropriate year's license renewal form~~, that they have obtained the required number of continuing education credits or submit a plan to complete CE credits. The board will review the renewal forms ~~prior to October 30~~ within six months of the renewal date of that same year, and notify the licensee regarding his/her noncompliance. Prior to the next consecutive year's license renewal ~~deadline date~~, those licensees who have not complied with continuing education requirements will not be granted license renewal. Those not receiving notice from the board regarding their continuing education ~~should~~ may assume satisfactory compliance. Notices will be considered properly mailed when addressed to the last known address on file in the board office. No continuing education programs used to complete delinquent continuing education plan requirements for licensure may be used to meet the continuing education requirements for the next continuing education reporting period.

(iv) through (vii) remain the same.

AUTH: 37-1-141, 37-1-319, 37-26-201, MCA

IMP: 37-1-131, 37-1-141, 37-1-306, MCA

REASON: It is reasonable and necessary to amend this rule in order to remove the specific renewal date as explained in the general reasonable necessity statement. With that change being made, it is no longer appropriate to list a specific date by which the Board will review renewal forms. The rule is being amended to delete the specific date reference, but still allows the board the same time length to review the forms. This change is not a change in substance, only in wording and will not impact either the Board or the licensees.

24.111.2103 MIDWIVES CONTINUING EDUCATION REQUIREMENTS (1) through (2)(b) remain the same.

(i) One continuing education credit shall be granted for each hour of participation in the continuing education activity excluding breaks and meals. A licensed direct-entry midwife must earn at least 14 continuing education credits within the 12 months prior to ~~the renewal on April 30~~ date set by ARM 8.2.208 of each year. A maximum of two credits by cassette or videotape per renewal period ~~is will be~~ allowed. A certificate of completion or an outline of course content must be submitted by the licensee for each cassette or videotape ~~of the maximum two continuing education credits to be granted~~ allowed. The total number of continuing education credits obtained via the Internet and/or correspondence courses will be limited to three credits per renewal period.

(ii) remains the same.

(iii) All licensed direct-entry midwives must either ~~submit attestation to the board, on the appropriate year's license renewal form,~~ that they have obtained the required number of continuing education credits or submit a plan to complete CE credits. The board will review the renewal forms ~~prior to October 30~~ within six months of the renewal date of that same year, and notify the licensee regarding his/her noncompliance. Prior to the next consecutive year's license renewal ~~deadline date,~~ those licensees who have not complied with continuing education requirements will not be granted license renewal. Those not receiving notice from the board regarding their continuing education ~~should~~ may assume satisfactory compliance. Notices will be considered properly mailed when addressed to the last known address on file in the board office. No continuing education programs used to complete delinquent continuing education plan requirements for licensure may be used to meet the continuing education requirements for the next continuing education reporting period.

(iv) through (vi) remain the same.

AUTH: 37-1-141, 37-1-319, 37-27-105, MCA

IMP: 37-1-131, 37-1-141, 37-1-306, MCA

REASON: See reason for ARM 24.111.2102.

24.111.2301 UNPROFESSIONAL CONDUCT (1) through (6) remain the same.

(7) Practicing naturopathy or midwifery while the license is suspended, revoked, or expired ~~not currently renewed~~;

(8) through (13) remain the same.

AUTH: 37-1-319, 37-26-201, 37-27-105, MCA

IMP: 37-1-141, 37-1-316, 37-1-319, 37-26-201, 37-27-105, MCA

REASON: It is reasonable and necessary to amend this rule to make the rule consistent with the intent of 37-1-141, MCA. A lapsed license is not currently renewed, but a licensee who practices with a lapsed license is not considered to be practicing without a license. Therefore, this should not be considered as unprofessional conduct making the amendment necessary.

BOARD OF ALTERNATIVE HEALTH CARE
MICHAEL BERGKAMP, N.D., CHAIRPERSON

/s/ VIVIAN V. HAMMILL
Vivian V. Hammill
Rule Reviewer

/s/ KEITH KELLY
Keith Kelly, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

BOARD OF ARCHITECTS

24.114.401 FEE SCHEDULE

- | | |
|--|----------------|
| (1) remains the same. | |
| (2) Biennial renewal (if paid by July 31st) | 110 |
| (3) Late biennial renewal (if paid after July 31st) | 170 |
| (4) <u>(3)</u> Original license fee, if licensed in an even year | 80 |
| (5) <u>(4)</u> Original license fee, if licensed in an odd year | 40 |
| (6) Documents, duplicate license, rosters | 27 |
| (7) License verification fee | 10 |
| (8) <u>(6)</u> All fees are non-refundable. | |
| <u>(5) Additional standardized fees are specified in [NEW RULE III].</u> | |

AUTH: 37-1-134, 37-65-204, 37-65-307, MCA

IMP: 37-1-134, 37-1-141, 37-65-201, ~~37-65-304, 37-65-306~~, 37-65-307,
MCA

REASON: It is reasonably necessary to amend (2) and (3) to remove a specific date reference. In the event the renewal date changes, this rule will not need to be amended to reflect that change. By eliminating the need for additional rulemaking, the Board of Architects can save money and better serve the licensees. Also, there is no current law to require a one-month grace period. See general statement of reasonable necessity for more detail.

Based on fiscal year 2005, it is estimated that the creation of standardized fees will have the following impact:

- (1) five licensees will request license verification for an \$80 increase in revenue;
- (2) seven licensees will request duplicate licenses for a \$35 increase in revenue;
- (3) 20 pages of photocopies will be requested for a \$5 increase in revenue;
- (4) ten pages of certified photocopies will be requested for a \$5 increase in revenue;
- (5) eight licensees will request duplicate wall certificates for a \$160 increase in revenue; and
- (6) 40 licensees will pay the late penalty fee for a \$6,651.20 increase in revenue.

24.114.406 SOLICITATION OF BUSINESS BY ARCHITECTS FROM OTHER STATES (1) A nonresident architect who holds a current, ~~unexpired~~,

unrestricted license to practice architecture issued by the state in which the architect's principal offices are located and who holds a current NCARB certificate, may, upon furnishing the board with verification of licensure from the other state licensing authority, and verification of NCARB certification, offer architectural services in this state, but may accept no commission or otherwise engage in the practice of architecture within this state until licensed by the board.

AUTH: 37-1-319, 37-65-204, MCA
IMP: 37-1-141, 37-1-305, MCA

REASON: This rule is to be amended to remove a connotation of the word "expire" which was defined in HB 182 amendments. By removing this word from the rule, it eliminates the potential for misinterpretation. Under the new definition, an expired license is one that is not reactivated 45 days to two years after the renewal date. Therefore, an unexpired license is a license that has been reactivated 45 days to two years after the renewal date. The timeframe prior to the 45th day is not addressed the way the rule currently reads. The amendment would clarify that the nonresident architect must hold a current, unrestricted license in order to offer architectural services in Montana.

24.114.2101 RENEWALS (1) ~~Biennial renewals shall be issued by the board, upon receipt of biennial renewal fee. Notice of biennial renewal~~ Renewal notices shall be mailed to each licensed architect in advance of the renewal date will be sent as specified in [NEW RULE V]. The notice shall be returned with the renewal fee or late renewal fee to the board office.

(2) ~~The renewal date fee shall be due on is the date set forth in by ARM 8.2.208. However, a one-month grace period thereafter is provided by statute. A late renewal fee will be imposed upon any license which has not been renewed by July 31. Both a renewal fee and late renewal fee will be imposed for each year a license is lapsed.~~

(3) ~~A license that has lapsed for three successive years automatically terminates and may not be reinstated, and a new license must be obtained, and appropriate fees must be paid~~ The provisions of [NEW RULE VI] apply.

AUTH: 37-1-131, 37-1-141, 37-65-204, MCA
IMP: 37-1-131, 37-1-141, ~~37-65-306~~, MCA

REASON: It is reasonably necessary to change this rule to clarify the renewal notification process that will be completed by all Division Boards and Programs. Also, there is no current law to require a one-month grace period so that reference is being eliminated. A reference to the standard late penalty fee rule is being added to aid the user in determining the appropriate fees required if submitting after the renewal date. Section (3) is being amended because current language conflicts with amendments made in HB 182 and the requirements will be found in NEW RULE VI. See general statement of reasonable necessity for more detail.

BOARD OF ARCHITECTS
TOM WOOD, PRESIDENT

/s/ VIVIAN V. HAMMILL
Vivian V. Hammill
Rule Reviewer

/s/ KEITH KELLY
Keith Kelly, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

BOARD OF ATHLETICS

24.117.402 FEES (1) through (10) remain the same.
(11) Additional standardized fees are specified in [NEW RULE III].

AUTH: 23-3-405, 37-1-134, MCA
IMP: 23-3-405, 23-3-501, 37-1-134, 37-1-141, MCA

REASON: See general statement of reasonable necessity. Based on fiscal year 2005, it is estimated that the creation of standardized fees will have no fiscal impact. The Board of Athletics does not renew licenses therefore there will be no late penalty fees or status change fees. During the last fiscal year, the Board did not receive any requests for duplicate licenses, license verifications, license histories, licensee lists or rosters, or copy requests. It is anticipated this trend will continue.

24.117.406 GENERAL LICENSING REQUIREMENTS (1) remains the same.

(2) All licenses ~~shall expire on June 30 of each year~~ end on the date set by ARM 8.2.208 and are nonrenewable.

(3) through (15) remain the same.

AUTH: 23-3-405, 37-1-141, MCA
IMP: 23-3-404, 23-3-405, 23-3-501, 23-3-502, 37-1-141, MCA

REASON: It is reasonable and necessary to amend this rule in order to remove the specific renewal date as explained in the general reasonable necessity statement.

This rule is also to be amended to remove the word "expire" which was defined in HB 182 amendments. By removing this word from the rule, it eliminates the potential for misinterpretation. Under the new definition, an expired license is one that is not reactivated 45 days to two years after the renewal date. Athletics licenses are nonrenewable, therefore the provisions to renew an expired license are not applicable to these licensees.

BOARD OF ATHLETICS
KEVIN MCCARL, CHAIRPERSON

/s/ VIVIAN V. HAMMILL
Vivian V. Hammill
Rule Reviewer

/s/ KEITH KELLY
Keith Kelly, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

BOARD OF BARBERS AND COSMETOLOGISTS

24.121.401 FEES AND RENEWALS (1) through (9) remain the same.

~~(10) Late renewal penalty~~ 75

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

~~(12) Duplicate license~~ 15

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

~~(14) Document~~ 20

(12) Additional standardized fees are specified in [NEW RULE III].

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

(14) Renewal notices will be sent as specified in [NEW RULE VI].

~~(16) (15) All individual licenses must be renewed on or before the renewal date a biennial basis and expire on December 31 of the renewal year set by ARM 8.2.208.~~

~~(a) If the completed renewal application is postmarked after December 31, or after the first business day of the new year if December 31 is a Sunday, the licensee shall pay a late renewal fee in addition to the license renewal fee.~~

~~(17) (16) All school licenses must be renewed on or before the renewal date an annual basis and expire on December 31 of each year set by ARM 8.2.208.~~

~~(a) If the completed school renewal application is postmarked after December 31, or after the first business day of the new year if December 31 is a Sunday, the licensee shall pay a late renewal fee in addition to the license renewal fee.~~

~~(18) (17) All salon, shop, and booth rental licenses must be renewed on or before the renewal date an annual basis and expire on July 1 of each year set by ARM 8.2.208.~~

~~(a) If the completed salon, shop or booth renewal application is postmarked after July 1, or after the first business day of the renewal year if July 1 is a Sunday, the licensee shall pay a late renewal fee in addition to the license renewal fee.~~

(18) The provisions of [NEW RULE VI] apply.

(19) and (20) remain the same.

AUTH: 37-1-131, 37-1-134, 37-1-141, 37-31-203, MCA

IMP: 37-1-134, 37-1-141, 37-31-302, 37-31-304, 37-31-305, 37-31-311, 37-31-312, ~~37-31-321, 37-31-322~~, 37-31-323, MCA

REASON: See general statement of reasonable necessity. Based on fiscal year 2005, it is estimated that the creation of standardized fees will have the following impact:

- (1) 120 licensees will request license verifications for no change in revenue;
- (2) 50 licensees will request duplicate licenses for a \$500 decrease in revenue;
- (3) 35 requests for licensee lists or rosters will be received for a \$1,050 increase in revenue;
- (4) three licensees will request status change for no change in revenue;
- (5) 13 licensees will request suspended license renewal for a \$292.50 decrease in revenue;

(6) nine licensees will request probationary license renewal for a \$202.50 decrease in revenue;

(7) 300 personal license licensees will pay the late penalty fee for a \$9,000 increase in revenue; and

(8) 100 salon or shop license licensees will pay the late penalty fee for a \$5,000 increase in revenue.

24.121.603 OUT-OF-STATE APPLICANTS (1) through (7) remain the same.

(8) Out-of-state applicants ~~whose licensure has lapsed and~~ who are not currently licensed in another state shall:

(a) through (9) remain the same.

AUTH: 37-1-131, 37-31-203, MCA

IMP: 37-1-141, 37-1-304, 37-31-303, 37-31-304, 37-31-305, 37-31-308, MCA

REASON: It is reasonable and necessary to amend this rule to eliminate the reference to lapsed licensure. The definition of lapsed licensure in the other state may not be the same as in Montana. It is prudent to remove this reference in order to prevent misinterpretation and confusion.

24.121.609 LAPSED LICENSE found at ARM page 24-9103 is proposed to be repealed.

AUTH: 37-1-131, 37-31-203, MCA

IMP: 37-1-141, ~~37-31-322~~, MCA

REASON: It is reasonable and necessary to repeal this rule. The provisions of ARM 24.121.609 are similar to those in proposed NEW RULE VI, which is referenced in ARM 24.121.401. Having similar information could lead to conflict and confusion. Therefore in keeping with the concept of standardized rules, this information more appropriately belongs in the Division rule instead of in the Board of Barbers and Cosmetologists rules.

24.121.2101 CONTINUING EDUCATION - INSTRUCTORS/INACTIVE INSTRUCTORS (1) through (7) remain the same.

(8) To activate an inactive instructor license, licensees shall submit evidence of completion of 15 hours of approved continuing education obtained within the 12-month period prior to activating the license. Licensees shall also be required to complete an additional 30 hours of continuing education before the ~~December 31~~ renewal date set by ARM 8.2.208.

AUTH: 37-1-131, 37-1-141, 37-1-319, 37-31-203, MCA

IMP: 37-1-141, 37-1-306, MCA

REASON: It is reasonable and necessary to amend this rule in order to remove the specific renewal date as explained in the general reasonable necessity statement. See general statement of reasonable necessity for more detail.

BOARD OF BARBERS AND COSMETOLOGISTS
WENDELL PETERSEN, CHAIRPERSON

/s/ VIVIAN V. HAMMILL
Vivian V. Hammill
Rule Reviewer

/s/ KEITH KELLY
Keith Kelly, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

BOARD OF CHIROPRACTORS

24.126.401 FEE SCHEDULE (1) through (3) remain the same.

~~(4) Late renewal fee~~

50

(5) through (11) remain the same but are renumbered (4) through (10).

(11) Additional standardized fees are specified in [NEW RULE III].

(12) All fees are non-refundable.

AUTH: 37-1-134, 37-12-201, MCA

IMP: 37-1-134, 37-1-141, 37-12-201, 37-12-302, 37-12-304, ~~37-12-307~~,
MCA

REASON: See general statement of reasonable necessity. Based on fiscal year 2005, it is estimated that the creation of standardized fees will have the following impact:

(1) ten licensees will request license verification for a \$200 increase in revenue;

(2) five licensees will request duplicate licenses for a \$25 increase in revenue;

(3) ten requests for licensee lists or rosters will be received for a \$160 increase in revenue;

(4) one licensee will request a duplicate wall certificate for a \$20 increase in revenue;

(5) eight licensees will request status change for a \$50 decrease in revenue;

(6) one licensee will request probationary license renewal for a \$50 increase in revenue;

(7) ten active chiropractor licensees will pay the late penalty fee for a \$1,000 increase in revenue; and

(8) ten inactive chiropractor licensees will pay the late penalty fee for a \$900 decrease in revenue.

24.126.2101 RENEWALS - CONTINUING EDUCATION REQUIREMENTS

~~(1) The board shall send a renewal application form to the licensee's address on file in the board office prior to the renewal deadline. Failure of the licensee to receive a renewal~~
Renewal notices will be sent as specified in [NEW RULE V].

application form in no way releases the licensee from the obligation to renew his or her license in a timely manner.

(2) The renewal date for a chiropractic license is set by ARM 8.2.208.

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

~~(4) (5) Licensees may renew their licenses for a period of one year after the expiration date of the license by paying a late fee and by submitting documentation of the appropriate continuing education requirements.~~ A license that is not renewed within ~~one~~ two years of the most recent renewal date automatically terminates. The terminated license may not be ~~reinstated~~ reactivated, and a new original license must be obtained by passing the special purposes examination for chiropractic (SPEC) administered by the National Board of Chiropractic Examiners and paying the appropriate fees in accordance with [NEW RULE III].

(6) The provisions of [NEW RULE VI] apply.

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

AUTH: 37-1-134, 37-1-141, 37-1-319, 37-12-201, ~~37-12-307~~, MCA

IMP: 37-1-134, 37-1-141, 37-1-306, 37-1-319, ~~37-12-307~~, MCA

REASON: See general statement of reasonable necessity.

BOARD OF CHIROPRACTORS
DANIEL PRIDEAUX, D.C., PRESIDENT

/s/ VIVIAN V. HAMMILL
Vivian V. Hammill
Rule Reviewer

/s/ KEITH KELLY
Keith Kelly, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

BOARD OF CLINICAL LABORATORY SCIENCE PRACTITIONERS

24.129.401 FEES (1) through (2)(d) remain the same.

~~(e) late renewal fee (in addition to renewal fee)~~ 50

(f) remains the same but is renumbered (e).

~~(g) duplicate license fee~~ 25

(h) remains the same but is renumbered (f).

(g) Additional standardized fees are specified in [NEW RULE III].

AUTH: 37-1-134, 37-34-201, MCA

IMP: 37-1-134, 37-1-141, 37-34-201, MCA

REASON: See general statement of reasonable necessity. Based on fiscal year 2005, it is estimated that the creation of standardized fees will have the following impact:

(1) one licensee will request license verification for a \$20 increase in revenue;

(2) one request for licensee lists or rosters will be received for a \$50 increase in revenue;

- (3) two licensees will request duplicate wall certificates for a \$40 increase in revenue;
- (4) four licensees will request status change for a \$60 decrease in revenue;
- (5) 11 active clinical laboratory scientist licensees will pay the late penalty fee for a \$110 increase in revenue;
- (6) ten active clinical laboratory technician licensees will pay the late penalty fee for a \$100 increase in revenue;
- (7) one inactive clinical laboratory scientist licensee will pay the late penalty fee for a \$50 increase in revenue;
- (8) one inactive clinical laboratory technician licensee will pay the late penalty fee for a \$50 increase in revenue; and
- (9) one inactive clinical laboratory specialist licensee will pay the late penalty fee for a \$50 increase in revenue.

24.129.602 RENEWALS (1) Renewal notices will be sent as specified in [NEW RULE V].

(2) Licenses must be renewed on or before the date set by ARM 8.2.208.

~~(4) (3) If a license fee is received by the department after the renewal date set by ARM 8.2.208, the licensee shall pay a the late renewal penalty fee in accordance with [NEW RULE III]. Any person failing to renew a license within 45 days of the expiration date will be considered to have forfeited his or her license. Thereafter, the individual shall be treated as a new applicant for licensure, and shall be required to comply with all statutes and rules relating to new applicants for a license.~~

~~(2) Licenses will be renewed on an annual basis beginning with the May 1, 2000 renewal.~~

(4) The provisions of [NEW RULE VI] apply.

AUTH: 37-1-141, 37-34-201, MCA

IMP: 37-1-141, 37-34-201, 37-34-305, MCA

REASON: See general statement of reasonable necessity.

24.129.610 INACTIVE STATUS (1) and (1)(a) remain the same.

~~(b) paying the required fee in accordance with 37-34-204 37-1-134, MCA, and ARM 24.129.401.~~

~~(2) remains the same.~~

~~(3) With annual renewal, and payment of the required fee in accordance with ARM 24.129.401, a licensee may remain on inactive status. Failure to renew an inactive status license will result in forfeiture of the license pursuant to ARM 24.129.602.~~

~~(4) remains the same.~~

AUTH: 37-1-131, 37-1-134, 37-1-319, 37-34-201, MCA

IMP: 37-1-131, 37-1-134, 37-1-141, 37-1-319, 37-34-201, MCA

REASON: HB 182 was amended and the reference to setting fees commensurate with costs was removed from 37-34-201, MCA. This rule is being amended to make the rule agree with statute. Section (3) is being amended to remove an internal reference to a rule that is also being amended. The proposed amendment will delete information regarding forfeiture; therefore it is no longer necessary to have this internal reference.

BOARD OF CLINICAL LABORATORY SCIENCE
PRACTITIONERS
KAREN MCNUTT, CHAIRPERSON

/s/ VIVIAN V. HAMMILL
Vivian V. Hammill
Rule Reviewer

/s/ KEITH KELLY
Keith Kelly, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

BOARD OF DENTISTRY

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

(1) through (7) remain the same.

(8) "Retired or nonpracticing dentist or dental hygienist" is a person who has surrendered or ~~allowed not renewed~~ the individual's license ~~to expire~~ for non-disciplinary reasons and has ceased to practice the individual's profession for remuneration.

(9) remains the same.

AUTH: 37-1-131, 37-4-205, 37-4-340, 37-29-201, MCA

IMP: 37-4-101, 37-4-205, 37-4-340, 37-4-408, 37-29-201, MCA

REASON: It is reasonable and necessary to amend this rule to make the rule consistent with the intent of 37-1-141, MCA. See general statement of reasonable necessity for more detail.

24.138.402 FEE SCHEDULE (1) through (13) remain the same.

(14) Late renewal penalty 100

(15) Duplicate wall certificate (computer printed) 10

(16) Duplicate wall certificate (hand lettered) 30

(17) Lists 30

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

(19) Copies (per page, over 50 pages) 0.20

(20) through (22) remain the same but are renumbered (15) through (17).

(18) Additional standardized fees are specified in [NEW RULE III].

AUTH: 37-1-131, 37-1-134, 37-4-205, 37-4-340, 37-4-405, MCA

IMP: 37-1-134, 37-1-141, 37-4-301, ~~37-4-303~~, 37-4-307, 37-4-340, 37-4-402, ~~37-4-403~~, 37-4-405, 37-4-406, ~~37-29-304~~, MCA

REASON: See general statement of reasonable necessity. Based on fiscal year 2005, it is estimated that the creation of standardized fees will have the following impact:

- (1) eight licensees will request duplicate licenses for a \$40 decrease in revenue;
- (2) 19 requests for licensee lists or rosters will be received for a \$380 increase in revenue;
- (3) no photocopies requests in excess of 20 pages will be received for a \$3.80 decrease in revenue;
- (4) two licensees will request duplicate wall certificates for a \$20 decrease in revenue;
- (5) 17 dentist licensees will pay the late penalty fee for a \$799 decrease in revenue;
- (6) 11 dental hygienist licensees will pay the late penalty fee for a \$1,430 decrease in revenue; and
- (7) one denturist licensee will pay the late penalty fee for no change in revenue.

24.138.517 DENTURIST LICENSE REINSTATEMENT (1) Upon application and payment of the appropriate fee, the board may reinstate a license ~~previously forfeited for non-payment of fee~~ if the applicant does each of the following:

- (a) through (f) remain the same.
- (g) pays renewal fees for each year they were unpaid, plus a the late penalty fee for each year as specified in [NEW RULE III].

AUTH: 37-1-141, 37-29-201, MCA
IMP: 37-1-141, MCA

REASON: It is reasonable and necessary to amend (1) to eliminate the cause of forfeiting the license. A license is not forfeited per se for failure to pay the required fees. In order for a license to be forfeited, the licensee must fail to submit the required information and pay the required fees within two years of the license renewal date. Also, the provision in 37-4-307, MCA, which allowed for a license to be forfeited for nonpayment of the renewal fee has been removed. In order to clarify the rule, this language is proposed to be deleted.

Also, see general statement of reasonable necessity for the rationale for amending (1)(g).

24.138.518 RENEWALS (1) Renewal notices will be sent as specified in [NEW RULE V].

- (2) ~~Each year licensees~~ Licensees shall:
 - (a) renew their licenses by the ~~elected~~ date stated in ARM ~~8-2-203~~ 8.2.208;
 - (b) submit ~~an annual~~ renewal form and fee, and a the late penalty fee as specified in [NEW RULE III], if applicable;
 - (c) and (d) remain the same.

~~(2) (3) In case of default by a dentist in payment of the annual renewal fee, the dentist will be subject to 37-4-307, MCA. The provisions of [NEW RULE VI] apply.~~

~~(3) In case of default by a dental hygienist in payment of the annual renewal fee, the dental hygienist will be subject to 37-4-406, MCA.~~

~~(4) In case of default in payment of the annual renewal fee by a licensee denturist:~~

~~(a) The denturist must forfeit the license. The board shall give the denturist 30 days notice of the proposed forfeiture action. The notice must be sent by certified letter addressed to the last known address of the denturist and must contain a statement of the time and place at which the forfeiture will be concluded.~~

~~(b) If the denturist pays the renewal fee, plus a delinquent fee as set forth in ARM 24.138.402, prior to the time set for forfeiture, the denturist license may not be forfeited.~~

~~(c) A denturist license forfeited for nonpayment of the renewal fee may be reinstated within five years of forfeiture if all requirements set forth in ARM 24.138.517 have been satisfied.~~

AUTH: 37-1-131, 37-1-141, 37-4-205, 37-29-201, MCA

IMP: 37-1-141, 37-4-307, 37-4-406, 37-29-306, MCA

REASON: It is reasonable and necessary to amend this rule because the provision in 37-4-307, MCA that allowed for a license to be forfeited for nonpayment of the renewal fee has been removed. Also, see general statement of reasonable necessity for more detail.

24.138.530 LICENSURE OF RETIRED OR NONPRACTICING DENTIST OR DENTAL HYGIENIST FOR VOLUNTEER SERVICE (1) through (4) remain the same.

(5) Volunteer licenses must be renewed annually by the date set by ARM 8.2.208.

AUTH: 37-1-131, 37-1-141, 37-4-204, 37-4-340, MCA

IMP: 37-1-141, 37-4-340, MCA

REASON: See general statement of reasonable necessity.

BOARD OF DENTISTRY
PAUL SIMS, D.D.S., PRESIDENT

/s/ VIVIAN V. HAMMILL
Vivian V. Hammill
Rule Reviewer

/s/ KEITH KELLY
Keith Kelly, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

STATE ELECTRICAL BOARD

24.141.405 FEE SCHEDULE (1) through (5) remain the same.

~~(6) Late renewal fee~~

50

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

~~(8) License list~~

20

~~(9) (7) Fees are non-refundable.~~

(8) Additional standardized fees are specified in [NEW RULE III].

AUTH: 37-1-134, 37-1-141, 37-68-201, MCA

IMP: 37-1-134, 37-1-141, 37-1-304, 37-1-305, 37-68-304, 37-68-307, 37-68-310, 37-68-311, 37-68-312, 37-68-313, MCA

REASON: See general statement of reasonable necessity. Based on fiscal year 2005, it is estimated that the creation of standardized fees will have the following impact:

(1) 30 licensees will request duplicate licenses for a \$150 increase in revenue;

(2) six requests for licensee lists or rosters will be received for a \$220 increase in revenue;

(3) 400 pages of photocopies will be requested for a \$100 decrease in revenue;

(4) four licensees will request license histories for an \$80 increase in revenue; and

(5) 150 licensees will pay the late penalty fee for a \$21,000 increase in revenue. This increase in revenue is for a two-year renewal cycle, therefore no late penalty fees were received in fiscal year 2005.

24.141.2101 RENEWALS (1) Renewal notices will be sent as specified in [NEW RULE V].

~~(2) Renewal dates The renewal date is shall be set forth in by ARM 8.2.208. Renewal is the responsibility of the licensee and although the board may send out reminder notices to the last known address of the licensee, the lack of receipt of such notice does not relieve the licensee of the responsibility of renewal.~~

(3) The provisions of [NEW RULE VI] apply.

AUTH: 37-1-131, 37-1-141, 37-68-201, MCA

IMP: 37-1-141, 37-68-310, MCA

REASON: See general statement of reasonable necessity.

24.141.2102 CONTINUING EDUCATION (1) Each master, journeyman, and residential electrician license shall not be renewed unless the continuing education requirements imposed by this rule have been met, prior to a ~~July 15th~~ the renewal date set by ARM 8.2.208. Any licensee who fails to fulfill the continuing education requirements, imposed by this rule, ~~by the August 15th following a July 15th renewal date,~~ within 31 days following the renewal date, shall cause the license to ~~lapse~~ not be renewed. It is unlawful for a person whose license has ~~lapsed~~ not been renewed to perform electrical work in this state. For reinstatement ~~after August 15th and before July 15th of the next year,~~ before the end of the current renewal

period, the applicant shall have completed the continuing education requirements, certified that fact to the board and met all other renewal requirements.

(2) remains the same.

AUTH: 37-1-131, 37-1-319, 37-68-201, MCA

IMP: 37-1-306, 37-68-201, MCA

REASON: It is reasonable and necessary to amend (1) in order to remove the specific renewal date as explained in the general reasonable necessity statement. Amendments are also proposed to eliminate specific date references, but include language to designate the same timeframes and continue with the same intent for meeting the continuing education requirements.

STATE ELECTRICAL BOARD
TONY MARTEL, PRESIDENT

/s/ VIVIAN V. HAMMILL

Vivian V. Hammill
Rule Reviewer

/s/ KEITH KELLY

Keith Kelly, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

BOARD OF FUNERAL SERVICE

24.147.401 FEE SCHEDULE (1) through (7)(h) remain the same.

(i) ~~Late renewal penalty – mortician, crematory~~
operator and technician (paid in addition to renewal fee) 150

(j) ~~Late renewal penalty – mortuary and~~
crematory license (paid in addition to renewal fee) 150

(8) through (18) remain the same.

(19) Additional standardized fees are specified in [NEW RULE III].

AUTH: 37-1-131, 37-1-134, 37-19-202, 37-19-703, MCA

IMP: 37-1-134, 37-1-141, 37-19-301, 37-19-303, 37-19-304, ~~37-19-306~~, 37-19-401, 37-19-402, 37-19-403, 37-19-702, 37-19-703, 37-19-808, 37-19-814, 37-19-815, 37-19-816, MCA

REASON: See general statement of reasonable necessity. Based on fiscal year 2005, it is estimated that the creation of standardized fees will have the following impact:

(1) five licensees will request license verification for a \$100 increase in revenue;

(2) five licensees will request duplicate licenses for a \$25 increase in revenue;

(3) five requests for licensee lists or rosters will be received for a \$150 increase in revenue;

(4) one mortician licensee will request status change for a \$50 increase in revenue;

- (5) five active mortician licensees will pay the late penalty fee for an \$800 decrease in revenue;
- (6) two inactive mortician licensees will pay the late penalty fee for a \$200 increase in revenue;
- (7) five active crematory operator licensees will pay the late penalty fee for a \$500 increase in revenue;
- (8) one inactive crematory operator licensee will pay the late penalty fee for a \$50 increase in revenue;
- (9) three active crematory technician licensees will pay the late penalty fee for a \$300 increase in revenue;
- (10) three mortuary licensees will pay the late penalty fee for a \$900 increase in revenue;
- (11) one branch facility licensee will pay the late penalty fee for a \$50 increase in revenue; and
- (12) one crematory licensee will pay the late penalty fee for a \$300 increase in revenue.

24.147.505 RENEWALS OF LICENSE ~~(1) (2)~~ All licenses, whether individual or establishment, with the exception of cemeteries, expire end annually and may be renewed pursuant to the provisions of this rule. If a license is not renewed, practice by a licensee, whether individual or an establishment, after the The renewal date is set forth in by ARM 8.2.208 will constitute unlicensed practice and will subject the licensee to disciplinary action as provided by statute and rule.

~~(2) (1)~~ Prior to the renewal date, the board office will mail a renewal form to the licensee's preferred mailing address on file with the board. Failure to receive such renewal form shall not relieve the licensee of the licensee's obligation to renew and pay renewal fees in a timely manner. Renewal notices will be sent as specified in [NEW RULE V].

(3) remains the same.

(4) Completed renewals forms submitted to the board after the date specified in ARM 8.2.208 shall be considered late and subject to a late penalty fee as specified in [NEW RULE III] in addition to the renewal fee. In the event of a late renewal, the licensee may be subject to disciplinary action by the board for unlicensed practice.

(5) remains the same.

(6) The provisions of [NEW RULE VI] apply.

AUTH: 37-1-141, 37-19-202, 37-19-301, ~~37-19-306~~, MCA

IMP: 37-1-141, 37-19-301, ~~37-19-306~~, MCA

REASON: See general statement of reasonable necessity. It is also reasonable and necessary to amend this rule to clarify that a late renewal does not necessarily constitute unlicensed practice. A licensee may not have renewed by the renewal date, but as long as the license is renewed within 45 days of the renewal date, the licensee is practicing with a lapsed license, which is not considered to be practicing without a license under 37-1-141, MCA.

24.147.1313 TRANSFER OF CEMETERY OWNERSHIP (1) and (2) remain the same.

(3) When there is a change of ownership pursuant to this rule, the existing certificate of authority shall ~~lapse~~ become void and a new certificate of authority shall be obtained from the Board of Funeral Service. No person shall purchase a cemetery, including purchase at a sale for delinquent taxes, or purchase more than 50% of the equitable ownership of a cemetery authority without having obtained a certificate of authority from the Board of Funeral Service prior to the purchase of the cemetery, or such an ownership interest in the cemetery authority.

(4) and (5) remain the same.

AUTH: 37-19-807, MCA

IMP: 37-19-815, MCA

REASON: See general statement of reasonable necessity. Also, it is reasonable and necessary to amend this rule to clarify the terminology. When the word "lapse" was inserted into the rule, the "three tier" licensing concept of lapse, expire, and terminate was not being used. Therefore, it is necessary to explain at what point the existing certificate of authority no longer remains valid.

BOARD OF FUNERAL SERVICE
R. J. BROWN, CHAIRPERSON

/s/ VIVIAN V. HAMMILL
Vivian V. Hammill
Rule Reviewer

/s/ KEITH KELLY
Keith Kelly, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

BOARD OF HEARING AID DISPENSERS

24.150.301 DEFINITIONS (1) through (6) remain the same.

(7) "Substantially equivalent," for the purposes of 37-1-304, MCA, means the applicant has successfully completed a written and practical examination administered by or authorized by a state other than Montana. The examination shall measure basic knowledge of the fitting and dispensing of hearing aids ~~and comply with the requirements set forth in 37-16-403 and 37-16-404, MCA.~~ In addition, the applicant shall have successfully completed a training period of direct supervision for no less than 90 days. To satisfy the substantial equivalency requirement, the board shall accept formal training, in its discretion, in lieu of the traineeship.

AUTH: 37-16-202, 37-16-303, MCA

IMP: 37-1-131, 37-1-304, 37-16-301, 37-16-303, 37-16-304, 37-16-414, MCA

REASON: It is reasonable and necessary to amend this rule because HB 182 repealed 37-16-403 and 37-16-404, MCA. Therefore, the reference to these statutes is no longer appropriate to be included in the rule.

24.150.401 FEES (1) through (1)(h) remain the same.

- ~~(i) Penalty for late renewal paid~~ 175
- ~~in addition to renewal fee (active or inactive)~~
- ~~(j) Lists of licensees~~ 20
- (2) Additional standardized fees are specified in [NEW RULE III].
- (2) remains the same but is renumbered (3).

AUTH: 37-1-134, 37-16-202, MCA

IMP: 37-1-134, 37-1-141, 37-16-202, 37-16-402, ~~37-16-404~~, 37-16-405, ~~37-16-407~~, MCA

REASON: See general statement of reasonable necessity. Based on fiscal year 2005, it is estimated that the creation of standardized fees will have the following impact:

- (1) one licensee will request a duplicate license for a \$5 increase in revenue;
- (2) one request for licensee lists or rosters will be received for a \$50 increase in revenue;
- (3) five licensees will request status change for an \$875 increase in revenue;
- and
- (4) four licensees will pay the late penalty fee for a \$400 increase in revenue.

24.150.505 INACTIVE STATUS (1) remains the same.

- (2) Inactive licensees shall not be required to meet the continuing education requirements ~~under 37-16-407, MCA.~~
- (3) and (4) remain the same.

AUTH: 37-1-319, 37-16-202, MCA

IMP: 37-1-131, 37-1-306, ~~37-16-407~~, MCA

REASON: It is reasonable and necessary to amend this rule because HB 182 repealed 37-16-407, MCA. Therefore, the reference to this statute is no longer appropriate to be included in the rule.

24.150.2101 RENEWALS (1) ~~The board shall send renewal application forms to the licensee's address on file in the board office~~ Renewal notices will be sent as specified in [NEW RULE V] prior to the renewal deadline date set by ARM 8.2.208. ~~Failure to receive a renewal application form in no way releases the licensee from the obligation to renew in a timely manner, and shall not constitute a defense for practicing without a license.~~

- (2) remains the same.
- (3) ~~Licensees may renew their licenses within three years after the expiration date of the license by paying one renewal fee, one additional late fee and submission of documentation of continuing education that would have been required had the license remained active~~ The provisions of [NEW RULE VI] apply.
- (4) ~~A license that is not renewed within three years of the most recent renewal date automatically terminates. The terminated license may not be~~

~~reinstated, and a new original license must be obtained by passing the licensing examination.~~

AUTH: 37-1-141, 37-1-319, 37-16-202, MCA

IMP: 37-1-131, 37-1-141, 37-1-306, 37-16-407, MCA

REASON: See general statement of reasonable necessity.

24.150.2201 CONTINUING EDUCATIONAL REQUIREMENTS (1) The licensee must submit an affidavit, subscribed and sworn, stating that the licensee completed at least ten clock hours of continuing education. Such evidence must be presented by ~~June 30th of each year~~ the date set in ARM 8.2.208.

(2) through (8) remain the same.

AUTH: 37-1-319, 37-16-202, MCA

IMP: 37-1-131, 37-1-306, MCA

REASON: See general statement of reasonable necessity.

BOARD OF HEARING AID DISPENSERS
BECKIE HOFFMAN, SECRETARY

/s/ VIVIAN V. HAMMILL

Vivian V. Hammill
Rule Reviewer

/s/ KEITH KELLY

Keith Kelly, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

BOARD OF MEDICAL EXAMINERS

GENERAL REASONABLE NECESSITY STATEMENT FOR THE BOARD OF MEDICAL EXAMINERS:

In addition to the general reasonable necessity statement for the Division rule changes given at the beginning of this document, the following general reasonable necessity statement applies to the rule changes proposed for the Board of Medical Examiners rules.

The Board of Medical Examiners previously approved renewing licenses biennially instead of annually. In order to better serve the public and be more efficient, the renewal frequency change is being included in this notice. By consolidating these changes with the changes implementing HB 182, the number of times the same rules are amended over a short period of time is decreased, prevents running simultaneous amendments to the same rules, decreases the cost of promulgating rules by reducing the number of rulemaking notices required, and eliminates the misconception that license fee amounts changed several times within a short time period, or that licensees were over regulated.

The total amount of the renewal fee is not changing; there will be no fiscal impact by moving from annual renewal to biennial renewal. It was arbitrarily decided that even numbered licenses would renew for a one-year period while odd numbered licenses would renew for a two-year period during the transition from annual renewals to biennial renewals. The new renewal structure is proposed to begin with the 2007 renewal cycle. Therefore, these licensees will have adequate time to prepare for the fee submittal change. The holders of odd numbered licensees will not renew their license during the 2008 renewal cycle.

The option of promulgating a separate rule notice addressing the renewal frequency and corresponding change to the fee rule was considered, but deemed to be inefficient, costly, and burdensome to the licensees. Therefore, the renewal frequency changes are being proposed at this time.

24.156.601 FEE SCHEDULE (1) through (1)(c) remain the same.

(d) Renewal fee (active)

(i) even numbered licenses renewing for one year 200

(ii) odd numbered licenses renewing for two years 400

(e) Renewal fee (inactive)

(i) even numbered licenses renewing for one year 100

(ii) odd numbered licenses renewing for two years 200

(f) Renewal fee (inactive-retired)

(i) even numbered licenses renewing for one year 32.50

(ii) odd numbered licenses renewing for two years 65

(g) ~~Penalty fee~~ 150

(h) ~~Verification fee~~ 20

(2) Additional standardized fees to be charged are specified in [NEW RULE

III].

(3) All fees are nonrefundable.

AUTH: 37-1-134, 37-1-141, 37-1-319, 37-3-203, MCA

IMP: 37-1-134, 37-1-141, 37-3-203, 37-3-304, 37-3-308, 37-3-309, 37-3-311, 37-3-313, MCA

REASON: See both general statements of reasonable necessity. Based on fiscal year 2005, it is estimated that the creation of standardized fees will have the following impact:

(1) 50 licensees will request duplicate licenses for a \$250 increase in revenue;

(2) 127 requests for licensee lists or rosters will be received for a \$3,175 increase in revenue;

(3) ten licensees will request status change for a \$1,000 increase in revenue;

(4) two physician, osteopath, or podiatrist licensees will request suspended license renewal for a \$200 decrease in revenue;

(5) one EMT, nutritionist, or physician assistant licensee will request suspended license renewal for a \$15 decrease in revenue;

- (6) 122 physician or podiatrist licensees will pay the late penalty fee for a \$6,250 increase in revenue;
- (7) ten physician assistant licensees will pay the late penalty fee for a \$500 decrease in revenue;
- (8) 24 EMT F licensees will pay the late penalty fee for a \$480 increase in revenue;
- (9) 96 EMT B licensees will pay the late penalty fee for a \$2,880 increase in revenue;
- (10) 13 EMT P licensees will pay the late penalty fee for a \$780 increase in revenue;
- (11) five EMT I licensees will pay the late penalty fee for a \$225 increase in revenue; and
- (12) three acupuncturist or nutritionist licensees will pay the late penalty fee for a \$300 decrease in revenue.

24.156.602 NONREFUNDABLE FEES found at ARM page 24-15041 is proposed to be repealed.

AUTH: 37-3-203, MCA
IMP: 37-3-314, MCA

REASON: This rule is to be repealed in order to standardize policies and procedures within the Department as directed by HB 182. It is standard practice for the fee rules of the Department to identify that fees are nonrefundable. It would have been necessary to amend ARM 24.156.602 to reflect the migration to a biennial basis instead of an annual basis. By repealing the rule instead of amending it, the fee rule will now be consistent with other Division rules.

24.156.615 ANNUAL REGISTRATION RENEWALS AND FEES

(1) ~~Annual registration~~ Renewal notices are to will be sent by the department on or before February 1 of each year as specified in [NEW RULE V].

(2) Beginning with the 2007 renewal cycle, one-half of the licensees will renew for a period of one year.

(a) Licensees with an even numbered license will renew for a one-year period.

(b) Licensees with an odd numbered license will renew for a two-year period.

(c) Following the completion of this phase-in to biennial renewal, all licensees will renew for a period of two years.

~~(2) (3)~~ (3) A physician actively engaged in the practice of medicine ~~on~~ with a permanent license shall pay an ~~annual~~ license fee. If the physician does not pay the annual license fee and return the required renewal form and required information before April 1 the date set by ARM 8.2.208, the physician must pay the ~~delinquency~~ late penalty fee ~~listed specified~~ in ARM 24.156.604 [NEW RULE III], in order to renew the physician's license.

~~(3) (4)~~ (4) A physician with a permanent license not actively engaged in the practice of medicine in this state or absent from this state for a period of one or more

years may renew as an inactive licensee ~~for~~ and pay the annual inactive fee listed in ARM 24.156.601.

~~(4)~~ (5) A physician with a permanent license not ~~actively~~ engaged in the practice of medicine and who has retired from practice may renew his license as an inactive-retired licensee ~~for an annual~~ and pay the fee listed in ARM 24.156.601. A retired license may not be reactivated. The individual must reapply for a new original license.

(6) The provisions of [NEW RULE VI] apply.

AUTH: 37-1-134, 37-1-141, 37-3-203, MCA

IMP: 37-1-134, 37-1-141, 37-3-313, MCA

REASON: See both general statements of reasonable necessity.

24.156.617 ACTIVE AND INACTIVE LICENSE (1) through (2) remain the same.

(a) As used in this rule, "renewal period" means:

(i) for even numbered licenses, the time one-year period from April 1 the renewal date as listed in ARM 8.2.208 of a given year through March 31 of the following year. the day immediately prior to the renewal date of the following year;

(ii) for odd numbered licenses, the two-year period from the renewal date as listed in ARM 8.2.208 of a given year through the day immediately prior to the renewal date of the two-year cycle.

(b) remains the same.

(c) Beginning with the 2007 renewal cycle, one-half of the licensees will renew for a period of one year. An active license must be renewed ~~annually, as provided in 37-3-313, MCA.~~ as follows:

(i) licensees with an even numbered license will renew for a one-year period;
and

(ii) licensees with an odd numbered license will renew for a two-year period.

(3) remains the same.

(a) Beginning with the 2007 renewal cycle, one-half of the licensees will renew for a period of one year. An inactive license must be renewed ~~annually~~ by a the renewal date set by the department; in ARM 8.2.208 as follows:

(i) licensees with an even numbered license will renew for a one-year period;
and

(ii) licensees with an odd numbered license will renew for a two-year period.

(b) To renew a license on inactive status, a physician must pay a fee prescribed by the board, and ~~return a completed the renewal form to the board office prior to April 1; the date set by ARM 8.2.208.~~

~~(c) If both the renewal fee and completed renewal form are not returned to the board office prior to April 1, the physician must pay a penalty fee prescribed by the board in order to renew the license.~~

(4) remains the same.

(a) Beginning with the 2007 renewal cycle, one-half of the licensees will renew for a period of one year. An inactive-retired license must be renewed ~~annually~~ by a the renewal date set by the department; in ARM 8.2.208 as follows:

and (i) licensees with an even numbered license will renew for a one-year period:

(ii) licensees with an odd numbered license will renew for a two-year period.

~~(b) To renew a license on inactive-retired status, a physician must pay a fee prescribed by the board, and return a completed renewal form to the board office prior to April 1.~~

~~(c) (b) If both the renewal fee and completed renewal form are not returned to the board office prior to April 1 the date specified in ARM 8.2.208, the physician must pay a the late penalty fee prescribed by the board specified in [NEW RULE III] in order to renew the license.~~

~~(5) If a physician holding an inactive or inactive-retired license fails to pay the prescribed renewal fee or fails to return the completed annual renewal form by April 1, the physician's license may be revoked by the board on 30 days' notice of the date, time and place the board will consider the revocation.~~

~~(a) A registered or certified letter sent to the last known address of the physician, as the address appears on the records of the department, constitutes sufficient notice of intention to revoke the inactive or inactive-retired license.~~

~~(b) If the physician pays the renewal fee and any required penalty fee and provides the completed annual renewal form before the date and time fixed for consideration of revocation, the license may not be revoked for nonpayment or failure to return the completed annual renewal form.~~

~~(6) The department may collect a renewal fee and any required penalty fee by an action at law.~~

AUTH: 37-1-141, 37-1-319, MCA

IMP: 37-1-141, 37-1-319, MCA

REASON: See both general statements of reasonable necessity.

24.156.805 FEES (1) remains the same.

(a) The applicant shall submit an application fee of \$300 in the form of a check or money order payable to the board.

(b) The licensee shall submit a renewal fee of \$150 biennially (on or before the expiration of two years from the date the certificate is issued date set by ARM 8.2.208) in the form of a check or money order payable to the board, together with a completed renewal form approved by the board.

(2) Additional standardized fees are specified in [NEW RULE III].

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

AUTH: 37-1-134, 37-1-141, 37-3-203, MCA

IMP: 37-1-134, 37-1-141, 37-3-344, 37-3-345, ~~37-3-346~~, 37-3-347, MCA

REASON: See both general statements of reasonable necessity. Fiscal impact information follows ARM 24.156.601.

24.156.808 CERTIFICATE RENEWALS APPLICATION (1) Renewal notices will be sent as specified in [NEW RULE V]. Every two years the licensee

shall complete and return an application for renewal on a form approved by the board, together with payment of the application renewal fee. The application for renewal and renewal fee are due on or before March 30, of the renewal year.

(2) The provisions of [NEW RULE VI] apply.

AUTH: 37-1-141, 37-3-203, MCA

IMP: 37-1-141, 37-3-346, MCA

REASON: See both general statements of reasonable necessity.

24.156.1002 FEES ~~(4)~~ (a) The annual renewal fee for a podiatrist, whether actively engaged or not, in the practice of podiatry in the state of Montana shall be:

(i) even numbered licenses renewing for one year \$200-

(ii) odd numbered licenses renewing for two years 400

~~(2)~~ (1) The following fees will be charged:

~~(a)~~ (b) Endorsement or reciprocity \$325

~~(b)~~ Penalty fee 150

~~(c)~~ Verification of licensure 20

(2) Additional standardized fees are specified in [NEW RULE III].

AUTH: 37-1-134, 37-1-141, 37-6-106, MCA

IMP: 37-1-134, 37-1-141, 37-3-203, 37-6-302, ~~37-6-303~~, MCA

REASON: See both general statements of reasonable necessity. Fiscal impact information follows ARM 24.156.601.

24.156.1004 ANNUAL RENEWALS (1) Renewal notices will be sent as specified in [NEW RULE V].

(2) The annual renewal date for a podiatry license is ~~October 31~~ the date set by ARM 8.2.208.

(3) Beginning with the 2007 renewal cycle, one-half of the licensees will renew for a period of one year.

(a) Licensees with an even numbered license will renew for a one-year period.

(b) Licensees with an odd numbered license will renew for a two-year period.

(c) Following the completion of this phase-in to biennial renewal, all licensees will renew for a period of two years.

(4) The provisions of [NEW RULE VI] apply.

AUTH: 37-1-141, 37-6-106, MCA

IMP: 37-1-141, 37-6-304, MCA

REASON: See both general statements of reasonable necessity.

24.156.1302 FEES (1) and (1)(a) remain the same.

(b) Renewal fee

(i) even numbered licenses renewing for one year \$ 50

(ii) <u>odd numbered licenses renewing for two years</u>	100
(c) Late fee	150
(d) Verification of licensure	20
<u>(2) Additional standardized fees are specified in [NEW RULE III].</u>	

AUTH: 37-1-134, 37-1-141, 37-25-201, MCA

IMP: 37-1-134, 37-1-141, 37-3-203, 37-25-201, 37-25-302, ~~37-25-307~~, MCA

REASON: See both general statements of reasonable necessity. Fiscal impact information follows ARM 24.156.601.

24.156.1305 LICENSE RENEWALS (1) ~~Forms of application for renewal of licenses will be mailed to all licensees by the board 30 days prior to expiration of existing licenses~~ Renewal notices will be sent as specified in [NEW RULE V].

~~(2) (4)~~ Completed applications for renewal, together with renewal fees and proof of current registration by the commission must be received no later than October 31 the date set by ARM 8.2.208.

(3) Beginning with the 2007 renewal cycle, one-half of the licensees will renew for a period of one year.

(a) Licensees with an even numbered license will renew for a one-year period.

(b) Licensees with an odd numbered license will renew for a two-year period.

(c) Following the completion of this phase-in to biennial renewal, all licensees will renew for a period of two years.

~~(3) License fees will be treated as delinquent and subject to a late charge or fee on all renewal applications postmarked after October 31.~~

~~(4) (5) Failure to renew by October 31 will be treated as a violation of a rule of the board and grounds for disciplinary action under 37-25-308(4), MCA. The provisions of [NEW RULE VI] apply.~~

~~(5) (2) The annual renewal date for a nutritionist license is October 31~~ the date set by ARM 8.2.208.

AUTH: 37-1-131, 37-1-141, 37-25-201, MCA

IMP: 37-1-141, 37-25-307, MCA

REASON: See both general statements of reasonable necessity.

24.156.1402 FEES (1) remains the same.

~~(2) The annual renewal fee to practice acupuncture will be:~~

(a) even numbered licenses renewing for one year \$ 50-

(b) odd numbered licenses renewing for two years 100

~~An additional \$150 will be charged for late renewal.~~

~~(3) The board will charge a fee of \$20 for written verification of licensure.~~

(3) Additional standardized fees are specified in [NEW RULE III].

AUTH: 37-1-134, 37-1-141, 37-13-201, 37-13-301, 37-13-302, 37-13-304, 37-13-305, MCA
IMP: 37-1-134, 37-1-141, 37-3-203, 37-13-302, 37-13-304, 37-13-305, ~~37-13-306~~, MCA

REASON: See both general statements of reasonable necessity. Fiscal impact information follows ARM 24.156.601.

24.156.1411 ANNUAL RENEWALS DATE (1) Renewal notices will be sent as specified in [NEW RULE V].

(2) The annual renewal date for an acupuncture license is ~~October 31~~ the date set by ARM 8.2.208.

(3) Beginning with the 2007 renewal cycle, one-half of the licensees will renew for a period of one year.

(a) Licensees with an even numbered license will renew for a one-year period.

(b) Licensees with an odd numbered license will renew for a two-year period.

(c) Following the completion of this phase-in to biennial renewal, all licensees will renew for a period of two years.

(4) The provisions of [NEW RULE VI] apply.

AUTH: 37-1-141, 37-13-201, MCA

IMP: 37-1-141, 37-13-306, MCA

REASON: See both general statements of reasonable necessity.

NEW RULE VII RENEWALS (1) Renewal notices will be sent as specified in [NEW RULE V].

(2) The renewal date for a physician assistant license is the date set by ARM 8.2.208.

(3) Beginning with the 2007 renewal cycle, one-half of the licensees will renew for a period of one year.

(a) Licensees with an even numbered license will renew for a one-year period.

(b) Licensees with an odd numbered license will renew for a two-year period.

(c) Following the completion of this phase-in to biennial renewal, all licensees will renew for a period of two years.

(4) The provisions of [NEW RULE VI] apply.

AUTH: 37-1-141, 37-20-202, MCA

IMP: 37-1-141, 37-20-302, MCA

REASON: It is reasonable and necessary to adopt this new rule as a means of keeping with the intent of HB 182 and standardizing certain aspects of license renewal including setting uniform standards for license renewals, including renewal periods, and notification periods. Several licensing entities do not have specific rules that address renewals, or have existing rules where it is appropriate to include

language that addresses licensee notification regarding upcoming renewal dates, or clarification of new statutory definitions regarding license renewal. Therefore, this new rule is proposed in order to incorporate the three components that have been included within the text of numerous other rules to fulfill the changes brought about by HB 182. It is appropriate to propose the new rule at this time in order to maintain consistency regarding renewal requirements among all entities licensed by the Division. See also both general statements of reasonable necessity.

24.156.1605 FEES (1) remains the same.

(2) The fee for ~~annual~~ renewal of a license is as follows:

(a) even numbered licenses renewing for one year \$100-

(b) odd numbered licenses renewing for two years 200

~~If said renewal is late, there is an additional \$150 fee.~~

(3) through (5) remain the same.

(6) ~~The fee for verification of licensure is \$20.~~ Additional standardized fees are specified in [NEW RULE III].

(7) All fees provided for in this rule are non-refundable.

~~(8) The date for annual license renewal and payment of fees therefore is set by the department.~~

AUTH: 37-1-134, 37-1-141, 37-20-201, MCA

IMP: 37-1-134, 37-1-141, 37-20-203, 37-20-302, MCA

REASON: See both general statements of reasonable necessity. Fiscal impact information follows ARM 24.156.601.

24.156.2717 EMT LICENSE RENEWAL (1) Renewal notices will be sent as specified in [NEW RULE VI].

(2) EMT licenses are issued on a biennial renewal cycle. EMT licenses ~~expire on March 31~~ must be renewed on or before the date set by ARM 8.2.208 of the last year of the two-year cycle.

~~(2) (3)~~ Except as provided in ~~(3) (4)~~, in order to renew an EMT license, the licensee must:

(a) through (c) remain the same.

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

~~(6) For the EMT license renewal cycle following July 1, 2005, if the completed renewal application is postmarked after March 31 of the renewal year, the licensee will be assessed a late renewal fee in addition to the license renewal fee set in ARM 24.156.2731.~~

(7) The provisions of [NEW RULE VI] apply.

~~(7) Waivers of the late fee are at the discretion of the board.~~

AUTH: 37-1-141, 50-6-203, MCA

IMP: 37-1-131, 37-1-141, 37-1-306, 50-6-203, MCA

REASON: See both general statements of reasonable necessity.

24.156.2719 LAPSED EXPIRED LICENSE (1) An ~~lapsed expired~~ EMT license may be renewed upon completion of an ~~lapsed expired~~ license renewal application. To renew an ~~lapsed expired~~ license the applicant shall:

(a) complete an ~~lapsed expired~~ license renewal application and submit it to the board;

(b) pay the license fee plus late ~~renewal~~ penalty fee as specified in [NEW RULE III] for each year the license has ~~lapsed expired~~ up to ~~three~~ two years;

(c) and (d) remain the same.

(2) ~~Pursuant to 37-1-141, MCA, a professional or occupational license that has not been renewed within three years of the most recent renewal date automatically terminates. The provisions of [NEW RULE VI] apply.~~

~~(3) A lapsed license that has terminated may not be reinstated. A person whose license has lapsed shall re-apply for licensure and complete a new application pursuant to ARM 24.156.2713.~~

AUTH: 37-1-141, 37-3-203, 50-6-203, MCA

IMP: 37-1-141, 50-6-203, MCA

REASON: See both general statements of reasonable necessity.

24.156.2731 FEES (1) through (1)(i) remain the same.

~~(j) verification of licensure fee~~

20.00

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

~~(2) (3)~~ All fees provided for in this rule are non-refundable and are not prorated for portions of the licensing period.

(2) Additional standardized fees are specified in [NEW RULE III].

AUTH: 37-1-134, 37-1-141, 50-6-203, MCA

IMP: 37-1-134, 37-1-141, 50-6-203, MCA

REASON: See both general statements of reasonable necessity. Fiscal impact information follows ARM 24.156.601.

BOARD OF MEDICAL EXAMINERS
DR. MICHAEL LAPAN, D.P.M., PRESIDENT

/s/ VIVIAN V. HAMMILL
Vivian V. Hammill
Rule Reviewer

/s/ KEITH KELLY
Keith Kelly, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

BOARD OF NURSING

8.32.306 APPLICATION FOR RECOGNITION (1) through (2)(f) remain the same.

(g) payment of non-refundable ~~statutory~~ fee.

(3) remains the same.

AUTH: 37-1-131, 37-8-202, MCA

IMP: 37-1-134, 37-8-202, 37-8-409, ~~37-8-431~~, MCA

REASON: The reference to a statutory fee is being deleted because this infers that the fee will be found in statute and this is not the case. Board fees are set by rule and even though rules have the force and effect of law, the reference to "statutory" fee is misleading. Removing the word clarifies the intent of the rule. See general statement of reasonable necessity for more detail regarding hyphenation change.

8.32.402 LICENSURE BY EXAMINATION (1) remains the same.

(2) The executive director is authorized to negotiate the contract ~~with the national council of state boards of nursing, inc.~~ for licensing examination services.

(3) through (13) remain the same.

AUTH: 37-8-202, MCA

IMP: 37-1-131, 37-8-406, 37-8-416, MCA

REASON: It is reasonable to delete the reference to a specific entity that provides licensing examination services. Listing the contractor serves no purpose and would require the rule be amended if the contract is awarded to some other testing service or if the entity name changes. The entire section was not deleted because the department feels the section is necessary to clarify that the executive director is authorized to represent the board in negotiating the licensing examination contract.

8.32.410 DUPLICATE OR LOST LICENSES (1) and (2) remain the same.

(3) Upon written request, and payment of the proper fee as specified in [NEW RULE III], the board may provide a duplicate renewal certificate.

AUTH: 37-8-202, MCA

IMP: 37-1-134, 37-8-202, MCA

REASON: See general statement of reasonable necessity.

8.32.411 RENEWALS (1) ~~In November of each even-numbered year, the board of nursing shall mail an application for renewal of license to all currently licensed registered nurses and licensed practical nurses~~ Renewal notices will be sent as specified in [NEW RULE V]. The licensee must fill out the renewal application and return it to the board ~~BEFORE January 1 of the next year, by the date set by ARM 8.2.208,~~ together with the renewal fee. Upon receiving the renewal application and fee, the board shall issue a certificate of renewal for the ~~current year beginning January 1 of the odd-numbered year, and expiring December 31 of the even-numbered year.~~ two-year period following the renewal date set by ARM 8.2.208. If the renewal application is postmarked ~~subsequent to December 31 of~~ after the renewal year deadline, it is subject to a the late penalty fee of ~~two times the renewal fee~~ specified in [NEW RULE III].

(2) ~~A license shall be renewed by January 1 of the odd-numbered years. Any person practicing nursing during the time a license has elapsed shall be~~

considered an illegal practitioner and may be subject to the penalties provided for violators under the provisions of this chapter. The provisions of [NEW RULE VI] apply.

(3) ~~In November of even-numbered years, the board shall mail an application for renewal of license to~~ Renewal notices will be sent to all currently licensed advanced practice registered nurses (APRNs) as specified in [NEW RULE V]. The licensee shall complete the application and return it, the proof of continuing education required by ARM 8.32.411, and the renewal fee to the board before ~~January 1 the date set by ARM 8.2.208.~~ Upon receiving the completed renewal application and fee, the board shall issue a certificate of renewal for the ~~current two-year period beginning January 1 and expiring December 31~~ following the date set by ARM 8.2.208. If the renewal application is postmarked ~~subsequent to December 31 after the renewal deadline,~~ it is subject to a the late penalty fee of two times the renewal fee specified in [NEW RULE III]. Any person practicing during the time a license has lapsed shall be considered an illegal practitioner and may be subject to the penalties provided for violators under the provisions of this chapter. The provisions of [NEW RULE VI] apply.

(a) through (4) remain the same.

AUTH: 37-1-131, 37-1-141, 37-8-202, MCA

IMP: 37-1-134, 37-1-141, 37-8-202, ~~37-8-431~~, MCA

REASON: See general statement of reasonable necessity.

8.32.425 FEES (1) through (6) remain the same.

~~(7) The fee for late renewal of a license is double the regular renewal fee.~~

(8) and (9) remain the same but are renumbered (7) and (8).

~~(10) The verification fee is \$25.~~

~~(11) The fee for a duplicate renewal certificate is \$20.~~

(12) and (13) remain the same but are renumbered (9) and (10).

~~(14) The fee for checks issued with non-sufficient funds as notified by the department's management services, is \$50.~~

(15) through (20) remain the same but are renumbered (11) through (16).

(17) Additional standardized fees are specified in [NEW RULE III].

AUTH: ~~37-1-134~~, 37-1-319, 37-8-202, MCA

IMP: 37-1-134, 37-1-141, 37-8-202, ~~37-8-431~~, MCA

REASON: See general statement of reasonable necessity. Based on fiscal year 2005, it is estimated that the creation of standardized fees will have the following impact:

(1) 85 licensees will request license verification for a \$425 decrease in revenue;

(2) ten licensees will pay the status change fee for a \$300 decrease in revenue; and

(3) seven licensees with a suspended license will pay the renewal fee for a \$210 decrease in revenue.

8.32.426 GENERAL REQUIREMENTS FOR LICENSURE AS MEDICATION

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

(4) Licenses shall be issued for one-year periods, and shall expire on the date set by ARM 8.2.208 ~~March 31 of each year.~~

(5) ~~In February of each year, the board office will mail all currently licensed medication aides a renewal application.~~ Renewal notices will be sent as specified in [NEW RULE V] which must be completed and returned to the board before April 1 ~~the date set by ARM 8.2.208,~~ together with the renewal fee.

~~(6) Any person practicing as a medication aide without a license or during the time the license is lapsed shall be considered an unlicensed practitioner and may be subject to the penalties provided by law for practicing without a license.~~

AUTH: 37-1-131, 37-8-202, MCA

IMP: 37-1-131, 37-1-141, 37-8-101, 37-8-202, MCA

REASON: See general statement of reasonable necessity.

8.32.1501 PRESCRIPTIVE AUTHORITY FOR ELIGIBLE APRNS

(1) through (3) remain the same.

(4) The Board of Pharmacy will be notified in a timely manner when the status of an APRN's prescriptive authority ~~changes of an APRN is terminated, suspended or reinstated.~~

AUTH: 37-8-202, MCA

IMP: 37-8-202, MCA

REASON: It is reasonable and necessary to amend this rule to eliminate terminology that could be confusing and unclear to licensees and the public. HB 182 defines terminated licenses as licenses that have not been renewed or reactivated within two years of lapsing. An APRN's prescriptive authority is tied to the APRN license, therefore using "terminated" in this rule could be confusing. An APRN can maintain APRN licensure without having prescriptive authority, but they must also renew prescriptive authority in order to maintain it.

8.32.1509 ~~TERMINATION~~ SUSPENSION OR REVOCATION OF PRESCRIPTIVE AUTHORITY (1) The Board of Nursing may impose discipline up to and including ~~termination~~ suspension or revocation of an advanced practice registered nurse's prescriptive authority when one or more of the following criteria apply:

(a) through (e) remain the same.

(2) An advanced practice registered nurse whose prescriptive authority has ~~terminated~~ ended ~~will not~~ is not authorized to prescribe until the advanced practice registered nurse has received written notice is received from the board of nursing that his or her the prescriptive authority has been reinstated ~~by the board.~~

AUTH: 37-8-202, MCA

IMP: 37-8-202, MCA

REASON: It is reasonable and necessary to amend this rule to eliminate terminology that could be confusing and unclear to licensees and the public. HB 182 defines terminated licenses as licenses that have not been renewed or reactivated within two years of lapsing. An APRN's prescriptive authority is tied to the APRN license, therefore using "terminated" in this rule could be confusing. An APRN can maintain APRN licensure without having prescriptive authority, but they must also renew prescriptive authority in order to maintain it.

After an APRN's license expires, the APRN has no prescriptive authority until the license and prescriptive authority are reinstated by the board. Changing the words that describe the action of the Board would provide clarity. The word change in (2) would also clarify that the ending of an APRN's prescriptive authority is in effect until reactivation notification by the Board has been received.

8.32.1510 RENEWAL OF PRESCRIPTIVE AUTHORITY (1) The term of an APRN's prescriptive authority will expire ends on December 31 of even-numbered years the date set by ARM 8.2.208.

(2) remains the same.

(a) a completed renewal application and a non-refundable fee;

(b) through (3) remain the same.

(4) If an APRN fails to renew prescriptive authority prior to the expiration renewal date of that authority, the APRN's prescriptive authority will expire end. The APRN may not prescribe until renewal is completed and the APRN has received written notice that the prescriptive authority has been reinstated.

AUTH: 37-1-141, 37-8-202, MCA

IMP: 37-8-202, MCA

REASON: See general statement of reasonable necessity. It is also reasonable and necessary to amend this rule to eliminate terminology that could be confusing and unclear to licensees and the public. HB 182 defines terminated licenses as licenses that have not been renewed or reactivated within two years of lapsing. An APRN's prescriptive authority is tied to the APRN license, therefore using "terminated" in this rule could be confusing. An APRN can maintain APRN licensure without having prescriptive authority.

After an APRN's license expires, the APRN has no prescriptive authority until the license and prescriptive authority are reinstated by the Board. Changing the word that describes the action of the Board would provide clarity. The word changes in (4) would also clarify that the ending of an APRN's prescriptive authority is in effect until reactivation notification by the Board has been received.

BOARD OF NURSING
KAREN POLLINGTON, R.N., CHAIRPERSON

/s/ VIVIAN V. HAMMILL
Vivian V. Hammill
Rule Reviewer

/s/ KEITH KELLY
Keith Kelly, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

BOARD OF NURSING HOME ADMINISTRATORS

<u>24.162.420 FEE SCHEDULE</u> (1) through (1)(f) remain the same.	
(g) duplicate license	40
(h) lists of licensees	40
(i) verification of licensure	40
(j) late renewal (if paid after December 31)-	100
<u>(2) Additional standardized fees are specified in [NEW RULE III].</u>	
(2) (3) All fees are non-refundable.	
(3) remains the same but is renumbered (4).	

AUTH: 37-1-131, 37-1-134, 37-9-304, MCA
IMP: 37-1-131, 37-1-134, 37-1-141, 37-9-304, MCA

REASON: See general statement of reasonable necessity. Based on fiscal year 2005, it is estimated that the creation of standardized fees will have the following impact:

- (1) ten licensees will request license verifications for a \$100 increase in revenue;
 - (2) one licensee will request a duplicate license for a \$5 increase in revenue;
 - (3) four requests for licensee lists or rosters will be received for a \$160 increase in revenue;
 - (4) one licensee will request status change for a \$60 increase in revenue;
- and
- (5) five licensees will pay the late penalty fee for a \$125 increase in revenue.

24.162.2101 RENEWALS (1) Renewal notices will be sent as specified in [NEW RULE V].

~~(2) An application for renewal of license for any year shall be filed on or before January 1 of that year the date set by ARM 8.2.208 and must be accompanied by the required fee, which shall not be refunded.~~

~~(2) (3) The renewal fee for any year is due and payable on or before January 1 the date set by ARM 8.2.208 of that year. Renewal fees paid by mail shall be considered as paid when due if the envelope bears a postmark of or earlier.~~

(4) The provisions of [NEW RULE VI] apply.

AUTH: 37-1-141, 37-9-201, MCA
IMP: 37-1-141, 37-9-304, 37-9-305, MCA

REASON: See general statement of reasonable necessity.

BOARD OF NURSING HOME
ADMINISTRATORS
DEBORAH WILSON, CHAIRPERSON

/s/ VIVIAN V. HAMMILL
Vivian V. Hammill
Rule Reviewer

/s/ KEITH KELLY
Keith Kelly, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

BOARD OF OCCUPATIONAL THERAPY PRACTICE

- 24.165.401 FEES (1) through (1)(c) remain the same. 40
~~(d) Late license renewal~~
(e) and (f) remain the same but are renumbered (d) and (e).
~~(g) Duplicate license fee~~ 40
~~(h) License verification fee~~ 30
(2) Additional standardized fees are specified in [NEW RULE III].
~~(2)~~ (3) All fees are non-refundable.

AUTH: 37-1-131, 37-1-134, 37-24-201, 37-24-202, MCA
IMP: 37-1-134, 37-1-141, 37-24-310, MCA

REASON: See general statement of reasonable necessity. Based on fiscal year 2005, it is estimated that the creation of standardized fees will have the following impact:

- (1) 39 licensees will request license verifications for a \$390 decrease in revenue;
- (2) one licensee will request a duplicate license for a \$5 increase in revenue;
- (3) 26 requests for licensee lists or rosters will be received for a \$780 increase in revenue;
- (4) one licensee will request a duplicate wall certificate for a \$20 increase in revenue;
- (5) five licensees will request a status change for a \$50 increase in revenue; and
- (6) six licensees will pay the late penalty fee for a \$240 increase in revenue.

24.165.407 EXAMINATIONS (1) ~~For the purposes of 37-24-304(2), MCA,~~
~~the~~ The board adopts as its examination the examinations in existence on May 30, 1986, offered through the National Board of Certification in Occupational Therapy (NBCOT).

- (2) through (5) remain the same.

AUTH: 37-1-131, 37-24-201, 37-24-202, MCA
IMP: 37-1-131, 37-24-304, MCA

REASON: It is reasonable and necessary to amend this rule to delete the reference to 37-24-304, MCA that was repealed by HB 182.

NEW RULE VIII RENEWALS (1) The renewal date for an occupational therapist or occupational therapist assistant license is the date set by ARM 8.2.208.
(2) Renewal notices will be sent as specified in [NEW RULE V].
(3) The provisions of [NEW RULE VI] apply.

AUTH: 37-24-201, 37-24-202, 37-1-141, MCA

IMP: 37-1-141, 37-24-102, 37-24-301, 37-24-306, MCA

REASON: It is reasonable and necessary to adopt this new rule as a means of keeping with the intent of HB 182 and standardizing certain aspects of license renewal including setting uniform standards for license renewals, including renewal periods, and notification periods. Several licensing entities do not have specific rules that address renewals, or have existing rules where it is appropriate to include language that addresses licensee notification regarding upcoming renewal dates, or clarification of new statutory definitions regarding license renewal. Therefore, this new rule is proposed in order to incorporate the three components that have been included within the text of numerous other rules to fulfill the changes brought about by HB 182. It is appropriate to propose the new rule at this time in order to maintain consistency regarding renewal requirements among all entities licensed by the Division.

BOARD OF OCCUPATIONAL THERAPY PRACTICE
DEB AMMONDSON, O.T., CHAIRPERSON

/s/ VIVIAN V. HAMMILL
Vivian V. Hammill
Rule Reviewer

/s/ KEITH KELLY
Keith Kelly, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

BOARD OF OPTOMETRY

<u>24.168.401 FEE SCHEDULE</u> (1) and (2) remain the same.	
(3) Penalty for late renewal	150
(4) remains the same but is renumbered (3).	
(5) Copies per page	.25
(6) remains the same but is renumbered (4).	
(7) List of licensees	20
<u>(5) Additional standardized fees are specified in [NEW RULE III].</u>	

AUTH: 37-1-131, 37-1-134, 37-10-202, MCA

IMP: 37-1-134, 37-1-141, 37-1-304, 37-10-302, ~~37-10-307~~, MCA

REASON: See general statement of reasonable necessity. Based on fiscal year 2005, it is estimated that the creation of standardized fees will have the following impact:

(1) 15 licensees will request license verifications for a \$300 increase in revenue;

- (2) four licensees will request duplicate licenses for a \$20 increase in revenue;
- (3) three requests for licensee lists or rosters will be received for a \$90 increase in revenue;
- (4) one licensee will request a duplicate wall certificate for a \$20 increase in revenue; and
- (5) four licensees will pay the late penalty fee for a \$650 increase in revenue.

24.168.2101 REQUIREMENTS (1) remains the same.

(a) A copy of this ~~act~~ rule shall be sent to each licensee by the board prior to the license renewal date set by ARM 8.2.208 each year.

(b) through (5) remain the same.

AUTH: 37-1-141, 37-1-319, 37-10-202, MCA

IMP: 37-1-141, 37-1-306, MCA

REASON: See general statement of reasonable necessity. It is also necessary to clarify the language in (1)(a) to specify exactly what is to be sent to the licensee.

NEW RULE IX RENEWALS (1) Renewal notices will be sent as specified in [NEW RULE V].

(2) The renewal date for an optometrist license is the date set by ARM 8.2.208.

(3) The provisions of [NEW RULE VI] apply.

AUTH: 37-1-141, 37-10-202, MCA

IMP: 37-1-141, MCA

REASON: It is reasonable and necessary to adopt this new rule as a means of keeping with the intent of HB 182 and standardizing certain aspects of license renewal including setting uniform standards for license renewals, including renewal periods, and notification periods. Several licensing entities do not have specific rules that address renewals, or have existing rules where it is appropriate to include language that addresses licensee notification regarding upcoming renewal dates, or clarification of new statutory definitions regarding license renewal. Therefore, this new rule is proposed in order to incorporate the three components that have been included within the text of numerous other rules to fulfill the changes brought about by HB 182. It is appropriate to propose the new rule at this time in order to maintain consistency regarding renewal requirements among all entities licensed by the Division. See also general statement of reasonable necessity.

BOARD OF OPTOMETRY
LARRY OBIE, O.D., PRESIDENT

/s/ VIVIAN V. HAMMILL
Vivian V. Hammill
Rule Reviewer

/s/ KEITH KELLY
Keith Kelly, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

BOARD OF OUTFITTERS

24.171.401 FEES (1) through (1)(c)(i) remain the same.

~~(ii) late renewal penalty~~

~~applications postmarked Jan. 1 – Jan. 31~~ 100

~~applications postmarked after Feb. 1~~ 300

(iii) remains the same but is renumbered (ii).

(d) through (m) remain the same.

(n) Additional standardized fees are specified in [NEW RULE III].

AUTH: 37-1-131, 37-1-134, 37-47-201, 37-47-306, MCA

IMP: 37-1-134, 37-1-141, 37-47-304, 37-47-306, 37-47-307, 37-47-308, 37-47-310, 37-47-316, 37-47-317, 37-47-318, MCA

REASON: Based on fiscal year 2005, it is estimated that the creation of standardized fees will have the following impact:

(1) ten licensees will request license verifications for a \$200 increase in revenue;

(2) 50 licensees will request duplicate licenses for a \$250 increase in revenue;

(3) four requests for photocopies will be received for a \$7.60 increase in revenue;

(4) two requests for certified photocopies will be received for an \$88.70 increase in revenue;

(5) 25 licensees will request license histories for a \$500 increase in revenue;

(6) ten licensees will request status change for no change in revenue;

(7) three licensees will request suspended license renewal for no change in revenue;

(8) 15 licensees will request probationary license renewal for a \$300 increase in revenue; and

(9) 30 licensees will pay the late penalty fee for a \$1,100 increase in revenue.

24.171.2101 OUTFITTER RENEWALS (1) The provisions of [NEW RULES V and VI] apply.

(1) through (1)(e) remain the same but are renumbered (2) through (2)(e).

~~(2) (3) If an An outfitter does not must submit a completed renewal application with the required fee in accordance with (4) (2) on or before December 31 the date set by ARM 8.2.208 of each license year the outfitter shall immediately cease practice until a renewal application is submitted and approved by the board.~~

~~(3) Upon submission of a completed application for late renewal, payment of a renewal fee in accordance with (1) and late fee, an outfitter may renew his or her license until April 1 of the new license year. An outfitter license for which a renewal application has not been filed on or before April 1 of the new license year may not be renewed. The individual previously holding such license shall thereafter be treated~~

~~as a new applicant for purposes of establishing the qualifications for licensure and payment of licensing fees.~~

(4) remains the same.

AUTH: 37-1-131, 37-47-201, MCA

IMP: 37-1-104, 37-1-141, 37-47-201, 37-47-302, 37-47-304, 37-47-306, 37-47-307, MCA

REASON: It is reasonable and necessary to amend the catchphrase of this rule in order to standardize the catchphrases for all renewal rules throughout the Division rules. This change is in keeping with the intent of HB 182. It is further amended to avoid conflict with 37-1-141, MCA.

The deletion of (3) is reasonable and necessary because this section conflicts with 37-1-141, MCA, which as amended, allows a lapsed or expired license to be renewed within two years after the license renewal date.

BOARD OF OUTFITTERS
MEL MONTGOMERY, CHAIRPERSON

/s/ VIVIAN V. HAMMILL
Vivian V. Hammill
Rule Reviewer

/s/ KEITH KELLY
Keith Kelly, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

BOARD OF PHARMACY

<u>24.174.401 FEE SCHEDULE</u> (1) through (3) remain the same.	
(4) Pharmacist late renewal	110
(5) and (6) remain the same but are renumbered (4) and (5).	
(7) Certified pharmacy late renewal fee	200
(8) through (18) remain the same but are renumbered (6) through (16).	
(19) Wholesale drug distributor late renewal fee	150
(20) and (21) remain the same but are renumbered (17) and (18).	
(22) Copies of documents	45
(23) remains the same but is renumbered (19).	
<u>(20) Additional standardized fees are specified in [NEW RULE III].</u>	

AUTH: 37-1-134, 37-7-201, MCA

IMP: 37-1-134, 37-1-141, 37-7-201, 37-7-302, ~~37-7-303,~~ 37-7-321, 37-7-703, MCA

REASON: See general statement of reasonable necessity. Based on fiscal year 2005, it is estimated that the creation of standardized fees will have the following impact:

(1) ten licensees will request duplicate licenses for a \$50 increase in revenue;

(2) three requests for licensee lists or rosters will be received for a \$150 increase in revenue;

(3) 12 requests for certified copies will be received for a \$60 increase in revenue; and

(4) two licensees with a suspended license will pay the renewal fee for a \$55 increase in revenue.

24.174.1402 APPLICATION FOR REGISTRATION OR RENEWALS

(1) remains the same.

(2) ~~Forms for renewal~~ Renewal notices will be mailed to each registered person or entity sent as specified in [NEW RULE V]. ~~60 days before the expiration date of the registration at the last known address. The applicant is required to notify the board of current changes of address within 10 days.~~

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

(3) The provisions of [NEW RULE VI] apply.

AUTH: 50-32-103, MCA

IMP: 37-1-141, 50-32-301, MCA

REASON: It is reasonable and necessary to amend this rule to standardize renewal language throughout the Division renewal rules. The reference to change of address notice requirements is being deleted because there is no "penalty" for noncompliance. However, it is in the best interest of the licensee to maintain a current address with the Division. See general statement of reasonable necessity for more detail.

24.174.2103 REGISTERED PHARMACIST- RENEWALS NOTICE AND APPLICATION (1) ~~The board will mail an appropriate annual renewal~~ Renewal notices to all licensed Montana pharmacists 60 days will be sent as specified in [NEW RULE V] prior to the renewal date set forth in by ARM 8.2.208. Failure to receive such notice shall not relieve the licensee of the licensee's obligation to file the renewal and pay the renewal fees in such a manner that they are received by the board on or before the renewal date or a late fee will be assessed.

(a) through (3) remain the same.

(4) The provisions of [NEW RULE VI] apply.

AUTH: 37-1-319, MCA

IMP: 37-1-141, 37-1-306, MCA

REASON: See general statement of reasonable necessity.

24.174.2107 REGISTERED PHARMACIST CONTINUING EDUCATION - NON-COMPLIANCE (1) Failure to meet the annual license renewal requirements set forth in ARM 8.2.208 will be cause for the license to lapse. ~~Reinstatement may be considered as provided in 37-7-303, MCA, as amended. For reinstatement after June 30 and before July 1 of the next year, the applicant shall have completed the~~

continuing education requirements and certify that fact to the board as stated in ARM 24.174.2103.

AUTH: 37-1-319, MCA

IMP: 37-1-141, 37-1-306, MCA

REASON: See general statement of reasonable necessity. The reference to 37-7-303 is proposed to be removed because this section was repealed by HB 182, therefore the reference is obsolete.

BOARD OF PHARMACY
WILLIAM BURTON, R. Ph., CHAIRPERSON

/s/ VIVIAN V. HAMMILL

Vivian V. Hammill
Rule Reviewer

/s/ KEITH KELLY

Keith Kelly, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

BOARD OF PHYSICAL THERAPY EXAMINERS

<u>24.177.401 FEES</u> (1) through (1)(c) remain the same.	
(d) Late renewal (if paid after April 1)	50
(e) through (g) remain the same but are renumbered (d) through (f).	
(h) Duplicate license	5
(i) Lists	5
(j) Verification for licensure	40
<u>(2) Additional standardized fees are specified in [NEW RULE III].</u>	
(2) (3) All fees are non-refundable.	

AUTH: 37-1-134, 37-11-201, MCA

IMP: 37-1-134, 37-1-141, 37-1-304, 37-1-305, 37-11-201, 37-11-304, 37-11-307, MCA

REASON: See general statement of reasonable necessity. Based on fiscal year 2005, it is estimated that the creation of standardized fees will have the following impact:

- (1) 50 licensees will request license verifications for a \$1,000 increase in revenue;
- (2) five licensees will request duplicate licenses for a \$25 increase in revenue;
- (3) 25 requests for licensee lists or rosters will be received for a \$1,110 increase in revenue;
- (4) 35 physical therapy licensees will pay the late penalty fee for a \$350 increase in revenue; and
- (5) five physical therapy assistant licensees will pay the late penalty fee for no change in revenue.

24.177.410 LIST OF LICENSED PHYSICAL THERAPISTS (1) Upon written request and payment of the applicable fee as listed in [NEW RULE III] \$5, the board office shall mail to an interested person a list of licensed physical therapists. The list is furnished by the board for public information purposes only. It is not intended for use by private parties as a mailing list and no permission has been obtained from the individual licensees for such purposes. The use of material supplied by a state agency as a mailing list to private parties without the permission of those on the list is prohibited by 2-6-109, MCA.

AUTH: 37-1-134, 37-11-201, MCA

IMP: 37-11-201, MCA

REASON: See general statement of reasonable necessity.

24.177.504 TEMPORARY LICENSES (1) Applicants for licensure who are holders of a license in another state may be issued a temporary license to practice pending licensure by the board. An interview with at least one board member may be required. Said temporary license will ~~expire~~ terminate when the board makes its final determination on licensure.

(2) and (3) remain the same.

AUTH: 37-1-131, 37-1-319, 37-11-201, MCA

IMP: 37-1-305, ~~37-11-309~~, MCA

REASON: See general statement of reasonable necessity.

24.177.2101 RENEWALS OF LICENSE (1) ~~As provided by 37-11-308, MCA, all~~ All licenses must be renewed on or before the renewal date set by ARM 8.2.208.

(2) Renewal notices ~~Notices~~ will be sent as specified in [NEW RULE VI] ~~to the last address which the licensee has made available to the board.~~ It shall be the licensee's responsibility to notify the board immediately upon change of address. ~~Failure to receive a renewal notice shall not constitute grounds for failure to make timely renewal.~~

(3) The provisions of [NEW RULE VI] apply.

~~(3)~~ (4) A person may not practice as a physical therapist or a physical therapist assistant in this state when their license has ~~lapsed~~ expired for failure to timely renew.

AUTH: 37-1-131, 37-11-201, MCA

IMP: 37-1-141, ~~37-11-308~~, MCA

REASON: See general statement of reasonable necessity.

BOARD OF PHYSICAL THERAPY EXAMINERS
BRUCE LAMB, P.T., CHAIRPERSON

/s/ VIVIAN V. HAMMILL
Vivian V. Hammill
Rule Reviewer

/s/ KEITH KELLY
Keith Kelly, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

BOARD OF PLUMBERS

24.180.401 FEE SCHEDULE

(1) Application fee <u>(nonrefundable)</u>	\$ 30
non-refundable	
(2) through (6) remain the same.	
(7) Replacement of certificates	15
(8) Late fee	
(a) Journeyman	150
(b) Master	250
(9) through (12) remain the same but are renumbered (7) through (10).	
(13) Copies of documents	20
(11) <u>Additional standardized fees are specified in [NEW RULE III].</u>	

AUTH: 37-1-134, 37-69-202, 37-69-401, MCA

IMP: 37-1-134, 37-1-141, 37-1-304, 37-1-305, 37-69-202, ~~37-69-307~~, 37-69-401, MCA

REASON: See general statement of reasonable necessity. Based on fiscal year 2005, it is estimated that the creation of standardized fees will have the following impact:

- (1) one duplicate license will be issued for a \$10 decrease in revenue;
- (2) 14 journeyman plumbers will pay the late penalty fee for a \$1,050 decrease in revenue; and
- (3) 11 journeymen plumbers will pay the late penalty fee for a \$1,375 decrease in revenue.

24.180.410 DUPLICATE AND LOST LICENSES (1) Duplicate licenses shall be provided by the board to persons requesting the same in writing, upon payment of the replacement fee as specified in [NEW RULE III].

AUTH: 37-69-202, MCA

IMP: 37-1-134, 37-1-141, ~~37-69-307~~, MCA

REASON: See general statement of reasonable necessity.

24.180.607 TEMPORARY PRACTICE PERMITS (1) remains the same.

(2) A temporary permit shall ~~expire~~ run out on the last day of the month of the next scheduled examination or upon receipt of the results, whichever occurs first. If the applicant fails or does not write the next scheduled examination, a temporary

permit may be renewed at the discretion of the board, on a case-by-case basis upon receipt of a letter requesting renewal of a temporary practice permit and stating their intention to take the next scheduled examination. The letter must be accompanied by the examination fee. If the applicant does not take the next scheduled examination, the temporary practice permit will ~~expire~~ run out and the examination fee will be forfeited.

(3) remains the same.

(4) If the applicant does not appear for, cancels, or fails the next scheduled examination, the second temporary permit ~~expires~~ runs out on the date the board office learns of that occurrence.

(5) remains the same.

AUTH: 37-1-319, MCA

IMP: 37-1-305, MCA

REASON: See general statement of reasonable necessity.

24.180.707 ANNUAL RENEWAL OF ENDORSEMENT (1) All medical gas endorsements ~~shall expire~~ must be renewed annually on or before the date set by ARM 8.2.208. Each endorsement holder must submit a renewal form, proof of a current certification, and the required renewal fee. ~~Failure to submit the annual renewal fee and to renew the endorsement within 30 days following the expiration date shall require the applicant to reapply for endorsement as required by board rule.~~

AUTH: 37-1-141, 37-69-202, 37-69-401, MCA

IMP: 37-1-141, 37-69-401, MCA

REASON: It is reasonable and necessary to amend this rule to delete the reference to the frequency of endorsement renewal. By deleting this reference within the Board's rule, it avoids the potential for having conflicts between ARM 8.2.208, the rule that sets renewal dates and individual Board rules. This section is also being amended to remove the language that conflicts with 37-1-141, MCA, and NEW RULE VI.

24.180.2101 RENEWALS (1) Renewal notices will be sent as specified in [NEW RULE VI]. ~~may be mailed prior to the expiration of the license by the department, at the discretion of the board, to the address on file. It shall be the responsibility of the licensee to keep his current address on file with the board.~~

(2) All master and journeyman licenses ~~shall expire on~~ must be renewed on or before the date set in ARM 8.2.208. ~~It is unlawful for a person who refuses or fails to pay the renewal fee to practice plumbing work in this state. A lapsed license may be reinstated within one year of the default without examination on payment of the arrears, and compliance with board requirements. A lapsed license not renewed within one year following its expiration date terminates automatically. The terminated license may not be reinstated, and a new original license must be obtained by submitting a new application, meeting the current requirements, passing~~

the examination, and paying the appropriate fee.

(3) The provisions of [NEW RULE VI] apply.

AUTH: 37-1-101, 37-1-141, 37-69-202, MCA

IMP: 37-1-141, ~~37-69-307~~, MCA

REASON: See general statement of reasonable necessity.

BOARD OF PLUMBERS
TIM REGAN, PRESIDING OFFICER

/s/ VIVIAN V. HAMMILL
Vivian V. Hammill
Rule Reviewer

/s/ KEITH KELLY
Keith Kelly, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

PRIVATE SECURITY PATROL OFFICERS AND INVESTIGATORS

<u>24.182.401 FEE SCHEDULE</u> (1) through (1)(c) remain the same.	
(d) Certified firearms instructor (biannual)	100
(e) through (2)(c) remain the same.	
(d) Certified firearms instructor (biannual)	100
(e) remains the same.	
(f) Late renewal	50
(3) remains the same.	
(a) Duplicate license or photo <u>Photo</u> ID card (original lost or destroyed)	10
(b) through (d) remain the same.	
(e) License history/license verification	45
(f) and (g) remain the same but are renumbered (e) and (f).	
(h) Copies, per page	.35
(i) Certified copies, per page	.50
(j) remains the same but is renumbered (g).	
<u>(4) Additional standardized fees are specified in [NEW RULE III].</u>	
(4) remains the same but is renumbered (5).	

AUTH: 37-1-134, 37-1-141, 37-60-202, MCA

IMP: 25-1-1104, 37-1-134, 37-1-141, 37-60-304, ~~37-60-312~~, MCA

REASON: See general statement of reasonable necessity. It is also reasonable and necessary to amend this rule to remove the reference to biannual fees for certified firearms instructors. The rule inadvertently uses biannual (twice per year), when the intent is to collect the fee on an annual basis.

Based on fiscal year 2005, it is estimated that the creation of standardized fees will have the following impact:

(1) five contract security company licensees will pay the late penalty fee for a \$250 increase in revenue;

- (2) 40 security guard licensees will pay the late penalty fee for a \$300 increase in revenue;
- (3) ten alarm installer licensees will pay the late penalty fee for a \$200 increase in revenue;
- (4) ten private investigator licensees will pay the late penalty fee for a \$500 increase in revenue;
- (5) five resident manager licensees will pay the late penalty fee for a \$225 increase in revenue;
- (6) two qualifying agent licensees will pay the late penalty fee for a \$50 increase in revenue;
- (7) three certified firearms instructor licensees will pay the late penalty fee for a \$300 increase in revenue; and
- (8) 100 licensees will request license verifications or license histories for a \$500 increase in revenue.

24.182.511 PRIVATE INVESTIGATOR TRAINEE (1) through (3) remain the same.

(4) Trainee licenses ~~expire annually~~ must be renewed as set forth in ARM 8.2.208.

(5) remains the same.

AUTH: 37-60-202, MCA

IMP: 37-60-202, MCA

REASON: See general statement of reasonable necessity.

24.182.513 LICENSE RENEWALS (1) ~~The board shall send each licensee, by mail to the licensee's last known address, an application for renewal, indicating the renewal fee, prior to expiration of license~~ Renewal notices will be sent as specified in [NEW RULE V].

(2) The renewal date is set by ARM 8.2.208.

(3) At renewal, the board may require applicants to submit one recent photograph showing full face, head, and shoulders of the applicant, with the application for renewal to be used for the current identification card.

~~(3) (4) Expired licenses may be renewed within 90 days of the renewal date, as shown in ARM 8.2.208, upon payment of the renewal fee and late fee. If more than 90 days have passed since expiration, to obtain a new license the applicant must:~~ The provisions of [NEW RULE VI] apply.

~~(a) submit a new application;~~

~~(b) take and pass the appropriate examination; and~~

~~(c) pay the required fees.~~

AUTH: 37-1-141, 37-60-202, MCA

IMP: 37-1-141, ~~37-60-312~~, MCA

REASON: See general statement of reasonable necessity. It is also reasonable and necessary to delete (3) because it conflicts with 37-1-141, MCA, as amended by HB 182.

BOARD OF PRIVATE SECURITY PATROL
OFFICERS AND INVESTIGATORS
LINDA SANEM, CHAIRPERSON

/s/ VIVIAN V. HAMMILL
Vivian V. Hammill
Rule Reviewer

/s/ KEITH KELLY
Keith Kelly, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

BOARD OF PROFESSIONAL ENGINEERS
AND PROFESSIONAL LAND SURVEYORS

24.183.404 FEE SCHEDULE (1) through (3)(f)(iv) remain the same.
~~(g) Late renewal fees post marked after June 30 of even number years. The late renewal fee is in addition to the biennial renewal fees stated above.~~
~~(i) Professional engineer 45~~
~~(ii) Professional land surveyor 45~~
~~(iii) Dual license as a professional engineer and land surveyor 55~~
~~(iv) Certificate of Authority 12.50~~
(h) through (h)(iv) remain the same but are renumbered (g) through (g)(iv).
(v) Certificate of Authority issued in conjunction with late renewal 12.50
(4) Additional standardized fees are specified in [NEW RULE III].

AUTH: 37-1-134, 37-67-202, MCA

IMP: 37-1-134, 37-1-141, 37-1-319, 37-67-303, 37-67-312, 37-67-313, ~~37-67-315~~, 37-67-320, 37-67-321, MCA

REASON: See general statement of reasonable necessity. Based on fiscal year 2005, it is estimated that the creation of standardized fees will have the following impact:

- (1) 416 licensees will request license verifications for an \$8,320 increase in revenue;
- (2) 45 licensees will request duplicate licenses for a \$225 increase in revenue;
- (3) six requests for licensee lists or rosters will be received for a \$300 increase in revenue;
- (4) 15 licensees will request duplicate wall certificates for a \$300 increase in revenue;
- (5) 25 licensees will request status change for no change in revenue;
- (6) one licensee will request suspended license renewal for no change in revenue;
- (7) one licensee will request probationary license renewal for no change in revenue; and

(8) 230 licensees will pay the late penalty fee for a \$33,475 increase in revenue.

24.183.2101 EXPIRATION OF LICENSE- RENEWALS (1) Licenses ~~expire must be renewed every second year on or before the date established in set by~~ ARM 8.2.208 and shall be renewed as outlined in ~~37-67-315, MCA, upon receipt of the renewal fee set by the board.~~

(2) ~~The department will renewal~~ Renewal notices will be sent as specified in [NEW RULE V]. ~~notify every licensee by mailing a letter to the address in the roster or to a corrected address 30 to 60 days prior to the date of expiration of the license. The letter renewal notice will specify the fees for renewal for a two-year period. The letter and will include a form for a statement by the licensee that the licensee has maintained the licensee's professional competency during the preceding biennium. This statement must be signed and returned to the board before the license will be renewed.~~

(3) The provisions of [NEW RULE VI] apply.

AUTH: 37-67-202, MCA

IMP: 37-1-141, ~~37-67-315~~, MCA

REASON: See general statement of reasonable necessity.

24.183.2103 LATE RENEWALS (1) Any renewal postmarked after the renewal date specified in ARM 8.2.208 is considered late and subject to a the late renewal penalty fee as specified in [NEW RULE III].

~~(2) The late renewal fee is 50% of the normal renewal fee as shown in ARM 24.183.405.~~

~~(3) Failure to receive a renewal notice from the board shall not relieve the licensee of the licensee's obligation to pay renewal fees in such a manner that they are postmarked on or before the renewal date.~~

(2) The provisions of [NEW RULE VI] apply.

AUTH: 37-1-134, 37-67-202, MCA

IMP: 37-1-141, ~~37-67-315~~, MCA

REASON: See general statement of reasonable necessity.

24.183.2104 EXPIRED CERTIFICATE - RENEWAL GRACE PERIOD found at ARM page 24-21290 is proposed to be repealed.

AUTH: 37-67-202, MCA

IMP: 37-67-315, MCA

REASON: It is reasonable and necessary to repeal ARM 24.183.2104 because it will conflict with 37-1-141, MCA, and NEW RULE VI as proposed. Also, the Department has determined once an individual is licensed, that individual should renew the license as opposed to being considered a new applicant. This decision

was made in order to more accurately provide a complete history of a licensee. If licensees were allowed to apply as a new applicant instead of renewing and paying a late penalty fee because this was cheaper for the licensee, the public would not know that the person had been previously licensed. This could also potentially allow for previous disciplinary action against a licensee to go unnoticed.

BOARD OF PROFESSIONAL ENGINEERS AND
PROFESSIONAL LAND SURVEYORS
DENIS APPLEBURY, CHAIRPERSON

/s/ VIVIAN V. HAMMILL
Vivian V. Hammill
Rule Reviewer

/s/ KEITH KELLY
Keith Kelly, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

BOARD OF PSYCHOLOGISTS

24.189.401 FEE SCHEDULE (1) through (1)(d) remain the same.

~~(e) Late renewal fee~~

100

(2) Additional standardized fees are specified in [NEW RULE III].

AUTH: 37-1-134, 37-17-202, MCA

IMP: 37-1-134, 37-1-141, 37-17-302, ~~37-17-303, 37-17-306, 37-17-307,~~
MCA

REASON: See general statement of reasonable necessity. Based on fiscal year 2005, it is estimated that the creation of standardized fees will have the following impact:

(1) 15 licensees will request license verifications for a \$300 increase in revenue;

(2) five licensees will request duplicate licenses for a \$25 increase in revenue;

(3) 17 requests for licensee lists or rosters will be received for a \$510 increase in revenue;

(4) no requests for photocopies in excess of 20 pages will be received for a \$18.30 decrease in revenue;

(5) one licensee will request a duplicate wall certificate for a \$20 increase in revenue;

(6) one licensee will request suspended license renewal for a \$125 increase in revenue; and

(7) 17 licensees will pay the late penalty fee for a \$2,550 increase in revenue.

24.189.407 RENEWALS (1) ~~At least one month (December 1) before the renewal date (January 1 of the following year), a renewal~~ Renewal ~~notices~~ will be sent as specified in [NEW RULE V]. ~~by the department to each certificate holder to the last address in the board's file. Failure to receive such notice shall not relieve~~

the certificate holder of his obligation to pay renewal fees in such a manner that they are received by the department on or before the renewal date.

(2) A ~~renewed~~ license shall be valid for one year following must be renewed on or before the expiration renewal date set by ARM 8.2.208 of the previously held license.

(3) ~~The board reserves the right to allow renewal of a license after the time when renewal would normally have been required if the circumstances justify such action.~~

(3) The provisions of [NEW RULE VI] apply.

AUTH: 37-1-131, 37-1-141, 37-17-202, MCA

IMP: 37-1-141, ~~37-17-306~~, MCA

REASON: See general statement of reasonable necessity.

24.189.2107 CONTINUING EDUCATION IMPLEMENTATION (1) and (2) remain the same.

(a) ~~Commencing on or before December 31, 1992, licensees with even-numbered licenses shall submit 20 hours of continuing education credit on their license renewals. Thereafter, licensees~~ Licensees with even-numbered licenses shall submit 40 hours of continuing education credit on or before ~~December 31~~ the renewal date set by ARM 8.2.208 of each even-numbered calendar year. Licensees in this category will not report continuing education on the odd-numbered years but must renew their licenses each year.

(b) ~~Commencing on or before December 31, 1993, licensees~~ Licensees with odd-numbered licenses shall submit 40 hours of continuing education credit on or before ~~December 31~~ the renewal date set by ARM 8.2.208 of each odd-numbered calendar year. Licensees in this category will not report continuing education on the even-numbered years but must renew their licenses each year.

(c) through (f) remain the same.

AUTH: 37-1-319, 37-17-202, MCA

IMP: 37-1-131, 37-1-141, 37-1-306, 37-17-202, MCA

REASON: See general statement of reasonable necessity. It is also reasonable and necessary to amend the rule to remove obsolete information. By removing this unnecessary information, it provides clarity to the rule.

BOARD OF PSYCHOLOGISTS
JAY PALMATIER, Ph. D., CHAIRPERSON

/s/ VIVIAN V. HAMMILL
Vivian V. Hammill
Rule Reviewer

/s/ KEITH KELLY
Keith Kelly, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

BOARD OF PUBLIC ACCOUNTANTS

<u>24.201.410 FEE SCHEDULE</u> (1) through (1)(f) remain the same.	
(g) Late fees for renewals postmarked after the deadline date:	
(i) Permit to practice	50
(ii) Non-permit holder	25
(h) (g) Late fee for failure to comply with CPE requirements in accordance with ARM 24.201.2106	100
(i) (h) Late fee for failure to submit CPE reporting form by July 31 within one month following the end of the CPE reporting of each year	25
(j) through (l) remain the same but are renumbered (i) through (k).	
<u>(2) Additional standardized fees are specified in [NEW RULE III].</u>	
(2) remains the same but is renumbered (3).	

AUTH: 37-1-134, 37-50-203, 37-50-204, 37-50-323, MCA

IMP: 37-1-134, 37-1-141, 37-50-204, 37-50-308, 37-50-314, 37-50-317, 37-50-323, MCA

REASON: See general statement of reasonable necessity. Based on fiscal year 2005, it is estimated that the creation of standardized fees will have the following impact:

- (1) 100 licensees will request license verification for a \$2,000 increase in revenue;
- (2) 15 licensees will request duplicate licenses for a \$75 increase in revenue;
- (3) four requests for licensee lists or rosters will be received for a \$44 decrease in revenue;
- (4) 40 pages of photocopies will be requested for a \$10 increase in revenue;
- (5) three licensees will request duplicate wall certificates for a \$15 increase in revenue;
- (6) one licensee will request probationary license renewal for no change in revenue; and
- (7) 85 licensees will pay the late penalty fee for a \$5,500 increase in revenue.

24.201.2101 EXPIRATION- RENEWALS (1) Renewal notices will be sent as specified in [NEW RULE VI].

(2) Pursuant to 37-50-314 and 37-50-317, MCA, all All certified public accountants and licensed public accountants certificates, licenses, and permits to practice expire on must be renewed on or before the date set by department rule in ARM 8.2.208.

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

(4) The provisions of [NEW RULE VI] apply.

AUTH: 37-1-131, 37-50-201, 37-50-203, MCA

IMP: 37-1-141, 37-50-203, 37-50-314, 37-50-317, MCA

REASON: See general statement of reasonable necessity.

BOARD OF PUBLIC ACCOUNTANTS
GARY KASPER, L.P.A., CHAIRPERSON

/s/ VIVIAN V. HAMMILL
Vivian V. Hammill
Rule Reviewer

/s/ KEITH KELLY
Keith Kelly, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

BOARD OF RADIOLOGIC TECHNOLOGISTS

NEW RULE X RENEWALS (1) Renewal notices will be sent as specified in [NEW RULE V].

(2) The renewal date for a radiologic technologist license is the date set by ARM 8.2.208.

(3) The provisions of [NEW RULE VI] apply.

AUTH: 37-1-141, 37-14-202, MCA
IMP: 37-1-141, MCA

REASON: It is reasonable and necessary to adopt this new rule as a means of keeping with the intent of HB 182 and standardizing certain aspects of license renewal including setting uniform standards for license renewals, including renewal periods, and notification periods. Several licensing entities do not have specific rules that address renewals, or have existing rules where it is appropriate to include language that addresses licensee notification regarding upcoming renewal dates, or clarification of new statutory definitions regarding license renewal. Therefore, this new rule is proposed in order to incorporate the three components that have been included within the text of numerous other rules to fulfill the changes brought about by HB 182. It is appropriate to propose the new rule at this time in order to maintain consistency regarding renewal requirements among all entities licensed by the Division. See also general statement of reasonable necessity.

24.204.401 FEE SCHEDULE (1) through (1)(c) remain the same.

~~(d) Late renewal fee (in addition to renewal fee)~~ 50

~~(e) Duplicate or lost licenses or certificates~~ 5

~~(f) Verification/certification of licensure to another state~~ 5

(d) Additional standardized fees are specified in [NEW RULE III].

AUTH: 37-1-134, 37-14-202, MCA
IMP: 37-1-134, 37-1-141, 37-14-305, ~~37-14-309~~, ~~37-14-310~~, MCA

REASON: See general statement of reasonable necessity. Based on fiscal year 2005, it is estimated that the creation of standardized fees will have the following impact:

(1) eight licensees will request license verifications for a \$160 increase in revenue;

- (2) five licensees will request duplicate licenses for a \$25 increase in revenue;
- (3) four requests for licensee lists or rosters will be received for a \$120 increase in revenue;
- (4) one licensee will request a duplicate wall certificate for a \$20 increase in revenue; and
- (5) 20 licensees will pay the late penalty fee for a \$1,000 increase in revenue.

24.204.404 PERMIT FEES (1) through (4) remain the same.

~~(5) Late renewal fee (in addition to renewal fee)~~ 50

(6) and (7) remain the same but are renumbered (5) and (6).

(7) Additional standardized fees are specified in [NEW RULE III].

~~(8) Document~~ 20

AUTH: 37-1-134, 37-14-202, 37-14-306, ~~37-14-310~~, MCA

IMP: 37-1-134, 37-1-141, 37-14-306, ~~37-14-309~~, ~~37-14-310~~, MCA

REASON: See general statement of reasonable necessity. Fiscal impact statement appears with ARM 24.204.401.

24.204.2102 WAIVER OF CONTINUING EDUCATION REQUIREMENT

(1) In the event of hardship such as a disabling illness or other personal emergency which substantially interferes with a permit holder's ability to meet the minimum requirement of six contact hours prior to the deadline, the board may approve a waiver of the continuing education requirement. There must be a written request submitted to the board by the renewal date set by ARM 8.2.208. Such request for approval for a waiver shall be in writing and shall set forth the reasons why the licensee was unable to earn the minimum number of credit units required prior to the deadline.

AUTH: 37-1-319, 37-14-202, MCA

IMP: 37-1-306, 37-1-319, MCA

REASON: See general statement of reasonable necessity.

BOARD OF RADIOLOGIC TECHNOLOGISTS
JOHN ROSENBAUM, R.T., CHAIRPERSON

/s/ VIVIAN V. HAMMILL

Vivian V. Hammill
Rule Reviewer

/s/ KEITH KELLY

Keith Kelly, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

BOARD OF REAL ESTATE APPRAISERS

NEW RULE XI RENEWALS (1) Renewal notices will be sent as specified in [NEW RULE V].

(2) The renewal date for real estate appraiser licensure is the date set by ARM 8.2.208.

(3) The provisions of [NEW RULE VI] apply.

AUTH: 37-1-141, 37-54-105, MCA

IMP: 37-1-141, MCA

REASON: It is reasonable and necessary to adopt this new rule as a means of keeping with the intent of HB 182 and standardizing certain aspects of license renewal including setting uniform standards for license renewals, including renewal periods, and notification periods. Several licensing entities do not have specific rules that address renewals, or have existing rules where it is appropriate to include language that addresses licensee notification regarding upcoming renewal dates, or clarification of new statutory definitions regarding license renewal. Therefore, this new rule is proposed in order to incorporate the three components that have been included within the text of numerous other rules to fulfill the changes brought about by HB 182. It is appropriate to propose the new rule at this time in order to maintain consistency regarding renewal requirements among all entities licensed by the Division. See also general statement of reasonable necessity.

24.207.401 FEES (1) through (1)(g) remain the same.

~~(h) administrative/copying fee~~ 40

~~(i) late renewal fee~~ 150

(j) through (n) remain the same but are renumbered (h) through (l).

(m) Additional standardized fees are specified in [NEW RULE III].

(2) remains the same.

AUTH: 37-1-131, 37-1-134, 37-54-105, MCA

IMP: 37-1-131, 37-1-134, 37-1-141, 37-54-105, 37-54-112, 37-54-201, 37-54-202, ~~37-54-210~~, ~~37-54-211~~, 37-54-212, 37-54-302, 37-54-310, 37-54-403, MCA

REASON: See general statement of reasonable necessity. Based on fiscal year 2005, it is estimated that the creation of standardized fees will have the following impact:

(1) nine requests for licensee lists or rosters will be received for a \$90 increase in revenue;

(2) 36 licensees will request status change for no change in revenue; and

(3) ten licensees will pay the late penalty fee for a \$1,500 increase in revenue.

24.207.517 TRAINEE REQUIREMENTS (1) through (4) remain the same.

(5) A trainee license must be renewed by ~~March 31~~ the date set by ARM 8.2.208 of each expiration year following the trainee's original year of licensure. A trainee license may be renewed a total of four times, but may be extended by the board for cause.

(6) through (11) remain the same.

AUTH: 37-1-131, 37-1-141, 37-54-105, MCA

IMP: 37-1-131, 37-1-141, 37-54-105, 37-54-201, 37-54-202, 37-54-303, 37-54-403, MCA

REASON: See general statement of reasonable necessity.

24.207.2101 CONTINUING EDUCATION (1) through (4) remain the same.

(5) An education reporting form executed under the penalty of perjury of the laws of Montana attesting to the successful completion of the continuing education requirement must be submitted to the board by ~~March 31~~ the date set by ARM 8.2.208 of the licensee's educational reporting cycle.

(6) An incomplete education reporting form will not be accepted and will be returned to the licensee. Any form returned to the licensee must be properly completed and resubmitted before the ~~March 31 deadline~~ date set by ARM 8.2.208.

(7) through (9) remain the same.

AUTH: 37-1-131, 37-1-306, 37-1-319, 37-54-105, MCA

IMP: 37-1-131, 37-1-141, 37-1-306, 37-54-105, ~~37-54-210~~, 37-54-303, 37-54-310, MCA

REASON: See general statement of reasonable necessity.

BOARD OF REAL ESTATE APPRAISERS
TIM MOORE, CHAIRPERSON

/s/ VIVIAN V. HAMMILL
Vivian V. Hammill
Rule Reviewer

/s/ KEITH KELLY
Keith Kelly, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

BOARD OF REALTY REGULATION

24.210.401 FEE SCHEDULE (1) through (10) remain the same.

~~(11) For each duplicate license, where the original is lost or destroyed~~ 15

(12) through (15) remain the same but are renumbered (11) through (14).

~~(16) Late renewal fee~~ 200

(17) and (18) remain the same but are renumbered (15) and (16).

~~(19) Lists 1-700 names~~ 20

701 and over, per name 0.03

all licensees 125

(20) Labels -- 1-700 names	20
701 and over, per name	0.03
all licensees	125
(21) Copies, per page	0.25
(22) Certified copies, per page	0.50
(23) remains the same but is renumbered (17).	
(24) License history/license verification	15
(25) and (26) remain the same but are renumbered (18) and (19).	
(20) Additional standardized fees are specified in [NEW RULE III].	

AUTH: 37-1-131, 37-1-134, 37-51-203, 37-51-204, MCA

IMP: 37-1-134, 37-1-141, 37-51-202, 37-51-204, 37-51-207, 37-51-303, ~~37-51-310~~, 37-51-311, MCA

REASON: See general statement of reasonable necessity. Based on fiscal year 2005, it is estimated that the creation of standardized fees will have the following impact:

- (1) 50 licensees will request duplicate licenses for a \$250 increase in revenue;
- (2) 50 requests for licensee lists or rosters will be received for a \$3,750 decrease in revenue;
- (3) 35 pages of photocopies will be requested for a \$8.75 increase in revenue;
- (4) 50 licensees will request license histories for a \$250 decrease in revenue;
- (5) 15 licensees will request duplicate wall certificates for a \$75 increase in revenue;
- (6) 650 licensees will request status change for no change in revenue; and
- (7) 200 licensees will pay the late penalty fee for no change in revenue.

24.210.635 RENEWALS (1) ~~Beginning with the renewal of December 31, 2001, one-half of the licensees will renew for a period of two years with an expiration date of December 31, 2003. Following this initial renewal period, each~~ Each licensee will renew for a period of two years by December 31 on or before the date set by ARM 8.2.208 of their expiration year.

(2) ~~Renewal forms~~ notices will be mailed to all real estate licensees at their ~~last address of record sent as specified in [NEW RULE V].~~ Active salesperson licensee renewals will be sent to the broker of record. Inactive licensee renewals will be sent to their home address. ~~Failure to receive a renewal form does not eliminate the renewal requirement.~~ Each licensee is required to renew.

(3) remains the same.

(4) Incomplete renewal forms will not be accepted and will be returned to the licensee. Any form returned to the licensee must be properly completed and resubmitted before the ~~December 31 deadline~~ date as set by ARM 8.2.208, or the ~~late renewal penalty fees as specified in [NEW RULE III]~~ will be required.

(5) The provisions of [NEW RULE VI] apply.

AUTH: 37-51-203, MCA

IMP: 37-1-141, 37-51-310, MCA

REASON: See general statement of reasonable necessity.

24.210.661 NEW LICENSEE MANDATORY CONTINUING EDUCATION -- SALESPERSONS (1) remains the same.

(2) New sales licensees will receive an interim license that will ~~expire December 31~~ end on the date set by ARM 8.2.208 of the year of the initial license date.

(3) through (5) remain the same.

(6) All licensees are required to submit the renewal form and renewal fee by ~~December 31~~ the date set by ARM 8.2.208 of their license renewal year.

AUTH: 37-1-306, 37-1-319, 37-51-203, MCA

IMP: 37-1-306, 37-1-319, MCA

REASON: See general statement of reasonable necessity.

24.210.667 CONTINUING REAL ESTATE EDUCATION (1) through (11) remain the same.

(12) An education reporting form attesting to the successful completion of the continuing education requirement must be submitted to the board by ~~December 31~~ the date set by ARM 8.2.208 of each year. Filing of an education reporting form after ~~December 31~~ the renewal date set by ARM 8.2.208, but on or before ~~February 15~~ 45 days following the renewal date will result in a late filing penalty fee. No affidavit will be accepted after ~~February 15~~ 45 days following the renewal date set by ARM 8.2.208.

(13) An incomplete education reporting form will not be accepted and will be returned to the licensee. Any form returned to the licensee must be properly completed and resubmitted before the ~~December 31~~ date set by ARM 8.2.208, or late filing penalty fees as specified in [NEW RULE III] will be required.

(14) through (17) remain the same.

AUTH: 37-1-131, 37-1-306, 37-51-203, 37-51-204, MCA

IMP: 37-1-306, 37-1-319, 37-51-202, 37-51-203, 37-51-204, MCA

REASON: See general statement of reasonable necessity.

24.210.801 FEE SCHEDULE (1) through (6) remain the same.

(7) For each duplicate license where the original was lost or destroyed 15

(8) For each duplicate pocket card where the original was lost or destroyed 15

(9) through (12) remain the same but are renumbered (7) through (10).

(13) Late renewal fee 200

(14) and (15) remain the same but are renumbered (11) and (12).

(16) List of licensees 20

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

~~(18) License history/license verification~~

15

(14) Additional standardized fees are specified in [NEW RULE III].

AUTH: 37-1-134, 37-51-202, 37-51-203, MCA

IMP: 37-1-134, 37-1-141, 37-51-207, MCA

REASON: See general statement of reasonable necessity. Fiscal impact statement follows ARM 24.210.401.

24.210.825 PROPERTY MANAGEMENT LICENSE RENEWALS AND LATE RENEWALS (1) ~~Renewal forms notices will be mailed to all licensed property managers at their last address of record. Failure to receive a renewal form does not eliminate the renewal requirement sent as specified in [NEW RULE V].~~ Each licensee is required to renew.

(2) remains the same.

(a) payment of the current renewal fee as prescribed by the board within 45 days of the renewal date by February 15;

(b) payment of the late penalty fee as ~~prescribed by the board~~ specified by [NEW RULE III]; and

(c) remains the same.

~~(3) Any licensee not renewed by February 15 is automatically canceled and may not be reinstated.~~

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

~~(5) (4)~~ (4) Incomplete renewal forms will not be accepted and will be returned to the licensee. Any form returned to the licensee must be properly completed and resubmitted before the renewal ~~deadline~~ date set forth in ARM 8.2.208, or the late renewal penalty fees will be required.

(5) The provisions of [NEW RULE VI] apply.

AUTH: 37-1-131, 37-1-141, 37-51-202, 37-51-203, MCA

IMP: 37-1-101, 37-1-141, 37-51-604, MCA

REASON: See general statement of reasonable necessity.

24.210.835 CONTINUING PROPERTY MANAGEMENT EDUCATION

(1) through (6) remain the same.

(7) An education reporting form attesting to the successful completion of the continuing education requirement must be submitted to the board by ~~December 31~~ the date set by ARM 8.2.208 of each year. Filing of an education reporting form after the renewal date set by ARM 8.2.208 ~~December 31~~, but on or before February 15 of the next year 45 days following the renewal date, will result in a late filing penalty fee.

AUTH: 37-1-131, 37-1-319, 37-51-202, 37-51-203, MCA

IMP: 37-1-306, 37-1-141, 37-1-319, MCA

REASON: See general statement of reasonable necessity.

24.210.836 CONTINUING PROPERTY MANAGEMENT EDUCATION REPORTING REQUIREMENTS (1) An education reporting form attesting to the successful completion of the continuing education requirement must be submitted to the board by ~~December 31~~ the date set by ARM 8.2.208 of each year. Filing of an education reporting form after ~~December 31~~ the renewal date set by ARM 8.2.208, but on or before ~~February 15~~ 45 days following the renewal date, will result in a late filing penalty fee. No education reporting form will be accepted after ~~February 15~~ 45 days following the renewal date set by ARM 8.2.208.

(2) An incomplete education reporting form of education will not be accepted and will be returned to the licensee. Any form returned to the licensee must be properly completed and resubmitted before the ~~December 31~~ deadline as set by ARM 8.2.208, or the late filing penalty fees as specified in [NEW RULE III] will be required.

(3) through (5) remain the same.

AUTH: 37-1-131, 37-1-319, 37-51-203, MCA

IMP: 37-1-101, 37-1-131, 37-1-306, 37-1-319, MCA

REASON: See general statement of reasonable necessity.

24.210.1020 TIMESHARE LICENSE RENEWALS REQUIREMENTS

~~(1) (2)~~ Licenses and certificates of completion for timeshare brokers and salespersons shall be renewed annually in the month of December, postmarked no later than December 31 of the year preceding that for which the renewal is requested, by the date set by ARM 8.2.208. ~~Include~~ include payment of the required fee, and, except as contained in ARM 24.210.1003 renewal shall include a typewritten, or printed, and sworn update to the personal disclosure statement.

~~(2) (1)~~ The license held by a licensee who fails to submit a complete renewal request prior to the date set forth above shall lapse on January 1 of the new license year. ~~The lapsed license may be reinstated by payment of the renewal fee and the late renewal fee at any time within 45 days from the renewal deadline. The late renewal fee shall be \$50.~~ Renewal notices will be sent as specified in [NEW RULE VI].

(3) The provisions of [NEW RULE VI] apply.

AUTH: 37-1-131, 37-53-104, MCA

IMP: 37-1-131, 37-1-141, 37-53-104, MCA

REASON: See general statement of reasonable necessity.

BOARD OF REALTY REGULATION
TERRY HILGENDORF, CHAIRPERSON

/s/ VIVIAN V. HAMMILL
Vivian V. Hammill
Rule Reviewer

/s/ KEITH KELLY
Keith Kelly, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

BOARD OF RESPIRATORY CARE PRACTITIONERS

24.213.401 FEE SCHEDULE (1) through (1)(d) remain the same.

(e) ~~Late renewal fee~~ 40

(f) (e) Inactive license fee 30

(f) Additional standardized fees are specified in [NEW RULE III].

AUTH: 37-1-134, 37-28-104, MCA

IMP: 37-1-134, 37-1-141, 37-28-104, 37-28-202, ~~37-28-203~~, MCA

REASON: See general statement of reasonable necessity. Based on fiscal year 2005, it is estimated that the creation of standardized fees will have the following impact:

- (1) 12 licensees will request license verifications for a \$240 increase in revenue;
- (2) 12 licensees will request duplicate licenses for a \$60 increase in revenue;
- (3) four requests for licensee lists or rosters will be received for a \$120 increase in revenue;
- (4) two licensees will request duplicate wall certificates for a \$40 increase in revenue;
- (5) five licensees will request status change for a \$350 increase in revenue;
- and
- (6) five licensees will pay the late penalty fee for a \$300 increase in revenue.

24.213.403 ABATEMENT OF RENEWAL FEES (1) through (2)(b) remain the same.

(c) The fact that a renewal fee is abated for any given renewal cycle does not excuse the licensee or registrant from otherwise fulfilling renewal requirements, including submission of a renewal application and any continuing education documentation. The ~~board~~ department, to the extent it provides by rule, may impose a late penalty fee on untimely submissions of renewal applications or other required documentation.

(3) and (4) remain the same.

AUTH: 37-1-101, 37-1-131, 37-1-134, MCA

IMP: 17-2-302, 17-2-303, 37-1-101, 37-1-131, 37-1-134, 37-1-141, MCA

REASON: See general statement of reasonable necessity.

24.213.412 PROCEDURES FOR RENEWALS (1) ~~The board shall mail the renewal Renewal notices will be sent as specified in [NEW RULE VI], approximately six to eight weeks in advance of the renewal date to the licensee's address on file with the board. Failure to receive the renewal notice does not relieve the licensee from the obligation to renew in a timely manner.~~

(2) Licenses expire must be renewed every even numbered year on or before the renewal date set forth in by ARM 8.2.208.

(3) ~~Licensees may renew their licenses for a period of three years from the expiration date of the license by submitting a renewal form, one renewal fee and one late fee and documentation of the continuing education that would have been required had the license been renewed in a timely manner. A license that is not renewed within three years of the most recent renewal date automatically terminates. The terminated license may not be reinstated, and a new original license must be obtained by passing the certifying examination and paying the appropriate fees.~~

(3) The provisions of [NEW RULE VI] apply.

AUTH: 37-1-141, 37-28-104, MCA

IMP: 37-1-141, ~~37-28-203~~, MCA

REASON: See general statement of reasonable necessity.

24.213.2121 WAIVER OF CONTINUING EDUCATION REQUIREMENT

(1) In the event of hardship such as a disabling illness or other personal emergency which substantially interferes with a licensee's ability to meet the minimum requirement of 12 credit units prior to the deadline, the board may approve a waiver of the continuing education requirement. There must be a written request submitted to the board by the renewal date set by ARM 8.2.208. Such request for approval for a waiver shall be in writing and shall set forth the reasons why the licensee was unable to earn the minimum number of credit units required prior to the deadline.

AUTH: 37-28-104, MCA

IMP: 37-28-104, ~~37-28-203~~, MCA

REASON: See general statement of reasonable necessity.

BOARD OF RESPIRATORY CARE
PRACTITIONERS
EILEEN CANEY, CHAIRPERSON

/s/ VIVIAN V. HAMMILL
Vivian V. Hammill
Rule Reviewer

/s/ KEITH KELLY
Keith Kelly, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

BOARD OF SANITARIANS

24.216.402 FEE SCHEDULE (1) through (4) remain the same.

~~(5) Late renewal (in addition to renewal fee)~~

50

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

(6) Additional standardized fees are specified in [NEW RULE III].

(7) remains the same.

AUTH: 37-1-134, 37-40-203, MCA

IMP: 37-1-134, 37-1-141, 37-40-302, ~~37-40-304~~, MCA

REASON: See general statement of reasonable necessity. Based on fiscal year 2005, it is estimated that the creation of standardized fees will have the following impact:

(1) 11 licensees will pay the late penalty fee for no change in revenue.

24.216.2101 RENEWALS (1) ~~Renewal application forms notices~~ will be sent as specified in [NEW RULE V]. ~~to the licensee's address on file in the board office approximately six to eight weeks prior to the renewal deadline. Failure to receive a renewal application form in no way releases the licensee from the obligation to renew prior to the end of the licensing year.~~

(2) Licenses must be renewed on or before the date set by ARM 8.2.208.

(3) The provisions of [NEW RULE VI] apply.

~~(2) Licensees shall have 90 days after the expiration date of their licenses to submit a renewal application with the accompanying renewal and late fees and proper documentation of continuing education requirements.~~

~~(3) Ninety days after the expiration date, the license lapses. To reinstate a lapsed license, an applicant must submit a new application and retake and successfully pass the licensing examination.~~

AUTH: 37-1-141, 37-40-203, ~~37-40-304~~, MCA

IMP: 37-1-141, ~~37-40-304~~, MCA

REASON: See general statement of reasonable necessity.

BOARD OF SANITARIANS
TED KYLANDER, CHAIRPERSON

/s/ VIVIAN V. HAMMILL

Vivian V. Hammill
Rule Reviewer

/s/ KEITH KELLY

Keith Kelly, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

BOARD OF SOCIAL WORK EXAMINERS AND PROFESSIONAL COUNSELORS

NEW RULE XII RENEWALS (1) Renewal notices will be sent as specified in [NEW RULE V].

(2) Social worker licenses must be renewed on or before the date set by ARM 8.2.208.

(3) The provisions of [NEW RULE VI] apply.

AUTH: 37-1-141, 37-22-201, MCA

IMP: 37-1-141, MCA

REASON: It is reasonable and necessary to adopt this new rule as a means of keeping with the intent of HB 182 and standardizing certain aspects of license renewal including setting uniform standards for license renewals, including renewal periods, and notification periods. Several licensing entities do not have specific rules that address renewals, or have existing rules where it is appropriate to include language that addresses licensee notification regarding upcoming renewal dates, or clarification of new statutory definitions regarding license renewal. Therefore, this new rule is proposed in order to incorporate the three components that have been included within the text of numerous other rules to fulfill the changes brought about by HB 182. It is appropriate to propose the new rule at this time in order to maintain consistency regarding renewal requirements among all entities licensed by the Division. See also general statement of reasonable necessity.

24.219.401 FEE SCHEDULE FOR SOCIAL WORKERS (1) through (4) remain the same.

(5) Additional standardized fees are specified in [NEW RULE III].

AUTH: 37-1-134, 37-22-201, 37-22-302, ~~37-22-304~~, MCA

IMP: 37-1-134, 37-1-141, 37-22-301, 37-22-302, ~~37-22-303, 37-22-304~~, MCA

REASON: See general statement of reasonable necessity.

24.219.405 FEE SCHEDULE FOR PROFESSIONAL COUNSELORS (1) through (4) remain the same.

(5) Additional standardized fees are specified in [NEW RULE III].

AUTH: 37-1-134, ~~37-23-103~~, MCA

IMP: 37-1-134, 37-1-141, 37-23-206, MCA

REASON: See general statement of reasonable necessity.

Based on fiscal year 2005 for the Board of Social Work Examiners and Professional Counselors, it is estimated that the creation of standardized fees will have the following impact:

(1) 25 licensees will request license verifications for a \$500 increase in revenue;

(2) ten licensees will request duplicate licenses for a \$50 increase in revenue;

- (3) 25 requests for licensee lists or rosters will be received for a \$690 increase in revenue;
- (4) five licensees will request duplicate wall certificates for a \$100 increase in revenue;
- (5) ten licensees will request status change for a \$1,000 increase in revenue;
- (6) one licensee will request suspended license renewal for a \$50 increase in revenue; and
- (7) 25 licensees will pay the late penalty fee for a \$2,500 increase in revenue.

24.219.615 ANNUAL LICENSE RENEWALS ~~(1)~~ (2) Professional counselor licenses ~~expire must be renewed on or before December 31 the date set by ARM 8.2.208 of each year. Current licenses expire December 31, 1987.~~ Fees for initial licenses issued other than the uniform renewal date will be prorated.

- (1) Renewal notices will be sent as specified in [NEW RULE V].
- (3) The provisions of [NEW RULE VI] apply.

AUTH: 37-1-134, 37-1-141, ~~37-23-103, 37-23-205~~, MCA
IMP: 37-1-141, ~~37-23-205~~, MCA

REASON: See general statement of reasonable necessity.

BOARD OF SOCIAL WORK EXAMINERS AND
PROFESSIONAL COUNSELORS
SHERRY MEADOR, CHAIRPERSON

/s/ VIVIAN V. HAMMILL
Vivian V. Hammill
Rule Reviewer

/s/ KEITH KELLY
Keith Kelly, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

BOARD OF SPEECH-LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS

NEW RULE XIII RENEWALS (1) Renewal notices will be sent as specified in [NEW RULE V].

- (2) Speech pathologist and audiologist licenses must be renewed on or before the date set by ARM 8.2.208.
- (3) The provisions of [NEW RULE VI] apply.

AUTH: 37-1-141, 37-15-202, MCA
IMP: 37-1-141, MCA

REASON: It is reasonable and necessary to adopt this new rule as a means of keeping with the intent of HB 182 and standardizing certain aspects of license renewal including setting uniform standards for license renewals, including renewal periods, and notification periods. Several licensing entities do not have specific rules that address renewals, or have existing rules where it is appropriate to include language that addresses licensee notification regarding upcoming renewal dates, or

clarification of new statutory definitions regarding license renewal. Therefore, this new rule is proposed in order to incorporate the three components that have been included within the text of numerous other rules to fulfill the changes brought about by HB 182. It is appropriate to propose the new rule at this time in order to maintain consistency regarding renewal requirements among all entities licensed by the Division. See also general statement of reasonable necessity.

24.222.401 FEES (1) through (2)(c) remain the same.

~~(i) Late renewal fees are an additional 10% due each month that the payment of the renewal fee is delayed after the February 1 expiration date. The maximum fee for delayed renewal may not exceed twice the normal renewal fee.~~

(d) through (f) remain the same.

~~(g) Replacement or duplication of a license~~

40

(3) Additional standardized fees are specified in [NEW RULE III].

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

AUTH: 37-1-134, 37-15-202, MCA

IMP: 37-1-134, 37-1-141, 37-15-307, ~~37-15-308~~, 37-15-313, MCA

REASON: See general statement of reasonable necessity. Based on fiscal year 2005, it is estimated that the creation of standardized fees will have the following impact:

(1) four licensees will request license verifications for a \$80 increase in revenue;

(2) five licensees will request duplicate licenses for a \$25 increase in revenue;

(3) six requests for licensee lists or rosters will be received for a \$180 increase in revenue;

(4) one licensee will request a duplicate wall certificate for a \$20 increase in revenue;

(5) five licensees will request status change for a \$250 increase in revenue; and

(6) five licensees will pay the late penalty fee for a \$500 increase in revenue.

24.222.2102 CONTINUING EDUCATION REQUIREMENTS (1) Each licensee shall affirm completion of the required continuing education hours before ~~February 1~~ the date set by ARM 8.2.208 of each odd-numbered year, on the renewal form. The board will randomly audit 10% of the renewed licensee's continuing education hours submitted each odd-numbered year. Certificates of completion for continuing education credits reported must be submitted upon request of the board.

(2) through (7) remain the same.

AUTH: 37-1-319, 37-15-202, MCA

IMP: 37-1-131, 37-1-306, 37-15-102, 37-15-309, MCA

REASON: See general statement of reasonable necessity.

BOARD OF SPEECH-LANGUAGE
PATHOLOGISTS AND AUDIOLOGISTS
MARILYN THADDEN, S.L.P., CHAIRPERSON

/s/ VIVIAN V. HAMMILL

Vivian V. Hammill

Rule Reviewer

/s/ KEITH KELLY

Keith Kelly, Commissioner

DEPARTMENT OF LABOR AND INDUSTRY

BOARD OF VETERINARY MEDICINE

<u>24.225.401 FEE SCHEDULE</u> (1) through (2)(b) remain the same.	
(c) Late renewal fee	50
(3) through (3)(b) remain the same.	
(c) Technician late renewal	50
(d) and (e) remain the same but are renumbered (c) and (d).	
(f) Agency late renewal	50
(g) remains the same but is renumbered (e).	
<u>(4) Additional standardized fees are specified in [NEW RULE III].</u>	

AUTH: 37-1-134, 37-18-202, 37-18-603, MCA

IMP: 37-1-134, 37-1-141, 37-1-304, 37-1-305, 37-18-302, ~~37-18-307~~, 37-18-603, MCA

REASON: See general statement of reasonable necessity. Based on fiscal year 2005, it is estimated that the creation of standardized fees will have the following impact:

- (1) 40 licensees will request license verifications for an \$800 increase in revenue;
- (2) five licensees will request duplicate licenses for a \$25 increase in revenue;
- (3) one request for licensee lists or rosters will be received for a \$30 increase in revenue;
- (4) 61 veterinarian licensees will pay the late penalty fee for a \$915 increase in revenue;
- (5) two euthanasia technician licensees will pay the late penalty fee for a \$140 increase in revenue;
- (6) one embryo transfer technician licensee will pay the late penalty fee for a \$65 increase in revenue; and
- (7) one euthanasia agency licensee will pay the late penalty fee for a \$125 increase in revenue.

24.225.510 ANNUAL RENEWALS OF CERTIFICATE OF REGISTRATION

~~(1) Notice for annual renewal of certificate of registration shall be mailed annually to each licensed veterinarian at his/her last known address at least 30 days prior to the November 1st deadline. Notices will be considered properly mailed when addressed to the last known address on file in the board office~~ Renewal notices will be sent as specified in [NEW RULE V].

- (2) The proper annual renewal of certificate of registration fee and completed renewal form are due by ~~November 1st~~ the date set by ARM 8.2.208 of each year.
- (3) The provisions of [NEW RULE VI] apply.

AUTH: 37-1-141, 37-18-202, MCA
IMP: 37-1-141, ~~37-18-307~~, MCA

REASON: See general statement of reasonable necessity.

24.225.511 CONTINUING EDUCATION (1) Each veterinarian licensed shall be required to obtain every two years a minimum of 20 credit hours of continuing education approved by the board. The credit hours must be obtained within the 24 months prior to renewal on ~~November 1~~ the date set by ARM 8.2.208 of the even-numbered years. Licensees licensed less than two full calendar years but more than one full calendar year on their first continuing education reporting date shall be required to submit ten hours of continuing education.

(a) remains the same.

(b) A veterinarian may be granted a grace period of three months after the ~~November 1st~~ deadline set by ARM 8.2.208 in which to fulfill the continuing education requirements. This grace period shall be granted only upon written request to the board, payment of the ~~restoration~~ late penalty fee and upon board approval. A license to practice veterinary medicine valid for the duration of the grace period will be issued to those persons granted grace by the board.

(c) through (6) remain the same.

AUTH: 37-1-131, 37-1-319, 37-18-202, MCA
IMP: 37-1-141, 37-1-306, MCA

REASON: See general statement of reasonable necessity. In order to be consistent, the rule is further amended to delete language that was previously used in statute and replace with new terminology that is being used throughout the Division's rules when referencing the late penalty fee.

24.225.515 FORFEITURE OF LICENSE AND RESTORATION found at ARM page 24-26583 is proposed to be repealed.

AUTH: 37-18-202, MCA
IMP: 37-18-307, MCA

REASON: This rule is proposed to be repealed because the implementing statute, 37-18-307, MCA, which allowed for license forfeiture and one year restoration was repealed by HB 182 and the rule now conflicts with 37-1-141, MCA as enacted by HB 182.

24.225.550 UNPROFESSIONAL CONDUCT (1) For the purposes of implementing the provisions of 37-1-319, MCA, the board defines "unprofessional conduct" as follows:

- (1) through (9) remain the same but are renumbered (a) through (i).
~~(40)~~ (j) Practicing veterinary medicine ~~while~~ after the practitioner's license is ~~not currently renewed~~ has expired.
(11) through (13) remain the same but are renumbered (k) through (m).

AUTH: 37-1-131, 37-1-319, 37-18-202, MCA

IMP: 37-1-131, 37-1-141, 37-1-316, 37-1-319, 37-18-311, MCA

REASON: See general statement of reasonable necessity.

24.225.709 ANNUAL RENEWALS AND CONTINUING EDUCATION (1) A person certified as an embryo transfer technician under these rules must renew ~~his~~ the certificate ~~annually~~ before November 1 the date set by ARM 8.2.208.

(2) through (4) remain the same.

(5) A certificate holder may be granted a grace period of three months after the ~~November 1 renewal deadline~~ date set by ARM 8.2.208 in which to fulfill continuing education requirements. This grace period will be granted only upon written request to the board, payment of the renewal fee, and board approval. A certificate valid for the duration of the grace period will be issued only to a person granted grace by the board.

~~(6) Failure of a person to renew his or her certificate, apply for a grace period or to obtain hardship relief within 90 days of the November 1 deadline constitutes a forfeiture of the certificate. A defaulting certificate holder under this provision must apply and qualify for a new certificate, including passing the applicable examinations if he or she wishes to renew his or her certificate and practice.~~

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

AUTH: 37-1-319, 37-18-202, MCA

IMP: 37-1-138, 37-1-141, 37-1-306, 37-18-104, MCA

REASON: See general statement of reasonable necessity.

24.225.750 UNPROFESSIONAL CONDUCT (1) through (2)(h) remain the same.

(i) performing embryo transfer while the embryo transfer technician's certificate ~~is not currently renewed~~ has expired.

(j) and (k) remain the same.

AUTH: 37-1-319, 37-18-202, MCA

IMP: 37-1-141, 37-1-316, 37-18-104, MCA

REASON: See general statement of reasonable necessity.

24.225.925 ANNUAL RENEWALS OF CERTIFICATE FOR TECHNICIANS AND CERTIFIED AGENCIES (1) CETs must re-certify on a form or by a method approved by the board on or before ~~May 30~~ the date set by ARM 8.2.208 of every year, beginning in 2005. The certification renewal application must include:

(a) through (c) remain the same.

(2) CEAs must renew certification on a form or by a method approved by the board on or before May 30 the date set by ARM 8.2.208 of every year, beginning in 2005. The renewal application must include:

(a) through (d) remain the same.

(3) ~~A renewal~~ Renewal notices will be sent by the board to each certificate holder at the current certified agency address in the board's files at least 30 days prior to the renewal deadline. ~~Failure to receive such notice must not relieve the certificate holder of the certificate holder's obligation to pay certification renewal fees in such a manner that they are received by the department on or before the certification renewal date as specified in [NEW RULE V].~~

(4) A CET's or CEA's renewal certificate shall be valid for one year following the ~~expiration~~ renewal date of the previously held certificate.

(5) The fee for any certificate holder who fails to re-certify or submit the proper fee prior to the ~~expiration~~ renewal date ~~must be increased by an amount determined by the board and specified in the fee schedule~~ pay the late penalty fee specified in [NEW RULE III]. Certification renewal forms may not be processed until all required documentation is received in the board office and all fees are paid.

~~(6) The board will randomly audit 10 renewals for CEAs and 10 renewals for CETs each year.~~

~~(7) Any certificate holder failing to renew a certificate within 90 days of the expiration date will be considered to have forfeited the certificate. If 90 days have passed, the CET or CEA must reapply to the board for an initial certificate to function as a CET or CEA and pay the required fee.~~

(6) The provisions of [NEW RULE VI] apply.

AUTH: 37-1-131, 37-18-202, 37-18-603, MCA

IMP: 37-1-141, 37-18-603, MCA

REASON: See general statement of reasonable necessity. It is also reasonable and necessary to remove (6) because this section conflicts with 37-1-131(7)(d), MCA, as amended by HB 182. Currently, there are only nine certified euthanasia technicians and six certified euthanasia agencies licensed. The rule implies that all certified euthanasia agencies renewing and all certified euthanasia technicians renewing could be audited as one of the ten licensees randomly selected as stated in (6).

BOARD OF VETERINARY MEDICINE
JACK NEWMAN, D.V.M., PRESIDENT

/s/ VIVIAN V. HAMMILL
Vivian V. Hammill
Rule Reviewer

/s/ KEITH KELLY
Keith Kelly, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

BOILER OPERATING ENGINEERS PROGRAM

24.122.401 FEE SCHEDULE FOR BOILER OPERATING ENGINEERS

(1) and (2) remain the same.

~~(3) Replacement of lost license~~

15

(3) Additional standardized fees are specified in [NEW RULE III].

(4) and (5) remain the same.

AUTH: 37-1-134, 50-74-101, MCA

IMP: 37-1-134, 37-1-141, ~~50-74-309, 50-74-313~~, MCA

REASON: See general statement of reasonable necessity. Based on fiscal year 2005, it is estimated that the creation of standardized fees will have the following impact:

(1) three duplicate licenses will be issued for a \$30 decrease in revenue;

(2) five first class boiler engineer licensees will pay the late penalty fee for a \$50 decrease in revenue;

(3) five second class boiler engineer licensees will pay the late penalty fee for a \$50 decrease in revenue;

(4) six third class boiler engineer licensees will pay the late penalty fee for a \$60 increase in revenue;

(5) 20 low pressure boiler engineer licensees will pay the late penalty fee for a \$600 increase in revenue; and

(6) one traction boiler engineer licensee will pay the late penalty fee for a \$40 increase in revenue.

24.122.515 RENEWALS OF LICENSE ~~(1) (2) The Renewal~~ renewal of licenses ~~is on an annual basis date is set by ARM 8.2.208.~~ Licensees shall submit the appropriate fee established in ARM 24.122.401 when applying to renew a license.

~~(2) (1) Renewal notices will be mailed sent as specified in [NEW RULE VI] by the department prior to the expiration of the boiler operating engineer's license to the licensee's address on file. It is the responsibility of the licensee to keep a current address on file with the department. Lack of receipt of such renewal notice by the licensee does not relieve the licensee of the responsibility to renew the license.~~

~~(3) The consequences for failure to renew a boiler operating engineer's license are established in 50-74-313, MCA. The provisions of [NEW RULE VI] apply.~~

(4) remains the same.

AUTH: 37-1-141, 50-74-101, MCA

IMP: 37-1-141, ~~50-74-313~~, MCA

REASON: HB 182 repealed 50-74-313, MCA, therefore the reference to this statute is being deleted and the reference to NEW RULE VI is being added. This change substitutes the reference to when a new license is required which is one of the

consequences listed in 50-74-313, MCA. See general statement of reasonable necessity for more detail.

CONSTRUCTION BLASTERS PROGRAM

24.131.405 TRAINING PROGRAMS (1) Training programs in construction blasting must be recognized by the explosives and construction industry and approved by the bureau. The training program must offer comprehensive instruction in safe use of explosives, methods and purposes of their use, and safety procedures for storage. These training programs shall be at least 24 hours to obtain a Class 1, Class 2, or Class 3 license, and eight hours to obtain a Class 4 license, or be approved by the bureau based on content and quality of the course.

~~(2) The following construction blasting training courses are approved by the bureau:~~

- ~~(a) northwest laborers employers training program;~~
- ~~(b) AGC training program for state of Montana;~~
- ~~(c) kinopak blasting seminar;~~
- ~~(d) dupont blasting seminar;~~
- ~~(e) society of explosive engineers;~~
- ~~(f) Karl Burgher explosive classes;~~
- ~~(g) United States forest service explosive training classes;~~
- ~~(h) BS consulting explosive training classes (William and Amanda Hale, trainers).~~

(2) The Construction Blasters Program maintains a list of approved training courses which can be obtained by contacting the Construction Blasters Program at 301 South Park, P.O. Box 200513, Helena, MT 59620-0513, or e-mail dlibsdbla@mt.gov.

(3) remains the same.

AUTH: 37-72-202, MCA
IMP: 37-72-302, MCA

REASON: It is reasonable and necessary to amend ARM 24.131.405 to remove the approved training courses from rule. This is a working list, can have constant changes, and is administrative in nature. The rule would need to be modified each time a course is approved or removed from the list. Construction blasters are better served by not having the approved courses in an administrative rule. Once a course has been approved, the blaster is able to take the course without having to wait for the list to be amended through the rulemaking process. This is advantageous to the blaster and the public by making the blasters more familiar with new training material in a more timely manner.

24.131.501 CONSTRUCTION BLASTER LICENSE REQUIREMENTS

(1) remains the same.

~~(2) The following construction blasters' licenses are issued under 37-72-303, MCA:~~

(a) through (d) remain the same.

~~(3) The following fees must be paid to the bureau and are nonrefundable:~~

(a) application fee	\$35
(b) examination fee	25
(c) license fee	40
(d) annual renewal fee	40
(e) reexamination fee	35
(f) duplicate license fee	15

~~(4) (3)~~ The bureau shall issue a construction blaster's license to each applicant who:

(a) submits a completed application form supplied by the bureau; with applicable fees:

(b) through (d) remain the same.

(e) achieves a grade of 80% or higher on an examination administered by the bureau based upon the adopted standards and regulations regarding the use of explosives. ~~A copy of such standards and regulations shall be available at a reasonable fee from the bureau.~~

~~(5) (4)~~ Construction blasters' licenses are not transferable, ~~expire at the end of each year and must be renewed by request of the applicant and the fee paid on or 60 days before January 1 of each year on or before the date set by ARM 8.2.208.~~ The provisions of [NEW RULES V and VI] apply.

~~(6) (5)~~ A license, certificate, or permit issued by another state or an agency of the United States will be recognized and an appropriate construction blaster's license issued if the bureau determines that the requirements are equivalent to those in 37-72-302 and ~~37-72-303~~, MCA.

AUTH: 37-1-141, 37-72-201, 37-72-202, MCA

IMP: 37-1-131, 37-1-141, 37-72-301, 37-72-302, ~~37-72-303~~, 37-72-304, 37-72-305, ~~37-72-306~~, MCA

REASON: The MCA reference in (2) is being deleted because 37-72-303, MCA, was repealed by HB 182. Section (3) is being amended to remove the fee schedule from the license requirements and a new rule dealing exclusively with fees is being proposed. The fee schedule is not a license requirement, and removing it from this rule will make the fee schedule easier to locate. The fee amounts are not changed with this amendment. A reference to standardized fees charged by the department has been added to implement changes made by HB 182.

NEW RULE XIV FEES (1) The following fees must be paid to the bureau and are nonrefundable:

(a) application fee	\$35
(b) examination fee	25
(c) license fee	40
(d) annual renewal fee	40
(e) reexamination fee	35

(2) Additional standardized fees are specified in [NEW RULE III].

AUTH: 37-1-134, 37-72-202, MCA

IMP: 37-1-134, 37-1-141, MCA

REASON: It is reasonable and necessary to propose this new rule to make the fees applicable to construction blasters easier to locate. It was previously located in the license requirements rule. By moving the fees to a rule exclusive to fees, it aids both construction blasters and program staff. Also having an individual rule complies with the rule-writing concept that a rule should contain only a single idea. The creation of the new rule is being done at this time since other changes to the rule were necessitated by the passage of HB 182.

Based on fiscal year 2005, it is estimated that the creation of standardized fees will have the following impact:

- (1) 15 licensees will pay the late penalty fee for a \$172 increase in revenue.

CRANE AND HOISTING OPERATING ENGINEERS PROGRAM

24.135.402 FEE SCHEDULE (1) Initial application, including examination:

(a) First Class	\$100
(b) Second Class	100
(c) Third Class	60
(d) NCCO reciprocity	80
(2) Annual renewal of license (1st & 2nd <u>First and Second</u> Class)	80
(3) Annual renewal of license (3rd <u>Third</u> Class)	50
(4) Late renewal fee for each missed renewal cycle:	
(a) First Class	80
(b) Second Class	80
(c) Third Class	50
(5) Duplicate/Lost License	15

(4) Additional standardized fees are specified in [NEW RULE III].

~~(6)~~ (5) An applicant who fails the examination shall pay 50% of the licensure fee in order to retake the examination.

~~(7)~~ (6) All fees are nonrefundable.

AUTH: 37-1-134, 50-76-112, MCA

IMP: 50-76-104, MCA

REASON: See general statement of reasonable necessity. Based on fiscal year 2005, it is estimated that the creation of standardized fees will have the following impact:

- (1) one duplicate license will be issued for a \$10 decrease in revenue;
- (2) 15 First Class licensees will pay the late penalty fee for a \$1,200 increase in revenue;
- (3) five Second Class licensees will pay the late penalty fee for a \$400 increase in revenue; and
- (4) two Third Class licensees will pay the late penalty fee for a \$100 increase in revenue.

24.135.2101 RENEWALS (1) The license must be renewed in accordance with ARM 8.2.208 within 12 months of obtaining the previous license.

~~(a) A license not renewed within 12 months will be lapsed for a period of 45 days. A licensee may legally work on a lapsed license for a period of 45 days. A lapsed license may be renewed within the 45 days by submitting the renewal form and applicable late fees.~~

~~(b) A lapsed license not renewed within 45 days will expire. A licensee is not considered to be working legally if the licensee's license has expired. An expired license may be renewed within two years by submitting the renewal form and applicable late fee.~~

~~(c) A license automatically terminates if it has not been renewed within two years. The terminated license may not be reinstated, and a new original license must be obtained by:~~

- ~~(i) submitting a new application;~~
- ~~(ii) meeting the current requirements;~~
- ~~(iii) passing the examination; and~~
- ~~(iv) paying the appropriate fees.~~

(2) Renewal notices will be sent as specified in [NEW RULE V].

(3) The provisions of [NEW RULE VI] apply.

~~(2) (4)~~ A biennial physical examination shall be required after the license is granted. The biennial physical examination report, or proof of passing an applicable physical examination, shall be presented to the department every second renewal date after the original licensure date, and may not be dated more than 180 days prior to the renewal date of the license.

AUTH: 50-76-112, MCA

IMP: 37-1-141, 50-76-103, MCA

REASON: See general statement of reasonable necessity.

FIRE PREVENTION AND FIREWORKS WHOLESALERS PROGRAM

24.144.404 DUPLICATE LICENSE OR ENDORSEMENT (1) The department may upon request replace any previously issued license or endorsement that has been lost or destroyed. The request must include a written statement from the holder attesting to the loss or destruction of the license or endorsement. The request must also be accompanied by ~~a fee of \$15~~ the fee as set in [NEW RULE III].

AUTH: 50-3-102, MCA

IMP: 37-1-134, 50-3-102, MCA

REASON: See general statement of reasonable necessity. Based on fiscal year 2005, it is estimated that the creation of standardized fees for the issuance of a duplicate license or endorsement will have no impact on the amount of revenue generated. In fiscal year 2005, no duplicate license requests were received.

24.144.502 EXAMINATION FOR ENDORSEMENT (1) remains the same.

(2) The department shall issue an endorsement for pre-engineered fire alarm systems, or special fire agent suppression systems to an individual who submits proof of manufacturer training on the specific brand and model of such pre-engineered system for which the applicant seeks endorsement. An endorsement granted under this rule shall be valid only for the brand and model number specified on the endorsement. Those extinguisher system endorsements issued under this rule prior to February, 1998, will remain valid until or unless the endorsement ~~lapses~~ is not renewed by the renewal date or is revoked.

AUTH: 50-3-102, 50-39-107, MCA

IMP: 37-1-131, 50-39-101, MCA

REASON: It is reasonable and necessary to amend this rule to clarify the terminology. When the word "lapses" was inserted into the rule, the "three tier" licensing concept of lapse, expire, and terminate was not being used. Therefore, it is necessary to explain at what point the endorsement no longer remains valid.

24.144.2102 RENEWALS OF LICENSE OR ENDORSEMENT (1) Each entity or person who receives a license or endorsement from the department in accordance with these rules shall submit an application for renewal ~~annually~~.

(2) remains the same.

(3) All fire protection equipment licenses and endorsements ~~shall expire on May 31 of each year~~ must be renewed on or before the date set by ARM 8.2.208. A renewal notice will be sent as specified in [NEW RULE V] ~~by the department to each license and endorsement holder to the last address in the department's files no later than April 15 of each year~~. ~~Failure to receive such notice shall not relieve the license or endorsement holder of the obligation to pay renewal fees and file an application for renewal in such a manner that it is postmarked or hand-delivered to the department on or before May 31.~~

(4) and (5) remain the same.

(6) The provisions of [NEW RULE VI] apply.

AUTH: 37-1-141, 50-39-107, MCA

IMP: 37-1-141, 50-39-102, MCA

REASON: See general statement of reasonable necessity.

LICENSED ADDICTION COUNSELORS PROGRAM

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

~~(c) Late renewal~~

185

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

~~(e) Document or license replacement~~

30

(2) Additional standardized fees are specified in [NEW RULE III].

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

AUTH: 37-1-131, 37-1-134, 37-35-103, MCA

IMP: 37-1-131, 37-1-134, 37-1-141, 37-35-103, 37-35-202, ~~37-35-203~~,
MCA

REASON: See general statement of reasonable necessity. Based on fiscal year 2005, it is estimated that the creation of standardized fees will have the following impact:

- (1) five licensees will request license verification for a \$100 increase in revenue;
- (2) five licensees will request duplicate licenses for a \$25 increase in revenue;
- (3) ten requests for licensee lists or rosters will be received for a \$200 increase in revenue; and
- (4) six licensees will pay the late penalty fee for no change in revenue.

8.11.114 COUNSELORS CERTIFIED IN OTHER STATES (1) through (1)(b) remain the same.

(c) holds a current, ~~unexpired~~ state certificate, in good standing, from another state; and

(d) through (4) remain the same.

(a) holds a current, ~~unexpired~~ certificate, in good standing, from a nationally recognized addiction organization;

(b) through (6) remain the same.

AUTH: 37-35-103, MCA

IMP: 37-1-131, 37-35-103, ~~37-35-203~~, MCA

REASON: This rule is to be amended to remove a connotation of the word "expire" which was defined in HB 182 amendments. By removing this word from the rule, it eliminates the potential for misinterpretation. It is implied that if a certificate is current, it is unexpired. It does not appear that the context of the rule is changed by the deletion.

8.11.115 RENEWALS (1) ~~Approximately two months before the renewal date, a renewal~~ Renewal notices will be sent by the department as specified in [NEW RULE V]. ~~to each certificate holder to the last address in the program's files. Failure to receive such notice shall not relieve the certificate holder of the holder's obligation to pay renewal~~ Renewal fees in such a manner that they are must be received by the department on or before the renewal date as set by ARM 8.2.208.

(2) A renewed certificate shall be valid for ~~two years~~ the time period length listed under the renewal frequency in ARM 8.2.208 following the ~~expiration~~ renewal date of the previously held certificate.

(3) A default in the payment of a renewal fee after the date it is due increases the renewal fee as prescribed by the department in [NEW RULE III]. A certificate holder, that has not received ~~his/her~~ the certificate from the department due to failure of the certificate holder to meet continuing education requirements or to pay the renewal fee, will be notified in writing by the department. The certificate holder shall

have 12 months from the renewal date to obtain continuing education acceptable to the department.

~~(4) It is unlawful for a person who refuses or fails to pay the renewal fee to practice as a certified chemical dependency in this state. The provisions of [NEW RULE VI] apply.~~

~~(5) A non-renewed certificate is lapsed. A lapsed certificate that is not renewed within one year of the most recent renewal date automatically terminates. The terminated certificate may not be reinstated, and a new original certificate must be obtained by passing a qualifying examination and paying the appropriate fees.~~

AUTH: 37-1-141, 37-35-103, MCA

IMP: 37-1-141, 37-35-203, MCA

REASON: See general statement of reasonable necessity.

8.11.118 CONTINUING EDUCATION PROCEDURES AND DOCUMENTATION ~~(1) Certificates must be renewed by June 30th of each two-year renewal period according to the department audit process.~~

~~(2) The department shall provide the renewal application form and instructions for the audit process to all counselors at least three months in advance of the renewal date.~~

~~(3) (1) Certificate holders shall affirm their understanding of and compliance with the continuing education requirements and the audit process of renewal with the signing of the renewal form.~~

~~(4) through (8) remain the same but are renumbered (2) through (6).~~

AUTH: 37-1-319, 37-35-103, MCA

IMP: 37-1-306, 37-35-203, MCA

REASON: The department has determined it is reasonable and necessary to amend this rule to delete (1) and (2). The renewal requirements are being amended out because they are unnecessary and are duplicative of requirements in ARM 8.11.115. Also, removing the renewal requirements will make the rule more closely conform to ARM 1.2.215 in keeping rules to contain a single idea. Removal of these sections eliminates the potential for conflicts between rules.

7. Concerned persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to Kathy Lubke, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to DLIBSDHouseBill182@mt.gov, and must be received no later than 5:00 p.m., March 28, 2006.

8. 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.mt.gov/dli/bsd/license/rules.asp>. The Department strives to make the electronic copy of this Notice conform to the official version of the Notice, as printed

in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the Department strives to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems, and that a person's technical difficulties in accessing or posting to the e-mail address do not excuse late submission of comments.

9. The Division, and each Board and Program maintain a list of interested persons who wish to receive notices of rulemaking actions proposed by the Division, Board or Program. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding Division, and/or which Board or Program administrative rulemaking proceedings or other administrative proceedings. Such written request may be mailed or delivered to Kathy Lubke, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2305, e-mailed to klubke@mt.gov, or may be made by completing a request form at any rules hearing held by the agency.

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

11. Kathy Lubke, Administrative Rules Specialist, has been designated to preside over and conduct this hearing.

/s/ VIVIAN V. HAMMILL

Vivian V. Hammill

Rule Reviewer

/s/ KEITH KELLY

Keith Kelly, Commissioner

DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State February 13, 2006

BEFORE THE BOARD OF MEDICAL EXAMINERS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the proposed amendment	)	NOTICE OF PUBLIC HEARING ON
of ARM 24.156.1601, 24.156.1604,	)	PROPOSED AMENDMENT,
24.156.1625, the proposed adoption of	)	ADOPTION AND REPEAL
NEW RULES I-VII, and the proposed)
repeal of ARM 24.156.1603, 24.156.1605,)
24.156.1606, 24.156.1607, 24.156.1608,)
24.156.1609, 24.156.1610, 24.156.1611,)
24.156.1612, 24.156.1613, 24.156.1614,)
and 24.156.1615, pertaining to physician)
assistant licensure)

TO: All Concerned Persons

1. On March 23, 2006, at 1:00 p.m., a public hearing will be held in room 489 of the Park Avenue Building, 301 South Park Avenue, Helena, Montana to consider the proposed amendment, adoption and repeal of the above-stated rules.

2. The Department of Labor and Industry (Department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Medical Examiners (Board) no later than 5:00 p.m., on March 17, 2006, to advise us of the nature of the accommodation that you need. Please contact Evie Martin, Board of Medical Examiners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2364; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail dlibsmed@mt.gov.

3. GENERAL STATEMENT OF REASONABLE NECESSITY: The 2005 Montana Legislature enacted Chapter 519, Laws of 2005 (House Bill 737), an act generally revising the licensure and regulation of physician assistants. The bill was signed by the Governor on April 28, 2005, and became effective October 1, 2005.

The Board determined it is reasonably necessary to amend and repeal certain existing rules and to adopt New Rules I-VII to timely implement the 2005 legislation. The amended and new rules will function as guidelines for the licensure, conduct and supervision of physician assistants. It is necessary to repeal certain rules to avoid repetition and to update and further simplify the rules.

The rule changes are reasonable and necessary in keeping with the 2005 Montana Legislature's intent to simplify and streamline the licensure application processes for all licensees within the Department and to update Montana's administrative rules regarding physician supervision of physician assistants to reflect national trends in the field. Where additional specific bases for a proposed action exist, the Board will identify those reasons immediately following that rule. Authority and implementation cites are amended throughout to accurately reflect all statutes

implemented through the rules, to provide the complete sources of the Board's rulemaking authority and to delete references to repealed statutes.

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

24.156.1601 DEFINITIONS As used in this subchapter the following definitions apply:

(1) ~~"Applicant" means a person seeking to practice as a physician assistant-certified.~~

(2) ~~"Department" means the Montana department of labor and industry provided for in 2-15-1701, MCA.~~

(3) ~~"License" means that authorization granted by the board of medical examiners to a physician assistant-certified to practice in the state of Montana.~~

(4) ~~"Licensee" means a physician assistant licensed to practice in the state of Montana.~~

(5) ~~"Remote site" means a site other than the supervising physician's customary place(s) of practice.~~

(6) ~~"Supervising physician" means a person licensed under Title 37, chapter 3, MCA, who is authorized by the board to supervise the practice of a physician assistant-certified.~~

(1) "Direct supervision" means the supervisor is within technologically unassisted audible and visible reach of the person being supervised.

(3) "Nonroutine application" means an initial physician assistant license application and/or supervision agreement where the supervising physician has never supervised a Montana licensed physician assistant and/or the physician assistant has never practiced in the state of Montana. A nonroutine application shall require a teleconference interview with a current board member.

(4) "Onsite supervision" means the supervisor must be in the facility and quickly available to the person being supervised.

(5) "Routine application" means a supervision agreement where the supervising physician and the physician assistant both have had approved Montana supervision agreements or utilization plans in the past. These applications shall be processed and approved by board staff.

(7) (2) "Supervision" "General supervision" means accepting responsibility for, and overseeing the medical services of, a physician assistant-certified assistant by telephone, radio, or in person as frequently as the board shall determine is necessary considering the location, nature of practice, and experience of the physician assistant-certified assistant, and the supervising physician. Unless otherwise specified by the board, the constant physical presence of the supervising physician is not required.

(8) ~~"Utilization plan" means that document which describes the duties, responsibilities and scope of practice of the physician assistant-certified as delegated by the supervising physician and approved by the board.~~

AUTH: 37-1-131, 37-20-201, 37-20-202, ~~37-20-203~~, MCA

IMP: 37-1-101, 37-20-202, 37-20-203, MCA

24.156.1604 TRAINING OF STUDENT PHYSICIAN ASSISTANTS

(1) remains the same.

(2) A physician assistant student must train under the supervision of a physician ~~who is licensed or a physician assistant-certified~~ assistant who is licensed in Montana.

(3) remains the same.

(a) be currently enrolled in a physician assistant training program accredited by the Accreditation Review Commission on Education for the Physician Assistant or if accreditation was granted before 2001, accredited by the American medical association Medical Association's committee Committee on allied health education and accreditation Allied Health Education and Accreditation, or its successor the Commission on Accreditation of Allied Health Education Programs; and

(b) remains the same.

AUTH: 37-20-202, MCA

IMP: 37-20-202, 37-20-402, MCA

24.156.1625 UNPROFESSIONAL CONDUCT (1) In addition to those forms of unprofessional conduct defined in 37-1-316, MCA, the following is unprofessional conduct for a licensee or license applicant under Title 37, chapter 20, MCA:

~~(4) (a) Conviction~~ conviction, including conviction following a plea of nolo contendere, of an offense involving moral turpitude, whether misdemeanor or felony, and whether or not an appeal is pending;

~~(2) Fraud, misrepresentation, deception or concealment of a material fact in applying for or securing a license, license renewal, utilization plan or in taking an examination required for licensure; as used herein, "material" means any false or misleading statement or information;~~

~~(3) (b) Conduct~~ conduct likely to deceive, defraud or harm the public, including but not limited to practicing while subject to a physical or mental condition which renders the licensee unable to safely engage in the practice of medicine;

~~(4) (c) Making~~ making a false or misleading statement regarding the licensee's skill or the effectiveness or value of the medicine, treatment, or remedy prescribed by the licensee or at the licensee's direction in the treatment of a disease or other condition of the body or mind;

~~(5) (d) Resorting~~ resorting to fraud, misrepresentation, or deception in the examination or treatment of a person, or in billing, giving or receiving a fee related to professional services, or reporting to a person, company, institution or organization, including fraud, misrepresentation, or deception with regard to a claim for benefits under Title 39, chapter 71 or 72, MCA;

~~(6) Use of a false, fraudulent or deceptive statement, whether written or verbal, in connection with the physician assistant-certified's practice of medicine;~~

~~(7) Having been subject to disciplinary action of another state or jurisdiction against a license or other authorization to practice medicine, based upon acts or conduct by the licensee similar to acts or conduct that would constitute grounds for disciplinary action under Title 37, chapter 20, MCA, or these rules; a certified copy of~~

the record of the action taken by the other state or jurisdiction is evidence of unprofessional conduct;

(8) ~~(e)~~ Willful disobedience violation of any section in Title 37, chapter 20, MCA, and/or any rule adopted by the board to implement Title 37, chapters 1 or 20, MCA, any order of the board regarding enforcement of discipline of a licensee, or any term, condition or limitation imposed on the licensee in a utilization plan;

(9) ~~(f)~~ Habitual habitual intemperance or excessive use of an addictive drug, alcohol, or any other substance to the extent that the use impairs the user physically or mentally; this provision does not apply to a licensee who is maintaining an approved therapeutic regimen as described in 37-3-203, MCA;

(10) ~~(g)~~ Failing failing to furnish to the board or its investigators or representatives information legally requested by the board;

(11) ~~(h)~~ Failing to cooperate with a lawful investigation conducted by the board;

(12) ~~(i)~~ Failing failing to report to the board any adverse judgment, settlement or award arising from a medical liability claim or other unprofessional conduct;

(13) ~~(j)~~ Obtaining obtaining a fee or other compensation, either directly or indirectly, by the misrepresentation that a manifestly incurable disease, injury, or condition of a person can be cured;

(14) ~~Abusive billing practices;~~

(15) ~~(k)~~ Commission commission of an act of sexual abuse, misconduct, or exploitation related to the licensee's practice of medicine;

(16) ~~(l)~~ Administering administering, dispensing, prescribing, or ordering a controlled substance, as defined by the federal ~~food and drug administration~~ Food and Drug Administration or successors, ~~otherwise other~~ than in the course of legitimate or reputable professional practice;

(17) ~~(m)~~ Conviction conviction or violation of a federal or state law regulating the possession, distribution, or use of a controlled substance, as defined by the federal ~~food and drug administration~~ Food and Drug Administration or successors, whether or not an appeal is pending;

(18) ~~(n)~~ Testifying testifying in a legal proceeding on a contingency basis;

(19) ~~(o)~~ Conspiring conspiring to misrepresent or willfully misrepresenting medical conditions improperly to increase or decrease a settlement, award, verdict, or judgment;

(20) ~~(p)~~ Except except as provided in this subsection, practicing medicine as the partner, agent, or employee of, or in joint venture with, a person who does not hold a license to practice medicine within this state; however, this does not prohibit:

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

(iii) ~~(C)~~ neither the physician nor the physician assistant-certified assistant may be required to refer any patient to a particular provider or supplier or take any other action that the physician or physician ~~assistant-certified~~ assistant determines not to be in the patient's best interest;

(21) ~~(q)~~ Failing failing to transfer pertinent and necessary medical records to another licensed health care provider, the patient or the patient's representative when requested to do so by the patient or the patient's legally designated representative, in accordance with Title 50, chapter 16, MCA;

~~(22) (r) Promoting promoting~~ the sale of services, goods, appliances or drugs in such a manner as to exploit the patient for the financial gain of the licensee or a third party;

~~(23) (s) Willfully willfully~~ harassing, abusing, or intimidating a patient, either physically or verbally;

~~(24) (t) Failing failing~~ to maintain a record for each patient which accurately reflects the evaluation, diagnosis, and treatment of the patient;

~~(25) (u) Failing failing~~ to exercise appropriate supervision over persons who provide health care under the supervision of the licensee;

~~(26) Failing to maintain certification by the national commission on certification of physician assistants (NCCPA);~~

~~(27) Any other act, whether specifically enumerated or not, that in fact constitutes unprofessional conduct.~~

(v) acting in such a manner as to present a danger to public health or safety, or to any patient including, but not limited to, incompetence, negligence, or malpractice;

(w) having voluntarily relinquished or surrendered a professional or occupational license, certificate, or registration in this state, or in another state or jurisdiction;

(x) having withdrawn an application for licensure, certification, or registration while under investigation or prior to a determination of the completed application in this state, or in another state or jurisdiction;

(y) failing to furnish to the board or its designee information requested by the board;

(z) filing a complaint with, or providing information to, the board which the licensee knows, or ought to know, is false or misleading. This provision does not apply to any filing of a complaint or providing information to the board when done in good faith under 37-1-308, MCA;

(aa) commission of any act of sexual abuse, misconduct or exploitation by the licensee whether or not related to the practice;

(ab) falsifying and altering patient records, intentionally documenting patient records inaccurately, failing to appropriately and timely document patient records;

(ac) diversion of a medication for any purpose or a violation of state or federal laws governing the administration of medications;

(ad) failing to comply with any agreement with the board, required by the board, or with the endorsed professional assistance program contracted by the board, the licensee has entered into;

(ae) failing to submit to the board a completed supervision agreement prior to commencing physician assistant practice in the state of Montana;

(af) failing to maintain and/or provide copies on request, pursuant 37-1-301, MCA, of the physician assistant's current duties and delegation agreement; and

(ag) any other act, whether specifically enumerated or not, that in fact constitutes unprofessional conduct.

AUTH: 37-1-319, 37-20-202, MCA

IMP: 37-1-319, 37-3-202, 37-20-201, 37-20-402, 37-20-403, MCA

5. The proposed new rules provide as follows:

NEW RULE I APPLICATION FOR PHYSICIAN ASSISTANT LICENSE

(1) An applicant for a physician assistant license shall submit an application on a form prescribed by the department. The application must be complete and accompanied by the appropriate fees and the following information and/or documentation:

- (a) applicant's current original unopened National Practitioner Data Bank (NPDB) self-query report;
- (b) applicant's professional education and work experience since completing physician assistant training; and
- (c) two written character references.

(2) Applicants licensed in another state or jurisdiction shall cause all states and jurisdictions in which the applicant holds or has ever held a license to submit a current verification of licensure directly to the board on behalf of the applicant.

(3) Applicants whose applications are received, processed, and determined to be incomplete will be sent a letter from the board office specifying the deficiencies, which may include but not be limited to appropriate fees, verifications, character references, and any other supplemental information the board or its designee deems appropriate. The incomplete application will be held for a period of one year at which time the application will be treated as an expired application and all fees will be forfeited. The applicant may correct any deficiencies, submit missing or additional information, and complete any requirements necessary to complete the application within one year from the date the initial application is received in the board office.

(4) The applicant may voluntarily withdraw the application prior to the one-year deadline set forth in (3) by submitting a request to withdrawal in writing to the board office. All application fees submitted will be forfeited.

(5) After withdrawal of an application, the applicant will be required to submit a new application, including supporting documentation and appropriate fees to begin the licensing and verification process again.

(6) Completed applications shall be reviewed by the board or its designee, which may request such additional information or clarification of information provided in the application as deemed reasonably necessary.

AUTH: 37-1-131, 37-20-202, MCA

IMP: 37-20-202, 37-20-203, 37-20-302, 37-20-402, MCA

NEW RULE II PHYSICIAN ASSISTANT FEES

(1) The following fees must be paid in connection with physician assistant licensure:

- | | |
|--|-------|
| (a) license application fee | \$325 |
| (b) 90-day temporary license fee | 100 |
| (c) active renewal fee (2006) | 100 |
| (d) active biennial renewal (2007) | 200 |
| (e) inactive renewal fee (2006) | 50 |
| (f) inactive biennial renewal fee (2007) | 100 |
| (g) supervision agreement fee | 25 |

(2) Licensees desiring to activate an inactive physician assistant license must contact the board and pay an activation fee of \$100 and affirm that they have a current NCCPA certification.

(3) All fees provided for in this rule are nonrefundable and are not prorated for portions of the licensing period.

AUTH: 37-1-134, 37-20-202, MCA

IMP: 37-1-134, MCA

REASON: The Board has determined it is reasonably necessary to adopt New Rule II instituting the proposed fee changes in order to comply with the provisions of 37-1-134, MCA, and ensure that the Board's fees associated with physician assistants remain commensurate with program costs. The Board is not increasing fees at this time, but is reducing fees in several instances. In addition, licensure fees for physician assistants are being adjusted as the Board moves toward biennial renewal periods. The Board is also amending fees to coincide with current Board processes regarding supervision plans and temporary licenses. Further, it is necessary to address terminology changes and both the inactive and active licensure of physician assistants pursuant to House Bill 737 of the 2005 Montana legislature. The proposed fee changes will result in an initial increase in revenue of \$13,120.00 between fiscal years 2006 and 2007, due to the adjustment to biennial renewals. By fiscal year 2008, revenue from physician assistant licensure is estimated to be \$45,020.00, compared to \$45,700.00 in fiscal year 2006. The Board estimates the fee changes will result in an aggregate increase in revenue of \$12,440.00 over the next two fiscal years. Approximately 230 persons will be affected by the proposed fee changes.

NEW RULE III PHYSICIAN ASSISTANT LICENSE RENEWAL

(1) Physician assistant licenses are issued on a biennial renewal cycle beginning January 1, 2007. For the renewal cycle in 2007, licensees whose licenses end in an odd number will renew for two years and pay the full renewal fee. Licensees whose licenses end in an even number will renew for one year and pay half of the renewal fee.

(2) Except as provided in (3), to renew an active physician assistant license, the licensee shall:

(a) submit a completed license renewal application through electronic means or on a form prescribed and supplied by the department;

(b) affirm that the physician assistant possesses a current National Commission on the Certification of Physician Assistants (NCCPA) certification;

(c) self report any pending complaints or imposed disciplinary action or sanctions taken by another jurisdiction;

(d) provide current information regarding name and address changes; and

(e) submit payment of the renewal fee set in [NEW RULE II].

(3) Inactive licensees shall comply with (2)(a), (c), (d), and (e) of this rule to renew an inactive license.

(4) Incomplete renewal applications will be returned to the licensee and will not be considered received by the board.

(5) The board shall conduct a random audit of NCCPA certification following each renewal period.

AUTH: 37-1-131, 37-20-202, MCA

IMP: 37-1-141, 37-20-202, 37-20-203, 37-20-302, 37-20-402, MCA

NEW RULE IV OBLIGATION TO REPORT TO BOARD (1) A physician assistant shall report to the board within three months from the date of a final judgment, order, or agency action, all information related to malpractice, misconduct, criminal, or disciplinary action in which the physician assistant or the physician assistant's supervisor, based on the physician assistant's conduct, is a named party.

(2) A physician assistant shall, within ten days of receipt of a complaint from the board, provide the board with the name of the supervising physician who is responsible under the supervision agreement to which the complaint is related.

(3) A physician assistant with suspected or known impairment shall self-report to the board. In lieu of reporting to the board, the physician assistant may self-report to the board-endorsed professional assistance program.

(4) A physician assistant is obligated to report suspected or known impairment of other health care providers to the appropriate licensing board, agency, or in lieu of the board or agency, may report to the endorsed professional assistance program.

AUTH: 37-1-131, 37-1-319, 37-20-202, MCA

IMP: 37-1-131, 37-3-401, 37-3-405, MCA

NEW RULE V SUPERVISION OF PHYSICIAN ASSISTANT

(1) A supervising physician may provide the following types of supervision to a physician assistant:

- (a) direct supervision;
- (b) onsite supervision; or
- (c) general supervision.

(2) The supervising physician shall meet face to face with each physician assistant supervised a minimum of once a month for the purposes of discussion, education, and training, to include but not be limited to practice issues, patient care, and chart reviews in accordance with [NEW RULE VI].

(3) A supervising physician may supervise more than one physician assistant if the supervising physician:

- (a) agrees to supervise more than one physician assistant by signing and filing multiple supervision agreements with the board;
- (b) provides appropriate and real time means of communication or back up supervision for the physician assistants;
- (c) determines the appropriate level supervision (direct, onsite, or general), based on the physician assistant's education, training, and experience; and
- (d) assumes professional and legal responsibility for all physician assistants under the supervising physician's supervision regardless of the varying types of supervision.

AUTH: 37-20-202, MCA

IMP: 37-20-101, 37-20-301, 37-20-403, MCA

NEW RULE VI CHART REVIEW (1) The supervising physician shall review a minimum of 10% of the physician assistant charts on at least a monthly basis.

(2) Chart review for a physician assistant having less than one year of full time practice experience from the date of initial licensure must be 100% for the first three months of practice, and then may be reduced to not less than 25% for the next three months, on a monthly basis, for each supervision agreement.

(3) The supervising physician shall countersign and date all written entries that have been chart reviewed and shall document any amendments, modifications, or guidance provided.

(4) Chart review for a physician assistant who has been issued a probationary license must be 100% on a monthly basis, unless the board terminates the probationary period.

AUTH: 37-20-202, MCA

IMP: 37-20-101, 37-20-301, MCA

NEW RULE VII PATIENT RIGHTS (1) For the purposes of implementing this chapter, if the patient is being medically cared for or treated by a physician assistant:

(a) The patient may request to be treated or seen by the supervising physician in lieu of the physician assistant, if the supervising physician is available.

(b) If the supervising physician is not available, the patient must be given an explanation for the unavailability of the supervising physician and the patient's request and explanation must be documented in the patient's chart at the time of the request. The patient must also be given the opportunity to be treated by the supervising physician when the supervising physician is available.

(c) The physician assistant shall report to the supervising physician the patient's request to be seen or treated by the supervising physician.

AUTH: 37-20-202, MCA

IMP: 37-20-101, 37-20-301, MCA

6. The rules proposed to be repealed are as follows:

24.156.1603 QUALIFICATIONS OF PHYSICIAN ASSISTANT-CERTIFIED
found at ARM page 24-15352.

AUTH: 37-20-201, MCA

IMP: 37-20-101, 37-20-402, MCA

24.156.1605 FEES found at ARM page 24-15353.

AUTH: 37-1-134, 37-20-201, MCA

IMP: 37-1-134, 37-20-203, 37-20-302, MCA

24.156.1606 APPLICATION found at ARM page 24-15354.

AUTH: 37-20-201, MCA

IMP: 37-20-101, 37-20-203, 37-20-301, 37-20-402, MCA

24.156.1607 TEMPORARY APPROVAL found at ARM page 24-15355.

AUTH: 37-20-201, MCA

IMP: 37-20-203, 37-20-301, MCA

24.156.1608 SCOPE OF PRACTICE found at ARM page 24-15356.

AUTH: 37-20-202, MCA

IMP: 37-20-301, MCA

24.156.1609 PRESCRIBING/DISPENSING AUTHORITY found at ARM page 24-15356.

AUTH: 37-20-201, MCA

IMP: 37-20-404, MCA

24.156.1610 UTILIZATION PLAN found at ARM page 23-15356.

AUTH: 37-20-201, MCA

IMP: 37-20-301, MCA

24.156.1611 UTILIZATION PLAN - TERMINATION AND TRANSFER found at ARM page 24-15357.

AUTH: 37-20-201, MCA

IMP: 37-20-202, MCA

24.156.1612 PROHIBITIONS found at ARM page 24-15357.

AUTH: 37-20-201, MCA

IMP: 37-20-202, MCA

24.156.1613 PROTOCOL found at ARM page 24-15358.

AUTH: 37-20-201, MCA

IMP: 37-20-202, 37-20-403, MCA

24.156.1614 SUPERVISION OF MORE THAN ONE PHYSICIAN ASSISTANT-CERTIFIED found at ARM page 24-15358.

AUTH: 37-20-201, 37-20-202, MCA

IMP: 37-20-202, MCA

24.156.1615 INFORMED CONSENT found at ARM page 24-15358.

AUTH: 37-20-201, MCA

IMP: 37-20-202, 37-20-203, MCA

7. Concerned persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Board of Medical Examiners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to dlibsdmed@mt.gov, and must be received no later than 5:00 p.m., March 31, 2006.

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

9. The Board of Medical Examiners maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this Board. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all Board of Medical Examiners administrative rulemaking proceedings or other administrative proceedings. Such written request may be mailed or delivered to the Board of Medical Examiners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2305, e-mailed to dlibsdmed@mt.gov, or made by completing a request form at any rules hearing held by the agency.

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

11. Anne O'Leary, attorney, has been designated to preside over and conduct this hearing.

BOARD OF MEDICAL EXAMINERS
MICHAEL D. LAPAN, DPM, PRESIDENT

/s/ DARCEE L. MOE
Darcee L. Moe
Alternate Rule Reviewer

/s/ KEITH KELLY
Keith Kelly, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State February 13, 2006

BEFORE THE BOARD OF OCCUPATIONAL THERAPY PRACTICE
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the proposed amendment) NOTICE OF PUBLIC HEARING
of ARM 24.165.401 fees, and the proposed) ON PROPOSED AMENDMENT AND
adoption of NEW RULE I fee abatement) ADOPTION

TO: All Concerned Persons

1. On March 16, 2006, at 9:00 a.m., a public hearing will be held in room 439, Park Avenue Building, 301 South Park, Helena, Montana to consider the proposed amendment and adoption 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 Board of Occupational Therapy Practice no later than 5:00 p.m. on March 10, 2006, to advise us of the nature of the accommodation that you need. Please contact Helena Lee, Board of Occupational Therapy Practice, 301 South Park, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2385; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail dlibsdotp@mt.gov.

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

24.165.401 FEES (1) Fees adopted by the board under 37-24-310, MCA, are as follows:

(a) Applications for licensure	\$ 80
<u>(i) registered occupational therapist</u>	<u>\$110</u>
<u>(ii) certified occupational therapist assistant</u>	<u>110</u>
(b) Initial license issuance	80
<u>(i) registered occupational therapist</u>	<u>80</u>
<u>(ii) certified occupational therapist assistant</u>	<u>80</u>
(c) License renewal	80
<u>(i) registered occupational therapist</u>	<u>110</u>
<u>(ii) certified occupational therapist assistant</u>	<u>110</u>
(d) remains the same.	
(e) Temporary practice permit	60 <u>120</u>
(f) Inactive fee renewal	30 <u>50</u>
(g) and (h) remain the same.	
<u>(i) Modality applications</u>	
<u>(i) superficial</u>	<u>20</u>
<u>(ii) sound and electrical (deep)</u>	<u>35</u>
<u>(iii) iontophoresis</u>	<u>20</u>
(2) remains the same.	

AUTH: 37-1-131, ~~37-1-134~~, 37-24-201, ~~37-24-202~~, MCA
IMP: 37-1-134, 37-24-310, MCA

REASON: The Board of Occupational Therapy Practice has determined that there is reasonable necessity to amend ARM 24.165.401 in order to set the Board's fees at a level commensurate with program costs, as required by 37-1-134, MCA. The Board estimates that approximately 314 persons will be affected by the increased renewal fee, 26 persons will be affected by the inactive fee and 26 new applicants will be affected by the proposed application and temporary license fee changes.

In 2003, the Legislature specified qualification requirements for use of sound electrical physical agent modalities, the use of occupational therapy techniques involving topical medications, application and administration of topical medications and protocols. The Board has implemented rules that outline the required documentation for authorization to use superficial and sound and electrical (deep) physical agent modalities. Three professional members of the Board review each superficial modality application, sound and electrical modality application and iontophoresis modality application. The Board believes that the proposed fees for the three modality applications are commensurate with costs. Twenty-six applicants for the superficial modality will be affected by the \$20.00 proposed fee. Five applicants for the sound and electrical (deep) modality will be affected by the \$35.00 proposed fee. Five applicants for the iontophoresis modality will be affected by the \$20.00 proposed fee.

The Board estimates that approximately 366 persons will be affected annually by the proposed fee increases. The total estimated annual increase in revenue is approximately \$12,435. With the proposed fee increase, the Board's projected annual revenue is \$44,825. The Board's appropriation for fiscal year 2006 is \$49,213. The Board has agreed to reduce their budget \$10,000 by eliminating the CE Caravan in FY 2007. FY 2007 budget will be \$40,418. The Board believes that the proposed fee structure, along with the abatement of renewal fees proposed in NEW RULE I below, will address the Board's maintaining fees set at a level commensurate with costs.

The Board has also determined there is reasonable necessity to clarify that application, new license issuance, and annual renewal fees are charged to both occupational therapists (OTRs) and to certified occupational therapy assistants (COTAs). Historically, both categories have been charged the same fees, and thus the fees provided for in the rule are not new. However, in order to provide greater clarity and accountability, the Board believes that it is appropriate to separately identify the two license classifications in its fee rule.

There is also reasonable necessity to amend the AUTH and IMP citations to the rule, while the rule is otherwise being amended, in order to correctly reflect the Board's rulemaking authority and the statutes being implemented by the rule.

4. The proposed New Rule provides as follows:

NEW RULE I ABATEMENT OF RENEWAL FEES (1) The Board of Occupational Therapy Practice adopts and incorporates by reference the fee abatement rule of the Department of Labor and Industry found at ARM 24.101.301.

AUTH: 37-1-131, MCA

IMP: 17-2-302, 17-2-303, 37-1-134, MCA

REASON: The Board has determined there is reasonable necessity to adopt and incorporate by reference ARM 24.101.301 to allow the Board to authorize the Department to perform renewal licensure fee abatements as appropriate and when needed, without further vote or action by the Board. The Department recently adopted ARM 24.101.301 to implement a means for the prompt elimination of excess cash accumulations in the licensing programs operated by the Department.

Adoption and incorporation of ARM 24.101.301 will allow the Department to promptly eliminate excess cash balances of the Board that result from unexpectedly high licensing levels or other non-typical events. Abatement in such instances will allow the licensees who have paid fees into the Board's program to receive the temporary relief provided by abatement. Adoption of this abatement rule does not relieve the Board from its duty to use proper rulemaking procedures to adjust the Board's fee structure in the event of recurrent instances of cash balances in excess of the statutorily allowed amount.

5. Concerned persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Board of Occupational Therapy Practice, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to dlibsdotp@mt.gov, and must be received no later than 5:00 p.m., March 24, 2006.

6. An electronic copy of this Notice of Public Hearing is available through the Department and Board's site on the World Wide Web at <http://www.otp.mt.gov>. 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.

7. The Board of Occupational Therapy Practice maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this Board.

Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all Board of Occupational Therapy Practice administrative rulemaking proceedings or other administrative proceedings. Such written request may be mailed or delivered to the Board of Occupational Therapy Practice, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2305, e-mailed to dlibsdotp@mt.gov, or may be made by completing a request form at any rules hearing held by the agency.

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

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

BOARD OF OCCUPATIONAL THERAPY
PRACTICE
ELSPETH RICHARDS, CHAIRPERSON

/s/ MARK CADWALLADER
Mark Cadwallader
Alternate Rule Reviewer

/s/ KEITH KELLY
Keith Kelly, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State February 13, 2006

BEFORE THE DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION OF THE STATE OF MONTANA

In the matter of the proposed	)	NOTICE OF PUBLIC HEARING
amendment of 36.11.304, equipment	)	ON PROPOSED AMENDMENT
operation in the SMZ, ARM 36.11.305,	)	AND ADOPTION
retention of trees and clearcutting in the)	
SMZ, ARM 36.11.310, site-specific)	
alternative practices, ARM 36.11.312,)	
definitions, and the adoption of New)	
Rule I regarding penalties for violation of)	
the streamside management zone law)	

To: All Concerned Persons

1. On March 27, 2006, the Department of Natural Resources and Conservation will hold a public hearing at 7:00 p.m. at the Department of Fish, Wildlife and Parks, Region 2 Headquarters, 3201 Spurgin Road, Missoula, Montana, to consider the proposed amendment and adoption of the above-stated rules.

2. The Department of Natural Resources and Conservation 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 March 21, 2006, to advise us of the nature of the accommodation that you need. Please contact Dan Rogers, Forest Stewardship Specialist, Department of Natural Resources and Conservation, 2705 Spurgin Road, Missoula, MT 59804-3199; telephone (406) 542-4326; fax (406) 542-4203; or e-mail to DanRogers@mt.gov.

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

36.11.304 EQUIPMENT OPERATION IN THE SMZ (1) Operation of wheeled or tracked equipment in the SMZ except on established roads is prohibited except as provided in this rule.

(2) In order to permit timber harvest on wetlands under conditions that protect the integrity of the SMZ, an operator may, as an alternative practice without site-specific approval, operate wheeled or tracked equipment from the outside edge of an SMZ to within 50 feet of the ordinary high water mark wherever:

(a) the SMZ extends beyond 50 feet from the ordinary high water mark to include adjacent wetlands;

(b) there exist winter conditions with adequate snow or frozen ground; and

(c) operation of the wheeled or tracked equipment:

(i) does not cause rutting or displacement of the soil;

(ii) protects and retains shrubs and submerchantable trees to the fullest extent possible;

(iii) does not remove stumps; and

(iv) otherwise conserves the integrity of the SMZ.

(3) In order to minimize road construction and ~~skid~~ trails necessary for timber harvest on lands adjacent to the SMZ, an operator may, as an alternative practice without site-specific approval, cross the SMZ and the stream or other body of water with wheeled or tracked equipment on a class 3 stream segment or other body of water at locations spaced approximately 200 feet apart or more provided that:

(a) crossings are located in areas where the stream or other body of water is dry and the banks and bottoms are stable;

(b) excavation is minimized;

(c) the capacity of the stream channel or other body of water is maintained; and

(d) the distance traveled through the SMZ is minimized.

(4) In order to minimize road construction necessary for timber harvest on lands adjacent to the SMZ, an operator may, as an alternative practice without site-specific approval, operate wheeled or tracked equipment inside the SMZ off of established roads on the side of the road away from the stream wherever:

(a) an established road exists inside the SMZ or construction of a road inside the SMZ is authorized under ARM 36.11.306;

(b) the toe of the road fill nearest the stream is at least 25 feet from the ordinary high water mark; and

(c) operations are conducted in such a manner that:

(i) wheeled or tracked equipment stays out of wetlands except under winter conditions as provided in (2) ~~above~~;

(ii) all skidding of logs takes place on designated skid trails located approximately 200 feet apart or more;

(iii) all skid trails in such areas are reclaimed by installing erosion control measures and reestablishing vegetative cover;

(iv) drainage features are established or reestablished on all roads used under this section; and

(v) logs are not decked on the side of the road toward the stream; ~~and~~ .

(vi) ~~no landing are constructed in the SMZ.~~

(5) An operator may, as an alternative practice, without site-specific approval, operate equipment on an existing road located in the SMZ, to allow the extraction of logs or trees from within the SMZ. Under these conditions an operator may:

(a) store individual logs or small groups of logs on the side of a road toward the stream provided:

(i) no portion of any stored log encroaches on an area within 15 feet of the ordinary high-water mark;

(ii) all such areas are reclaimed by installing erosion control measures and the reestablishment of vegetative cover; and

(iii) there are no adverse impacts to the functions of the SMZ or to water quality.

~~(5) (6)~~ When logs are being winched or cable yarded across a class 1 or 2 stream segment ~~by equipment located outside the SMZ~~, the logs must be fully suspended over the stream or stream bank unless approved by the department pursuant to a site-specific alternative practice and unless otherwise authorized

pursuant to the Natural Streambed and Land Preservation Act of 1975, 75-7-101 et seq., MCA.

(7) Landings shall not be constructed in the SMZ unless the department has approved a site-specific alternative practice pursuant to ARM 36.11.310.

~~(6)~~ (8) The department may also approve operation of wheeled or tracked equipment in the SMZ as a site-specific alternative practice only under conditions that:

- (a) conserve the integrity of the SMZ;
- (b) do not cause rutting of the soil; and
- (c) protect the residual stand of shrubs and trees.

AUTH: 77-5-303, 77-5-307, MCA

IMP: 77-5-303, MCA

REASONABLE NECESSITY: The Department of Natural Resources and Conservation proposes to amend this rule to clarify when equipment may be operated within the streamside management zone.

36.11.305 RETENTION OF TREES IN THE SMZ – CLEARCUTTING

(1) The forest practice of clearcutting is prohibited in the SMZ unless approved by the department under a site-specific alternative practice.

(2) ~~Further, in~~ In order to provide large woody debris, stream shading, water filtering effects, and to protect stream channels and banks, merchantable and submerchantable trees must be retained in the first 50 feet of the SMZ beyond the ordinary high water mark and in the entire SMZ where the SMZ is extended for wetlands under ARM 36.11.302(2)(a), on each side of streams, and along lakes and other bodies of water as follows:

(a) On each side of class 1 stream segments and lakes retain 50% of the trees greater than or equal to 8 inches dbh, or ten trees greater than or equal to 8 inches dbh in each 100 lineal feet of the SMZ, whichever is greater.

(i) If less than ten trees greater than or equal to 8 inches dbh are present in any 100 lineal-foot segment of the SMZ, then a minimum of ten trees of the largest diameter available must be retained in that segment; ~~;~~

(ii) Trees retained must be representative of the species and size of trees in the pre-harvest stand; ~~;~~ and

(iii) Shrubs and submerchantable trees must be protected and retained in the entire SMZ to the fullest extent possible when conducting forest practices in the SMZ.

(b) On each side of class 2 stream segments retain 50% of the trees greater than or equal to 8 inches dbh, or five trees greater than or equal to 8 inches dbh in each 100 lineal feet of the SMZ, whichever is greater.

(i) If less than five trees greater than or equal to 8 inches dbh are present in any 100 lineal-foot segment of the SMZ, then a minimum of five trees of the largest diameter available must be retained in that segment; ~~;~~

(ii) Trees retained must be representative of the species and size of trees in the pre-harvest stand; ~~;~~ and

(iii) Shrubs and submerchantable trees must be protected and retained in the entire SMZ to the fullest extent possible when conducting forest practices in the SMZ.

(c) On each side of class 3 stream segments and other bodies of water, shrubs and submerchantable trees must be protected and retained in the entire SMZ to the fullest extent possible when conducting forest practices in the SMZ.

(3) Hardwood trees and snags meeting diameter standards of (2) ~~above~~ may be counted toward retention tree requirements in the same approximate proportion as their occurrence in the stand prior to commencement of forest practices.

(4) Trees retained pursuant to this rule must be distributed within the SMZ as guided by the following criteria:

(a) favor bank-edge trees;

(b) favor trees leaning toward the stream and those that cannot be felled without falling into the stream;

(c) where the SMZ is greater than 50 feet wide and harvesting will result in the minimum stocking of trees required to be retained under (2)(a) and (b), concentrate retained trees within 50 feet of the stream; ;

(d) all trees that have fallen through natural processes, across or in a class 1 or 2 stream, must be retained, unless removal of such trees is conducted pursuant to ARM 36.11.304(5), is approved as a site-specific alternative practice, and is conducted consistently with other applicable federal and state laws and regulations.

(5) Trees retained pursuant to this rule may be salvaged only under the following conditions:

(a) Trees to be harvested meet the definition of salvage found at ARM ~~26.6.601(2)(p)~~ 36.11.312; and

(b) The minimum tree retention requirements of ~~section~~ (2) are met by standing live trees, or by dead or fallen trees where sufficient standing live trees are not available; and ;

~~(c) All trees that have fallen across or in the stream must be retained, unless salvage of such trees is approved as a site-specific alternative practice subject to other federal and state laws and regulations.~~

(6) All practices which deviate from the tree-distribution criteria provided in (2) and (4) ~~above~~ require approval as site-specific alternative practices.

AUTH: 77-5-303, 77-5-307, MCA

IMP: 77-5-303, MCA

REASONABLE NECESSITY: The Department of Natural Resources and Conservation proposes to amend this rule to clarify the tree retention standard within the streamside management zone.

36.11.310 SITE-SPECIFIC ALTERNATIVE PRACTICES (1) The owner or operator shall comply with the management standards stated in 77-5-303(1), MCA, and this subchapter, unless approval has been obtained from the department for alternative practices designed for site-specific conditions encountered during a timber sale prior to conducting such practices.

(2) The department may approve a proposed alternative practice only if such practice would be otherwise lawful and the department determines with reasonable certainty that the proposed alternative practice would conserve the integrity of the streamside management zone and would not significantly diminish the function of the zone as stated in 77-5-301, MCA:

- (a) to act as an effective sediment filter to maintain water quality;
- (b) to provide shade to regulate stream temperature;
- (c) to support diverse and productive aquatic and terrestrial riparian habitats;
- (d) to protect stream channel and banks;
- (e) to provide large, woody debris that is eventually recruited into a stream to maintain riffles, pools, and other elements of channel structure; and
- (f) to promote floodplain stability.

(3) In order to obtain department approval of alternative practices, the owner or operator shall submit to the department an application describing the proposed practices and location. Applications must provide all data specified by the department and must be submitted on forms provided or approved by the department.

(4) Within ten working days of receipt of the application for approval of alternative practices the department shall determine if the application is approved, approved with modification, disapproved, incomplete, requires additional information or environmental analysis, or requires a field review. The department shall notify the owner and the applicant of its decision in writing.

(5) If the department determines a field review is necessary, the field review must be made at a mutually agreeable time. The owner or his designee must be present at the field review.

(6) Within ten working days after all necessary field review is complete, the department shall determine whether the application is approved, approved with modification, disapproved, incomplete, or requires additional information or environmental analysis. The department shall notify the owner and the applicant of its decision in writing.

(7) The department may notify the applicant in writing that it declines to conduct further environmental analysis of an application if it determines that the proposed alternative practices are complex, or affect an environmentally sensitive area, or involve a high degree of uncertainty that the proposed alternative practices will have a significant impact on the quality of the human environment. The notice must briefly describe the department's reasons for declining to conduct further analysis. In this case, the applicant may conduct further environmental analysis and submit documentation to the department. The department shall independently review any further environmental analysis and documentation of the proposed alternative practices provided by the applicant and may adopt such documentation if it is adequate under the Montana Environmental Policy Act (75-1-101 et seq., MCA) and rules adopted thereunder (~~ARM 26.2.628—26.2.663~~ 36.2.521 through 36.2.611). If so adopted, the department may utilize such environmental documentation in further consideration of the application for alternative practices.

(8) In the event the department determines that an application for alternative practices may be of significant interest to the public, the time provided in this rule for considering such application may be extended in order to allow time for the public to

be notified and participate in the department's decision pursuant to 2-3-101 et seq., MCA, and ARM ~~26.2.701—26.2.707~~ 36.2.701 and 36.2.702 .

(9) Persons applying for approval of alternative practices shall agree in writing that approved alternative practices, including any additional conditions imposed by the department, shall have the same force and authority as the standards contained in 77-5-303, MCA, and shall be enforceable by the department under 77-5-305, MCA, to the same extent as such standards. Persons responsible for conducting alternative practices shall comply with all conditions of such practices. In determining whether to approve applications for alternative practices, the department may consider past violations of such standards or of the requirements of previously approved alternative practices by the applicant.

(10) Authorization to conduct alternative practices is valid for ~~2~~ two years from the date of approval or for such period as may be specified by the department.

AUTH: 77-5-303, 77-5-307, MCA
IMP: 77-5-303, MCA

REASONABLE NECESSITY: The proposed amendment is to correct incorrect administrative rule cross-references and to further clarify when site-specific alternative practices may be approved.

36.11.312 DEFINITIONS Wherever used in this subchapter, unless a different meaning clearly appears from the context:

(1) "Alternative practices" means forest practices conducted in the SMZ that are different from the practices required by the standards provided in 77-5-303, MCA, and are approved by the department either by adoption of this subchapter or on a site-specific basis upon application of the operator.

(2) "Broadcast burning" means spreading fire through a continuous fuel cover. The fuels consist of slash resulting from forest practices, surface litter, and duff. Fuels are left in place, fairly uniform, and ignited under certain conditions with the intent to meet planned management objectives in the desired area.

(3) "Class 1 stream segment" means a portion of stream that supports fish; or a portion of stream that normally has surface flow during ~~6~~ six months of the year or more; and that contributes surface flow to another stream, lake, or other body of water.

(4) "Class 2 stream segment" means a portion of stream that is not a class 1 or class 3 stream segment. Two common examples of class 2 stream segments are:

(a) A portion of stream which does not support fish; normally has surface flow during less than ~~6~~ six months of the year; and contributes surface flow to another stream, lake, or other body of water; or

(b) A portion of stream that does not support fish; normally has surface flow during ~~6~~ six months of the year or more; and does not contribute surface flow to another stream, lake, or other body of water.

(5) "Class 3 stream segment" means a portion of a stream that does not support fish; normally has surface flow during less than ~~6~~ six months of the year; and rarely contributes surface flow to another stream, lake, or other body of water.

(6) "Clearcutting" means removal of all or virtually all the trees, large and small, in a stand in one cutting operation. Virtually all woody vegetation is removed from the site preparatory to establishment of new trees.

(7) "Construction" means cutting and filling of earthen material that results in a travel-way for wheeled vehicles.

(8) "Department" means the Department of Natural Resources and Conservation provided for in 2-15-3301, MCA.

~~(8)~~ (9) "Diameter at breast height" (abbreviated "dbh") means the diameter of a tree measured 4 1/2 feet from the ground level. Ground level is the highest point of the ground touching the stem.

~~(9)~~ (10) "Eastern zone" means the counties of Big Horn, Blaine, Carter, Chouteau, Custer, Daniels, Dawson, Fallon, Fergus, Garfield, Golden Valley, Hill, Liberty, McCone, Musselshell, Petroleum, Phillips, Powder River, Prairie, Richland, Roosevelt, Rosebud, Sheridan, Toole, Treasure, Valley, Wibaux, and Yellowstone.

~~(40)~~ (11) "Established road" means an existing access or haul route for highway vehicles that is passable under one or more of the following circumstances:

- (a) without any work;
- (b) with clearing of windfall or small woody vegetation;
- (c) with surface blading;
- (d) with replacement of stream crossing structures and drainage structures that were removed to restrict access; or
- (e) with removal of constructed access barriers.

~~(44)~~ (12) "Hazardous or toxic material" means substances which by their nature are dangerous to handle or dispose of, or are a potential environmental contaminant, and includes petroleum products, pesticides, herbicides, chemicals, and biological wastes.

~~(42)~~ (13) "Lake" means a body of water where the surface water is retained by either natural or artificial means, where the natural flow of water is substantially impeded, and which supports fish.

(14) "Landing" means a cleared area in the forest to which trees or logs are yarded or skidded for processing or loading onto trucks for transport.

(15) "Major", as used in the damage table in [NEW RULE I], means that the action disturbs the integrity of the SMZ and significantly diminishes two or more of the SMZ functions listed in 77-5-301(1)(a) through (f), MCA.

(16) "Minor", as used in the damage table in [NEW RULE I], means that the action disturbs the integrity of the SMZ but does not significantly diminish more than one of the SMZ functions listed in 77-5-301(1)(a) through (f), MCA.

(17) "Operator" means a person responsible for conducting forest practices. An operator may be the owner or a person who, through contractual agreement with the owner, is obligated to or entitled to conduct forest practices or carry out a timber sale.

~~(43)~~ (18) "Ordinary high water mark" means the stage regularly reached by a body of water at the peak of fluctuation in its water level. The ordinary high water mark is generally observable as a clear, natural line impressed on the bank. It may be indicated by such characteristics as terracing, changes in soil characteristics, destruction of vegetation, presence or absence of litter or debris, or other similar characteristics.

~~(14)~~ (19) "Other body of water" means ponds and reservoirs greater than 1/10th acre that do not support fish; and irrigation and drainage systems discharging directly into a stream, lake, pond, reservoir, or other surface water. Water bodies used solely for treating, transporting, or impounding pollutants shall not be considered surface water.

(20) "Owner" means an individual, firm, partnership, corporation, or association of any nature that holds an ownership interest in forest land or timber.

(21) "Prolonged", as used in the damage table in [NEW RULE I], means that the impacts to the functions of the SMZ or water quality will last longer than one growing season (generally more than one to two years).

~~(15)~~ (22) "Road" means a travel-way suitable for highway vehicles.

~~(16)~~ (23) "Salvage" means harvesting trees that have been killed or damaged or are in imminent danger of being killed or damaged by injurious agents other than competition between trees.

~~(17)~~ (24) "Sidecasting" means the act of moving excess earthen material over the side of a road during road maintenance operations.

~~(18)~~ (25) "Slash" means the woody debris that is dropped to the forest floor during forest practices. Timber slash consists of stems, branches, and twigs left behind after forest practices.

~~(19)~~ (26) "Slope distance" means the length of a line between two points on the land surface.

~~(20)~~ (27) "Stream", as defined at 77-5-302(7), MCA, means "a natural watercourse of perceptible extent that has a generally sandy or rocky bottom or definite banks and that confines and conducts continuously or intermittently flowing water."

~~(21)~~ (28) "Streamside management zone" or "zone" (abbreviated "SMZ"), as defined at 77-5-302(~~S~~)(8), MCA, means "the stream, lake, or other body of water and an adjacent area of varying width where management practices that might affect wildlife habitat or water quality, fish, or other aquatic resources need to be modified. The streamside management zone encompasses a strip at least 50 feet wide on each side of a stream, lake, or other body of water, measured from the ordinary high-water mark, and extends beyond the high-water mark to include wetlands and areas that provide additional protection in zones with steep slopes or erosive soils."

(29) "Temporary", as used in the damage table in [NEW RULE I], means that the impacts to the functions of the SMZ or water quality will be negligible following one full growing season (generally less than one to two years).

~~(22)~~ (30) "Timber sale", as defined at 77-5-302(9), MCA, means "a series of forest practices designed to access, harvest, or regenerate trees on a defined land area for commercial purposes."

~~(23)~~ (31) "Wetlands" means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands include marshes, swamps, bogs, and similar areas.

AUTH: 77-5-303, 77-5-307, MCA

IMP: 77-5-302, 77-5-303, 77-5-305, MCA

REASONABLE NECESSITY: The proposed amendment is meant to add definitions to assist in the administration of the Streamside Management Zone and to add definitions related to the Penalty Formula established in New Rule I.

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

NEW RULE I PENALTIES (1) Each violation of Title 77, chapter 5, part 3, MCA, rules adopted thereunder, or of an order issued pursuant to 77-5-305, MCA, is subject to a separate civil penalty not to exceed \$1,000, with each day of the violation constituting a separate violation.

(2) If the department determines that a violation does not warrant a civil penalty, as calculated in (5), it may seek voluntary compliance and site rehabilitation through warning, conference, or other appropriate means.

(3) For purposes of assessing penalties, the department shall divide SMZs into 100 lineal-foot segments. Each violation of a forest-practices standard set forth in 77-5-303(1), MCA, that occurs in a separate 100 lineal-foot SMZ segment shall constitute a separate violation and shall be subject to a separate civil penalty.

(4) The penalty matrix set forth in this rule establishes the initial penalty value for each violation. The significance of the violation, whether significant harm resulted to health, environment, water quality and quantity, aquatic and terrestrial riparian habitats, stream channels and banks, may decrease or increase a penalty within the limits listed below. The department shall have the option to select the most appropriate penalty and penalty value for each and every violation of the SMZ law, 77-5-301 through 77-5-307, MCA.

(5) SMZ violations that warrant a civil penalty and site rehabilitation shall be documented on a repair-order form prescribed by the department. For each separate violation, the department shall specify in the repair order the nature of the violation and the damage or unsatisfactory condition resulting from the violation, shall specify the appropriate repair action, and shall, in order to implement the management standards provided in 77-5-303, MCA, and to provide specific direction necessary for owners and operators to understand and comply with the management standards, specify the amount of civil penalty per violation, according to the following formula:

Penalty Formula = [(\$100 x Repair) + (\$100 x Damage)] x # days of violation,

where the repair and damage variables are determined as follows:

(a) Repair – Determined by whether the repair actions are completed by the deadline specified in the department's repair order, with one of the following values inserted into the Penalty Formula as the repair variable:

- 0 - Responsible party exceeds required repair actions.
- 2 - Responsible party meets required repair actions.
- 4 - Responsible party fails to complete repair actions.

(b) Damage – Determined by the extent of watershed damage, duration of impact, and stream class involved, as shown in the following damage table, with one of the following values inserted into the Penalty Formula:

Degree and Duration of Watershed Damage	Class 3 Stream	Class 2 Stream	Class 1 Stream
Minor and Temporary	1	2	3
Minor and Prolonged	2	3	4
Major and Temporary	2	3	4
Major and Prolonged	4	5	6

AUTH: 77-5-303, 77-5-307, MCA

IMP: 77-5-303, 77-5-305, MCA

REASONABLE NECESSITY: The proposed adoption of New Rule I is necessary to provide a consistent and fair manner for the Department of Natural Resources and Conservation to impose civil penalties with respect to violations of the Streamside Management Zone Law, in order for the Department of Natural Resources and Conservation to further comply with its obligation to implement the management standards set forth in 77-5-303, MCA and to provide specific direction necessary for owners and operators to understand and comply with the management standards set forth at 77-5-303, MCA.

5. Concerned persons may submit their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to Dan Rogers, Forest Stewardship Specialist, Department of Natural Resources and Conservation, 2705 Spurgin Road, Missoula, MT 59804-3199; telephone (406) 542-4326; fax (406) 542-4203; or e-mailed to DanRogers@mt.gov, and must be received no later than 5:00 p.m. on March 23, 2006.

6. Rob Ethridge, Forestry Assistance Bureau Chief, Department of Natural Resources and Conservation, 2705 Spurgin Road, Missoula, MT 59804 has been designated to preside over and conduct the hearing.

7. An electronic copy of this Notice of Public Hearing on Proposed Amendment and Adoption is available through the Department's site on the World Wide Web at <http://www.dnrc.mt.gov>. The Department strives to make the electronic copy of this Notice of Public Hearing on Proposed Amendment and Adoption conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered.

8. The agency maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding conservation districts and resource development, forestry, oil and gas conservation, trust land management, water resources or a combination thereof. Such written request may be mailed or delivered to Legal Unit, Department of Natural Resources and Conservation, P.O. Box 201601, 1625 11th Avenue, Helena, MT 59620-1601, faxed to the office at (406) 444-2684, or may be made by completing a request form at any rules hearing held by the agency.

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

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

/s/ Mary Sexton
MARY SEXTON
Director, Natural Resources and Conservation

/s/ Tommy H. Butler
Tommy H. Butler
Rule Reviewer

Certified to the Secretary of State February 13, 2006.

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

In the matter of the amendment of ARM	)	NOTICE OF PUBLIC HEARING
37.36.604 and 37.36.610 pertaining to	)	ON PROPOSED AMENDMENT
the Montana Telecommunications)	
Access Program (MTAP))	
)	

TO: All Interested Persons

1. On March 15, 2006, at 10:00 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 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 March 3, 2006, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970; Email dphhslegal@mt.gov.

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

37.36.604 FINANCIAL ELIGIBILITY CRITERIA (1) Individuals whose annual family income during the 12 months immediately preceding the month of application is less than 250% of the ~~2004~~ 2006 poverty guidelines published by the U.S. ~~d~~De~~p~~ar~~t~~me~~n~~t of ~~h~~He~~a~~l~~t~~h and ~~h~~Hu~~m~~an ~~s~~er~~v~~i~~c~~es (HHS) are eligible for a loan of specialized telecommunications equipment based on income. 250% of the HHS ~~2004~~ 2006 annual poverty guidelines for families of various sizes are shown in (2).

(2) 250% of the annual poverty guidelines is as follows:

FAMILY SIZE	250% OF ANNUAL POVERTY GUIDELINE
One	\$23,275 <u>\$24,500</u>
Two	31,225 <u>33,000</u>
Three	39,175 <u>41,500</u>
Four	47,125 <u>50,000</u>
Five	55,075 <u>58,500</u>
Six	63,025 <u>67,000</u>
Seven	70,975 <u>75,000</u>
Eight	78,925 <u>84,000</u>
Each Additional Person, Add	7,950 <u>8,500</u>

(3) There is no asset test to be eligible for a loan of specialized telecommunications equipment.

AUTH: 53-19-307, MCA

IMP: 53-19-305, 53-19-307, MCA

37.36.610 DETERMINATION OF APPROPRIATE TELECOMMUNICATION DEVICE (1) The program shall consult with the applicant to determine the appropriate telecommunication device or devices. However, the program shall make the final determination, taking into consideration the needs and wishes of the applicant and available funding.

AUTH: 53-19-307, MCA

IMP: 53-19-305, 53-19-307, MCA

3. The Montana Telecommunications Access Program (MTAP) provides specialized telecommunications equipment to low-income persons who need such equipment to communicate effectively on the telephone. MTAP is administered by the Committee on Telecommunications Access Services for Persons with Disabilities (the Committee). Persons whose gross family income is less than 250% of the poverty guidelines established by the U.S. Department of Health and Human Services (HHS) are eligible for MTAP services.

ARM 37.36.604 currently provides that persons whose gross family income is less than 250% of HHS' 2004 poverty guidelines are eligible for MTAP services. HHS updates the poverty guidelines each year to take into account increases in the cost of living. It is therefore necessary to amend ARM 37.36.604 to provide that the 2006 poverty guidelines, which are higher than the 2004 guidelines, will be used to determine eligibility for MTAP. If the Committee did not use the most current poverty guidelines, some persons might be ineligible for MTAP due to inflationary increases in their household income that do not reflect an increase in actual buying power.

ARM 37.36.604 contains a table showing the level of income equal to 250% of the federal poverty guidelines for households of various sizes. The table is currently based on the 2004 poverty guidelines. It is therefore necessary to amend the rule to insert the new income amounts based on the 2006 poverty guidelines.

ARM 37.36.610 provides that MTAP will consult with the applicant for MTAP services to determine the appropriate telecommunications device for the applicant. The current language of the rule implies that a person eligible for services can receive only one telecommunications device. It was never the intention of the committee to limit an eligible person to one device if the person needs or can benefit from more than one device, nor does 53-19-307, MCA, governing the provision of MTAP services, impose any limit on the number of devices an eligible person may receive. The amendment of ARM 37.36.610 is therefore necessary to specify that MTAP will consult with the applicant to determine the appropriate telecommunications device or devices, in order to make the rule consistent with the statutory provision allowing an eligible person to have more than one device if that is appropriate.

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 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 March 23, 2006. Data, views or arguments may also be submitted by facsimile (406)444-1970 or by electronic mail via the Internet to dphhslegal@mt.gov. The Department also maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. For placement on the mailing list, please write the person at the address above.

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

/s/ Dawn Sliva
Rule Reviewer

/s/ John Chappuis for
Director, Public Health and
Human Services

/s/ Linda Kirkland
Chairman of the Montana
Telecommunications Access Committee

Certified to the Secretary of State February 13, 2006.

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

In the matter of the adoption of Rule I	)	NOTICE OF PUBLIC HEARING
and amendment of ARM 37.89.103,	)	ON PROPOSED ADOPTION
and 37.89.106 pertaining to Mental	)	AND AMENDMENT
Health Access Plan Prescription Drug)	
Benefits for Persons Eligible for)	
Medicare)	

TO: All Interested Persons

1. On March 15, 2006, at 1:30 p.m., a public hearing will be held in the auditorium of the Department of Public Health and Human Services Building, 111 N. Sanders, Helena, Montana to consider the proposed 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 March 3, 2006, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970; Email dphhslegal@mt.gov.

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

RULE I MENTAL HEALTH SERVICES PLAN, OUTPATIENT DRUGS FOR BENEFICIARIES ELIGIBLE FOR MEDICARE (1) Notwithstanding any other provision of this subchapter, a plan beneficiary who is also eligible for Medicare is subject to the limitations and benefits provided for in this rule.

(2) Reimbursement for outpatient drugs provided to plan beneficiaries who are also eligible for Medicare are limited to medically necessary barbiturates and benzodiazepines prescribed for the treatment of mental illness.

(3) Reimbursement will not be made for drugs for which payment as prescribed and dispensed or administered to an individual is available for that individual under Medicare Part A, Part B, or Part D even though the individual is eligible for coverage under Medicare but has declined to enroll in Part A, Part B, or Part D.

(4) Additional assistance will be provided plan beneficiaries who are also eligible for Medicare as follows:

(a) beneficiaries eligible for full subsidy extra help through the Social Security Administration will receive no additional assistance through the plan;

(b) beneficiaries eligible for partial subsidy extra help through the Social Security Administration will receive plan assistance with annual deductibles and

coinsurance, for drugs prescribed for the treatment of mental illness up to a combined maximum of \$425.00 per month; or

(c) beneficiaries not eligible for subsidy extra help through the Social Security Administration will receive plan assistance with annual deductibles, coinsurance, and cost-sharing within the coverage gap, for drugs prescribed for the treatment of mental illness up to a combined maximum of \$425.00 per month.

(5) Reimbursement will be made only for services for which third party payment is not available.

AUTH: 53-2-201, MCA
IMP: 53-21-701, MCA

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

37.89.103 MENTAL HEALTH SERVICES PLAN, DEFINITIONS As used in this subchapter, unless expressly provided otherwise, the following definitions apply:

(1) through (8) remain the same.

(9) "Medicare Part D" means the prescription drug benefit available to Medicare beneficiaries through a Medicare prescription drug plan or a Medicare Advantage Plan.

(9) through (13) remain the same but are renumbered (10) through (14).

~~(14)~~ (15) "Serious emotional disturbance (SED)" means with respect to a youth between the ages of six and 17 years that the youth meets the following requirements of ~~(14)~~(15)(a) and either ~~(14)~~(15)(b)₁ or ~~(14)~~(15)(c):

(a) through (a)(xx) remain the same.

(b) As a result of the youth's diagnosis determined in ~~(14)~~(15)(a) and for a period of at least six months, or for a predictable period over six months, the youth consistently and persistently demonstrates behavioral abnormality in two or more spheres, to a significant degree, well outside normative developmental expectations, that cannot be attributed to intellectual, sensory, or health factors:

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

(iii) the juvenile correctional system, due to the diagnosis determined in ~~(14)~~(15)(a), as evidenced by a youth court consent adjustment or consent decree or youth court adjudication; or

(iv) through (d)(vi) remain the same.

~~(15)~~ (16) "Severe disabling mental illness" means with respect to a person who is 18 or more years of age that the person meets the requirements of ~~(15)~~(16)(a), (b)₁ or (c). The person must also meet the requirements of ~~(15)~~(16)(d). The person:

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

(16) through (17) remain the same but are renumbered (17) through (18).

~~(18)~~ (19) The department hereby adopts and incorporates by reference the ICD-9-CM diagnosis codes with meanings found in the St. Anthony's ICD-9-CM Code Book (1998) effective October 1, 1998 through September 30, 1999, published by St. Anthony Publishing. The department also hereby adopts and incorporates by reference the DSM-IV diagnosis codes with meanings found in the Diagnostic and

Statistical Manual of Mental Disorders, Fourth Edition (1994), published by the American Psychiatric Association of Washington, DC. These systems of coding provide the codes and meanings of the diagnostic terms commonly used by treating professionals and are incorporated herein in order to provide common references for purposes of the provision of services through the mental health services plan. Copies of applicable portions of the ICD-9-CM and the DSM-IV 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.

AUTH: 41-3-1103, 52-1-103, 53-2-201, 53-6-113, 53-6-131, 53-6-701, 53-21-703, MCA

IMP: 41-3-1103, 52-1-103, 53-1-601, 53-1-602, 53-2-201, 53-6-101, 53-6-113, 53-6-116, 53-6-117, 53-6-131, 53-6-701, 53-6-705, 53-21-139, 53-21-202, 53-21-701, MCA

37.89.106 MENTAL HEALTH SERVICES PLAN, MEMBER ELIGIBILITY

(1) An individual is eligible for covered services under the plan if:

(a) through (c) remain the same.

(d) the individual is an adolescent who has met the eligibility requirements of the plan as a youth with serious emotional disturbance, but who will not meet the eligibility requirements of the plan as an adult with severe and disabling mental illness. The individual may continue to be eligible as an adolescent for the purpose of transition to independent living until the age of 21, provided the individual continues to meet income requirements; ~~and~~

(e) the total number of children and the total number of adults who can be eligible for MHSP at any time is within the limits set by the department as provided in (6) ~~of this rule;~~ and

(f) the individual is eligible for Medicare, is enrolled in a Medicare prescription drug plan or Medicare Advantage Plan, and has applied for subsidy extra help from the Social Security Administration and, if necessary, premium assistance from Big Sky Rx.

(2) through (6)(d)(ii) remain the same.

AUTH: 41-3-1103, 52-2-603, 53-2-201, 53-6-113, 53-6-131, 53-6-701, 53-6-706, 53-21-703, MCA;

IMP: 41-3-1103, 52-2-603, 53-1-601, 53-1-602, 53-2-201, 53-6-101, 53-6-113, 53-6-116, 53-6-117, 53-6-131, 53-6-701, 53-6-705, 53-6-706, 53-21-139, 53-21-202, 53-21-702, MCA

4. The Department of Public Health and Human Services (the Department) is proposing the amendment of ARM 37.89.103, "Mental Health Services Plan, Definitions," 37.89.106, "Mental Health Services Plan, Member Eligibility," and the adoption of a new rule, "Mental Health Service Plan, Outpatient Drugs for Beneficiaries Eligible for Medicare". The purpose of the proposed rule amendments is to eliminate prescription drug coverage, except for selected drugs, for beneficiaries of the Mental Health Services Plan (MHSP) who are also eligible for Medicare. The proposed changes would be effective May 5, 2006, although MHSP

beneficiaries who are also enrolled in a Medicare prescription drug plan should have begun receiving most prescription drugs, including drugs needed for treatment of mental illness, through their Medicare prescription drug plans beginning January 1, 2006, or the first of the month following their enrollment in a Medicare prescription drug plan.

The proposed rule amendments are necessary to coordinate MHSP prescription drug benefits with federal changes in section 101 of Title I of the Medicare Prescription Drug Improvement and Modernization Act of 2003 (MMA), Public Law 108-173, and to avoid unnecessary duplication of pharmacy benefits.

MMA creates new Medicare prescription drug benefits for people who are eligible for Medicare. MMA is a federal initiative with significant implications for Medicare beneficiaries and the states.

The Department's rules currently provide that MHSP pays the cost of covered prescription drugs that are medically necessary for treatment of mental illness for enrolled people who also have Medicare. This benefit was adopted before a prescription drug benefit was available to Medicare beneficiaries. Effective January 1, 2006, Medicare beneficiaries have had access to prescription drug coverage from Medicare-approved prescription drug plans or Medicare Advantage Plans. They may also qualify for subsidy extra help from the Social Security Administration and premium assistance from Big Sky Rx, the state of Montana's pharmacy access program for Medicare beneficiaries.

The Department proposes that people enrolled in MHSP who are also eligible for Medicare must also enroll in a Medicare prescription drug plan. This proposal would assure that available state funds will be used to provide benefits to the greatest number of people in the most cost-effective manner.

Since MHSP prescription drug benefits are provided for in the Department's rules, ARM 37.89.114, amendment of the rules is necessary to modify MHSP drug benefits for the individuals who could be covered under Medicare. This proposal is reasonable because the affected individuals would still have pharmacy benefits under a Medicare prescription drug or Medicare advantage plan. Out-of-pocket drug expenses for those individuals would not increase under this proposal because subsidies would be available through the Social Security Administration, Big Sky Rx, and MHSP.

Approximately 900 MHSP beneficiaries are eligible to receive their prescription drugs through a Medicare prescription drug or Medicare Advantage Plan. If the Department's proposal is adopted, MHSP will realize savings to its pharmacy budget and the MHSP will cease payment of most prescription drugs for beneficiaries with Medicare. These savings may in turn be used to provide a pharmacy benefit to larger numbers of mentally ill Montanans or to increase the monthly limit of MHSP's pharmacy benefit.

The specific provisions proposed by the Department are described below:

Rule I

The Department proposes the adoption of a new rule containing the terms and conditions of prescription drug coverage for MHSP beneficiaries who are also eligible for Medicare. All the new substantive provisions governing those benefits would be located in the same rule, making them easy to find.

The Department proposes to continue covering medically necessary barbiturate and benzodiazepines prescribed for the treatment of mental illness. Coverage for those drugs is not available through Medicare. Since this proposal is not intended to change the overall cost of prescription drugs to MHSP beneficiaries, it is necessary to include a specific provision including them.

The Department is proposing a new provision that makes it clear reimbursement will not be available through MHSP for prescription drugs that are available through Medicare. The Department's reasoning is discussed above. Other options considered by the Department are discussed below.

The Department proposes that MHSP provide additional assistance to MHSP beneficiaries up to a combined maximum of \$425 per month. Prescription drug assistance would be available under this proposal whether the MHSP beneficiary was eligible for partial or no subsidies through the Social Security Administration. MHSP beneficiaries eligible for full social security subsidies would not be eligible to receive MHSP subsidies.

The Department is also proposing a new provision that makes it clear reimbursement will not be available through MHSP for prescription drugs for which third party payment, such as private health insurance, is available.

37.89.103

The Department proposes the addition of a definition in this rule describing Medicare Part D. Under this definition, Medicare Part D would include a Medicare Advantage Plan.

37.89.106

The Department is proposing a new provision in this rule. A person who is eligible for Medicare would have to be enrolled in a Medicare prescription drug plan or Medicare Advantage Plan and would be required to apply for subsidy extra help and, if necessary, Big Sky Rx in order to be eligible for MHSP. The Department is proposing a specific provision that makes it clear reimbursement will not be available through MHSP for prescription drugs that are available through Medicare.

Other options considered

The Department considered maintaining the MHSP rules as they stand. This option was rejected as too costly and an inefficient use of available state funds.

The Department also considered requiring Medicare beneficiaries to enroll in a Medicare-approved prescription drug plan while MHSP would have continued to pay for prescription drugs that might not be covered by the beneficiaries' prescription drug plans. This option was rejected because the Medicare prescription drug benefit is comprehensive and has many built-in beneficiary protections with oversight by the Centers for Medicare and Medicaid Services (CMS). The Department believes CMS will assure that Medicare beneficiaries have access to all medically necessary prescription drugs and access to quick and efficient exceptions and appeals processes.

The Department is concerned about a successful transition for Medicare beneficiaries from receiving prescription drugs through MHSP to their Medicare-approved prescription drug plans. Consequently, it proposes overlapping safety-net prescription drug benefits to ensure coverage of all MHSP beneficiaries with Medicare until they have had ample opportunity to enroll in a Medicare prescription drug plan. The Department will work closely with Medicare, community partners, and the prescription drug plans to ensure a smooth and successful transition takes place.

Groups affected

The proposed amendments to these rules would affect approximately 420 MHSP pharmacy providers, five mental health centers and about 900 Medicare enrolled MHSP beneficiaries.

Fiscal effect

The proposed amendments could save the MHSP up to \$750,000 over the prescription drug benefit costs projected for the 2006-2007 biennium if the MHSP rules remain as they stand. Since the affected MHSP beneficiaries' prescription drug costs would still have coverage from Medicare-approved prescription drug plans or Medicare Advantage Plans, the Department does not expect the cost of prescription drugs to change for MHSP beneficiaries as a result of this proposal.

5. These rule changes will be applied effective May 5, 2006.

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 March 23, 2006. Data, views or arguments may also be submitted by facsimile (406)444-1970 or by electronic mail via the Internet to dphhslegal@mt.gov. The Department also maintains lists of persons interested in receiving notice of administrative rule

changes. These lists are compiled according to subjects or programs of interest. For placement on the mailing list, please write the person at the address above.

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

/s/ Dawn Sliva
Rule Reviewer

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

Certified to the Secretary of State February 13, 2006.

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

In the matter of the amendment of ARM	)	NOTICE OF PROPOSED
37.108.507 pertaining to Components	)	AMENDMENT
of Quality Assessment Activities)	
	)	NO PUBLIC HEARING
	)	CONTEMPLATED

TO: All Interested Persons

1. On March 25, 2006, the Department of Public Health and Human Services proposes to amend 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 March 3, 2006, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970; Email dphhslegal@mt.gov.

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

37.108.507 COMPONENTS OF QUALITY ASSESSMENT ACTIVITIES

(1) Annually, the health carrier shall evaluate its quality assessment activities by using the following HEDIS year ~~2005~~ 2006 measures:

(a) through (3) remain the same.

(4) The department adopts and incorporates by reference the HEDIS year ~~2005~~ 2006 measures for the categories listed in (1)(a) through (e). The HEDIS year ~~2005~~ 2006 measures are developed by the national committee for quality assurance and provide a standardized mechanism for measuring and comparing the quality of services offered by managed care health plans. Copies of HEDIS ~~2005~~ 2006 measures are available from the National Committee for Quality Assurance, 2000 L Street NW, Suite 500, Washington, DC 20036 or on the internet at www.ncqa.org.

AUTH: 33-36-105, MCA

IMP: 33-36-105, 33-36-302, MCA

3. The Managed Care Plan Network Adequacy and Quality Assurance Act (Title 33, Chapter 36, MCA) established standards for health carriers offering managed care plans and for the implementation of quality assurance standards in administrative rules. ARM 37.105.501 et seq. were adopted in 2001 to establish mechanisms for the Department to evaluate quality assurance activities of health

carriers providing managed care plans in Montana.

ARM 37.108.507 requires health carriers to report their quality assessment activities to the Department using health plan employer data and information set (HEDIS) measures. These are nationally-utilized measures that are updated annually. Since the HEDIS standards change somewhat every year, the rule must also be updated annually to reflect the current year's measures and ensure that national comparisons are possible, since the other states will also be using the same updated measures. The changes from the 2005 measures to the proposed 2006 measures are quoted below:

Updated Random Number Table for Measures Using the Hybrid Method

Childhood Immunization Status

- Summary of Changes

Delete: Changed the timing requirements for IPV.

- DtaP/DT

Replace the first sentence with: An initial DtaP vaccination followed by at least three DtaP, DT or individual diphtheria and tetanus shots on or before the child's second birthday.

- Table CIS-1/2

In the Hybrid cells, replace "Each of the 8 rates" with "Each of the 9 rates."

Breast Cancer Screening

- Table BSC-A

Add CPT code 76083.

Comprehensive Diabetes Care

- Administrative Specification: Numerators--*Poor HbA1c control*

Replace the first paragraph with: Using automated laboratory data, identify the *most recent* HbA1c test during the measurement year. The member is numerator compliant if the most recent automated HbA1c level is >9.0% or is missing a result or if an HbA1c test was not done during the measurement year. The member is not numerator compliant if the automated result for the most recent HbA1c test during the measurement year is #9.0%.

- Table CDC-G

Add CPT code 36819 to the *Evidence of diagnosis of or treatment for nephropathy* category.

- Hybrid Specification: Numerators--*Poor HbA1c control*

Replace the first paragraph with: The *most recent* HbA1c level (performed during the measurement year) is >9.0% or is missing or was not done during the measurement year, as identified by automated laboratory data or medical record review. The member is not numerator compliant if the result for the most recent HbA1c test during the measurement year is #9.0%.

- Hybrid Specification: LDL-C Level--*Medical record*

In the Friedewald equation, replace [lipoprotein] with [lipoprotein(a)].”

The option of not updating the HEDIS measure was considered and rejected because these are national quality measures which allow comparison among health plans. If the measures are not kept current, this function is lost.

4. These rule changes will be applied retroactively to January 1, 2006. The rule changes are being applied retroactively because the HEDIS measures and the health carriers measure on a January through December calendar year. In addition, the 2006 HEDIS measures are already being used by the health carriers impacted by these amendments. As a result, there is no negative impact by these changes being applied retroactively to this date.

5. Interested persons may submit their data, views or arguments concerning the proposed action in writing 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 March 23, 2006. Data, views or arguments may also be submitted by facsimile (406)444-1970 or by electronic mail via the Internet to dphhslegal@mt.gov. The Department also maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. For placement on the mailing list, please write the person at the address above.

6. 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 Gwen Knight, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 202951, Helena, MT 59620-2951, by facsimile (406)444-1970 or by electronic mail via the Internet to dphhslegal@mt.gov no later than 5:00 p.m. on March 23, 2006.

7. 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 two health carriers affected by rules covering components of quality assessment activities.

/s/ Dawn Sliva
Rule Reviewer

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

Certified to the Secretary of State February 13, 2006.

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

In the matter of the adoption of new	)	NOTICE OF EXTENSION OF
Rules I through XLI, the amendment of	)	COMMENT PERIOD ON
37.37.316 and 37.37.318 and the	)	PROPOSED ADOPTION,
repeal of ARM 37.97.1001, 37.97.1002,	)	AMENDMENT, AND REPEAL
37.97.1006, 37.97.1011, 37.97.1013,)	
37.97.1014, 37.97.1016, 37.97.1018,)	
and 37.97.1019 pertaining to youth)	
foster homes)	

TO: All Interested Persons

1. On December 8, 2005, the Department of Public Health and Human Services published MAR Notice No. 37-360 pertaining to the public hearing on the proposed adoption, amendment, and repeal of the above-stated rules relating to youth foster homes, at page 2379 of the 2005 Montana Administrative Register, issue number 23. The Department is extending the comment period for the proposed adoption, amendment, and repeal of these 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. If you need to request an accommodation, contact the department no later than 5:00 p.m. on March 1, 2006, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970; Email dphhslegal@mt.gov.

2. The hearing on the proposed adoption, amendment, and repeal was held on January 5, 2006, at 1:30 p.m. in the auditorium of the Department of Public Health and Human Services Building, 111 N. Sanders, Helena, Montana to consider the proposed adoption, amendment, and repeal of the above-stated rules. At the hearing the Department announced a revision to the text of Rule V, deleting text that indicated an exception for kinship homes that it did not intend, and announced an extension of the comment period to February 3, 2006, to allow time for additional comment. The Department is now formally extending the comment period to March 9, 2006 to allow additional time to comment on the changes proposed in MAR Notice No. 37-360 and the revision of the text of Rule V.

3. The rule as proposed to be amended from the original proposal provides as follows. Matter to be added is underlined. Matter to be deleted is interlined.

RULE V YOUTH FOSTER HOMES: LICENSURE AND RENEWAL

(1) The department shall issue a youth foster home, kinship foster home, or therapeutic foster home license to any license applicant that the department determines meets all licensing requirements established by these rules. The license will expire one year from the date it is issued unless it is extended up to an additional 60 days pursuant to (3).

(2) For placement made on or after [effective date of rule], the number of children for whom a ~~kinship~~ foster home is licensed will be based in part on the number of children already residing in the home. There shall be a maximum of seven children residing in a ~~kinship~~ foster home at any one time unless an exception is made by the regional administrator to accommodate placement of a sibling group.

(3) The department shall renew the license annually on the expiration date of the previous year's license if:

(a) the foster parents apply for renewal of the foster home license on a form provided by the department at least 30 days prior to the expiration date of the current license; and

(b) following completion of a relicensing study, the department determines that the foster home continues to meet all licensing requirements established by these rules.

(4) If the foster parent submits a completed application packet for renewal of a license at least 30 days prior to the expiration of the license, but the department is unable to complete the relicensing study but makes a determination that the home is in compliance with the licensing requirements before the expiration date of the previous year's license, the previous year's license will continue in effect for no more than 60 days while the department completes the relicensing study.

AUTH: 52-1-103, 52-2-111, 52-2-601, 52-2-621, 52-2-622, MCA

IMP: 52-1-103, 52-2-111, 52-2-601, 52-2-621, 52-2-622, MCA

4. The rationale for limiting the number of children in any foster home was stated in the original notice. Due to a typographical error the word "kinship" was inadvertently included in Rule V in error. This is a rule the Department is proposing to have apply to all foster homes.

5. Interested persons may submit their data, views or arguments to Gwen Knight, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 202951, Helena, MT 59620-2951, no later than 5:00 p.m. on March 9, 2006. Data, views or arguments may also be submitted by facsimile (406)444-1970 or by electronic mail via the Internet to dphhslegal@mt.gov. The Department also maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. For placement on the mailing list, please write the person at the address above.

/s/ Dawn Sliva
Rule Reviewer

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

Certified to the Secretary of State February 13, 2006.

BEFORE THE STATE LOTTERY COMMISSION
DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF AMENDMENT AND
ARM 2.63.201, 2.63.203, 2.63.204,	)	REPEAL
2.63.401 through 2.63.407, 2.63.601)	
through 2.63.604, 2.63.606 through)	
2.63.609, 2.63.611 through 2.63.613,)	
2.63.801, 2.63.1001 and 2.63.1002,)	
2.63.1004, 2.63.1006, 2.63.1007,)	
2.63.1201 and 2.63.1202 and the)	
repeal of ARM 2.63.202 and 2.63.408,)	
concerning the State Lottery's)	
procedures, and rules pertaining to)	
retailers, licensing, scratch tickets and)	
prizes)	

TO: All Concerned Persons

1. On January 12, 2006, the State Lottery Commission published MAR Notice No. 2-2-361 regarding the proposed amendment and repeal of the above-stated rules concerning the State Lottery's procedures, and rules pertaining to retailers, licensing, scratch tickets and prizes at page 1 of the 2006 Montana Administrative Register, Issue No. 1.

2. The Commission has amended the following rules exactly as proposed: ARM 2.63.201, 2.63.203, 2.63.204, 2.63.401 through 2.63.405, 2.63.407, 2.63.601 through 2.63.604, 2.63.606, 2.63.608, 2.63.609, 2.63.611 through 2.63.613, 2.63.801, 2.63.1001 and 2.63.1002, 2.63.1004, 2.63.1006, 2.63.1007, 2.63.1201 and 2.63.1202.

3. The Commission has amended the following rules as proposed, but with the following changes, stricken matter interlined, new matter underlined:

2.63.406 RETAILER BONDING (1) The director ~~will~~ may require a surety bond from the owner or corporation making the application to the lottery to become a of scratch ticket or terminal issue retailers ~~if a determination is made based on credit history of the owner or corporation making application to the lottery.~~ A determination for this bonding requirement is made based on the applicant's credit risk score exceeding a maximum allowable score of 30.

AUTH: 23-7-202 and 23-7-301, MCA
IMP: 23-7-301, MCA

2.63.607 BUSINESS CHANGES (1) through (1)(c) remain as proposed.
~~(d) business interruptions for reasons beyond the owner's control;~~

(e) through (g) remain as proposed, but are renumbered (d) through (f).

AUTH: 23-7-202, MCA

IMP: 23-7-301, MCA

4. The Commission has repealed ARM 2.63.202 and 2.63.408 as proposed.

5. The Commission has thoroughly considered all comments received. The comments received and the Commission's responses follow:

Comment 1: As proposed to be amended, ARM 2.63.406 will provide that "The director will require a bond of scratch ticket or terminal issue retailers if a determination is made based on credit history of the owner or corporation making application to the lottery." What determination will be made should be made clear.

Response 1: The Commission concurs and has amended the rule as shown.

Comment 2: In ARM 2.63.607, a new (1)(d) will be added requiring a licensee to notify the director of "business interruptions for reasons beyond the owner's control". This is extremely broad and includes any interruption for any length of time (no matter how short the time may be) that is beyond the owner's control.

Response 2: Because our new operating system uses Very Small Aperture Terminals (VSATs) for satellite communications, which let us know within 1/10 of a second if a terminal goes down, subsection (1)(d) has been deleted and the remaining subsections renumbered.

By: /s/ Robert Crippen
ROBERT CRIPPEN, CHAIR
MONTANA LOTTERY COMMISSION

/s/ Dal Smilie
DAL SMILIE, Rule Reviewer

Certified to the Secretary of State February 13, 2006.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
AND THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment of ARM)	NOTICE OF AMENDMENT AND
17.30.502, 17.30.516, 17.30.602,)	ADOPTION
17.30.607, 17.30.608, 17.30.610,)	
17.30.615, 17.30.619 through 17.30.629,))	(WATER QUALITY)
17.30.635, 17.30.641, 17.30.645,)	(SUBDIVISIONS)
17.30.650 through 17.30.658, 17.30.702,))	(CECRA)
17.30.705, 17.30.706, 17.30.708,)	(UNDERGROUND STORAGE
17.30.715, 17.30.716, 17.30.1001,)	TANKS)
17.30.1006, 17.30.1007, 17.36.331,)	
17.36.335, 17.36.336, 17.36.345,)	
17.55.102, 17.55.111, and 17.56.507)	
pertaining to Department Circular WQB-)	
7 and the adoption of new rules I and II)	
pertaining to outstanding resource)	
waters)	

TO: All Concerned Persons

1. On October 27, 2005, the Board of Environmental Review and the Department of Environmental Quality published MAR Notice No. 17-232 regarding a notice of public hearing on the proposed amendment and adoption of the above-stated rules at page 1957, 2005 Montana Administrative Register, issue number 20.

2. The Board and Department have amended ARM 17.30.502, 17.30.602, 17.30.607, 17.30.608, 17.30.610, 17.30.615, 17.30.619, 17.30.620, 17.30.623, 17.30.624, 17.30.625, 17.30.626, 17.30.627, 17.30.628, 17.30.629, 17.30.635, 17.30.641, 17.30.645, 17.30.650, 17.30.651, 17.30.652, 17.30.653, 17.30.654, 17.30.655, 17.30.656, 17.30.657, 17.30.658, 17.30.702, 17.30.705, 17.30.706, 17.30.708, 17.30.715, 17.30.716, 17.30.1001, 17.30.1006, 17.30.1007, 17.36.331, 17.36.335, 17.36.336, 17.36.345, 17.55.102, 17.55.111, and 17.56.507 and adopted New Rules I (17.30.617) and II (17.30.638) exactly as proposed and have amended ARM 17.30.516, 17.30.621 and 17.30.622 as proposed, but with the following changes, new material underlined, stricken material interlined:

17.30.516 STANDARD MIXING ZONES FOR SURFACE WATER

(1) through (3)(d) remain as proposed.

(4) The length of a standard mixing zone for flowing surface water, other than a nearly instantaneous mixing zone, must not extend downstream more than the one-half mixing width distance or extend downstream more than 10 times the stream width, whichever is more restrictive. For purposes of making this determination, the stream width as well as the discharge limitations are considered at the 7Q10 low flow. The recommended calculation to be used to determine the one-half mixing width distance ~~for~~ downstream from a stream bank discharge is described below.

- (a) $A_{1/2} = [0.4(W/2)^2V]/2\pi L$, where:
- (i) $A_{1/2}$ = one-half area mixing width distance;
- (ii) through (6) remain as proposed.

17.30.621 A-CLOSED CLASSIFICATION STANDARDS (1) and (2) remain as proposed.

(3) No person may violate the following specific water quality standards for waters classified A-Closed:

(a) The geometric mean number of Escherichia coli bacteria may not exceed 32 colony forming units per 100 milliliters and 10% of the samples may not exceed 64 colony forming units per 100 milliliters during any 30-day period.

(b) through (i) remain as proposed.

17.30.622 A-1 CLASSIFICATION STANDARDS (1) and (2) remain as proposed.

(3) No person may violate the following specific water quality standards for waters classified A-1:

(a) The geometric mean number of Escherichia coli bacteria may not exceed 32 colony forming units per 100 milliliters and 10% of the samples may not exceed 64 colony forming units per 100 milliliters during any 30-day period if resulting from domestic sewage.

(b) through (k) remain as proposed.

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

COMMENT NO. 1: The United States Environmental Protection Agency (EPA) strongly supports the change to E. coli as the bacterial indicator for recreational use. EPA suggests, however, that for waters classified as A-Closed and A-1, the standard should specify an averaging period for determining compliance similar to the averaging period provided in the other classifications.

RESPONSE: The Board agrees that the clarification is needed and has amended the A-closed and A-1 classification as shown above for determining compliance with the E. coli standard.

COMMENT NO. 2: EPA strongly supports the proposed revisions to the numeric criteria in DEQ-7.

RESPONSE: The Board acknowledges the comment.

COMMENT NO. 3: EPA suggests modifying the ammonia standards in DEQ-7 to include specific methods or dates for determining when early life stages (ELS) of fish occur. The ELS should be specific in order to clarify when the ELS chronic standards will apply.

RESPONSE: Determining when ELS occur for purposes of applying the ammonia standards in Montana Pollutant Discharge Elimination System permits is done on a site-specific basis. Although the Department may access a table on a web site to determine the possible presence of ELS, actual conditions may favor a

different result. Therefore, the Board does not believe incorporation of a table or adopting specific dates to determine ELS is warranted. More importantly, since the Board has not proposed amending DEQ-7 to specify when ELS occurs, the suggested modification is outside the scope of this rulemaking.

COMMENT NO. 4: EPA suggests changing the aluminum aquatic life standard from dissolved to total recoverable analysis method.

RESPONSE: Aluminum is an extremely abundant element in minerals that make up suspended sediment from colloidal through sand or larger particle sizes. The total recoverable analysis method extracts an undeterminable amount of the non bio-available aluminum from the suspended sediment resulting in an overestimation of the bio-available fraction. The Board believes the dissolved aquatic life standard for aluminum is protective and is a better estimate of the bio-available fractions in the water including the rare occasions when dissolved and filterable bio-available aluminum particulates are present. Also, since the Board has not proposed changing the aluminum standard to a total recoverable method of analysis, the suggested modification is beyond the scope of this rulemaking.

COMMENT NO. 5: EPA suggests that, for hardness-dependent metals, the minimum hardness value of 25 mg/L as CaCO₃ be eliminated.

RESPONSE: The Board believes that the existing low hardness limit of 25 mg/L as CaCO₃ is protective of aquatic life uses and there is no need to eliminate the hardness limit as a means of deriving more stringent standards for metals. However, the Board also believes that a future technical review of this issue may be a worthwhile effort for the Department. Finally, since the Board has not proposed eliminating the low hardness limit, the suggested change is beyond the scope of this rulemaking.

COMMENT NO. 6: EPA has determined that its earlier informal comment to the Department (suggesting that the mixing zone formula was wrong) was incorrect. EPA now comments that the equation in the current rule is indeed the correct one and should not be modified. EPA further suggests that the equation, as currently written, measures area when it should measure distance downstream from the discharge. In order to ensure that distance is measured, EPA suggests modifying ARM 17.30.516(4) to read: ". . . The recommended calculation to be used to determine the one-half mixing width distance downstream from a stream bank discharge is described below.

(a) $A_{1/2} = [0.4(W/2)^2 V]/L$, where:

(i) $A_{1/2}$ = one-half ~~area~~ mixing width distance;"

RESPONSE: The Board agrees with the comment and has amended the rule as shown above.

COMMENT NO. 7: The Western Environmental Trade Association (WETA) submitted comments stating that the Board's proposed revisions to DEQ-7 express the numeric surface water quality standards as total recoverable and, therefore, are inconsistent with EPA's position that the states should use the dissolved method for determining compliance with ambient surface water quality standards for metals.

RESPONSE: As an initial matter, EPA's position on using a dissolved method of analysis for determining compliance with water quality standards applies only to numeric standards for metals. Since the Board is not proposing to change any of the numeric standards for metals, WETA's comment indicating that the Board is adopting standards in a manner that is inconsistent with EPA is incorrect. Rather than changing the numeric standards for metals, the Board is simply modifying the manner in which the hardness value is displayed in DEQ-7 for hardness dependent metals. The proposed modification for displaying the hardness value does not in any way change the numeric standards themselves. Since the Board has not proposed changing the manner in which compliance with the numeric standards for metals is measured (i.e., from total recoverable to dissolved), WETA's suggestion to change to dissolved is outside the scope of this rulemaking.

COMMENT NO. 8: WETA suggests that the Board's proposal to adopt the amended rules revising the DEQ-7 water quality standards potentially violates Montana state law prohibiting the promulgation of state standards more stringent than corresponding federal regulations, guidelines or criteria, if the Board provides no sufficient scientific and technical evidence to support adoption of the more stringent state standards.

RESPONSE: Since the Board is not proposing to change any numeric standards for metals, the Board is not adopting standards that are more stringent than EPA's. Therefore, no findings are necessary under state law. See Response to Comment No. 7.

Reviewed by:

BOARD OF ENVIRONMENTAL REVIEW

/s/ James M. Madden
JAMES M. MADDEN
Rule Reviewer

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

DEPARTMENT OF ENVIRONMENTAL
QUALITY

BY: /s/ Richard H. Oppen
RICHARD H. OPPER, Director

Certified to the Secretary of State, February 13, 2006.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of ARM)	NOTICE OF AMENDMENT
17.30.1303, 17.30.1304, 17.30.1310,)	
17.30.1322, 17.30.1330, 17.30.1341 and)	
17.30.1343 pertaining to concentrated)	(WATER QUALITY)
animal feeding operations (CAFOs) and)	
adoption of Department Circular DEQ-9)	
(Montana Technical Standards for)	
CAFOs))	

TO: All Concerned Persons

1. On December 16, 2004, the Board of Environmental Review published MAR Notice No. 17-222 regarding a notice of public hearing on the proposed amendment of the above-stated rules at page 2962, 2004 Montana Administrative Register, issue number 24. A public hearing was conducted on January 14, 2005, and numerous comments were received. On June 16, 2005, at page 864, 2005 Montana Administrative Register, issue number 11, under MAR Notice No. 17-227, the Board published an amended notice to provide a six month extension of time for taking final action. On October 27, 2005, at page 1995, 2005 Montana Administrative Register, issue number 20, under MAR Notice No. 17-233, the Board published an amended notice of public hearing proposing to adopt the rules as originally proposed, except for certain provisions vacated by a federal court decision. The second public hearing was conducted on November 25, 2005.

2. The Board did not adopt the proposed amendments to ARM 17.30.1304, 17.30.1310 or 17.30.1341. The Board has amended ARM 17.30.1303, 17.30.1322, 17.30.1330, and 17.30.1343 exactly as proposed in MAR Notice No. 17-233, and has adopted Department Circular DEQ-9 with minor changes in response to comments.

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

COMMENT NO. 1: The Board received both written and oral comments concerning the development of Department Circular DEQ-9. Several agricultural consulting engineers complimented the Board for consolidating various environmental rules and providing design criteria. Commentors stated that Circular DEQ-9 provides guidance to consulting engineers and producers who elect to design their own systems.

RESPONSE: Comment noted.

COMMENT NO. 2: Numerous commentors stated that permit fees for concentrated animal feeding operations (CAFOs) are too high. Several of these

commentors contend that the high permit fees discourage unpermitted CAFOs from coming forward and obtaining permit coverage.

RESPONSE: These comments were submitted in January of 2005. In the spring of 2005 the Montana Legislature lowered CAFO permit fees. 75-5-803, MCA. The statutory fee reduction should help address the commentors' concern about the deterrent effect of high permit fees.

COMMENT NO. 3: Several commentors stated that the 30-day public comment period should be excluded from the CAFO permitting process.

RESPONSE: In the spring of 2005 the Legislature required most CAFO discharge permits to be issued using Water Quality Act general permit procedures. See 75-5-802, MCA. Under general permit procedures, the level of public review depends on the seriousness and complexity of the environmental issues and the level of public interest. For an action with limited environmental impact and little public interest, no public comment is required. However, an opportunity for public comment is required if there is the potential for significant environmental impacts, or if there is significant public interest in the Department's action. A public comment period is also required in cases where an individual CAFO permit is needed because a general permit authorization would not be sufficiently protective of water quality.

It should be noted that the Department may not deny a permit or a permit authorization based solely on unfavorable public comments. In order to affect the decision whether to issue a permit or an authorization, comments must pertain to whether the CAFO will comply with applicable water quality requirements in statute and rule.

COMMENT NO. 4: Several commentors stated that the proposed rules go beyond the authority of the Montana Water Quality Act by requiring all CAFOs to apply, regardless of their discharge status.

RESPONSE: These rules do not require all CAFOs to apply for permits regardless of their discharge status. The federal CAFO rules, as originally promulgated in 2003, did contain such "duty to apply" provisions. Under those provisions, every facility defined as a CAFO was required to obtain a discharge permit. Large facilities were defined as CAFOs based solely on the number and types of animals, without regard to the presence of an actual discharge. However, in February of 2005, a federal court vacated the "duty to apply" provisions in the 2003 federal CAFO rules. Waterkeeper Alliance, Inc., et al. v. USEPA, 399 F.3d 486 (2d Cir. 2005). In this rulemaking, the Board is incorporating the federal CAFO rules by reference, but the provisions in the federal rules that were vacated by the court will not be included. See MAR Notice No. 17-233.

COMMENT NO. 5: Several commentors stated that these regulations are too burdensome. The commentors pointed out that other sources of pollution, such as commercial fertilizer used by farmers, are not regulated to the same extent as the land application of generated waste from CAFOs.

RESPONSE: When EPA revised the effluent limitations guidelines for CAFOs in 2003, the agency conducted an economic analysis to determine what types of treatment technologies or best management practices would be economically

achievable by CAFOs. These proposed regulations have been determined to be cost-effective ways to reduce pollution from CAFOs. The federal Clean Water Act expressly requires discharges from CAFOs to be subject to permitting requirements, even though other agricultural operations are excluded.

COMMENT NO. 6: Several commentors stated that the Board does not have the authority to regulate the land application of waste from CAFOs. These commentors contend that the land application of manure and process-generated waste is a non-point source of pollution, and therefore, outside of the scope of the MPDES permitting program.

RESPONSE: The revised federal CAFO regulations, which are being incorporated by the Board in this rulemaking, define "discharge from a CAFO" to include discharges that result from the application of wastes to land areas under the CAFO's control. 40 CFR 122.23(e). A federal court has upheld EPA's authority, under the federal Clean Water Act, to regulate land application of wastes from CAFOs. Waterkeeper Alliance, Inc., et al. v. USEPA, 399 F.3d 486, 511 (2d Cir. 2005). The Board's statutory authority to adopt CAFO rules is found in 75-5-201, 75-5-304 and 75-5-401, MCA. In addition, 75-5-802(1), MCA, specifically directs the Board to incorporate by reference the federal CAFO regulations.

COMMENT NO. 7: Several commentors stated that the proposed rule package is more stringent than the federal regulations.

RESPONSE: Because the rules simply incorporate the federal CAFO requirements, the rules are not more stringent than the federal rules. No special stringency findings under 75-5-203 and 75-5-309, MCA, are required for the Board to adopt the state standards in Circular DEQ-9 because there are no comparable federal standards. That was the reason that EPA directed states to adopt standards like Circular DEQ-9. See 40 CFR 123.36.

COMMENT NO. 8: Several producers stated that the requirement that CAFOs prevent direct contact of confined animals with waters will prohibit livestock from accessing streams in Montana. Some commentors stated that this requirement was the first step to requiring fencing of all streams.

RESPONSE: The rules require that CAFOs implement best management practices to prevent direct contact of confined animals with waters. 40 CFR 122.42(e)(1)(iv). This requirement applies only to CAFO confinement areas. It does not prohibit range cattle from accessing streams, nor does it eliminate the use of properly designed water gaps.

COMMENT NO. 9: Several producers objected to the use of certified nutrient management planners to develop a nutrient management plan. Additionally, a few commentors inquired as to the qualifications of a certified nutrient management planner.

RESPONSE: The rules do not require the use of certified nutrient management planners to develop a nutrient management plan (NMP). Instead, the rules require that CAFOs report whether or not a certified nutrient management planner developed the facility's NMP. 40 CFR 122.42(e)(4)(vii). When EPA revised

the CAFO regulations, it originally proposed that all NMPs be developed by certified planners. After public comment, EPA decided that there was not enough information at this time to determine whether or not certified nutrient management planners were readily available to all CAFOs. Consequently, the revised rules require only that CAFOs report whether they used a certified planner. EPA will use this information for any future revisions to the CAFO rules.

The proposed Department Circular DEQ-9 provides information on how to find a certified planner in Montana. Certified planners include comprehensive nutrient management planners certified through the Natural Resource Conservation Service and crop advisors certified through the American Society of Agronomy.

COMMENT NO. 10: Several producers stated that the proposed recordkeeping requirements are too burdensome. Additionally, several commentors stated that the number of animals confined and the amount of waste generated is not relevant and cannot be accurately reported.

RESPONSE: The record keeping requirements are necessary to demonstrate the best management practices are being implemented at the CAFO. EPA determined that the best management practices, including routine inspections and the development and implementation of a nutrient management plan, were cost effective ways for CAFOs to reduce pollution.

Because the regulatory definition of a CAFO is based on the number of animals confined for 45 days or more in a 12-month period of time, the information about animal numbers is relevant. Information about the amount of waste generated is relevant to the goal of implementing management practices that are designed to properly manage the waste.

The Board realizes that it is sometimes difficult to summarize the annual waste produced at an operation, especially for open lot facilities where wastewater generation is dependent on rainfall. In order to aid producers, Circular DEQ-9 includes some guidance for calculating waste production. This information is provided for guidance only and is not a required method for calculating waste. To help avoid confusion about how this guidance is to be used, the Circular has been modified to contain procedures for adjusting the calculated daily manure production to reflect natural physical reductions due to evaporation, etc., at open lots. It is important to note that, although producers cannot predict the amount of rainfall they will receive, average rainfall statistics can be used to get a rough estimate of the amount of process wastewater generated at their operations.

COMMENT NO. 11: One producer stated that the specified containment requirements are too stringent.

RESPONSE: CAFOs are required to contain all process-generated wastewater plus the runoff and direct precipitation from a 25-year, 24-hour storm event. This requirement has been in place since the 1970s, and remains the same in the current rules, except for large swine, poultry, and veal calf operations designed and built after April 14, 2003. These latter operations are required, under the revised rules, to build waste control facilities to contain all process-generated wastewater plus the runoff and direct precipitation from a 100-year, 24-hour storm event. 40 CFR 412.46. EPA determined that large swine, poultry, and veal CAFOs

could feasibly meet this requirement because these animals are predominately maintained in confinement housing, without open confinement areas that generate large volumes of contaminated storm water runoff.

COMMENT NO. 12: Several commentors stated that the definitions of animal feeding operations (AFOs) and CAFOs are arbitrary. Additionally, one commentor stated that two or more AFOs under common ownership should only be considered as one if they both discharge to a common runoff control system.

RESPONSE: The regulatory definitions of AFOs and CAFOs are unchanged from the March 18, 1976, federal rule, so the comments about the animal numbers used in the definitions are outside the scope of this rulemaking. The new rules do remove the animal unit as an indicator and replace it with specific animal types. These changes are reasonably designed to address the potential for adverse effects on water quality from CAFOs.

The existing CAFO rules specify that two or more AFOs under common ownership are considered one if they adjoin each other or use a common disposal area. No change to this provision has occurred in the revised rules, so this comment is outside the scope of this rulemaking.

COMMENT NO. 13: Several producers questioned the authority of the Board to require proper mortality management. Additionally, the producers inquired why the Department's current CAFO permit application asks for information regarding programs to control odors, dust, flies, and rodents.

RESPONSE: The revised federal regulations specify that CAFOs must properly dispose of animal mortalities, and prohibit disposal of mortalities in any liquid waste control structure. 40 CFR 122.42(e)(1)(ii); 40 CFR 412.37(a)(4). The EPA determined that proper disposal of animal mortalities could be economically achieved by the CAFO industry and that this practice would further reduce the likelihood of pollutants being discharged into waters. Department Circular DEQ-9 references some additional requirements for animal mortality disposal. These requirements are already part of the state's solid waste rules and are summarized in the Circular so that producers are aware of additional requirements applicable to mortality disposal.

The Board's statutory authority for these rules is found in 75-5-201, 75-5-304 and 75-5-401, MCA. In addition, 75-5-802(1), MCA, specifically directs the Board to incorporate by reference the federal CAFO regulations.

The Department's application form requests information about programs for the control of odors, dust, flies, and rodents. The reason for this is to allow the Department to evaluate any water quality related concerns related to management of those problems. Programs used to control rodents and flies may involve the application of pesticides, resulting in pesticide-contaminated runoff discharging into the waste control structure. A dust control program may involve a spray system that may require additional containment, depending on the volume of water used for suppression.

COMMENT NO. 14: Several commentors questioned the authority of the Board to require that animal waste management systems be designed by qualified

individuals and/or licensed professional engineers. Additionally, one commentor questioned the Board's statutory authority to establish certain design criteria for animal waste management systems. Specifically, this commentor questioned the requirement to follow certain setback distances and application rates.

RESPONSE: The rules require CAFO facilities to be designed, constructed, operated and maintained to contain all manure, litter, and process wastewater including the runoff and direct precipitation from a 25-year, 24-hour storm event (or 100-year, 24-hour storm event for large swine, poultry, or veal calf operations built after April 14, 2003). See, e.g., 40 CFR 412.31. Given the degree of technical knowledge necessary to design a waste control system, the Department originally proposed, in Circular DEQ-9, that plans and specifications should be submitted by a licensed professional engineer. However, after meeting with stakeholders in October of 2004, the Department changed this language to say that plans and specifications must be submitted by an individual qualified to design an animal waste management system. Circular DEQ-9, Section 1, page 5. This change was made so that other design professionals, such as extension specialists, and pre-engineered designs, like those offered through MidWest Plan Service, could be used. This change was appropriate given the deadlines by which producers must comply with these rules, uncertainty about the number of available licensed professional engineers, and the number of other qualified design professionals and/or plans currently available to producers. Because proper design of CAFO waste control systems is important to protect water quality, the Board's authority to adopt MPDES rules includes authority to adopt design standards for waste control systems and to require that such systems be designed by qualified persons.

The design criteria that are the subject of this comment are for the purpose of preventing pollution of state waters. The Board has authority to adopt such criteria under the Water Quality Act. It should be noted that the design criteria are not mandatory because a deviation procedure exists. In order to provide guidance for producers and design professionals as to what constitutes a properly designed system, Circular DEQ-9 contains a list of design criteria. These criteria are based on established industry standards that must be addressed during the design period of each facility. The Circular includes a provision allowing the Department to approve deviations from the listed criteria for situations where site-specific factors warrant a different approach.

The application rate that was questioned by the commentor comes directly from the Natural Resources Conservation Service design criteria for wastewater treatment strips. Under the proposed rules, producers are allowed and encouraged to request a deviation from the design criteria to reflect site-specific factors such as soil type, etc.

The setback distance that is questioned states that sewage lagoons constructed after October 1, 1993, may not be located within 500 feet of existing water wells. This requirement is not new, and reflects existing provisions in the Montana Water Quality Act at 75-5-605, MCA. The pollution potential from animal waste and contaminated storm water runoff that has been concentrated into one area is high. The term "sewage" includes animal wastes. 75-5-103(26), MCA. In order to help protect ground water quality from the contaminants present in this type

of waste, the Circular refers to the statutory setback between sewage lagoons and existing water wells.

COMMENT NO. 15: Several commentors asked that the Department do all that it can to return to the use of a general permit for CAFOs.

RESPONSE: Pursuant to legislation passed in 2005, most CAFO discharge permits will now be issued under Water Quality Act general permit procedures. See 75-5-802, MCA.

COMMENT NO. 16: Several commentors stated that the deadlines for the design and construction of animal waste management systems are not realistic.

RESPONSE: The rules do not contain deadlines for the design and construction of animal waste management systems. The deadlines in the rules require only that producers submit an application to the Department for the CAFO within a certain timeframe.

COMMENT NO. 17: The Natural Resources Conservation Service (NRCS) submitted comments relating to Circular DEQ-9. The comments noted inconsistencies with the basis for land application rates and suggestions for limiting the use of the Montana Fertilizer Guidelines. In addition, one producer commented that phosphorus based application may be too limiting for his operation.

RESPONSE: Changes have been made to the tables listed in proposed Circular DEQ-9 regarding the basis for land application rates. However, Table 21 of the Montana Fertilizer Guidelines will continue to be included in the proposed Circular. The Guidelines provide Montana-specific nutrient removal rates, nutrient requirements, and crop replacement/removal values for the harvested portion. The Guidelines were developed by Montana State University using multiple fields and crops over multiple years. When site-specific information is available or is known through actual field experience, the producer is required to maintain this information as part of the recordkeeping requirements to ensure that nutrients are applied at agronomic rates.

COMMENT NO. 18: A few comments were received regarding the proposed best management practices. One producer inquired as to how strictly these best management practices must be followed. Another commentor objected to the best management practice listed in proposed Circular DEQ-9 that states that animals must be prohibited from entering into waste containment structures or their dikes, unless expressly stated in a facility's Operation and Maintenance Plan and approved by the Department. The NRCS also suggested that the best management practices regarding the application of waste to frozen or snow-covered ground be modified to require identification of those application areas in the approved plan.

RESPONSE: Under the revised federal regulations, it is mandatory that CAFOs develop and implement best management practices to comply with the applicable effluent limitation guidelines. 40 CFR 122.42(e)(1). Circular DEQ-9 summarizes all of the best management practices that are set out in the federal regulations. Circular DEQ-9, Section 4. The Circular uses the terms "must" and "should" to distinguish between mandatory and recommended measures.

The rules require that all waste control facilities be properly operated and maintained. 40 CFR 122.42(e)(1)(i). During routine inspections and complaint investigations, the Department has documented numerous occasions where producers have destroyed their waste control structures by allowing animals access. The Circular clarifies that proper maintenance of a waste control structure would not ordinarily include the confining of animals in the lagoon or containment structure. Trampling of the dikes and berms would affect the containment structure's waste holding capabilities.

Circular DEQ-9 requires the producer to notify the Department prior to applying liquid manure or process wastewater to frozen ground. Circular DEQ-9, Section 4, page 18. This will allow the Department to review a proposed application site based on current conditions at the site at the time of application.

COMMENT NO. 19: The NRCS submitted comments asking that certain items in proposed Circular DEQ-9 be defined or clarified.

RESPONSE: Minor changes have been made to the Circular for clarity. Changes have been made to correct typographical errors and to incorporate wording for clarification. In addition, the terms "shall," "must," "may not," and "required" have been bolded to more clearly indicate enforceable provisions of the Circular. Terms such as "should," "may," and "recommended" are merely suggestions and are provided to assist producers in locating information.

COMMENT NO. 20: One commentator wanted to make sure that the Board rules did not go beyond the federal CAFO rules.

RESPONSE: See Response to Comment No. 7.

Reviewed by:

BOARD OF ENVIRONMENTAL REVIEW

/s/ James M. Madden
JAMES M. MADDEN
Rule Reviewer

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

Certified to the Secretary of State, February 13, 2006.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
AND THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment of ARM)	NOTICE OF AMENDMENT
17.36.345, 17.38.101, 17.38.106,)	
17.38.208, and 17.38.229 pertaining to)	(PUBLIC WATER)
adoption by reference, plans for public)	(SEWAGE SYSTEM
water supply or wastewater system,)	REQUIREMENTS)
fees, treatment requirements, and)	(SUBDIVISIONS)
disinfection)	

TO: All Concerned Persons

1. On October 27, 2005, the Board of Environmental Review and the Department of Environmental Quality published MAR Notice No. 17-234 regarding a notice of public hearing on the proposed amendment of the above-stated rules at page 2002, 2005 Montana Administrative Register, issue number 20.

2. The Department has amended ARM 17.36.345 exactly as proposed, and has adopted Circulars DEQ-1 and DEQ-3 with changes in response to comments as set out in paragraph 3. The Board has amended ARM 17.38.101, 17.38.106, and 17.38.208 exactly as proposed. The Board has adopted Circulars DEQ-1 and DEQ-3 with changes in response to comments as set out in paragraph 3, and has amended ARM 17.38.229 as proposed, but with the following changes, new material underlined, stricken material interlined:

17.38.229 DISINFECTION (1) Full time disinfection with chlorine, chlorine dioxide, chloramines, or a disinfectant that maintains a residual is mandatory where the source of water is from lakes, reservoirs, or streams, or ground water sources under the direct influence of surface water, or where the water may be exposed to a potential source of contamination including, but not limited to:

(a) losses of ~~positive~~ pressure within the system that could result in backflow or infiltration conditions; or

~~(b) unprotected or poorly protected ground water sources; or~~

(c) remains as proposed, but is renumbered (b).

(2) Full time disinfection of the water supply is mandatory whenever the water may be exposed to a potential source of contamination through:

(a) treatment processes, as determined by the department; or

(b) unprotected or poorly protected ground water sources.

(3) Full time disinfection of the water in a ground water supply system is mandatory whenever the record of bacteriological tests of the system does not indicate a safe water under the criteria listed in ARM 17.38.207 and 17.38.215. Full time disinfection with chlorine, chlorine dioxide, chloramines, or a disinfectant that maintains a residual may be required where the history and nature of the contaminant indicate a residual is required to ensure safe water.

(4) remains as proposed.

(5) The residual disinfectant concentration measured as free chlorine, total chlorine, combined chlorine, chlorine dioxide, or other department approved disinfectant(s), in the distribution system of a ground water supply system required by the department to use continuous disinfection with chlorine, chlorine dioxide, chloramines, or a disinfectant that maintains a residual must not be less than 0.2mg/l using the DPD method or 0.1mg/l using the amperometric titration method. A heterotrophic bacteria concentration in water in the distribution system less than or equal to 500 per milliliter, measured as heterotrophic plate count (HPC), is an acceptable substitute for disinfectant residual for purposes of determining compliance with this rule.

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

COMMENT NO. 1: In ARM 17.38.229(1)(a), clarify when disinfection with chlorine will be required. Every ground, elevated, or pumped storage system has pressure losses in the distribution system.

RESPONSE: The intention is to require disinfection with chlorine when loss of pressure within the distribution system could result in backflow or infiltration conditions that could expose the system to sources of contamination. The rule has been amended as shown above in response to this comment.

COMMENT NO. 2: The proposed rule language in ARM 17.38.229 limits the use of alternative disinfectants other than chlorine.

RESPONSE: The Board recognizes that other disinfectants may be appropriate in certain situations. ARM 17.38.229(1)(b) has been removed and placed in 17.38.229(2) to allow other disinfection methods for ground water systems that are unprotected, poorly protected, or may be exposed to a potential source of contamination.

The language in ARM 17.38.229(1), (3), and (5), that refers to the use of chlorine, has been expanded to include chlorine dioxide, chloramines, or a disinfectant that maintains a residual. The term "chlorine" was intended to include any form of chlorine, such as chlorine dioxide or chloramines. However, the additional language will clarify what type of disinfectant is acceptable.

The requirement for chlorine, chlorine dioxide, chloramines, or a disinfectant that maintains a residual for surface water and ground water under the direct influence of surface water is contained in ARM 17.38.229(1). The Surface Water Treatment Rule (SWTR) as promulgated by the Environmental Protection Agency (EPA) has been adopted by reference in its entirety by the Board. The SWTR requires all regulated systems (surface water and ground water under the direct influence of surface water) to maintain a minimum disinfectant residual at the entry to the distribution system of 0.2 mg/L measured as free chlorine, total chlorine, combined chlorine, or chlorine dioxide, and that the disinfectant residual be detectable within the distribution system. Therefore, the rules must require systems regulated under the SWTR to use a disinfectant that maintains a residual, such as chlorine, chlorine dioxide, or chloramines. However, disinfectants other than chlorine can and have been used by systems to achieve primary inactivation of

pathogens. Please refer to Comment No. 3 and the Response to that comment for information on disinfectants that are allowed for primary inactivation of pathogens.

The language that requires ground water systems to maintain a disinfectant residual where protection of the distribution system is necessary is contained in ARM 17.38.229(3). Other disinfectants such as ozone or UV decay rapidly and cannot provide the residual necessary to protect the distribution system.

COMMENT NO. 3: There are several other disinfection methods, including EPA-approved filtration, ozonation, and UV systems that can remove or destroy microbial species as effectively if not more effectively than chlorine depending on the type of microbe.

RESPONSE: The Board has previously adopted by reference all currently promulgated EPA drinking water rules that apply to systems using either surface water or ground water under the direct influence of surface water as follows:

Surface Water Treatment Rule (SWTR) (40 CFR Sections 141.70 through 141.75)

Interim Enhanced Surface Water Treatment Rule (40 CFR Sections 141.170 through 141.175)

Long Term 1 Enhanced Surface Water Treatment Rule (40 CFR Sections 141.500 through 141.571)

These rules require that a system achieve removal and/or inactivation of Cryptosporidium, Giardia, and viruses through a combination of treatment (consisting of coagulation, flocculation, sedimentation, and filtration) and/or disinfection. The Board and Department recognize that chlorine is ineffective against Cryptosporidium and require surface water systems to install treatment processes (coagulation and filtration) to physically remove Cryptosporidium or implement a watershed control plan and monitoring to comply with the criteria to avoid filtration as stipulated in 40 CFR Section 141.71. The SWTR lists a number of disinfectants (chlorine, chlorine dioxide, and ozone) that can be used to achieve primary inactivation of pathogens and the rules allow the use of these disinfectants.

COMMENT NO. 4: There is substantial research regarding the potential negative health impact of chronic exposure to chlorinated disinfection byproducts.

RESPONSE: The Board and Department recognize that chlorine combines with organic matter to form disinfection byproducts. The Board has adopted by reference the Disinfectants and Disinfection Byproducts Rule (Stage 1) as promulgated by EPA. The rules currently require any system (surface water and ground water) that uses a chemical disinfectant to monitor for all regulated disinfection byproducts, including total trihalomethanes and haloacetic acids. Surface water systems that practice filtration typically achieve substantial organic removal to limit the formation of disinfection byproducts. Therefore, chlorine used for disinfection purposes after filtration has not created any issues with Stage 1 compliance. However, there are some systems that are developing alternative

treatment strategies, including the use of disinfectants other than chlorine, to address high disinfection byproduct concentrations.

COMMENT NO. 5: Circular DEQ-1, Standard 2.18. Will the revised wording, mandating compliance with all other applicable safety codes and regulations, require Department staff to review plans for compliance with other codes and will approval constitute compliance with those codes?

RESPONSE: Department staff will not review plans for compliance with other applicable codes. The revisions require only that the applicable codes be referenced in the specifications or engineering report narrative. Department review and approval is limited to the Department's authority under Title 75 of the Montana Code Annotated.

COMMENT NO. 6: Circular DEQ-1, Standard 6.0. The revised wording may be interpreted by the Department to require that valves, meters, and controls be placed above ground.

RESPONSE: This standard does not apply to valves, meters, or controls, but only to pumping stations as covered in Chapter 6. In addition, the term "should" indicates desirable procedures or methods, not mandatory requirements (see Circular DEQ-1, Forward). The requirements for distribution system appurtenances such as valves and meters are covered in Standard 8.6, which states "Whenever possible, chambers, pits or manholes containing valves, blow-offs, meters or other such appurtenances to the distribution system must not be located in areas subject to flooding or in areas of high ground water." As long as the valve or meter location is not subject to flooding or high ground water, it may be buried underground.

COMMENT NO. 7: Circular DEQ-1, Section 7.0.1. Where small systems are required to provide fire flow, the increase in water storage capacity may result in stagnation and poor water quality. The Department may want to establish a maximum number of days for turnover in a storage tank. Some flexibility should be given to small systems to balance stagnant water issues with fire protection capacity.

RESPONSE: The Board and Department do not concur with this recommendation since the risk of negative pressures under fire flow conditions could result in a serious health hazard. If less storage is appropriate for a specific situation, a deviation can be granted.

COMMENT NO. 8: Circular DEQ-1, Standard 7.0.1 seems to require a minimum of maximum day demand or average day demand. Which is correct?

RESPONSE: The Board and Department concur that the wording of this standard may be confusing and have made changes to the Circular.

COMMENT NO. 9: In Circular DEQ-1, Standard 7.0.8, changing the word "manholes" to "manways" may clarify the meaning.

RESPONSE: The Board and Department concur with this comment and have made changes to the Circular.

COMMENT NO. 10: In Circulars DEQ-1 and DEQ-3, revised wording regarding fire flow determinations needs clarification.

RESPONSE: The Board and Department concur that these Standards may require clarification and has made changes to the Circulars.

COMMENT NO. 11: Circular DEQ-1, Section 8.2.2. If a professional engineer properly designs the system, why do we have to set a minimum on main size? There are scenarios where a 2" main would meet the system requirements.

RESPONSE: The Board and Department concur that setting a minimum size may be unnecessarily restrictive and have changed this Standard from a requirement to a recommendation. There is adequate justification for leaving the recommended 3" size as small pipes have small hydraulic radii and this increases water quality deterioration through contact with the pipe wall, increases friction through interior incrustations and associated decreases in hydraulic capacity, and increases the relative effect of joint leakage. The recommended size also gives some margin of safety for disparate predictions of peak instantaneous demand. The Board and Department have made changes to the Circular.

COMMENT NO. 12: Circular DEQ-1, Standard 8.15. This new Standard requires Department approval of temporary water distribution during construction. Temporary water usually falls under the purview of the project contractor, rather than the design engineer. A delay of 60 days for review of the contractor's plan would have major financial and schedule impacts. It would be ideal for the Department to establish temporary standards so that contractors and engineers know what the standards are and the design engineers can enforce them.

RESPONSE: The Board and Department concur that objective standards that can be included in the contract specifications are appropriate. If these requirements are included in the contract specifications, the project contractor will not be required to submit an additional plan for approval. The Board and Department have made language changes to the Circular.

COMMENT NO. 13: Certified Checklists. Two engineers from the same firm should be able to stamp Main Extension Certified Checklists where the public water system does not have a City Engineer on staff or on retainer.

RESPONSE: The intent of the certified checklist procedure was to allow for a shortened review process when the project was reviewed by an independent engineer acting on behalf of the public water supply rather than a project developer. However, current language allows review by an engineer from the same firm as long as the review engineer is acting on behalf of the PWS rather than the developer, and the PWS submits a letter of concurrence.

COMMENT NO. 14: One additional comment was received on December 24, 2005, one month after the public comment period closed.

RESPONSE: The additional comment was duplicative of Comment No. 4. The Board and Department response to this comment is contained in Response to Comment No. 4.

Reviewed by:

BOARD OF ENVIRONMENTAL REVIEW

/s/ James M. Madden
JAMES M. MADDEN
Rule Reviewer

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

BY: /s/ Richard H. Opper
RICHARD H. OPPER, Director

Certified to the Secretary of State, February, 2006.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the	)	NOTICE OF AMENDMENT
amendment of ARM 24.29.4301,)	
24.29.4303, 24.29.4314,)	
24.29.4321, 24.29.4332, and)	
24.29.4335, all related to)	
the workers' compensation)	
reporting database)	

TO: All Concerned Persons

1. On August 25, 2005, the Department of Labor and Industry published MAR Notice No. 24-29-198 regarding the public hearing on the proposed amendment of the above-stated rules relating to the workers' compensation reporting database at page 1570 of the 2005 Montana Administrative Register, Issue no. 16.

2. On September 14, 2005, the Department of Labor and Industry held a public hearing in Helena regarding the above-stated rules at which oral comments were received. Additional written comments were received prior to the closing date of September 23, 2005.

3. The Department has thoroughly considered the comments and testimony received. The following is a summary of the comments received and the Department's responses to those comments:

Comment 1: A comment requested an explanation of the purpose of the reporting requirements for claimants' attorneys.

Response 1: As provided by 39-71-225, MCA, the purpose of the workers' compensation reporting database system is to provide management information to the legislative and executive branches. To that end, the department has adopted the International Association of Industrial Accident Boards and Commissions (IAIABC) reporting standards. These standards detail reporting requirements for insurers. However, the standards do not detail reporting requirements for attorneys. The department needs to gather data in order to compare the amount of legal fees paid by insurers versus the amount of legal fees paid by claimants on workers' compensation claims, as part of the collection of the costs of legal involvement as required by 39-71-225(2)(a)(iii), MCA. Hence, the department initially promulgated ARM 24.29.4332 in 1995 regarding claimants' attorney reporting. Over time, the department discovered that the reports from claimants' attorneys do not allow for meaningful comparison because the reports do not cover the same time period as reports from insurers. In addition, more reporting was required than was useful. The rule amendments adopted in this notice are intended to make claimant attorney

and insurer reporting more uniform and at the same time reduce reporting requirements, in order to provide more useful data.

To that end, as indicated below, the department has changed the claimant attorney reporting rule to require an initial report upon the first payment of legal fees rather than upon the first payment of costs by a claimant. Therefore, the first report is not required until the first payment of a fee. Because the majority of fee payments occur upon settlement, only one report in total is required from claimants' attorneys in that situation. The department estimates about 75% of reporting on attorney fees paid by claimants will occur on a one-time basis.

Further, certain legal fee payments confuse the straightforward purpose of comparing fees paid by claimants to fees paid by insurers. For example, in the case of liens, although an insurer makes the payment of the fee, the actual fee comes out of the claimant's benefits and must therefore be categorized as paid by the claimant. Under Montana's application of IAABC standards, insurers report these payments as claimants' benefit payments. Therefore, the department requires claimants' attorneys to report these fees, the same as all other fees and costs paid by or on behalf of a claimant, in order to come up with proper comparison data.

Comment 2: Numerous comments were received from claimants' attorneys stating the proposed amendment to ARM 24.29.4332(2) was unreasonably burdensome because it required the initial legal fee report within 14 days of receipt of the first payment of legal costs for each claim. Under such a requirement, the attorneys commented they would be required to file reports on every claim right at the beginning since the first cost charged to claimants is the cost of getting a copy of the file from the insurer.

Response 2: The department agrees that such a requirement is unduly burdensome and accordingly has amended ARM 24.29.4332(2). As amended, the initial legal fee report will be required when the attorney actually receives the first fee payment from the claimant on or behalf of the claimant. Therefore, no reporting of costs is required when the attorney receives the first cost payment, but costs are then reported when fees are reported.

Comment 3: Numerous comments were received from claimants' attorneys and from the Montana Trial Lawyers Association stating the proposed amendments to ARM 24.29.4332 would cause an undue burden upon them because they believed the rule would increase the number of reports that are required. They also commented such an undue burden would in turn be an increased burden on claimants because the existing regulation of workers' compensation claims already reduces the number of attorneys willing to represent such claimants.

Response 3: In light of the amendment discussed in Response 2, the department believes the proposed rule decreases the reporting requirements because the first report due, the initial report, is only submitted when the attorney actually receives a payment of fees. As mentioned, many times the first and only payment of fees is at

settlement. The proposed rule therefore requires only one report in cases where the first and only fee payment received is at settlement. As a result, the department does not believe the new reporting requirements will cause an undue burden on claimants' attorneys. In the cases where the attorney receives biweekly payments of legal fees, then the initial legal report is due within 14 days of the first fee payment and a subsequent legal fee report is due within 14 days of each six-month anniversary of the injury or occupational disease until no further fees are expected.

Comment 4: Numerous comments were received from claimants' attorneys questioning why six-month intervals were important because the attorneys believed the calendaring process for six-month intervals would be burdensome. A comment was also received that it was burdensome to have the reports due within 14 days of the triggering event because attorney billing is usually done on a 30-day basis.

Response 4: As discussed in the "General Statement of Reasonable Necessity" in the proposal notice, the department determined its business processes and rule related to attorney reporting of fees and costs should be consistent with insurer reporting in order to get more meaningful results from the data reported. Insurers are required to report their legal fees and cost payments at six-month intervals on the subsequent reports they submit to the department as required by ARM 24.29.4321(3), so this notice amends the rule to place claimant attorney reporting on a six-month interval as well.

The department does not believe the six-month interval will require burdensome calendaring for the small percentage of claims that are not dealt with in one report upon settlement because the department sends a reminder to attorneys just prior to the six-month anniversary for each subsequent report that is due. Therefore, claimants' attorneys do not need to calendar reports.

Regarding the 14-day window, the previous version of ARM 24.29.4332(4) required claimants' attorneys to submit the reports within 10 days of the triggering event. The 14 days is consistent with insurer's reporting requirements and is longer than the previous rule. The department intends to use the due date to trigger reminder notices and follow-up with attorneys who may have missed submission of reports. No other consequences are planned. Therefore, the department concludes the 14-day time frame is not unduly burdensome.

Comment 5: Numerous comments were received from claimants' attorneys stating the complexity of apportioning legal fees and costs to separate claims when the attorney represents the claimant on multiple claims.

Response 5: The department agrees this could result in unnecessary problems and has amended ARM 24.29.4332(2) accordingly.

Comment 6: A couple of comments were received that questioned why ARM 24.29.4332(1)(b) specifically referenced the Lockhart case and stated it was not clear or necessary.

Response 6: The department agrees with the comment and agrees it is not necessary to specifically refer to the Lockhart case. The department has amended ARM 24.29.4332(1)(b) accordingly. The department also amended ARM 24.29.4332(6)(a) to clarify that the report must include the, “total amount of legal fees paid to date by the claimant or on behalf of a claimant.”

Comment 7: A couple of comments stated the rules weren’t clear as to who reports the claimant legal fees and costs paid by the insurer. The commenter stated the payment reports might be duplicated if the rule isn’t clear.

Response 7: The department agrees that the rules need to be clarified to indicate that the insurer reports the insurer's legal fees and costs paid by the insurer, while the claimants' attorneys report the legal fees and costs paid by or on behalf of the claimant. Regarding claimant's legal fees and costs that are paid by the insurer to claimants' attorneys as part of a settlement, under IAIABC standards, insurers currently report these payments as claimants' benefits payments rather than payments of legal fees and costs. Therefore, the department requires claimants' attorneys to report their fees and costs payments in order to accurately show what is paid as legal fees and costs. The department is then able to use IAIABC reporting codes for insurers to properly compare the data. The department has amended ARM 24.29.4335(1) to clarify that insurers report on a per-claim basis, the amount of the insurer’s legal fees and costs. Insurer reporting of benefits remains as it has always been reported under ARM 24.29.4321.

Comment 8: A comment was received that recommended replacing the term “trading partner” with “reporting agent”, amending all references of “legal fees” to “attorney fees”, and deleting references to “consultant fees”. The commenter noted that 39-71-225, MCA, and associated statutes use the phrase attorney fees rather than legal fees. The commenter also suggested amending the insurer reporting requirements by itemizing the legal cost items in order to make the insurer rule read the same as the claimant attorney rule.

Response 8: The department participates in the IAIABC’s efforts to nationally standardize the reporting requirements so the department chooses to use the IAIABC terms and definitions wherever possible. The terms “trading partner” and “legal fees” are defined in the IAIABC Data Dictionary so the department will not change these terms.

ARM 24.29.4339 was not noticed or part of the hearing process for these rules changes, and therefore, the department cannot address the rule's use of the phrase "consultant fees" in this notice of amendment. The department will take into consideration the comment recommending deletion of “consultant fees” at the next update to these rules.

The department does not believe the insurer rule needs to read the same as the attorney rule at this time because insurer reporting is much more extensive and is

detailed by the IAIABC reporting requirements. ARM 24.29.4321 addresses general insurer reporting and does not contain specifics due the IAIABC standards. ARM 24.29.4335 regarding insurer reporting of legal fees is simply intended to clarify that this reporting is required in addition to the reporting in ARM 24.29.4321. However, the insurer reporting under ARM 24.29.4335 is also under IAIABC standards.

Comment 9: The Montana Self-Insurers Association commented that the complete set of rules should be included in the proposed rules notice so that readers could better understand the meaning and consequences of the proposed changes.

Response 9: While the department agrees including the complete rules in a rules notice aids readers in understanding the proposed changes, such an approach would substantially increase the cost of rules notices due to the per page charges for publication by the Secretary of State and for additional copying and mailing expense. The department prefers to hold down costs and will provide complete copies of rules to any interested party that makes a specific request so that the party can read the notice within its complete context. The department also makes its current rules accessible on the internet for this and other purposes.

Comment 10: Two comments pointed out that by including the phrase "but are not limited to" to preface the list of costs required to be reported by claimants' attorneys, ARM 24.29.4332 could cause disagreements about reporting requirements for costs.

Response 10: The department acknowledges the potential for disagreement but believes the potential is small. In the past, claimants' attorneys have reported costs and the department has not had any problems with the reports. The list is included in the rule as a guideline to reporting all costs.

Comment 11: One comment asked whether claimants' attorneys will have to report the information in a specific electronic format.

Response 11: Currently, the department will accept reports from claimants' attorneys via email, fax, or mail. The department does not require electronic reporting at this time.

Comment 12: One comment wondered whether any report would have to be filed if there is nothing new to report in six months.

Response 12: If it is not a first and final report due to one payment at settlement, reports have to be filed every six months even if no information has changed. In this circumstance, the department suggests refiling the last report by simply copying it and updating the date.

Comment 13: One comment thought that claimants' attorneys should not have to report on six-month intervals because under ARM 24.29.4335, insurers only report on a per claim basis.

Response 13: Insurers are also required to report in six-month intervals. The "per-claim" language in ARM 24.29.4335 is required every six months by virtue of the reference to ARM 24.29.4321.

Comment 14: Keith Messmer, Chief of the Workers' Compensation Regulations Bureau, commented that the Uninsured Employers Fund (UEF) should be excluded from the "subsequent report" reporting requirement in ARM 24.29.4321(3). He stated the UEF does not have a benefit payment database that can provide the information in an electronic format and that the expense of reporting the data manually would outweigh the benefit since UEF has only a small number of claims per year. He explained that the UEF also might not make payments at the same times and in the same amounts as insurers since payments are dependent on funding. He also pointed out that 39-71-225, MCA, does not require the UEF to report data because the UEF does not meet the definition of an insurer or of any of the other required reporting parties. Finally, he noted that the UEF provides year-end statistical data to the department for inclusion in the department's Workers' Compensation Annual Report.

Response 14: The department agrees that the UEF should not submit subsequent reports because the UEF is not required to by statute and because the potential data submitted by the UEF is not necessarily comparable or useful for database purposes. The department has amended ARM 24.29.4321(3), as indicated below, to exclude UEF from the requirement of submitting subsequent reports.

4. After consideration of the comments, the department has amended ARM 24.29.4301, 24.29.4303, and 24.29.4314 exactly as proposed.

5. After consideration of the comments, the department has amended ARM 24.29.4321, 24.29.4332, and 24.29.4335 as proposed, but with the following changes, stricken matter interlined, new matter underlined:

24.29.4321 INSURER REPORTING REQUIREMENTS--INJURIES AND OCCUPATIONAL DISEASES (1) All insurers and the UEF are required to submit a first report of injury ~~and or~~ occupational disease to the department within 30 days of the report to the insurer of the accident or of an occupational disease.

(2) remains as proposed.

(3) All insurers ~~and the UEF~~ are required to submit to the department a workers' compensation subsequent report for every indemnity claim within 14 days of the occurrence of any one of the following triggering events:

(a) through (6) remain as proposed.

AUTH: 39-71-203, MCA

IMP: 39-71-225, 39-71-307, MCA

24.29.4332 CLAIMANT LEGAL FEES AND COSTS REPORTING REQUIREMENTS (1) All attorneys that represent claimants shall report, on a per-claim basis, the amount of legal fees and costs received for each claim where:

(a) the attorney has an approved fee agreement; and
(b) the attorney actually receives a fee from the claimant or on behalf of a claimant. ~~For purposes of this rule, a fee received on behalf of a claimant as a result of a Lockhart lien is a fee withheld by the insurer from a payment to the medical provider and issued to the attorney pursuant to Lockhart v. New Hampshire Ins. Co., 1999 MT 205, 295 Mont. 465, 984 P.2d 744.~~

(2) An initial legal fee report must be reported to the department within 14 days of the date the attorney actually receives the first fee or cost payment for each claim. If an attorney represents a claimant on multiple claims, the fees and costs for all claims need only be reported on one of the claims.

(3) through (5) remain as proposed.

(6) A claimant attorney must report to the department, in the form prescribed by the department, the following information:

(a) the total amount of ~~attorney~~ legal fees paid to date by the claimant or on behalf of a claimant; and

(b) through (b)(vi) remain as proposed.

AUTH: 39-71-203, MCA

IMP: 39-71-225, MCA

24.29.4335 INSURER LEGAL FEES REPORTING REQUIREMENTS

(1) All insurers shall report, on a per-claim basis, the amount of the insurer's legal fees and costs, claimant's legal fees, and including fees paid to expert witnesses, that have been paid to date by the insurer, associated with each indemnity claim. That information must be reported on the subsequent report required by ARM 24.29.4321.

(2) remains as proposed.

AUTH: 39-71-203, MCA

IMP: 39-71-225, MCA

/s/ MARK CADWALLADER

Mark Cadwallader,
Alternative Rule Reviewer

/s/ KEITH KELLY

Keith Kelly, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State February 13th, 2006

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the adoption of NEW) NOTICE OF ADOPTION
RULES I through XVIII pertaining to)
the elevator services occupational)
licensing program)

TO: All Concerned Persons

1. On November 23, 2005, the Department published MAR Notice No. 24-142-1 regarding the public hearing on the proposed adoption of the above-stated rules relating to the elevator services occupational licensing program, at page 2293 of the 2005 Montana Administrative Register, issue no. 22.

2. On December 15, 2005, at 9:00 a.m., a public hearing was held in Helena, Montana, and several members of the public spoke at the public hearing. In addition, written comments were received prior to the closing of the comment period.

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

Comment 1: A comment was received that during the passage of Senate Bill (SB) 412 the term elevator was purposely not associated with the limited mechanic license. This limited mechanic license was for residential work only and it is understood that any commercial elevator installation such as for churches, businesses, or public buildings must be performed by a company that holds an elevator contractors license. All references in the new elevator program rules to a "limited elevator mechanic's license" should be changed to reflect that they are "limited mechanics licenses." Another commenter stated that the term "license limited residential mechanic" is an option to clarify this as well.

Response 1: The Department agrees with the commenter and has deleted the term elevator in the rules as suggested. Placing "elevator" after "limited" was an oversight in the rules and has been removed from all sections of the new rules. The current law, 37-73-203(5), MCA, specifically states that a limited mechanic license authorizes a licensee to work only on platform lifts, stairway chairlifts, and dumbwaiters that are installed in private residences. This law does not grant the Department the authority to allow a limited mechanic to work on nonresidential installations. The law does not define or use the term residential mechanic so therefore residential mechanic is not used to describe those that work only on residential elevators.

Comment 2: Three commenters stated that the fees for a temporary permit should be reduced from \$50 to \$25. One stating that \$25 was more reasonable and the other stating that it would be similar to the State of Washington if reduced.

Response 2: Fees must be commensurate with costs as required by 37-1-134, MCA. The fees were set based on the Department's best estimates for licensure costs in Montana. The fees will be monitored and changed accordingly (either up or down) as required in the future, in keeping with the statutory requirement.

Comment 3: Three commenters stated since the law was signed into effect on April 19, 2005, this date should be used for prior experience instead of October 1, 2005.

Response 3: The effective date of the legislation is the date used. Although Senate Bill 412 was signed by the Governor in April 2005, the effective date was not until October 1, 2005, as indicated in the bill itself. Therefore, the Department concludes that the prior experience must have been obtained by October 1, 2005, pursuant to 37-73-203, MCA.

Comment 4: A comment was received that the state should require elevator installers who previously worked on elevators to have three years experience to qualify for grandfathering. Consideration by the state should be made focusing on the amount of elevator work the person has completed. In the State of Washington, 1,800 hours is considered one year of experience.

Response 4: The Department will review and consider for licensure all applicants that can demonstrate they have attained at least three years of experience. Based on a typical nine-month construction season in Montana, 1,500 hours per year will be required. The 1,500 hours per year provision has been added to the qualifications for elevator mechanics in New Rule VII.

Comment 5: Three commenters stated that work done under a temporary permit should be allowed to be checked on an appropriate basis rather than on a daily basis. These comments are based on the following: If an elevator contractor had an elevator mechanic available to check the work daily there would be no need for a temporary permit. Secondly, based on the size of Montana it could create a hardship on the company to supply a mechanic to travel for daily checks on installation. Third, upon completion of a job the state sends an elevator inspector to inspect the installation. Finally, if a mechanic goes on vacation they would be checked when the mechanic returned.

Response 5: New Rule XII regarding the temporary permit has been amended to remove the checking of work on a daily basis. However, the elevator contractor is still responsible for ensuring that work performed by an individual working under a temporary permit is checked to ensure public safety. The elevator inspector is not the responsible party to ensure that each aspect of the installation is done correctly.

Comment 6: Many individuals stated concerns about being limited to residential installations only. They stated that similar conveyances are also installed in churches or as handicap access to buildings. Current contractors expressed worry about being put out of business by the new laws and rules.

Response 6: The Department is obligated to implement the laws enacted by the Montana legislature, which in 2005 made the public policy decision to require licensure in the elevator and lift industry. The current law, 37-73-203(5), MCA, specifically states that a limited mechanic license authorizes a licensee to work only on platform lifts, stairway chairlifts, and dumbwaiters that are installed in private residences. This law does not grant the Department the authority to allow a limited mechanic to work on nonresidential installations. Commercial (e.g., nonresidential) installations will require an elevator contractor's license and licensed elevator mechanics for the installation. Those with experience of at least three years prior to October 1, 2005, will be grandfathered in as appropriate.

Comment 7: A commenter stated that the law does not appear to address the area of handicap and limited use/limited application ("LU/LA") type conveyances. The commenter posed the question whether the commercial elevator contractors would be prepared to perform this type of work. A church typically does not want to add an elevator for full public conveyance but simply to meet handicap accessibility requirements. This is true for small businesses as well. Past impressions on this subject have led the commenter to believe that the commercial contractors are not interested in this type of work.

Response 7: Types of nonresidential installations that a limited mechanic may install cannot be addressed in these rules; such changes would require legislative action. Current statute allows limited mechanics to work on only residential installations.

Comment 8: A comment was made regarding New Rule V(4) in that it does not appear to include the limited elevator contractor. It appears to only include licensed elevator contractors. Subsections (5), (6), (7), (8) seemed to include both limited and elevator contractors.

Response 8: Section (4) was designed to apply to limited elevator contractors as well as elevator contractors. Neither limited elevator contractors nor elevator contractors can allow any person who does not meet the requirements listed in (4)(a) through (c) to perform installation or repair work. The rule has been amended accordingly.

Comment 9: Three individuals expressed concern over using only licensed individuals for installations. The common term used was "helper" and the need to be able to use unlicensed individuals to help move large components of an installation. A related concern was an increased expense of an installation will be passed on to Montana residents if all individuals must be licensed.

Response 9: An addition has been made to the definition rule (New Rule II) to include "helper" which means an individual who is assisting with the installation of conveyance components by a licensed elevator mechanic or limited mechanic.

Comment 10: The process of obtaining a limited mechanic's license is not described in rule although New Rule X does describe the elevator mechanics license application process. Does the grandfather clause apply to a limited mechanic and the limited elevator contractor?

Response 10: The Department has changed the catchphrase of New Rule X to include limited mechanics because the application process would be similar to an elevator mechanic. The only difference is the type of experience required to obtain a license, which is specified in New Rule VIII. New Rule VIII was corrected to include limited mechanics licensure qualifications. Time requirements for qualifications as a limited mechanics license were changed to one year because three years was placed in the rule inadvertently. Statutes do not permit grandfathering of licensure for limited mechanics.

Comment 11: A commenter stated that there was no specific mention of factory, manufacturer's schools, trade schools or colleges that supply continuing education courses. In addition, the commenter also stated industry related supplied reading material, online Internet classes, or phone conference classes should be acceptable toward meeting the continuing education requirements, but there is no mention of them qualifying.

Response 11: Courses are not restricted to mandatory attendance at a specific location. Sponsors will be able to submit online, correspondence, or any other method of course delivery for Department approval. All course sponsors will be able to register their courses, regardless of the method of instruction, with the Department, providing they meet the requirements set out in New Rule XV.

Comment 12: A commenter stated that some of the requirements for the continuing education sponsoring organizations seem impractical. One requirement is the retention of records for ten years. The licensees should be responsible for keeping their own records. Secondly, why does the Department feel that all course sponsors in the country will get their courses approved in Montana? The Department should make it as easy as possible to maintain and further an individual's education and knowledge. The eight-hour continuing education requirement every two years makes it imperative that the licensee has good educational avenues available to maintain this requirement.

Response 12: The Department has reduced the requirement for record retention to three years. The Department views it as the responsibility of the licensee to present proof of attendance if audited; therefore if a licensee wants to attend a qualifying course, the licensee must first make sure the course is approved by the Department. A list of approved courses and sponsors will be made available for the licensees to reference. The Department does not prohibit a licensee from presenting a course being offered for approval, but the licensee or sponsor must pay the continuing education course curriculum approval fee as specified in the fee schedule and the course must be approved.

Comment 13: A commenter believes that the rules are not specific as to the type of license that they are applicable to such as mechanics or contractors.

Response 13: The Department has made changes to the proposed rules to identify which level or type of license is being addressed. As far as contractors are concerned, anyone may own an elevator contracting business. Elevator contractors must meet business requirements such as obtaining liability insurance, providing proof of workers' compensation and unemployment insurance; or an independent contractor's exemption. Elevator contractors must also employ appropriate licensed staff as indicated in New Rule XI Elevator Contractor Applications.

Comment 14: The fee schedule indicates a fee for approval of a continuing education course. A commenter asked if the approval fee applies each time a licensee comes to the Department for approval, or if the fee is for an annual or two-year period.

Response 14: This fee is a one-time fee for the period of the course approval, and would be paid by the course sponsor. Courses will be reviewed and approved or denied as received. All approved courses will be valid until May 1 of each renewal year. If a new course is approved on May 2, 2006, it will be valid until May 1, 2008.

Comment 15: Two commenters stated that contractors that have been installing residential and commercial elevators for over three years should be grandfathered in with an unrestricted license. One of the commenters emphasized that all employees who have installed, maintained, and repaired elevators for over three years should be grandfathered in as elevator mechanics. The commenter argued that because Montana is not a heavily populated state, there is not enough business in conveyance devices to have full-time employees who perform conveyance system installations. Commercial elevators are half of the commenter's business, and without a grandfathering clause, the commenter would be driven out of business by larger companies who may charge the public higher prices.

Response 15: Employees of elevator contractors who have performed elevator installations for at least three years may qualify for licensure without an exam. The experience requirement may be applied toward their license application if an applicant provides evidence of performing at least three years of elevator installation work. Applicants will be responsible for providing evidence of the type of elevator work performed and duration of this type of experience.

The length of experience does not limit a business from obtaining a contractors license. Any business that employs a licensed elevator mechanic may apply for licensure as an elevator contractor, and anyone who employs a limited mechanic may apply for licensure as a limited elevator contractor.

Comment 16: Two commenters questioned the ability to hire a person to work on conveyances in a "full-time basis" as described in the proposed rule. It is difficult with the amount of work to keep someone on a full-time basis to do elevator work.

Response 16: In the context of licensing, "full-time" means the responsible licensed employee is available to perform, administer, and supervise an elevator installation. This does not prohibit the licensee from doing other types of work for the contractor.

Comment 17: Since the state is requiring continuing education, two commenters believe that the state has the responsibility to make available educational opportunities by in-state classes, online training, or correspondence courses. The classes should be offered in a one or two-day class to keep down travel costs and they should be offered in eastern and western parts of the state. In addition, it would be expensive to get course credits from manufacturers because they are all out-of-state.

Response 17: When the Legislature passed this new law, they included the requirement for continuing education. The Department is committed to implementing the new requirements and will monitor the continuing education requirements. Continuing education requirements may be addressed in the future if it is found unworkable. The continuing education rules do not exclude online training or correspondence courses. Course sponsors have the flexibility to offer courses through whatever methods are feasible to both them and their students.

Comment 18: A commenter stated that residential mechanics are required to be licensed under New Rule II(12).

Response 18: The commenter is correct but the term "residential mechanic" is not used in the new law and thus not in the proposed rules as a result. Residential mechanics, as the commenter suggests, would be the same as a limited mechanic.

Comment 19: A commenter argued the new rules state that limited elevator mechanics would be limited to residential work only. The commenter's company has been working for ten years on commercial buildings such as schools, churches, and businesses installing vertical platform lifts and LU/LA elevators. Becoming licensed as a limited elevator contractor is not acceptable to the commenter.

Response 19: First, residential elevators, by law, may only be installed in residential settings. Residential elevators may not be installed in churches, schools, or businesses, regardless of the limited use the elevator may have. Second, because of the grandfathering process that is allowed under 37-73-203, MCA, all elevator mechanics that have at least three years experience prior to October 1, 2005, will be considered for licensure as an elevator mechanic. Section 37-73-203, MCA, requires that the applicant have experience with commercial conveyances of over three years, otherwise the applicant may only qualify for a limited mechanic's license. The Department notes that it does not have the authority to issue a license unless the applicant meets the qualifications provided by law.

Comment 20: A commenter stated with respect to residential elevators, because there is no inspection requirement and in order to ensure installations are completed

per building code, elevator mechanics should be full-time mechanics for public or private elevators. The commenter suggested that "full-time" should be defined as 70% elevator work and 30% other applications. The commenter stated such a rule would improve safety for residential applications.

Response 20: Inspection requirements are set by the Department's Building Codes Bureau and are not included in these licensing rules. The Department believes that monitoring the percentage and types of work performed by each licensee would be difficult to accomplish and enforce. In addition, the Department does not have the legal authority to impose additional restrictions upon licensees (such as specifying the ratio of one form of work to another form of work) that is not provided in statute.

Comment 21: A commenter stated that apprentice registration does not appear to be available for vertical platform lifts and LU/LA elevators. The commenter would like to be able to provide training and schooling while working a trainee on the job.

Response 21: To ensure the quality of the education and to protect the public safety, an apprentice must be enrolled in an apprenticeship program recognized by the Department. To establish an apprenticeship program, contractors are encouraged to contact the Department's Apprenticeship and Training Program at (406) 444-3556.

Comment 22: Under New Rule VIII, a commenter stated that two years of experience under a licensed elevator mechanic should be considered. This would mean two years of full-time elevator mechanic training in the area of LU/LA elevators and vertical platform lifts, both in commercial building and residential applications.

Response 22: Current law as adopted by the Legislature requires three years of experience before October 1, 2005, in order to be "grandfathered" into a license. Any deviation would require a statutory change. The Department does not have the authority to change the three year experience requirement in administrative rule.

Comment 23: A commenter noted that the term "residential elevator" as described in the rules conflicts with section 5.3 of the ASME A17.1 Safety Code for Elevators. The commenter stated that rules regarding residential elevators should be the same as the elevator code adopted by the Building Codes Bureau.

Response 23: New Rule II describing a residential elevator has been amended to reflect the language suggested by the Building Codes Bureau.

Comment 24: A commenter stated that requiring a form and the tracking of unlicensed individuals who perform operational testing and maintenance is impractical given the limited number of Department staffers who are available for field inspections and monitoring related to the elevator occupations licensing program.

Response 24: The Department has removed the requirement for submission of a form before operational testing and maintenance occurs. The Department did not intend to monitor general daily activities of unlicensed individuals performing general testing and maintenance.

Comment 25: A commenter suggested that the rules needed to also list certified cities, counties and towns as the local authority having permit issuing jurisdiction.

Response 25: New Rule V has been amended to read that elevator contractors must meet permitting requirements.

Comment 26: A commenter expressed the belief that the list of entities approved for certification of elevator inspectors is not correct, and that the American Safety Institute does not certify elevator inspectors. The commenter also stated that the Department should accept certification by the National Association of Elevator Safety Authorities, or other suitably qualified educators on elevator inspection practices and standards.

Response 26: The language of New Rule IX has been amended to address the comment.

Comment 27: A commenter stated that the Department should consider allowing elevator inspectors to become certified within six months of being hired.

Response 27: Although the Department has provided for a six month transition period for existing elevator inspectors, the Department believes that it does not have the discretion under law to authorize a non-credentialed, and therefore non-licensed, elevator inspector to perform elevator inspections if that person was hired on or after October 1, 2005. Employer hiring practices will need to address when and how an elevator inspector is hired and trained if the employer hires a person who is not qualified to immediately obtain a Montana elevator inspector license.

Comment 28: During the compiling of the comments and drafting responses, the Department noted that section (9) in New Rule VI, Fee Schedule, was a duplicate of (4), the renewal fee.

Response 28: New Rule VI(9) has been deleted.

4. After consideration of the comments, the Department has adopted New Rule XVI (24.142.2103), New Rule XVII (24.142.2101), and New Rule XVIII (24.142.2401) exactly as proposed.

5. After consideration of the comments, the Department has adopted New Rule I (24.142.401), New Rule II (24.142.301), New Rule III (24.142.302), New Rule IV (24.142.405), New Rule V (24.142.404), New Rule VI (24.142.402), New Rule VII (24.142.501), New Rule VIII (24.142.502), New Rule IX (24.142.506), New Rule X (24.142.503), New Rule XI (24.142.507), New Rule XII (24.142.504), New Rule XIII

(24.142.509), New Rule XIV (24.142.510), and New Rule XV (24.142.2102), with the following changes, stricken matter interlined, new matter underlined:

NEW RULE I (24.142.401) GENERAL (1) remains as proposed.

(2) Any person wishing to perform conveyance work that is regulated by the department must be a licensed elevator mechanic or limited mechanic employed by a licensed elevator contractor.

(3) remains as proposed.

AUTH: 37-1-101, 37-73-102, 50-60-203, MCA

IMP: 37-73-102, 37-73-201, 37-73-203, 37-73-208, 37-73-212, 37-73-216, MCA

NEW RULE II (24.142.301) DEFINITIONS (1) and (2) remain as proposed.

~~(3) "ASI" means the American Safety Institute.~~

(4) remains as proposed but is renumbered (3).

~~(5)~~ (4) "Apprentice" means an individual who is working with and receiving training from an elevator mechanic or limited mechanic licensed under this chapter and who is registered by an appropriate governmental unit.

(6) through (9) remain as proposed but are renumbered (5) through (8).

(9) "Helper" means an individual who is assisting with the installation of conveyance components by a licensed elevator mechanic or limited mechanic.

(10) and (11) remain as proposed.

(12) "Limited ~~elevator~~ mechanic" means any person who is engaged in the installation, alteration, servicing, replacing, or maintaining of residential elevators, or other conveyances platform lifts, stairway chairlifts, and dumbwaiters in private residences ~~only~~.

(13) and (14) remain as proposed.

(15) "NAESA" means the National Association of Elevator Safety Authorities.

(15) through (16) remain as proposed but are renumbered (16) through (17).

~~(17)~~ (18) "Residential elevator" means a powered or passenger conveyance which is installed in a private residence ~~or multiple unit dwelling as a means of access to private residences,~~ where the access to or control of the ~~elevator conveyance~~ is restricted from public access to the residents of the residence or multiple unit dwelling.

(18) remains as proposed but is renumbered (19).

(20) "Responsible limited mechanic" means a designated individual employed by a licensed limited elevator contractor who is hired on a fulltime basis to ensure that all work performed by the mechanic's employer is code compliant.

(19) remains as proposed but is renumbered (21).

AUTH: 37-73-102, 50-60-203, MCA

IMP: 37-73-102, 37-73-201, 37-73-202, 37-73-203, 37-73-204, 37-73-208, 37-73-212, 37-73-216, MCA

NEW RULE III (24.142.302) EXCEPTIONS (1) through (1)(e) remain as proposed.

(2) Elevator mechanic licenses are not required for operational testing and maintenance work that is performed on conveyances when the appropriate lockout and tagout procedures have been performed by the person doing that work. ~~The department must be notified of and must approve the scope of work on a form provided by the department prior to it being performed.~~

(a) through (4) remain as proposed.

(5) A licensed elevator contractor may use a helper to assist a licensed elevator mechanic or limited mechanic during an installation. Assistance does not include performing any function that requires knowledge, skills, or abilities of an elevator mechanic or limited mechanic.

AUTH: 37-73-102, 50-60-203, MCA

IMP: 37-1-104, 37-73-102, 37-73-201, 37-73-203, 37-73-208, 37-73-212, MCA

NEW RULE IV (24.142.405) APPRENTICE REGISTRATION

(1) Elevator mechanic or limited mechanic licenses are not required for individuals who provide evidence of apprenticeship registration from:

(a) through (c) remain as proposed.

(2) An apprentice shall work under the direction, control, and supervision of a licensed elevator mechanic or limited mechanic ~~at all times~~ while the apprentice is performing or learning to perform elevator mechanic or limited mechanic duties and functions.

(3) remains as proposed.

AUTH: 37-73-102, 50-60-203, MCA

IMP: 37-73-202, MCA

NEW RULE V (24.142.404) LICENSEE RESPONSIBILITIES

(1) Licensed elevator mechanics, limited ~~elevator~~ mechanics, elevator contractors, limited elevator contractors, or elevator inspectors shall have their licenses available on job sites at all times when employed in these capacities. Elevator mechanic or limited mechanic apprentices shall have their registration card, issued by the department, on their persons at all times when so employed. A licensed elevator mechanic, limited ~~elevator~~ mechanic, elevator contractor, limited elevator contractor, elevator inspector, ~~or~~ elevator mechanic apprentice, or limited mechanic apprentice who does not have the required proof of licensure or apprenticeship registration while working in one of those capacities is subject to the issuance of a licensing citation in accordance with 37-73-225, MCA.

(2) A licensed limited ~~elevator~~ mechanic shall:

(a) through (3) remain as proposed.

(4) A licensed elevator contractor or limited elevator contractor shall not allow any person to perform elevator or other conveyance installation or repair work unless the person is:

(a) through (c) remain as proposed.

(5) Elevator contractors are responsible for obtaining any permit required by the state of Montana or a certified local building code enforcement authority relating

to elevator equipment and are responsible for ensuring that work performed complies with the permitting requirements ~~of the state of Montana.~~

(6) Elevator contractors, limited elevator contractors, elevator mechanics, or limited elevator mechanics may not allow their license to be used by other individuals, firms, corporations, or businesses for the purpose of obtaining elevator permits or for performing elevator conveyance work.

(7) remains as proposed.

(8) An elevator contractor, limited elevator contractor, elevator mechanic, or limited elevator mechanic may not perform work beyond the scope of the individual's license.

(9) and (10) remain as proposed.

AUTH: 37-73-102, 50-60-203, MCA

IMP: 37-1-406, 37-1-410, 37-73-102, 37-73-201, 37-73-203, 37-73-208, 37-73-212, 37-73-220, MCA

NEW RULE VI (24.142.402) FEE SCHEDULE (1) through (8) remain as proposed.

~~(9) License renewal~~ 150

(10) and (11) remain as proposed but are renumbered (9) and (10).

AUTH: 37-1-101, 37-73-102, MCA

IMP: 17-2-302, 17-2-303, 37-1-101, 37-1-134, 37-73-102, 37-73-201, 37-73-204, 37-73-208, 37-73-212, 37-73-216, 37-73-221, MCA

NEW RULE VII (24.142.501) DOCUMENTATION OF SUITABLE TRAINING AND EXPERIENCE (1) through (3) remain as proposed.

(4) 1500 hours of work constitutes a year's worth of work experience.

AUTH: 37-73-102, MCA

IMP: 37-1-104, 37-73-102, 37-73-201, 37-73-203, 37-73-208, 37-73-212, MCA

NEW RULE VIII (24.142.502) ELEVATOR MECHANIC AND LIMITED MECHANIC LICENSURE QUALIFICATIONS (1) and (1)(a) remain as proposed.

(b) performed three years verifiable conveyance work, ~~which:~~

~~(i) is at least 70% construction or maintenance based; and~~

~~(ii) does not rely upon residential experience to comprise more than 30% of the total three year requirement.~~

(2) An applicant for a limited elevator mechanic's license shall furnish evidence satisfactory to the department that the applicant has:

(a) remains as proposed.

(b) ~~three~~ one years of verifiable work experience in performing residential conveyance work.

AUTH: 37-73-102, 50-60-203, MCA

IMP: 37-1-104, 37-73-102, 37-73-201, 37-73-204, 50-60-203, MCA

NEW RULE IX (24.142.506) ELEVATOR INSPECTOR QUALIFICATIONS --
TRANSITION PERIOD (1) and (1)(a) remain as proposed.

- (b) ~~ASA~~ NAESA; ~~or~~
 - (c) ~~ASME~~; or
 - (d) another elevator inspector certification from a provider entity, as approved by the department on a case-by-case basis.
- (2) remains as proposed.

AUTH: 37-73-102, 50-60-203, MCA

IMP: 37-73-102, 37-73-201, 37-73-208, MCA

NEW RULE X (24.142.503) ELEVATOR MECHANIC AND LIMITED
MECHANIC APPLICATIONS (1) and (2) remain as proposed.

(3) ~~Applicants~~ Elevator mechanic applicants who can, under oath, provide verifiable proof of employment as an elevator mechanic for at least three years prior to October 1, 2005, and who also possess the requisite experience for licensure may be licensed without examination upon payment of the application fee.

AUTH: 37-1-105, 37-73-102, 50-60-203, MCA

IMP: 37-1-105, 37-73-102, 37-73-201, 37-73-203, 37-73-204, 37-73-221, MCA

NEW RULE XI (24.142.507) ELEVATOR CONTRACTOR APPLICATIONS

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

(b) employs a licensed limited ~~elevator~~ mechanic, named on a form provided by the department, as the ~~elevator~~ mechanic responsible for code compliance on all work performed under that contractor license.

(3) and (4) remain as proposed.

(5) An owner of a limited elevator contracting business not licensed as a limited ~~elevator~~ mechanic shall employ a limited ~~elevator~~ mechanic to perform all work done under that contractor's license. No holder of a limited ~~elevator~~ mechanic's license can be named as the responsible ~~elevator~~ limited mechanic for more than one elevator contractor at any given time.

(6) A responsible elevator mechanic or responsible limited mechanic who leaves the employment of a licensed elevator contractor, for whatever reason, must provide written notification to the department of that fact within ten working days. The licensed elevator contractor must notify the department within ten working days, on a provided form, of the change of responsible elevator mechanic or responsible limited mechanic.

(a) Failure to name another responsible elevator mechanic or responsible limited mechanic, as applicable, within ten working days is cause for disciplinary action, including suspension or revocation of the elevator contractor's license.

(7) A licensed elevator mechanic or limited ~~elevator~~ mechanic may be relieved from further responsibility under any application or permit if the elevator mechanic or limited ~~elevator~~ mechanic has left or been discharged from the employment of an elevator contractor or owner, provided the elevator mechanic or

limited elevator mechanic sends a notice in writing to that effect within ten working days of the last day of employment to the department or the state or local building code enforcement entity, whichever is applicable.

AUTH: 37-73-102, 50-60-203, MCA

IMP: 37-1-104, 37-73-102, 37-73-201, 37-73-212, 50-60-203, 50-60-716, MCA

NEW RULE XII (24.142.504) TEMPORARY PRACTICE PERMIT

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

(c) in the case of an apprentice seeking a temporary practice permit, documentation from a state apprenticeship and training bureau or program that the apprentice has completed no less than 70% of the apprentice's required term and is completely current with related instruction. ~~An apprentice's work done under a temporary practice permit must be physically examined on a daily basis by a licensed elevator mechanic for correctness.~~

(3) and (4) remain as proposed.

(5) In the event the department determines that a shortage of licensed elevator mechanics or limited mechanics exists to the extent that, if left uncorrected, it could have a materially adverse impact on public health, safety, and well-being, the department may issue a temporary practice permit for an elevator mechanic or limited ~~elevator~~ mechanic.

(a) A licensed elevator contractor may submit written notification to the department that a shortage of licensed elevator mechanics or limited mechanics exists. The elevator contractor must be in good standing with the department and have no active complaints against the licenses of the contractor or the contractor's employees before the contractor is eligible to declare a shortage of elevator mechanics or limited mechanics for the contractor's business. Sufficient proof of a bona fide shortage of licensed elevator mechanics or limited mechanics must accompany the written notification and must include:

(i) through (iii) remain as proposed.

(6) Upon consideration and subsequent finding by the department that a contractor's claimed shortage of elevator mechanics or limited mechanics is bona fide to the extent that, if left uncorrected, an adverse material impact on public health, safety, and well-being will result, the department will issue temporary practice permits as it deems prudent and appropriate to temporarily remedy the ~~elevator~~ mechanic shortage.

(7) remains as proposed.

(a) Subsequent temporary practice permits will be issued only if continued monitoring by the department indicates a bona fide elevator mechanic or limited mechanic shortage continues to exist.

(8) remains as proposed.

AUTH: 37-73-102, 50-60-203, MCA

IMP: 37-73-102, 37-73-201, 37-73-216, 50-60-203, MCA

NEW RULE XIII (24.142.509) EXAMINATIONS (1) through (3) remain as proposed.

(4) An applicant who has failed the elevator mechanic examination two or more times is not prohibited from taking the limited ~~elevator~~ mechanic's licensing examination. Applicants must submit a request in writing to the department requesting the lower level examination at any subsequent time.

AUTH: 37-73-102, 50-60-203, MCA

IMP: 37-73-102, 37-73-201, 37-73-204, MCA

NEW RULE XIV (24.142.510) LICENSURE BY RECIPROCITY OR ENDORSEMENT (1) The department may, on a case-by-case basis, enter into reciprocity agreements with other states or jurisdictions whose requirements are substantially equivalent to or greater than the standards of this state as a basis to issue elevator mechanic or limited ~~elevator~~ mechanic licenses.

(2) and (3) remain as proposed.

AUTH: 37-73-102, 50-60-203, MCA

IMP: 37-73-102, 37-73-201, 37-73-203, 37-73-204, MCA

NEW RULE XV (24.142.2102) CONTINUING EDUCATION SPONSORS AND COURSES (1) through (2)(a) remain as proposed.

(b) A sponsor must keep uniform records, for a period of 40 three years, of attendance of licensees and these records must be available for inspection by the department at its request. Those records must include:

(i) through (6) remain as proposed.

AUTH: 37-73-102, MCA

IMP: 37-73-102, 37-73-220, MCA

DEPARTMENT OF LABOR AND INDUSTRY

/s/ MARK CADWALLADER

Mark Cadwallader
Alternate Rule Reviewer

/s/ KEITH KELLY

Keith Kelly, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State February 13, 2006

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment)	NOTICE OF AMENDMENT,
of ARM 24.301.138, 24.301.146)	ADOPTION AND REPEAL
24.301.161, 24.301.172, 24.301.209,)	
24.301.301, 24.301.401, 24.301.421,)	
24.301.431, 24.301.441, 24.301.451,)	
24.301.461, 24.301.481, 24.301.501,)	
24.301.558, 24.301.711, 24.301.718, and)	
24.301.801, the adoption of NEW RULES)	
I through IX, and the repeal of)	
ARM 24.301.471, 24.301.601, 24.301.612,)	
24.301.613, 24.301.614, 24.301.615,)	
24.301.621, and 24.301.622)	
pertaining to building codes)	

TO: All Concerned Persons

1. On October 27, 2005 the Department of Labor and Industry published MAR Notice No. 24-301-191 regarding the public hearing on the proposed amendment, adoption, and repeal of the above-stated rules relating to building codes, at page 2021 of the 2005 Montana Administrative Register, issue no. 20.

2. On November 18, 2005, the Department held a public hearing on the proposed amendment, adoption, and repeal of the above-stated rules in Helena. Several comments were received by the November 28, 2005, deadline.

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

COMMENT 1: One commenter sent in written comment regarding ARM 24.301.146(19), which addresses snow load requirements for buildings in Montana. The commenter stated that he is concerned that the amendments to the rule will allow snow loads as low as 20 psf which he feels are not adequate for certain areas of Montana that at times see up to 12' of snow fall at one time.

RESPONSE 1: The proposed amendment to the rule does not rescind the 30 psf minimum design roof snow load, it simply allows for possible modification under strict circumstances. The amendment to allow the use of coefficients, other than those in the building code, for modifying ground snow loads is proposed to allow engineering and design practices, possibly not formatted in the building code, to be applied to building design. It is important to note that both amendments require justification by a Montana licensed design professional. For these reasons the Department is amending this rule as proposed.

COMMENT 2: One commenter stated that in the reason for ARM 24.301.161 there is a reference to R-12 insulation, which does not exist. This reference should have been listed as R-11 insulation.

RESPONSE 2: The Department agrees and regrets the error, which does not affect the language of the rule or its applicability.

COMMENT 3: The Department received one oral comment regarding ARM 24.301.172, which addresses the International Mechanical Code. The commenter would like to see the Department adopt the 2006 edition of the Uniform Mechanical Code as it is published by the same entity as the Uniform Plumbing Code already adopted by the Department. This would mean both codebooks would come from the same publisher rather than two separate publishers as it is now.

RESPONSE 3: The Department has not proposed adoption of a new code edition at this time; therefore the Department cannot take action with respect to this comment. The Department will keep the comment in mind, and take it into consideration in the future when considering adoption of the new code editions.

COMMENT 4: One oral comment was received regarding ARM 24.301.301(1)(h)(i), which allows the installation of waterless urinals. The commenter feels that some clarification is needed in regards to the language found in the last sentence of the rule which states that a properly sized drain, vent and water supply line, shall be installed in the event the owner decides or is ordered to replace the non-water supplied urinal with a water supplied urinal. The commenter would like the Department to specify who would have the authority to order the owner to remove the urinal.

RESPONSE 4: The amendments to this rule do not grant any specific person, agency or entity the authority to order the removal of a waterless urinal. In addition, the Department does not have any authority over existing buildings and therefore could not require a waterless urinal to be removed. A representative from the Department of Public Health and Human Services explained that county health inspectors may issue a violation if a owner fails to properly maintain a waterless urinal. The Department is not aware of any other city, county or state agencies that have any authority over improperly maintained waterless urinals.

COMMENT 5: Several comments, both oral and written, were received by the Department in support of the amendments to ARM 24.301.301(1)(h)(i), which allows the installation of waterless urinals. These commenters stated that waterless urinals save water and the commenters' research and experience has shown waterless urinals to be as sanitary and safe as the conventional flush type urinals. One commenter went on to state that waterless urinals have a lower bacterial count than flush type urinals when maintained properly and studies show that the waterless urinal is safe for the piping involved and are safer for drain fields than the deodorant blocks typically used in a flush type urinal.

RESPONSE 5: The Department acknowledges the commenters' view on waterless urinals.

COMMENT 6: With respect to ARM 24.301.301(1)(h)(i) one commenter stated that he supports the amendment allowing waterless urinals however he does not feel that the drain, vent, and water line should be required when installing the urinal.

RESPONSE 6: The Department included the requirement a properly sized drain, vent and water supply line be installed for a waterless urinal in the event that an owner decides to remove the urinal or is ordered to remove it. If an owner were to decide or be ordered to remove a waterless urinal and the plumbing for a flush type urinal were not in place, it would be very costly to the owner to install the piping necessary to install a flush type urinal. Due to the varying opinions on this subject the Department believes it is prudent to require that the plumbing be in place in the event the waterless urinal is removed.

COMMENT 7: The Department received several negative comments regarding the amendments to ARM 24.301.301(1)(h)(i) relating to the installation of waterless urinals. The commenters stated that although the waterless urinal saves water the urinals only work well when maintained properly. Waterless urinals must be washed down on a regular basis and the trap insert, which is filled with a bio-degradable material, must be re-filled, and there is no way to enforce maintenance. The commenters state that there is already a problem in maintaining a flush type urinal and are doubtful that maintenance will be any better on a waterless urinal. The commenters stated that when not maintained properly the waterless urinal becomes an unsanitary health issue and that other states have proven failures on waterless urinal installations.

RESPONSE 7: The Department of Environmental Quality, which supports this amendment, made a presentation to the Department's Building Codes Council to consider allowing waterless urinals to be installed anywhere in Montana without limitations. The council then recommended the Department adopt the proposed rule that would allow waterless urinals to be installed if a properly sized drain, vent, and water line is installed to allow the owner to install a flush urinal without incurring too much expense. The Department of Public Health and Human Services was contacted regarding the health issue and responded that it was not opposed to waterless urinals. Given that there was not significant opposition to waterless urinals, the Department is adopting the rule as proposed.

COMMENT 8: One commenter stated that waterless urinals are not allowed by the Uniform Plumbing Code currently adopted in the State of Montana and also noted that the International Association of Plumbing and Mechanical Officials' technical committee has reviewed this issue many times and every time voted to prohibit their use. For these reasons the commenter is not in favor of allowing the use of waterless urinals.

RESPONSE 8: The Department has reviewed the proposed code amendments to the Uniform Plumbing Codes and is aware the technical committee voted to prohibit the use of waterless urinals. For the reasons given in comment 7 the Department is adopting the rule as proposed.

COMMENT 9: One commenter expressed concern regarding the fluid found in the canister of a waterless urinal and whether or not the fluid is toxic. This commenter also questioned whether a waterless urinal increases the users risk of contracting a disease spread through bodily fluids such as hepatitis.

RESPONSE 9: According to information provided by the Department of Environmental Quality (DEQ) the fluid found in the waterless urinal canister is chloroxylene, which is generally used as a disinfectant. It is stable and safe to use though it has been found to cause dermatitis when overused, as with any cleaning agent. The DEQ went on to state that the fluid is benign from a health standpoint and doesn't appear to have any environmental concerns associated with it. The DEQ also stated that research and experience has shown waterless urinals to be as sanitary and safe as the conventional flush type urinals and that waterless urinals have a lower bacterial count than flush type urinals when maintained properly.

COMMENT 10: Several commenters stated that the addition of the word "licensed" in ARM 24.301.431(7) would ensure that any electrical work covered under the National Electrical Code, performed in association with a permit issued by the Department, would be done by licensed electricians.

RESPONSE 10: Although Montana adopts the National Electrical Code (NEC) generally; it also amends or deletes many NEC provisions by using the state's administrative rules process. Given the fact that Montana's application and adoption of the NEC is therefore in many respects different from the way the NEC is applied or enforced in other states, the Department concludes that allowing only licensed Montana electricians to install electrical equipment in this state is the best way to ensure that those installations comply with all relevant Montana statutes and administrative rules, including but not limited to the NEC. In short, the Department agrees with this comment, primarily because it believes that since Montana laws and regulations relating to electrical installations specifically address public health, safety, and well-being concerns and situations unique to Montana, the best way to ensure that these mandates are understood and complied with is to require Montana licensure of those performing electrical work in this state. For these reasons the Department has amended this rule as proposed.

COMMENT 11: Several commenters stated that the addition of the work "licensed" in ARM 24.301.431(7) covers work that may be addressed in the National Electrical Code but would not be considered electrical work such as digging ditches, pouring concrete, wiring thermostats, and wiring data/telephone equipment. These items are included in the National Electrical Code but do not require a license. The commenters went on to state that Montana Code Annotated specifies that the State

Electrical Board, not the Building Codes Bureau, has the authority to determine when an electrical license is required.

RESPONSE 11: The Department believes that any work covered by the National Electrical Code (NEC) is, by definition, electrical work. Consequently, as explained in Response 10, the Department believes it appropriate to require licensure of those who perform electrical installations in this state. More specifically, these commenters are incorrect in stating that digging ditches or pouring concrete are considered electrical work. In fact, the NEC only covers wiring methods that involve underground electrical installations or those which are covered by or buried beneath concrete. The Department believes that only licensed electricians are competent to understand and comply with regulatory requirements for these types of wiring methods. The Department is unconcerned about the lack of licensure of those who may dig ditches or pour concrete. Additionally, since Montana does not presently enforce provisions of the NEC relating to low voltage wiring methods such as installation of data/telephone wiring or low voltage thermostatic control wiring, the Department concludes the commenters' concerns in this regard are unfounded. Finally, to respond to the commenters' concern regarding the Department's authority to require licensure for work done under the electrical permits it issues, section 50-60-601, MCA, which is entitled "Electrical Installations" and which is enforced by the Building Codes Bureau, states in pertinent part that: "The purpose of this part is ... to establish a procedure for determining where and by whom electrical installations are to be made ..." (emphasis added.) For these reasons, the Department has amended this rule as proposed.

COMMENT 12: One commenter stated that the addition of the word "licensed" in ARM 24.301.431(7) would significantly hinder the process by which most electricians start their career. The commenter stated that many electricians start by working as a laborer or running low voltage wiring for six months and then they are eligible to apply for apprenticeship. If the word "licensed" is allowed to be added to this rule, workers would not be able to get the experience needed to apply for apprenticeship, which would limit the number of workers who can enter the trade.

RESPONSE 12: The Department disagrees with the underlying premise of the commenter, that a potential apprentice must have six months of experience before being eligible to apply for and become indentured as an apprentice. Pursuant to the Department-approved apprenticeship standards, prior experience is not required to apply for an electrical apprenticeship. The Department concludes that the proposed amendment will not limit the number of workers who can enter the trade. However, in order to clarify the application of the rule, the Department has amended the rule to expressly provide that work performed pursuant to a permit must be performed by a licensed electrician or a registered electrical apprentice.

COMMENT 13: Commenters stated that ARM 24.301.441(3) should be amended to require all inspectors to include code references in the correction notice. The commenters stated that many companies use those corrections as a training tool and incorporate them into company newsletters, notices and meetings. The

commenters stated that state inspectors already do this but they are not sure that all city inspectors include the reference in their correction notices.

RESPONSE 13: These commenters are correct in noting that state electrical inspectors include code references in the correction notices they issue. Although this practice is in place as a matter of policy at the state inspector level, there is no statute or administrative rule presently in effect which requires that city, county, or town inspectors also provide code references as part of their respective code enforcement programs. However, the Department believes these commenters make an excellent suggestion and, therefore, the Department will consider including it as part of a future rule proposal, which addresses city, county, or town code enforcement programs. For these reasons, the Department has amended this rule as proposed.

COMMENT 14: Commenters stated that the orange (conditionally approved) tags allowed in ARM 24.301.451(2) are being applied to installations that have violated the rough-in inspection requirement and may cause confusion on whether or not a rough-in inspection was done. The commenters also stated that the orange tag may be confused with a red tag and are concerned that a conditional approval may cause problems with the power supplier when the installation is ready to be energized. The commenters also expressed concern that electrical work that has not been inspected is being covered up and that when dealing with a life safety issue such as this that there should be no such thing as conditionally approved.

RESPONSE 14: The use of the orange tag is intended to influence contractors and homeowners to call for and to provide proper notice for rough-in inspections as required by ARM 24.301.441. The orange tag is easily distinguishable from the red tag in both appearance and verbiage. The orange tag has the words "conditionally approved" which will help to distinguish it from the red tag, which says "rejected". There should be no confusion as to whether or not a rough-in inspection has been performed as the orange tag is only applied to those installations that have not received rough-in inspections. The Department has not had any complaints citing confusion relative to orange tags from any power supplier nor did any power supplier comment on the proposed rule. Historically the Department has used discretion relative to requiring installations to be uncovered or exposed if a rough-in inspection was not performed. If code violations are detected, dismantlement may be required.

COMMENT 15: Commenters stated that they are concerned that the change to ARM 24.301.718(1)(a) and (b) may require large petroleum facilities and other similar facilities to shut down on an annual basis, and not just during regularly scheduled maintenance shut downs. The commenters would like the rule clarified to specify that processing systems such as pulp, paper, chemical and petroleum manufacturing facilities only need to shut down for an internal inspection during the facility's regularly scheduled maintenance shut down.

RESPONSE 15: The Department understands the impact that shutting down boilers may have on a building/business owner and will continue to utilize 50-74-209(1)(c), MCA, which provides "Upon written application, longer inspection intervals may be authorized by the department." Processing facilities within Montana are currently using this law without any disruption of production in their facilities. The amendments to this rule do not change the meaning or application of 50-74-209(1)(c), MCA, and therefore processing facilities can utilize this option, if they wish to extend the inspection interval for boilers that have been properly maintained and do not have outstanding violations or material deficiencies. The Department is evaluating methods to educate boiler owners/operators on internal inspection requirements and options available to them.

4. The Department has amended ARM 24.301.138, 24.301.146, 24.301.161, 24.301.172, 24.301.209, 24.301.301, 24.301.401, 24.301.421, 24.301.441, 24.301.451, 24.301.461, 24.301.481, 24.301.501, 24.301.558, 24.301.711, 24.301.718 and 24.301.801 exactly as proposed.

5. The Department has amended ARM 24.301.431 with the following changes, stricken matter interlined, new matter underlined:

24.301.431 ELECTRICAL PERMIT (1) through (6) remain as proposed.

(7) The permittee shall be responsible for all work performed under the electrical permit, and shall ensure that all work meets the requirements of the National Electrical Code, as amended by the version of ARM 24.301.411 in effect at the time the permit was issued. No permittee shall allow any other person to do, or cause to be done, any work under an electrical permit issued to the permittee, except the permittee or ~~his licensed~~ the permittee's employees who are licensed as an electrician or registered as an electrical apprentice.

(8) through (11) remain as proposed.

AUTH: 50-60-203, 50-60-603, 50-60-607, MCA

IMP: 50-60-201, 50-60-203, 50-60-603, 50-60-604, 50-60-605, MCA

6. The Department has adopted NEW RULE I (24.301.602), NEW RULE II (24.301.606), NEW RULE III (24.301.607), NEW RULE IV (24.301.608), NEW RULE V (24.301.609), NEW RULE VI (24.301.610), NEW RULE VII (24.301.611), NEW RULE VIII (24.301.623) and NEW RULE IX (24.301.472) exactly as proposed.

7. The Department has repealed ARM 24.301.471, 24.301.601, 24.301.612, 24.301.613, 24.301.614, 24.301.615, 24.301.621, and 24.301.622 exactly as proposed.

/s/ MARK CADWALLADER
Mark Cadwallader
Alternate Rule Reviewer

/s/ KEITH KELLY
Keith Kelly, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State February 13, 2006.

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

In the matter of the amendment of ARM	)	NOTICE OF AMENDMENT
37.62.2101, 37.62.2103, 37.62.2105,	)	AND REPEAL
37.62.2107, 37.62.2111, 37.62.2113,)	
37.62.2117, 37.62.2119 and)	
37.62.2121 and the repeal of ARM)	
37.62.2115 pertaining to the)	
Modification of Child Support Orders)	

TO: All Interested Persons

1. On December 8, 2005, the Department of Public Health and Human Services published MAR Notice No. 37-361 pertaining to the public hearing on the proposed amendment of the above-stated rules relating to the modification of child support orders, at page 2414 of the 2005 Montana Administrative Register, issue number 23.

2. The Department has amended ARM 37.62.2101, 37.62.2103, 37.62.2105, 37.62.2107, 37.62.2111, 37.62.2113, 37.62.2117, 37.62.2119 and 37.62.2121 and repealed ARM 37.62.2115 as proposed.

3. No comments or testimony were received.

/s/ Dawn Sliva
Rule Reviewer

/s/ Joan Miles
Director, Public Health and
Human Services

Certified to the Secretary of State February 13, 2006.

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

In the matter of the adoption of Rules I)
through V pertaining to Medicare Part D)
Low Income Subsidies)

NOTICE OF ADOPTION

TO: All Interested Persons

1. On December 8, 2005, the Department of Public Health and Human Services published MAR Notice No. 37-362 pertaining to the public hearing on the proposed adoption of the above-stated rules relating to Medicare Part D Low Income Subsidies, at page 2423 of the 2005 Montana Administrative Register, issue number 23.
2. The Department has adopted new rules I (37.81.9004), II (37.81.9005), III (37.81.9006), IV (37.81.9009), and V (37.81.9010) as proposed.
3. No comments or testimony were received.

/s/ Dawn Sliva
Rule Reviewer

/s/ John Chappuis for
Director, Public Health and
Human Services

Certified to the Secretary of State February 13, 2006.

NOTICE OF FUNCTION OF ADMINISTRATIVE RULE REVIEW COMMITTEE

Interim Committees and the Environmental Quality Council

Administrative rule review is a function of interim committees and the Environmental Quality Council (EQC). These interim committees and the EQC have administrative rule review, program evaluation, and monitoring functions for the following executive branch agencies and the entities attached to agencies for administrative purposes.

Economic Affairs Interim Committee:

- Department of Agriculture;
- Department of Commerce;
- Department of Labor and Industry;
- Department of Livestock;
- Office of the State Auditor and Insurance Commissioner; and
- Office of Economic Development.

Education and Local Government Interim Committee:

- State Board of Education;
- Board of Public Education;
- Board of Regents of Higher Education; and
- Office of Public Instruction.

Children, Families, Health, and Human Services Interim Committee:

- Department of Public Health and Human Services.

Law and Justice Interim Committee:

- Department of Corrections; and
- Department of Justice.

Energy and Telecommunications Interim Committee:

- Department of Public Service Regulation.

Revenue and Transportation Interim Committee:

- Department of Revenue; and
- Department of Transportation.

State Administration and Veterans' Affairs Interim Committee:

- Department of Administration;
- Department of Military Affairs; and
- Office of the Secretary of State.

Environmental Quality Council:

- Department of Environmental Quality;
- Department of Fish, Wildlife, and Parks; and
- Department of Natural Resources and Conservation.

These interim committees and the EQC have the authority to make recommendations to an agency regarding the adoption, amendment, or repeal of a rule or to request that the agency prepare a statement of the estimated economic impact of a proposal. They also may poll the members of the Legislature to determine if a proposed rule is consistent with the intent of the Legislature or, during a legislative session, introduce a bill repealing a rule, or directing an agency to adopt or amend a rule, or a Joint Resolution recommending that an agency adopt, amend, or repeal a rule.

The interim committees and the EQC welcome comments and invite members of the public to appear before them or to send written statements in order to bring to their attention any difficulties with the existing or proposed rules. The mailing address is PO Box 201706, Helena, MT 59620-1706.

HOW TO USE THE ADMINISTRATIVE RULES OF MONTANA AND THE MONTANA ADMINISTRATIVE REGISTER

Definitions: Administrative Rules of Montana (ARM) is a looseleaf compilation by department of all rules of state departments and attached boards presently in effect, except rules adopted up to three months previously.

Montana Administrative Register (MAR or Register) is a soft back, bound publication, issued twice-monthly, containing notices of rules proposed by agencies, notices of rules adopted by agencies, and interpretations of statutes and rules by the attorney general (Attorney General's Opinions) and agencies (Declaratory Rulings) issued since publication of the preceding register.

Use of the Administrative Rules of Montana (ARM):

- | | |
|------------------|---|
| Known
Subject | 1. Consult ARM topical index.
Update the rule by checking the accumulative table and the table of contents in the last Montana Administrative Register issued. |
| Statute | 2. Go to cross reference table at end of each Number and title which lists MCA section numbers and Department corresponding ARM rule numbers. |

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through September 30, 2005. This table includes those rules adopted during the period September 1, 2005 through December 31, 2005 and any proposed rule action that was pending during the past six-month period. (A notice of adoption must be published within six months of the published notice of the proposed rule.) This table does not, however, include the contents of this issue of the Montana Administrative Register (MAR or Register).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through September 30, 2005, this table, and the table of contents of this issue of the MAR.

This table indicates the department name, title number, rule numbers in ascending order, catchphrase or the subject matter of the rule, and the page number at which the action is published in the 2004 and 2005 Montana Administrative Registers.

To aid the user, the Accumulative Table includes rulemaking actions of such entities as boards and commissions listed separately under their appropriate title number.

GENERAL PROVISIONS, Title 1

- | | |
|---------|--|
| 1.2.102 | and other rules - Administrative Rules of Montana - Montana Administrative Register - Rule Formatting - Incorporation by Reference - Fees, p. 2211, 2699 |
| 1.2.419 | and other rule - Scheduled Dates for the 2006 Montana Administrative Register - Submission Dates for Replacement Pages, p. 1903, 2334 |

ADMINISTRATION, Department of, Title 2

- | | |
|----------|---|
| I-X | Definitions - Licensing and Application Requirements - Ownership Change - Examination of Title Lenders - Duration of Loans - Extensions - Reports - Schedule of Charges - Employees' Character and Fitness - Procedural Rules for Hearing and Discovery Proposed for Adoption under the Montana Title Loan Act, p. 1125, 1334, 1839 |
| 2.5.201 | and other rules - State Procurement of Supplies and Services - Disposition and Disposal of Surplus Property, p. 1316, 1709, 1906, 2446, 79 |
| 2.21.410 | and other rules - Military Leave, p. 767, 1506 |
| 2.21.501 | and other rules - Jury Duty - Witness Leave, p. 1633 |
| 2.59.801 | and other rules - Foreign Capital Depositories, p. 2130, 205 |

(Public Employees' Retirement Board)

- I-III Implementation of Detention Officer Transfer to Sheriffs' Retirement System, p. 1329, 1670
- I-III Implementation of Detention Officer Transfer to Sheriffs' Retirement System, p. 725, 1021
- I-VII When Salary Deferrals under a Cafeteria Plan Should be Treated as Compensation, p. 1626, 2241
- 2.43.1002 Investment Policy Statement for the Defined Contribution Retirement Plan, p. 1461, 1907
- 2.43.1801 and other rule - Plan Document and Investment Policy Statement for the 457 Deferred Compensation Plan, p. 1458, 1908

(State Compensation Insurance Fund)

- 2.55.320 Classifications of Employments, p. 1944, 2649

(State Lottery Commission)

- 2.63.201 and other rules - State Lottery's Procedures - Retailers, Licensing, Scratch Tickets and Prizes, p. 1

AGRICULTURE, Department of, Title 4

- I-III Cherry Research and Marketing Development Program, p. 771, 1279
- 4.13.1001A and other rule - State Grain Lab Fee Schedule, p. 775, 1280

(Montana Agriculture Development Council)

- 4.16.303 and other rules - Agricultural Marketing Development Program, p. 1532, 1909

STATE AUDITOR, Title 6

- I-XV Small Business Health Insurance Purchasing Pool - Premium Assistance and Premium Incentive Payments - Tax Credits, p. 1464, 1771
- 6.6.504 and other rules - Medicare Supplements, p. 1131, 1537, 1672, 1910
- 6.6.3504 Contents of Annual Audited Financial Report, p. 273
- 6.6.6811 and other rules - Captive Insurance Companies, p. 861, 2448, 321
- 6.6.8301 Updating References to the NCCI Basic Manual for New Classifications for Various Industries, p. 1947
- 6.6.8501 and other rules - Viatical Settlement Agreements, p. 1636, 2650

COMMERCE, Department of, Title 8

- I Administration of the 2006-2007 Federal Community Development Block Grant (CDBG) Program, p. 2133
- I Submission and Review of Applications to the Treasure State Endowment Program (TSEP), p. 1539, 2052

- I-XVI Award of Grants and Loans under the Big Sky Economic Development Program, p. 1711, 2449
8.94.3801 and other rule - Administration of Grants Awarded by the 2005 Legislature - Treasure State Endowment Program (TSEP), p. 1954, 2656

(Grant Review Committee)

- 14.4.101 and other rules - Award of Training Grants by the Grant Review Committee, p. 1471, 1915

EDUCATION, Title 10

(Superintendent of Public Instruction)

- 10.6.101 and other rules - School Controversies, p. 2136, 2658
10.16.3010 Special Education, p. 1641, 2056

(Board of Public Education)

- 10.55.603 and other rule - Assessment, p. 113
10.55.701 and other rules - Accreditation Standards, p. 2488
10.55.909 and other rule - Student Discipline Records - Student Records, p. 194, 575, 1390

(Montana State Library)

- 10.102.1151 and other rules - Public Library Standards, p. 2491

FISH, WILDLIFE, AND PARKS, Department of, Title 12

(Fish, Wildlife, and Parks Commission)

- I Annual Lottery of Hunting Licenses, p. 2503
I No Wake Zone on Georgetown Lake, p. 1644, 2331
I Notice of Adoption of a Temporary Emergency Rule - Closing the Clark Fork River from the Petty Creek Fishing Access Site to the Tarkio Fishing Access Site, p. 1586, 1916
I-X Aerial Herding Permits, p. 991, 1775
12.5.201 Removing the Peregrine Falcon from the State Endangered Species List, p. 1841, 2329
12.9.211 Abandonment of Teton-Spring Creek Bird Preserve, p. 1646, 2330
12.11.202 and other rules - Beaverhead and Big Hole Rivers, p. 144, 737, 917, 1391, 1507
12.11.501 List of Water Bodies (Index Rule), p. 2285

ENVIRONMENTAL QUALITY, Department of, Title 17

- I-XVIII Methamphetamine Cleanup Program - Decontamination of Inhabitable Property Contaminated by Clandestine Manufacture of Methamphetamine, p. 142

- 17.50.201 and other rule - Motor Vehicle Recycling and Disposal- Motor Vehicle Wrecking Facility License, p. 2506
- 17.56.101 and other rules - Underground Storage Tanks, p. 115
- 17.74.343 and other rules - Asbestos Control - Asbestos Control Program, p. 125

(Board of Environmental Review)

- I Solid Waste - State Solid Waste Management and Resource Recovery Plan, p. 2016
- 17.8.504 and other rules - Air Quality - Establishing a Registration System for Certain Facilities That Presently Require an Air Quality Permit, p. 2513
- 17.8.504 and other rules - Air Quality Permit Application, Operation and Open Burning Fees, p. 997, 2058
- 17.8.743 Air Quality - Montana Air Quality Permits - When Required - Oil and Gas Well Facilities, p. 1479, 2660
- 17.8.759 Air Quality - Review of Permit Applications, p. 1476, 2663
- 17.24.116 Application Requirements for Operating Permit, p. 1649, 2544, 154
- 17.30.670 and other rules - Water Quality - Nondegradation Requirements for Electrical Conductivity (EC) and Sodium Adsorption Ratio (SAR) - Definitions for Technology-based Effluent Limitations - Minimum Technology-based Controls - Treatment Requirements for the Coal Bed Methane Industry, p. 1844, 2288
- 17.30.1303 and other rules - Water Quality - Concentrated Animal Feeding Operations (CAFOs) - Adoption of Department Circular DEQ 9 (Montana Technical Standards for CAFOs), p. 2962, 864, 1995

(Board of Environmental Review and the Department of Environmental Quality)

- 17.24.132 and other rules - Air Quality - Asbestos - Hazardous Waste - Junk Vehicles - Major Facility Siting - Metal Mine Reclamation - Opencut Mining - Public Water Supply - Septic Pumpers - Solid Waste - Strip And Underground Mine Reclamation - Subdivisions - Underground Storage Tanks - Water Quality - Revising Enforcement Procedures Under the Montana Strip and Underground Mine Reclamation Act, Metal Mine Reclamation Laws, and Opencut Mining Act - Providing Uniform Factors for Determining Penalties, p. 2523
- 17.30.502 and other rules - Water Quality - Subdivisions - CECRA - Underground Storage Tanks - Department Circular WQB-7 - Outstanding Resource Waters, p. 1957
- 17.36.345 and other rules - Public Water and Sewage System Requirements and Subdivisions - Adoption by Reference, Plans for Public Water Supply or Wastewater System - Fees - Treatment Requirements - Disinfection, p. 2002

TRANSPORTATION, Department of, Title 18

- I-XIII Aeronautical Grant and Loan Program - Pavement Preservation Grant Program, p. 2151, 81

- 18.6.202 and other rules - Transportation Commission - Outdoor Advertising, p. 276
- 18.8.101 and other rules - Motor Carrier Services Regulations for Over Dimensional and Overweight Vehicles and Loads, p. 2142, 206
- 18.8.1101 Movement of Houses, Buildings, Extremely Heavy Machinery, and Other Large and Unusual Objects, p. 1002, 1589
- 18.9.401 and other rule - Eligibility for Gasohol Motor Fuel Tax Reduction - Tax Reduction on Certain Oxygenated Gasoline Passed by the 59th Legislature in SB 293, Ch. 452, p. 1719
- 18.9.704 Definitions for Motor Fuels, p. 14
- 23.5.101 and other rules - Transfer from the Department of Justice - Motor Carrier Safety Assistance Program, p. 2059

CORRECTIONS, Department of, Title 20

- I-VIII Establishment of a Residential Methamphetamine Treatment Center, p. 1337, 1917, 2060
- 20.9.601 and other rules - Licensure of Youth Detention Facilities, p. 1722, 2665
- 20.27.101 and other rule - Siting and Construction Standards, p. 778, 1393

JUSTICE, Department of, Title 23

- I Creating a Separate Endorsement and Qualification for Commercial Drivers Who Operate School Buses, p. 780, 1394
- I-V Credit Counseling Services, p. 2373, 207
- I-V Administration of the Address Confidentiality Program, p. 1731, 2332, 2453
- I-V Credit Counseling Services, p. 1485, 2452
- I-VI Operation of the Identity Theft Passport Program, p. 1541, 2061
- I-VI Administration of the Forensic Rape Examination Payment Program, p. 1545, 2063
- I-VII Regulation of Retail Establishment Selling Ephedrine or Pseudoephedrine, p. 1343, 1488, 1782
- 2.61.101 and other rules - Consumer Protection Office - Transfer from the Department of Administration, p. 322
- 23.16.102 and other rules - Effective Date for Forms Relating to Gambling Operator Licenses, Sports Tab Game Seller Licenses, Distributor's Licenses, Route Operator's Licenses, Manufacturer's Licenses, and Manufacturer of Illegal Gambling Devices Licenses, p. 1860, 2333
- 23.16.103 and other rules - Effective Date for Forms Relating to Investigation of Applicants, Disclosure from Noninstitutional Lender, Dealer Licenses, and Gambling Operator Licenses, p. 2018, 2454
- 23.16.202 and other rules - Credit Play Prohibited - Video Gambling Machine Permits - Requirements for Letters of Withdrawal - Video Gambling Machine Testing Fees, p. 1735, 2248

- 23.16.209 and other rules - Bonus Games - Definitions - Display of Antique Slot Machines - Elimination of the Video Gambling Machine Permit Fee Surcharge - General Specifications and Software Specifications for Video Gambling Machines - Addition of Testing to Purposes for Which Illegal Video Gambling Devices May Be Imported or Exported by a Video Gambling Machine Manufacturer - Allowable Winning Patterns for Bingo - Permit Surcharge Which was Eliminated, p. 784, 1281, 1509

LABOR AND INDUSTRY, Department of, Title 24

Boards under the Business Standards Division are listed in alphabetical order following the department rules.

- I-XVIII Elevator Services Occupational Licensing Program, p. 2293
24.11.101 and other rules - Unemployment Insurance Laws, p. 284
24.17.127 Prevailing Wage Rates for Public Works Projects - Nonconstruction Services - Heavy and Highway Construction Services, p. 2290
24.17.127 Prevailing Wage Rates for Public Works Projects - Building Construction Services - Heavy and Highway Construction Services, p. 1347, 2064
24.26.508 and other rule - Board of Personnel Appeals - Consolidation of Wage and Classification Appeals, p. 296
24.29.1409 Travel Expense Reimbursement for Workers' Compensation Medical Services, p. 1350, 210
24.29.1409 Travel Expense Reimbursement for Workers' Compensation Medical Services, p. 520, 1395
24.29.4301 and other rules - Workers' Compensation Reporting Database, p. 1570
24.30.102 Occupational Safety Matters in Public Sector Employment, p. 1355
24.35.111 and other rules - Independent Contractor Exemption Certificates, p. 874, 1511
24.122.401 and other rule - Boiler and Boiler Operator Program - Boiler Operating Engineers Licenses, p. 300
24.144.411 and other rule - Renewal of License or Endorsement, p. 2312, 224
24.301.138 and other rules - Building Codes, p. 2021

(Board of Architects)

- 24.114.403 and other rule - Business Entity Practice - Fee Abatement, p. 889, 2077

(Board of Athletics)

- 24.117.301 and other rules - Definitions - General Provisions - Contest Regulations - Boxing Regulations - Ring Regulations - Boxing Officials - Club Boxing - Promoter - Bout Approval - Referee - Fee Abatement - Suspension and Revocation - Mixed Martial Arts, p. 157

(Crane and Hoisting Operating Engineers Program)

24.135.501 and other rules - Hoisting Operators License Requirements - Crane Hoisting Operators License Requirements - Mine Hoisting Operators License Requirements - Fee Schedule - Renewals - National Commission Certification - Failed Examinations - Applications - Citations and Fines, p. 1871, 219

(Board of Dentistry)

24.138.301 and other rules - Definitions - Initial Licensure of Dentists by Examination - Initial Licensure of Dental Hygienists by Examination - Dentist Licensure by Credentials - Dental Hygienist Licensure by Credentials - Denturist Examination - Denturist Application Requirements - Definition of Continuing Education - Requirements and Restrictions - Requirements for Continuing Education in Anesthesia, p. 796, 1396

(State Electrical Board)

24.141.401 and other rules - Board Meetings - Apprentice Registration - Fee Schedule - Temporary Practice Permits - Examinations, p. 1219, 2458
24.141.403 Licensee Responsibilities, p. 317, 1397
24.141.405 and other rules - Fee Schedule - Continuing Education - Licensee Responsibilities - Fee Abatement, p. 17

(Board of Medical Examiners)

I & II Medical Assistants - Fee Abatement, p. 1882, 2676

(Board of Nursing)

8.32.402 and other rules - Licensure by Examination - Reexamination-Registered Nurse - Reexamination-Practical Nurse - Conduct of Nurses, p. 516, 1686
8.32.403 and other rules - Reexamination - Registered Nurse - Reexamination - Practical Nurse - Licensure by Endorsement - Temporary Practice Permit - Abatement of Fees - Foreign Educated Applicants - Licensure for Foreign Nurses, p. 866, 1687
8.32.427 General Requirements for Medication Aide Training Programs and Instructors, p. 1652, 2251
8.32.1701 and other rules - Delegation, p. 30, 1022, 1291

(Board of Nursing Home Administrators)

24.162.420 Fee Schedule, p. 1490, 2252

(Board of Outfitters)

8.39.501 and other rules - Outfitter Licensing and Operations - Transfer from the Department of Commerce, p. 1549, 324

(Board of Pharmacy)

24.174.301 and other rules - Definitions - General Provisions - Licensing - Internship Regulations - Pharmacy Technicians - Certified Pharmacies - Mail Service Pharmacies - Institutional Pharmacies - Wholesale Drug Distributors Licensing - Dangerous Drugs - Renewals and Continuing Education - Screening Panel - Inactive License - Telepharmacy Operations - Remote Telepharmacy Dispensing Machine Sites - Central Filling by Hub Pharmacies - Ambulatory Surgical Facilities - Fee Abatement, p. 23

(Board of Physical Therapy Examiners)

24.177.401 Fees, p. 2376, 225

(Board of Plumbers)

24.180.607 and other rule - Temporary Practice Permits - Continuing Education Requirements, p. 893, 2460

(Board of Private Alternative Adolescent Residential or Outdoor Programs)

I-VI Private Alternative Adolescent Residential or Outdoor Programs, p. 1886, 2677

(Board of Private Security Patrol Officers and Investigators)

8.50.423 and other rules - Private Security Patrol Officers and Investigators - Fee Schedule - Firearms Training Course Curriculum and Standards, p. 605, 1926

(Board of Professional Engineers and Professional Land Surveyors)

24.183.404 and other rules - Fee Schedule - License Seal - Classification of Experience for Engineering Applicants - Continuing Education - Safety, Health, and Welfare of the Public - Classification of Experience - Branch Offices - Fee Abatement, p. 303

24.183.1001 Form of Corner Records, p. 530, 1783

(Board of Psychologists)

24.189.601 and other rule - Application Procedures - Licensees from Other States or Canadian Jurisdictions, p. 729, 1294

24.189.2107 and other rule - Continuing Education Implementation - Fee Abatement, p. 1739, 2464

(Board of Public Accountants)

8.54.101 and other rules - Transfer from the Department of Commerce, p. 2668

8.54.410 and other rules - Fees - Amount of Required Experience - Continuing Education Matters - Special Practice Permits for Nonresident Certified Public Accountants, p. 1864, 2671, 83

(Board of Radiologic Technologists)

24.204.401 and other rules - Fee Schedule - Permit Fees - Abatement of Renewal Fees - Radiologic Technologists Applications - Replacement Licenses and Permits - Permits-Practice Limitations - Permit Examinations - Radiologist Assistants - Scope of Practice - Supervision - Adoption of a Code of Ethics, p. 1226, 2465, 84

(Board of Real Estate Appraisers)

24.207.401 and other rules - Fees - Licensing - Continuing Education - Renewals, p. 52

24.207.517 and other rule - Trainee and Mentor Requirements, p. 622, 1400

(Board of Realty Regulation)

8.58.101 and other rules - Transfer from the Department of Commerce, p. 2455

24.210.667 and other rule - Continuing Real Estate Education - New Licensee Mandatory Continuing Education for Salespersons, p. 2546

(Board of Sanitarians)

24.216.402 Fee Schedule, p. 61

(Board of Veterinary Medicine)

24.225.301 and other rule - Definitions - Out-of-State Licensure Endorsement - Occasional Case Exemption - Fee Abatement, p. 64

LIEUTENANT GOVERNOR, Office of the, Title 30

30.2.201 and other rules - Centennial Grants - Centennial Sanctioning, p. 1358, 226

LIVESTOCK, Department of, Title 32

32.2.403 Diagnostic Lab Fees, p. 1493, 1785

32.18.202 and other rule - Sheep Permits, p. 1007, 1517

(Board of Milk Control)

32.23.301 Fees Charged by the Department on the Volume on All Classes of Milk, p. 1743, 2254

32.24.501 and other rules - Quota, Utilization and Marketing of Montana Pooled Raw Milk, p. 2161, 2680

32.24.513 Computation of Price for Quota Milk and Excess Milk, p. 2551, 330

(Board of Horse Racing)

32.28.501 and other rule - Horse Racing, p. 194

MILITARY AFFAIRS, Department of, Title 34

- I-VI Reimbursement for Life Insurance Premiums Paid by Montana Reserve Component Service Members Serving Outside Montana in a Contingency Operation, p. 1362, 1691

NATURAL RESOURCES AND CONSERVATION, Department of, Title 36

- I Specifying Deadline for Water Rights Adjudication Fee Appeals under Adjudication Fee, p. 197
36.12.101 Municipal Use of Water, p. 2316, 199
36.19.106 Reclamation and Development Grants Program, p. 1746, 2468

(State Board of Land Commissioners and the Department of Natural Resources and Conservation)

- 36.25.210 Increase Royalty Rates for Oil and Gas Leases on State School Trust Lands from Current Rates to 16.67%, p. 1654, 2255

(Board of Oil and Gas Conservation)

- 36.22.1242 Privilege and License Tax Rates for Oil and Gas, p. 538, 1045

PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

- I-V Medicare Part D Low Income Subsidies, p. 2423
I-IV Montana Clean Indoor Air Act, p. 1665, 2079
I-XV Pharmacy Access Prescription Drug Benefit Program (Big Sky Rx), p. 2558, 336
37.30.102 and other rules - Vocational Rehabilitation Program, p. 1577, 2257
37.37.316 and other rules - Youth Foster Homes, p. 2379
37.40.302 and other rules - Nursing Facility Reimbursement, p. 630, 1046
37.40.311 Medicaid Payments to Nursing Facilities, p. 411, 969, 1401
37.62.2101 and other rules - Modification of Child Support Orders, p. 2414
37.70.305 and other rules - Low Income Energy Assistance Program (LIEAP), p. 1657, 2078
37.70.311 and other rules - Low Income Energy Assistance Program (LIEAP), p. 1366, 1786
37.75.101 and other rules - Child and Adult Care Food Program (CACFP), p. 2168, 331
37.78.102 and other rule - Temporary Assistance for Needy Families (TANF) - Medical Assistance - Purpose and Incorporation of Policy Manuals, p. 898, 1591
37.80.101 and other rules - Child Care Subsidy - Legally Unregistered Provider - Child Care Provider Merit Pay - Star Quality Tiered Reimbursement Programs, p. 217, 1057
37.85.406 and other rules - Medicaid Hospital and Ambulatory Surgical Center Reimbursement, p. 68

- 37.86.1004 and other rule - Medicaid Dental Reimbursement and Coverage, p. 733, 1073
- 37.86.1105 Medicaid Outpatient Drugs - Pharmacy Reimbursement for Medicare Part D Dual Eligibles, p. 2319, 227
- 37.86.2207 and other rules - Comprehensive School and Community Treatment Program (CSCT), p. 1374, 1787, 2260
- 37.86.3607 and other rules - Case Management Services for Persons with Developmental Disabilities, Reimbursement, p. 1010
- 37.86.4401 and other rules - Reimbursement of Rural Health Clinics and Federally Qualified Health Centers, p. 60, 975, 1402
- 37.95.102 and other rules - Licensure of Day Care Facilities, p. 2572, 201
- 37.104.101 and other rules - Emergency Medical Services, p. 1238, 2681, 229
- 37.106.704 Minimum Standards for a Critical Access Hospital, p. 804, 1295, 2258
- 37.106.1946 and other rules - Outpatient Crisis Response Facilities, p. 2428
- 37.108.219 and other rule - Managed Care Quality Assurance, p. 807, 1296
- 37.111.825 School Health Supervision and Maintenance, p. 2555
- 37.114.701 and other rules - School Immunization Requirements, p. 541, 1074

PUBLIC SERVICE REGULATION, Department of, Title 38

- I-VII Energy Utility Service Standards, p. 416, 1404
- 38.5.2202 and other rule - Pipeline Safety, p. 2323, 231
- 38.5.4111 InterLATA and IntraLATA PIC Change Charges, p. 2440, 232

REVENUE, Department of, Title 42

- I Manufactured Homes and Real Property Taxes, p. 2326, 88
- I & II Gains Calculations - Voluntary Disclosure, p. 314
- I-VI Issuance of Administrative Summons by the Department, p. 2635, 312
- 42.2.304 Montana Source Income - Economic Impact Statement, p. 2443, 340
- 42.2.304 and other rules - General Department Rules - Penalty and Interest Rules, p. 2198, 85
- 42.4.201 and other rules - Alternative and Wind Energy Credits, p. 2641, 357
- 42.15.112 and other rules - Personal Income Taxes, p. 2213, 3147, 1592
- 42.18.109 and other rules - Montana Reappraisal Plans for 2003 and 2009, p. 1891, 2469
- 42.20.106 and other rules - Property Taxes, p. 1016, 1594
- 42.21.113 and other rules - Personal, Industrial, and Centrally Assessed Property Taxes, p. 1748, 2262
- 42.25.1801 and other rules - Oil, Gas, and Coal Natural Resources, p. 1896, 2470

SECRETARY OF STATE, Title 44

- 1.2.102 and other rules - Administrative Rules of Montana - Montana Administrative Register - Rule Formatting - Incorporation by Reference - Fees, p. 2211, 2699

- 1.2.419 and other rule - Scheduled Dates for the 2006 Montana Administrative Register - Submission Dates for Replacement Pages, p. 1903, 2334
- 44.5.114 and other rule - Corporations - Profit and Nonprofit Fees - Limited Liability Company Fees, p. 2238, 2705

(Commissioner of Political Practices)

- 44.10.331 Limitations on Receipts from Political Committees to Legislative Candidates, p. 1583, 2094

BOARD APPOINTEES AND VACANCIES

Section 2-15-108, MCA, passed by the 1991 Legislature, directed that all appointing authorities of all appointive boards, commissions, committees and councils of state government take positive action to attain gender balance and proportional representation of minority residents to the greatest extent possible.

One directive of 2-15-108, MCA, is that the Secretary of State publish monthly in the ***Montana Administrative Register*** a list of appointees and upcoming or current vacancies on those boards and councils.

In this issue, appointments effective in January 2006 appear. Vacancies scheduled to appear from March 1, 2006, through May 31, 2006, are listed, as are current vacancies due to resignations or other reasons. Individuals interested in serving on a board should refer to the bill that created the board for details about the number of members to be appointed and necessary qualifications.

Each month, the previous month's appointees are printed, and current and upcoming vacancies for the next three months are published.

IMPORTANT

Membership on boards and commissions changes constantly. The following lists are current as of February 1, 2006.

For the most up-to-date information of the status of membership, or for more detailed information on the qualifications and requirements to serve on a board, contact the appointing authority.

BOARD AND COUNCIL APPOINTEES FROM JANUARY 2006

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Aging Advisory Council (Public Health and Human Services)			
Rep. Beverly Barnhart Bozeman	Governor	Neath	1/26/2006 7/18/2008
Qualifications (if required): Public Representative			
Rep. Antoinette R. Hagener Havre	Governor	Nikolaisen	1/26/2006 7/18/2008
Qualifications (if required): Public Representative			
Mr. Vern Klingman Billings	Governor	Saindon	1/26/2006 7/18/2008
Qualifications (if required): Public Representative			
Mr. Linwood Tall Bull Lame Deer	Governor	Rehbein	1/26/2006 7/18/2008
Qualifications (if required): Public Representative			
Board of Barbers and Cosmetologists (Labor and Industry)			
Ms. Maggie Burton-Blize Missoula	Governor	Richie	1/31/2006 10/1/2007
Qualifications (if required): barber			
Board of Hearing Aid Dispensers (Labor and Industry)			
Ms. Lee Frantz Oines Missoula	Governor	Kalarchik	1/27/2006 7/1/2008
Qualifications (if required): Dispenser with a Master's Degree and National Certification			

BOARD AND COUNCIL APPOINTEES FROM JANUARY 2006

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Board of Hearing Aid Dispensers (Labor and Industry) cont.			
Mr. Herbert Winsor	Governor	Delano	1/27/2006
Helena			7/1/2008
Qualifications (if required): Public Representative with Hearing Aid			
Board of Pardons and Parole (Corrections)			
Mr. Darryl Dupuis	Governor	reappointed	1/9/2006
Polson			1/1/2010
Qualifications (if required): education or experience in criminology, education, psychiatry, psychology, law & sociology			
Ms. Margaret Hall-Bowman	Governor	reappointed	1/9/2006
Pablo			1/1/2010
Qualifications (if required): education or experience in criminology, education, psychiatry, psychology, law & sociology			
Board of Regents (Higher Education)			
Ms. Heather O'Loughlin	Governor	French	1/3/2006
Missoula			6/30/2007
Qualifications (if required): full-time student at a unit of higher education under jurisdiction of the Board of Regents			
Corrections Advisory Council (Corrections)			
Ms. Mikie Baker-Hajek	Governor	Edwards	1/27/2006
Great Falls			9/8/2007
Qualifications (if required): victims' advocate			

BOARD AND COUNCIL APPOINTEES FROM JANUARY 2006

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Country of Origin Labeling Advisory Council (Labor and Industry)			
Rep. Bob Bergren	Governor	not listed	1/26/2006
Havre			12/31/2006
Qualifications (if required): Legislative Representative			
Director Keith Kelly	Governor	not listed	1/26/2006
Helena			12/31/2006
Qualifications (if required): Department of Labor and Industry Commissioner			
Mr. John Lehfeldt	Governor	not listed	1/26/2006
Lavina			12/31/2006
Qualifications (if required): Livestock Industry Representative			
Mr. John Munsell	Governor	not listed	1/26/2006
Miles City			12/31/2006
Qualifications (if required): Consumer			
Ms. Linda Nielsen	Governor	not listed	1/26/2006
Nashua			12/31/2006
Qualifications (if required): Board of Livestock Representative			
Ms. Margaret Novak	Governor	not listed	1/26/2006
Chester			12/31/2006
Qualifications (if required): Retail Food Industry Representative			
Director Nancy K. Peterson	Governor	not listed	1/26/2006
Helena			12/31/2006
Qualifications (if required): Department of Agriculture Director			

BOARD AND COUNCIL APPOINTEES FROM JANUARY 2006

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Country of Origin Labeling Advisory Council (Labor and Industry) cont.			
Director Anthony J. Preite	Governor	not listed	1/26/2006
Helena			12/31/2006
Qualifications (if required): Department of Commerce Director			
Mr. Dan Teigen	Governor	not listed	1/26/2006
Teigen			12/31/2006
Qualifications (if required): Livestock Industry Representative			
District Court Judge District 18 Department 3 (Justice)			
Judge John Brown	Governor	not listed	1/2/2006
Bozeman			1/1/2007
Qualifications (if required): none specified			
Historical Records Advisory Board (Historical Society)			
Ms. Jodie Foley	Governor	Kruckenber	1/10/2006
Helena			9/7/2006
Qualifications (if required): State Archivist			
Montana Grass Conservation Commission (Natural Resources and Conservation)			
Mr. Leo Solf	Governor	Unruh	1/31/2006
Winnett			1/1/2009
Qualifications (if required): grazing district director			
Mr. Alvin Windy Boy, Sr.	Governor	Brence	1/31/2006
Box Elder			1/1/2009
Qualifications (if required): Public Representative			

BOARD AND COUNCIL APPOINTEES FROM JANUARY 2006

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Montana Historical Society Board of Trustees (Historical Society)			
Mr. Jim Court	Governor	Henrich	1/11/2006
Billings			7/1/2009
Qualifications (if required): public member			
Mr. Kent Kleinkopf	Governor	Murphy	1/11/2006
Missoula			7/1/2007
Qualifications (if required): public member			
Ms. Katherine Lee	Governor	Browning	1/11/2006
Glendive			7/1/2007
Qualifications (if required): public member			
Montana's Advisory Council on Civil Rights Honoring Martin Luther King, Jr. (Office of Community Service)			
Sen. Dorothy Eck	Governor	not listed	1/13/2006
Bozeman			1/13/2008
Qualifications (if required): Public Representative			
Ms. June Hermanson	Governor	not listed	1/13/2006
Billings			1/13/2008
Qualifications (if required): Public Representative			
Ms. Jessie James-Hawley	Governor	not listed	1/13/2006
Harlem			1/13/2008
Qualifications (if required): Public Representative			

BOARD AND COUNCIL APPOINTEES FROM JANUARY 2006

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Montana's Advisory Council on Civil Rights Honoring Martin Luther King, Jr. (Office of Community Service) cont.			
Rep. Christine Kaufmann	Governor	not listed	1/13/2006
Helena			1/13/2008
Qualifications (if required): Public Representative			
Ms. Marilyn Kramer	Governor	not listed	1/13/2006
Billings			1/13/2008
Qualifications (if required): Public Representative			
Mr. Murray Pierce	Governor	not listed	1/13/2006
Turah			1/13/2008
Qualifications (if required): Public Representative			
Ms. Katie Stevens	Governor	not listed	1/13/2006
Great Falls			1/13/2008
Qualifications (if required): Public Representative			
Private Security Patrol Officers and Investigators (Labor and Industry)			
Ms. Holly Dershem-Bruce	Governor	Miller	1/6/2006
Glendive			8/1/2008
Qualifications (if required): Public Representative			
Dr. Raymond Murray	Governor	reappointed	1/6/2006
Missoula			8/1/2008
Qualifications (if required): Post Representative			

BOARD AND COUNCIL APPOINTEES FROM JANUARY 2006

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Traumatic Brain Injury Advisory Council (Labor and Industry)			
Mr. Lucas Foust	Governor	Gibbs	1/1/2006
Bozeman			1/1/2009
Qualifications (if required): representative of Injury Control or Prevention Programs			
Ms. Marilyn Patrick	Governor	not listed	1/1/2006
Butte			1/1/2009
Qualifications (if required): Family Member of Survivor			
Upper Clark Fork River Basin Remediation and Restoration Advisory Council (Justice)			
Mr. Paul Babb	Governor	reappointed	1/23/2006
Butte			1/19/2008
Qualifications (if required): resident of Upper Clark Fork River Basin			
Ms. Linda Bouck	Governor	reappointed	1/23/2006
Anaconda			1/19/2008
Qualifications (if required): resident of Upper Clark Fork River Basin			
Mr. Larry Curran	Governor	reappointed	1/23/2006
Butte			1/19/2008
Qualifications (if required): resident of Upper Clark Fork River Basin			
Mr. Dennis Daneke	Governor	reappointed	1/23/2006
Missoula			1/19/2008
Qualifications (if required): resident of Upper Clark Fork River Basin			

BOARD AND COUNCIL APPOINTEES FROM JANUARY 2006

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Upper Clark Fork River Basin Remediation and Restoration Advisory Council (Justice) cont.			
Mr. James Dinsmore	Governor	reappointed	1/23/2006
Hall			1/19/2008
Qualifications (if required): resident of Upper Clark Fork River Basin			
Ms. Barbara Evans	Governor	Mahlum	1/23/2006
Missoula			1/19/2008
Qualifications (if required): resident of Upper Clark Fork River Basin			
Ms. Kathy Hadley	Governor	Waber	1/23/2006
Deer Lodge			1/19/2008
Qualifications (if required): resident of Upper Clark Fork River Basin			
Director Jeff Hagener	Governor	not listed	1/23/2006
Helena			1/19/2008
Qualifications (if required): Director of the Department of Fish, Wildlife, and Parks			
Mr. John Hollenback	Governor	reappointed	1/23/2006
Gold Creek			1/19/2008
Qualifications (if required): resident of Upper Clark Fork River Basin			
Ms. Sally Johnson	Governor	reappointed	1/23/2006
Missoula			1/19/2008
Qualifications (if required): resident of Upper Clark Fork River Basin			

BOARD AND COUNCIL APPOINTEES FROM JANUARY 2006

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Upper Clark Fork River Basin Remediation and Restoration Advisory Council (Justice) cont.			
Mr. Milo Manning	Governor	Flynn	1/23/2006
Anaconda			1/19/2008
Qualifications (if required): resident of Upper Clark Fork River Basin			
Director Richard Opper	Governor	not listed	1/23/2006
Helena			1/19/2008
Qualifications (if required): Director of the Department of Environmental Quality			
Director Mary Sexton	Governor	not listed	1/23/2006
Helena			1/19/2008
Qualifications (if required): Director of the Department of Natural Resources and Conservation			
Ms. Robbie Taylor	Governor	Harrington	1/23/2006
Butte			1/19/2008
Qualifications (if required): resident of Upper Clark Fork River Basin			
Mr. James Yeoman	Governor	Vuckovich	1/23/2006
Anaconda			1/19/2008
Qualifications (if required): resident of Upper Clark Fork River Basin			
Workforce Investment Board (Labor and Industry)			
Ms. Georgia Gibbs-Atkinson	Governor	Ball	1/6/2006
Poplar			0/0/0
Qualifications (if required): private sector representative			

BOARD AND COUNCIL APPOINTEES FROM JANUARY 2006

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Workforce Investment Board (Labor and Industry) cont. Mr. Thomas McKenna Lewistown Qualifications (if required): private sector representative	Governor	Taylor	1/25/2006 0/0/0

VACANCIES ON BOARDS AND COUNCILS -- MARCH 1, 2006 through MAY 31, 2006

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Board of Architects (Labor and Industry) Mr. Tobias Stapleton, Billings Qualifications (if required): licensed architect	Governor	3/27/2006
Board of Athletics (Labor and Industry) Mr. Don Vegge, Billings Qualifications (if required): public member	Governor	4/25/2006
Board of Dentistry (Commerce) Ms. Jean Hagan, Big Fork Qualifications (if required): public member who is a senior citizen	Governor	3/29/2006
Dr. James Johnson, Billings Qualifications (if required): dentist	Governor	3/29/2006
Board of Hail Insurance (Agriculture) Mr. Larry Barbie, Inverness Qualifications (if required): public member	Governor	4/18/2006
Board of Nursing Home Administrators (Commerce) Ms. Greta Chaffin, Dillon Qualifications (if required): public member	Governor	5/28/2006
Board of Nursing Home Administrators (Labor and Industry) Mr. Tom Miller, Helena Qualifications (if required): public member	Governor	5/28/2006

VACANCIES ON BOARDS AND COUNCILS -- MARCH 1, 2006 through MAY 31, 2006

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Board of Plumbers (Labor and Industry)		
Mr. Terry Tatchell, Helena Qualifications (if required): journeyman plumber	Governor	5/4/2006
Mr. Timothy E. Regan, Miles City Qualifications (if required): master plumber	Governor	5/4/2006
Board of Real Estate Appraisers (Labor and Industry)		
Mr. David Heine, Kalispell Qualifications (if required): real estate appraiser	Governor	5/1/2006
Ms. Janeth Martin, Helena Qualifications (if required): public member	Governor	5/1/2006
Board of Realty Regulation (Labor and Industry)		
Mr. Terry W. Hilgendorf, Great Falls Qualifications (if required): public member and a Republican	Governor	5/9/2006
Commission on Practice of the Supreme Court (Supreme Court)		
Mr. Gary Davis, Helena Qualifications (if required): none specified	elected	3/28/2006
Mr. Bruce A. Fredrickson, Kalispell Qualifications (if required): none specified	elected	3/28/2006
Governor's Council on Organ and Tissue Donor Awareness (Public Health and Human Services)		
Mr. Tim Reardon, Helena Qualifications (if required): organ donor recipient	Governor	4/14/2006

VACANCIES ON BOARDS AND COUNCILS -- MARCH 1, 2006 through MAY 31, 2006

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Governor's Council on Organ and Tissue Donor Awareness (Public Health and Human Services) cont.		
Governor Judy Martz, Helena Qualifications (if required): representative of donor families and state government	Governor	4/14/2006
Mr. Theodore C. Marchion, Anaconda Qualifications (if required): representative of donor recipients	Governor	4/14/2006
Mr. Paul Buck, Missoula Qualifications (if required): ex-officio member	Governor	4/14/2006
Ms. Jan Hendrix, Kalispell Qualifications (if required): ex-officio member	Governor	4/14/2006
Ms. Sandi Stroot, Superior Qualifications (if required): ex-officio member	Governor	4/14/2006
Mr. John Pipe, Wolf Point Qualifications (if required): organ donor recipient and a Native American	Governor	4/14/2006
Mr. Dean Roberts, Helena Qualifications (if required): representative of the Department of Justice	Governor	4/14/2006
Rev. Kenneth Mottram, Bozeman Qualifications (if required): representative of clergy	Governor	4/14/2006
Ms. Jennifer Keck, Conrad Qualifications (if required): representative of donor recipients	Governor	4/14/2006

VACANCIES ON BOARDS AND COUNCILS -- MARCH 1, 2006 through MAY 31, 2006

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Governor's Council on Organ and Tissue Donor Awareness (Public Health and Human Services) cont. Ms. Rosemary Wolter, Billings Qualifications (if required): family donor and businessperson	Governor	4/14/2006
Ms. Maggie Bullock, Helena Qualifications (if required): representative of the Department of Public Health and Human Services	Governor	4/14/2006
Ms. Maggie Allen, Missoula Qualifications (if required): representative of donor families	Governor	4/14/2006
Mr. Jim DeTienne, Helena Qualifications (if required): representative of the Department of Public Health and Human Services	Governor	4/14/2006
Great Falls College of Tech-MSU (Education) Dr. Clay Gehring, Great Falls Qualifications (if required): public member	Governor	4/15/2006
Helena College of Tech-UM (Education) Mr. Rick Hays, Helena Qualifications (if required): public member	Governor	4/15/2006
Library Commission (Education) Mr. Ron Moody, Lewistown Qualifications (if required): resident of Montana	Governor	3/22/2006
MSU-Billings Executive Board (Education) Ms. Michelle Hood, Billings Qualifications (if required): public member	Governor	4/15/2006

VACANCIES ON BOARDS AND COUNCILS -- MARCH 1, 2006 through MAY 31, 2006

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
MSU-Northern Executive Board (Education) Ms. Judy Greenwood, Havre Qualifications (if required): public member	Governor	4/15/2006
Montana Abstinence Education Advisory Council (Public Health and Human Services) Dr. Tom Rasmussen, Helena Qualifications (if required): public member	Governor	3/10/2006
Ms. Jessie Stinger, Polson Qualifications (if required): public member	Governor	3/10/2006
Mr. Gary Swant, Deer Lodge Qualifications (if required): public member	Governor	3/10/2006
Mr. Bryce Skjervem, Helena Qualifications (if required): public member	Governor	3/10/2006
Mr. Jim Good, Bozeman Qualifications (if required): public member	Governor	3/10/2006
Ms. Joleen Spang, Lame Deer Qualifications (if required): public member	Governor	3/10/2006
Rep. Jeff Laszloffy, Laurel Qualifications (if required): public member	Governor	3/10/2006
Ms. Judy LaPan, Sidney Qualifications (if required): public member	Governor	3/10/2006

VACANCIES ON BOARDS AND COUNCILS -- MARCH 1, 2006 through MAY 31, 2006

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Montana Abstinence Education Advisory Council (Public Health and Human Services) cont.		
Mr. Matt Antonich, Kremlin Qualifications (if required): public member	Governor	3/10/2006
Mr. Collins Lawlor, Helena Qualifications (if required): non-voting youth representative	Governor	3/10/2006
Sen. Sherm Anderson, Deer Lodge Qualifications (if required): public member	Governor	3/10/2006
Ms. DeAnn Visser, Billings Qualifications (if required): public member	Governor	3/10/2006
Dr. Ken Graham, Butte Qualifications (if required): public member	Governor	3/10/2006
Mr. Joe Moerkerke, Conrad Qualifications (if required): public member	Governor	3/10/2006
Mr. Brent Gyuricza, Missoula Qualifications (if required): public member	Governor	3/10/2006
Ms. Carrie Price, Great Falls Qualifications (if required): public member	Governor	3/10/2006
Mr. Chris Jones, Missoula Qualifications (if required): public member	Governor	3/10/2006

VACANCIES ON BOARDS AND COUNCILS -- MARCH 1, 2006 through MAY 31, 2006

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Montana Abstinence Education Advisory Council (Public Health and Human Services) cont. Mr. Lance Lanning, Billings Qualifications (if required): public member	Governor	3/10/2006
Ms. Terry Reeser, Helena Qualifications (if required): non-voting youth representative	Governor	3/10/2006
Mr. David Ames, Helena Qualifications (if required): non-voting youth representative	Governor	3/10/2006
Montana Cherry Advisory Committee (Agriculture) Mr. Jan Tusick, Ronan Qualifications (if required): none specified	Director	5/3/2006
Montana Council on Homelessness (Public Health and Human Services) Mr. Terry Teichrow, Helena Qualifications (if required): public member	Governor	4/29/2006
Director Mark A. Simonich, Helena Qualifications (if required): public member	Governor	4/29/2006
Mr. Ed Amberg, Warm Springs Qualifications (if required): public member	Governor	4/29/2006
Mr. Mike Ferriter, Helena Qualifications (if required): public member	Governor	4/29/2006

VACANCIES ON BOARDS AND COUNCILS -- MARCH 1, 2006 through MAY 31, 2006

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Montana Council on Homelessness (Public Health and Human Services) cont.		
Mr. Hank Hudson, Helena Qualifications (if required): public member	Governor	4/29/2006
Ms. Sherry Scheel Matteucci, Missoula Qualifications (if required): public member	Governor	4/29/2006
Mr. Gordon Belcourt, Billings Qualifications (if required): public member	Governor	4/29/2006
Mr. Joe Foster, Helena Qualifications (if required): public member	Governor	4/29/2006
Mr. Roland Mena, Helena Qualifications (if required): public member	Governor	4/29/2006
Mr. Bob Anderson, Helena Qualifications (if required): public member	Governor	4/29/2006
Mr. Donald P. Ketchum, Denver Qualifications (if required): public member	Governor	4/29/2006
Ms. Lori Hartford, Billings Qualifications (if required): public member	Governor	4/29/2006
Mr. Joe Bichof, Missoula Qualifications (if required): public member	Governor	4/29/2006

VACANCIES ON BOARDS AND COUNCILS -- MARCH 1, 2006 through MAY 31, 2006

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Montana Council on Homelessness (Public Health and Human Services) cont. Mr. Eric Sells, Missoula Qualifications (if required): public member	Governor	4/29/2006
Mr. Gordon Higgins, Helena Qualifications (if required): public member	Governor	4/29/2006
Mr. Bob Buzzas, Bozeman Qualifications (if required): public member	Governor	4/29/2006
Montana Heritage Preservation and Development Commission (Montana Historical Society) Mr. F.W. Bill Howell, West Yellowstone Qualifications (if required): manager of a tourist facility	Governor	5/23/2006
Ms. Mary Oliver, Ennis Qualifications (if required): businessperson	Governor	5/23/2006
Montana State University Executive Board (Education) Ms. Sue Leigland, Bozeman Qualifications (if required): public member	Governor	4/15/2006
Public Employees Retirement Board (Administration) Rep. Betty Lou Kasten, Brockway Qualifications (if required): public member	Governor	4/1/2006
State 9-1-1 Advisory Council (Administration) Mr. Jim Anderson, Helena Qualifications (if required): Department of Military Affairs Disaster and Emergency Services Division	Director	3/1/2006

VACANCIES ON BOARDS AND COUNCILS -- MARCH 1, 2006 through MAY 31, 2006

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
State 9-1-1 Advisory Council (Administration) cont.		
Mr. Geoff Feiss, Helena Qualifications (if required): Montana Telephone Association	Director	3/1/2006
Mr. Richard Brumley, Lewistown Qualifications (if required): Montana Emergency Medical Services Association	Director	3/1/2006
Mr. Chuck Winn, Bozeman Qualifications (if required): Montana State Fire Chiefs Association	Director	3/1/2006
Mr. Joe Calnan, Montana City Qualifications (if required): Montana State Volunteer Fire Fighters Association	Director	3/1/2006
Ms. Wilma Puich, Butte Qualifications (if required): Association of Disaster and Emergency Services Coordinators	Director	3/1/2006
Mr. Larry Sheldon, Helena Qualifications (if required): Qwest Communications	Director	3/1/2006
Sheriff Cheryl Liedle, Helena Qualifications (if required): Montana Sheriff's and Peace Officers Association	Director	3/1/2006
Mr. Doug Kaercher, Havre Qualifications (if required): Montana Association of Counties	Director	3/1/2006
Mr. Fred Leistiko, Kalispell Qualifications (if required): Montana League of Cities and Towns	Director	3/1/2006

VACANCIES ON BOARDS AND COUNCILS -- MARCH 1, 2006 through MAY 31, 2006

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
State 9-1-1 Advisory Council (Administration) cont.		
Mr. Kevin Myhre, Lewistown Qualifications (if required): Montana Association of Chiefs of Police	Director	3/1/2006
Mr. Bill Rusche, Wolf Point Qualifications (if required): Association of Public Safety Communications Officials	Director	3/1/2006
Mr. Thom Danenhowe, Helena Qualifications (if required): Department of Public Health and Human Services	Director	3/1/2006
Mr. Dave Rosencrans, Helena Qualifications (if required): Public Safety Answering Point Representative	Director	3/1/2006
Ms. Lisa Kelly, Kalispell Qualifications (if required): Century Tel	Director	3/1/2006
Ms. Bonnie Lorang, Helena Qualifications (if required): Montana Independent Telecommunications Systems	Director	3/1/2006
Ms. Margaret Morgan, Helena Qualifications (if required): Western Wireless	Director	3/1/2006
Ms. Aimee Grmolijez, Helena Qualifications (if required): Verizon Wireless	Director	3/1/2006
Mr. Craig Bender, Great Falls Qualifications (if required): 3 Rivers Wireless	Director	3/1/2006

VACANCIES ON BOARDS AND COUNCILS -- MARCH 1, 2006 through MAY 31, 2006

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
State Library Commission (State Library) Mr. Donald Allen, Billings Qualifications (if required): public member	Governor	5/22/2006
University of Montana Executive Board (Education) Mr. Leonard Landa, Missoula Qualifications (if required): public member	Governor	4/15/2006
Western Montana College of the University of Montana (Education) Ms. Evelyn Ann Lohman, Dillon Qualifications (if required): public member	Governor	4/15/2006