ISSUE NO. 7

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 The Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

Page Number

SPECIAL NOTICE AND TABLE SECTION

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the proposed amendment of ARM 4.5.313 and 4.5.315 relating to noxious weed seed free forage	)	NOTICE OF PROPOSED AMENDMENT
	)	NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On May 6, 2006, the Montana Department of Agriculture proposes to amend the above-stated rules relating to noxious weed seed free forage.

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 April 20, 2006, to advise us of the nature of the accommodation that you need. Please contact Gregory H. Ames 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 rules as proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

4.5.313 FEES (1) An inspection fee of ~~$1.50~~ $2.50 per acre or a ~~$15~~ $25 minimum charge per field for forage inspection will be charged to the person for whom the forage was inspected. State mileage and per diem rates may also be assessed by the agents.

(2) through (2)(b) remain the same.

(c) If additional inspections are required because of weather operation delays or other related problems, the discretion of whether to charge an additional inspection fee will be left to the agent. The department will not require that the ~~25 cents~~ $1.00 per acre be charged for additional inspections due to weather, or other related problems, so the maximum inspection fee (if charged) will be ~~$1.25/acre~~ $1.50/acre.

(3) The government agent must submit ~~25 cents~~ $1.00 per acre or ~~$2.50~~ $10.00 for 10 acres or less for hay or straw~~,~~ to the department and report on a financial form provided by the department. The funds and form must be submitted by September 15 of each year to ensure that the persons producing certified forage will be included on the noxious weed seed free forage producer list.

(4) through (7) remain the same.

AUTH: ~~80-7-909~~ 80-7-907, MCA
IMP: 80-7-905, 80-7-908, MCA

REASON: The proposed inspection fee increase will help offset operational costs of the noxious weed seed free forage program. The noxious weed seed free forage program began with the intention of being self-funding from income generated by the acreage inspection fee. These inspection fees have been unchanged since 1996. Funding for the noxious weed seed free forage program has been supplemented by noxious weed program funds. This will continue since the fee increase will not make the program self-funding but will support a greater proportion of the operation costs.

(1) The increase to $2.50 per acre inspected or a $25.00 minimum on an estimated 30,000 acres would provide an increase of $7,500 in revenue to the counties and an increase of $22,500 in revenue to the department. This affects 280 producers.

(2)(c) The department would not require the $1.00 per acre be charged for additional inspections due to weather, or other related problems, so the maximum inspection fee (if charged by an inspector) would be $1.50 per acre. History shows that this would affect less than 1% of the 280 producers. Projected revenue would be $450 per year. That is calculated by taking 300 acres which is average (30,000 acres x 1%) by $1.50 for the reinspection fee. Inspections can be 100 acres or 1000 acres, it varies by individual producers.

(3) The minimum fee change to $25.00 for 10 acres or less will affect approximately 20% of the 280 producers. This increase is included in the $7,500 for counties and $22,500 for the department.

The Montana Code Annotated reference was corrected to 80-7-907, MCA which more specifically deals with the inspection fees.

4.5.315 IDENTIFICATION OF PRODUCT AND PACKAGE TYPES

(1) The following identification information will be used by agents when completing reporting forms:

~~(a) State and provincial abbreviations recognized by the United States postal service.~~

~~(b)~~ (a) Product forage types	~~Abbreviation~~
(i) Alfalfa	~~A~~
(ii) Alfalfa/grass	~~AG~~
(iii) Grass	~~G~~
(iv) Straw	~~S~~
(v) Grain/barley	~~GRB~~
(vi) Grain/oats	~~GRO~~
(vii) Sanfoin	~~SAN~~
(viii) Other forage (agent must describe)	~~OF~~
~~(c)~~ (b) Package type	~~Abbreviation~~
(i) Small rectangular bales	~~SB~~
(ii) Large rectangular	~~LB~~
(iii) Large round bales	~~LR~~
(iv) Small round bales	~~SR~~

(v) Cubes ~~CB~~
(vi) Pellets ~~PE~~
(vii) Loose forage ~~LF~~
(viii) Silage ~~SG~~
(ix) Grain concentrate ~~GC~~
(x) Other packages (agent must describe) ~~OP~~

AUTH: 80-7-909, MCA
IMP: 80-7-905, MCA

REASON: It will be less confusing and more useable to drop the abbreviations for the forage products. Agents and department administrative staff routinely confuse large rectangle and large round bales. Many of the terms, when abbreviated, require one to look up to see what it is (e.g., LF for loose forage, or SG for silage).

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to Gregory H. Ames 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. Any comments must be received no later than May 4, 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 Gregory H. Ames 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 May 4, 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 28 persons based on the 280 certified producers in the noxious weed seed free forage program.

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, do not apply.

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, March 27, 2006.

BEFORE THE MONTANA COAL BOARD
COMMUNITY DEVELOPMENT DIVISION
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed adoption of New Rule I, the amendment of ARM 8.101.101, 8.101.201, 8.101.202, 8.101.301, 8.101.302, 8.101.303, 8.101.304, 8.101.305, 8.101.306, 8.101.307, and 8.101.308, and the repeal of 8.101.309 and 8.101.310 pertaining to the administration of coal board grants	))))))))))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION, AMENDMENT, AND REPEAL

TO: All Concerned Persons

1. On May 10, 2006, at 1:30 p.m., a public hearing will be held in Room 226 of the Park Avenue Building, 301 South Park Avenue, Helena, Montana, to consider the adoption of a new rule and the amendment and repeal of rules pertaining to the administration of coal board grants.

2. The Department of Commerce will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Community Development Division no later than 5:00 p.m. on April 26, 2006, to advise the division of the nature of the accommodation that you need. Please contact Joe LaForest, Community Development Division, 301 South Park Avenue, P.O. Box 200523, Helena, Montana 59620-0523; telephone (406) 841-2789; Montana Relay 1-800-253-4091; TDD (406) 841-2702; facsimile (406) 841-2771; e-mail to jlaforest@mt.gov.

3. The proposed new rule provides as follows:

NEW RULE I APPLICATIONS FOR PRELIMINARY ENGINEERING REPORTS OR PRELIMINARY ARCHITECTURAL REPORTS (1) The purpose of the applications for preliminary engineering reports or preliminary architectural reports is to evaluate applicants and establish priorities among those who may qualify for these grants. Applications will be evaluated on the five main guidelines listed in ARM 8.101.301.

(2) Coal impact grant funds may only be used for the preparation of plans, studies, analyses, or necessary research for the preparation of a preliminary engineering report as described in the most current Uniform Application for Montana Public Facility Projects. Coal impact grant funds may only be used for the preparation of a preliminary architectural report as described in Appendix S of the CDBG Application Guidelines for Public Facilities Projects. Each booklet is available at http://comdev.mt.gov.

(3) Grants for preliminary engineering reports or preliminary architectural reports require the submission of only one application. The application shall be considered and either approved or denied by the coal board during the next scheduled quarterly meeting. The application is available online at http://comdev.mt.gov/CDD_CB.asp.

AUTH: 90-6-205, MCA
IMP: 90-6-205, MCA

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

8.101.101 ORGANIZATION OF BOARD (1) The coal board is created by ~~section 2-15-1104~~ 2-15-1821, MCA, and appointed by the governor.

(2) remains the same.

(3) Information or submissions: Inquiries regarding the board may be addressed to the administrative officer or chairman at the Coal Board, Department of Commerce, ~~Cogswell Bldg., Room C-211,~~ 301 South Park Avenue, P.O. Box 200523, Helena, Montana 59620-0523. Specific or general inquiries regarding the board may be addressed to the administrative officer.

~~(4) Personnel Roster. Addresses of the chairman and board members are as follows:~~

~~Mr. Monty E. Long, Chairman, 316 Harrison Blvd., Kalispell, MT 59901~~
~~Mr. Gene H. Kurtz, Vice-Chairman, P.O. Box 830, Forsyth, MT 59327~~
~~Mr. Hal J. Stearns, 300 Westview, Missoula, MT 59803~~
~~Mr. Alan Evans, 4300 Highway 87 South, Roundup, MT 59072~~
~~Mr. Gerald Feda, 206 Second Ave. North, Glasgow, MT 59230~~
~~Mr. Ted Fletcher, Ashland, MT 59003~~
~~Mr. Robert E. Carroll, 130 Neill Avenue, Helena, MT 59601~~

~~(5) Chart of Division Organization. A chart of the Department organization is found at page 8-13 of these rules and incorporated by reference.~~

AUTH: 90-6-205, MCA
IMP: 90-6-205, MCA

8.101.201 INCORPORATION OF MODEL RULES (1) The coal board ~~has herein adopted and incorporated the Attorney General's Model Procedural Rules 1 through 28 by reference and all subsequent amendments to the model procedural rules~~ adopts and incorporates by reference the Attorney General's Model Rules of Procedure. The model rules are found at ARM 1.3.101 through 1.3.233.

AUTH: 2-4-201, MCA
IMP: 2-4-201, MCA

8.101.202 INCORPORATION BY REFERENCE OF RULES FOR IMPLEMENTING MEPA (1) The board ~~hereby~~ adopts and incorporates by reference the department's rule for implementing Title 75, chapter 1, MCA, the

Montana Environmental Policy Act (MEPA) as set forth in ARM 8.2.302 through 8.2.401.

AUTH: 90-6-205, MCA
IMP: 75-1-201, 75-1-202, MCA

8.101.301 POLICY STATEMENT (1) The coal board must adopt rules governing its proceedings, prescribe forms for grant ~~and loan~~ applications, receive and consider applications for grants ~~and loans from the local impact and education trust fund~~, and award grants ~~and loans~~ to local governmental units, federally-recognized Indian tribes, school districts, and state agencies to assist local governmental units in meeting the local impact of coal development or decline by enabling them to adequately provide governmental services and facilities which are needed as a direct consequence of coal development or decline.

(2) remains the same.

(a) Demonstration of n~~N~~eed:

(i) ~~-~~ What assistance is required to eliminate or reduce a direct and obvious threat to the public health, safety or welfare that has been caused as a direct result of coal development or decline.

(b) Severity of impact:

(i) ~~-~~ What has been the rapidity of growth or decline and subsequent ~~expansion~~ development of the problem and the number of people affected.

(c) Degree of local effort:

(i) ~~-~~ As applicable, ~~W~~what bonding, ~~and~~ millage effort~~s~~, or user charge has ~~have~~ been made in the past, those currently being made, and what effort has been made to secure funds from other sources to answer needs.

(d) Availability of funds:

(i) ~~- The weighing of the~~ What amount of funds is available in light of the total request submitted.

(e) Planning:

(i) ~~-~~ How does the application fit into an overall plan for the orderly management of the existing or contemplated growth or decline problems.

AUTH: 90-6-205, MCA
IMP: 90-6-205, MCA

8.101.302 PRE-APPLICATION FORM (LIF 1-75) (1) The purpose of the pre-application form is t~~T~~o evaluate applicants and establish priorities among those who may qualify for grants ~~or loans~~. Items to be considered are a description of the proposed project, estimated cost, projected completion date, and the project's relationship to coal development.

(2) It shall include a citation to the Montana Code~~s~~ Annotated or, in the case of a federally-recognized Indian tribe, federal statute or regulation which authorizes the applicant to make expenditures to provide for the particular governmental service or facility. The pre-application ~~F~~form is available ~~from administrative officer~~ online at http://comdev.mt.gov/CDD_CB.asp.

~~(3) In addition to the above information an applicant for a loan shall establish that the method proposed for repayment of the loan is feasible.~~

~~(4) An application for a loan shall be accompanied by a written opinion from the applicant's legal counsel that the proposed loan arrangements will comply with all applicable statutes, including those relating to the form, limits, and procedures for incurring indebtedness.~~

~~(5)~~ (3) If the applicant for a grant ~~or loan~~ is a federally-recognized Indian tribe, its application must include a resolution of the tribal council or other governing body waiving the applicant's jurisdictional immunity from suit on any issue specifically arising from the transaction of a grant ~~or loan~~ obtained under this ~~part~~ subchapter and agreeing to the adjudication of any dispute arising out of the grant ~~or loan~~ transaction in the district court of the first judicial district of the state of Montana. In addition, the applicant must submit proof that it has requested approval of the transaction, including the waiver of immunity, by the secretary of the United States Department of Interior or his designated agent and that the secretary or his designated agent has either approved the transaction or found that the secretary's approval is unnecessary.

AUTH: 90-6-205, MCA
IMP: 90-6-208, MCA

8.101.303 FULL APPLICATION FORM (LIF 2-75) (1) ~~Requiring~~ The purpose of the full application is to require such additional information as is needed by the board to fully consider eligible recipients of grants ~~and loans~~. Such additional information shall include local government budgets, documentation of past and current local effort, current comprehensive or ongoing development plan, documentation of citizen participation, and firm estimates or bids on the completed project. The full application ~~F~~form is available ~~from administrative officer~~ online at http://comdev.mt.gov/CDD_CB.asp.

AUTH: 90-6-205, MCA
IMP: 90-6-208, MCA

8.101.304 AGREEMENT FORM (LIF 3-75) (1) The agreement form is t~~T~~o be executed between the coal board and local governmental unit establishing legal obligations and responsibilities upon each party to faithfully perform the terms of the grant ~~or loan~~ award. The f~~F~~orm is available from the administrative officer.

AUTH: 90-6-205, MCA
IMP: 90-6-208, MCA

8.101.305 SUBMITTAL DEADLINES (1) Grant pre-applications and full applications shall be submitted to the administrative officer ~~30 days prior to board considerations~~ by the first of the month preceding the month of the next quarterly meeting.

(2) remains the same.

~~(3) All loan preapplications shall be submitted to the administrative officer by August 31 or March 1 of each year for board action during that fiscal year.~~

~~(4)~~ (3) Exceptions to (1)~~,~~ and (2) ~~and (3)~~ shall be at the board's discretion.

AUTH: 90-6-205, MCA
IMP: 90-6-205, MCA

8.101.306 STATE AGENCIES (1) An eligible state agency is one that:

(a) is seeking a grant to assist a local governmental unit in providing a service which the local government unit is legally responsible to provide in whole or in part~~;~~, and such service must be expanded because of coal development or decline impact, and the applicant state agency is either joined in the application by the local governmental unit's governing body or has received letters of support from such authority; or

(b) remains the same.

AUTH: 90-6-205, MCA
IMP: 90-6-205, MCA

8.101.307 WATER AND/OR SEWER SYSTEMS PROVIDED BY DISTRICTS

(1) Improvement districts and county water and sewer districts are eligible for grants ~~and loans~~ to provide for the construction, reconstruction, expansion, and maintenance of a water and/or sewer system that serves:

(a) through (c) remain the same.

(2) Counties may apply for and receive grants ~~or loans~~ to pay for the expenses of rural improvement districts.

(3) Cities, towns, and consolidated units of local government may apply for and receive grants ~~or loans~~ to pay for the expenses of special improvement districts.

AUTH: 90-6-205, MCA
IMP: 90-6-205, MCA

8.101.308 FUNDING OF WATER AND/OR SEWER SYSTEMS ~~TO BE PROVIDED BY DISTRICTS~~ (1) remains the same.

AUTH: 90-6-205, MCA
IMP: 90-6-205, MCA

5. The board proposes to repeal the following rules:

8.101.309 LIMITATIONS ON LOANS found at ARM page 8-3684.

8.101.310 INTEREST RATES FOR LOANS found at ARM page 8-3684.

AUTH: 90-6-205, MCA
IMP: 90-6-205, 90-6-209, MCA

6. STATEMENT OF REASONABLE NECESSITY: As part of the periodic review of administrative rules, the board is proposing a number of revisions to board rules. The board determined that it is reasonably necessary to amend the rules to, among other things, remove all reference to loans, institute a new one-step application for preliminary engineering reports and preliminary architectural reports, institute the modifications to the pre-application and full application forms, and to provide additional direction to applicants seeking coal impact grant funds. Many of the rules proposed for amendment have never been amended since their initial adoption in 1981. New Rule I is necessary so that the department may properly evaluate applicants and establish priorities for limited public funds. Accordingly, the board determined that there is reasonable necessity to adopt New Rule I to generally amend certain rules, and to repeal two rules related to loans from the board because the board does not make loans from available funds. Some of the proposed amendments are technical in nature, such as the proposed renumbering within rules to make them internally consistent. This statement of reasonable necessity applies to all the proposed rule actions.

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 Community Development Division, 301 South Park Avenue, P.O. Box 200523, Helena, Montana, 59620-0523, or by facsimile to (406) 841-2771 to be received no later than 5:00 p.m., May 17, 2006.

8. Joe LaForest has been designated to preside over and conduct this hearing.

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

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

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

MONTANA COAL BOARD
COMMUNITY DEVELOPMENT DIVISION
DEPARTMENT OF COMMERCE

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

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

Certified to the Secretary of State March 27, 2006

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 17.8.101, 17.8.102, 17.8.103, 17.8.302, 17.8.340, 17.8.767, 17.8.801, 17.8.802, 17.8.818, 17.8.902, 17.8.1002, 17.8.1202, and 17.8.1502 pertaining to incorporation by reference of current federal regulations and other materials into air quality rules	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On May 11, 2006 at 10:30 a.m. the Board of Environmental Review will hold a public hearing in Room 111, Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The board will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the board no later than 5:00 p.m., May 1, 2006, to advise us of the nature of the accommodation that you need. Please contact the board secretary at P.O. Box 200901, Helena, Montana, 59620-0901; phone (406) 444-2544; fax (406) 444-4386; or e-mail ber@mt.gov.

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

17.8.101 DEFINITIONS As used in this chapter, unless indicated otherwise in a specific subchapter, the following definitions apply:

(1) "Administrator" means the administrator of the U.S. Environmental Protection Agency or ~~his~~ the administrator's designee.

(2) through (13) remain the same.

(14) "EPA" means the U.S. Environmental Protection Agency.

(15) through (42) remain the same.

AUTH: 75-2-111, MCA
IMP: Title 75, chapter 2, MCA

17.8.102 INCORPORATION BY REFERENCE--PUBLICATION DATES

(1) Unless expressly provided otherwise, in this chapter where the board has:

(a) adopted a federal regulation by reference, the reference is to the July 1, ~~2004~~ 2005, edition of the Code of Federal Regulations (CFR);

(b) adopted a section of the United States Code (USC) by reference, the reference is to the 2000 edition of the USC and Supplement ~~I~~ III (~~2001~~ 2003);

(c) referred to a section of the Montana Code Annotated (MCA), the

reference is to the ~~2003~~ 2005 edition of the MCA;

(d) adopted another rule of the department or of another agency of the state of Montana by reference, the reference is to the December 31, ~~2004~~ 2005, edition of the Administrative Rules of Montana (ARM).

AUTH: 75-2-111, MCA
IMP: Title 75, chapter 2, MCA

17.8.103 INCORPORATION BY REFERENCE AND AVAILABILITY OF REFERENCED DOCUMENTS (1) For the purposes of this subchapter, the board ~~hereby~~ adopts and incorporates by reference the following:

(a) through (g) remain the same.

(h) 40 CFR Part 60, Appendix B, pertaining to EPA performance specification and test procedures for continuous emission monitoring systems, except for the revisions to Appendix B, as set forth in the final rule published at 70 FR 28606 on May 18, 2005, "Standards of Performance for New and Existing Stationary Sources: Electric Utility Steam Generating Units" (the Clean Air Mercury Rule (CAMR));

(i) through (4) remain the same.

AUTH: 75-2-111, MCA
IMP: Title 75, chapter 2, MCA

17.8.302 INCORPORATION BY REFERENCE (1) For the purposes of this subchapter, the board ~~hereby~~ adopts and incorporates by reference the following:

(a) 40 CFR Part 60, pertaining to standards of performance for new stationary sources and modifications, with the following exceptions:

(i) 40 CFR 60.1500 through 1940 and tables 1 through 8 (subpart BBBB), emission guidelines for existing small municipal waste combustion units, are not incorporated by reference; and

(ii) the revisions to 40 CFR 60.17, 21, 24, 41a, 45-46a, 48-52a, 4101-4176 (new subpart HHHH), and Appendix B, as set forth in the final rule published at 70 FR 28606 on May 18, 2005, "Standards of Performance for New and Existing Stationary Sources: Electric Utility Steam Generating Units" (the Clean Air Mercury Rule (CAMR)) are not incorporated by reference;

(b) through (4) remain the same.

AUTH: 75-2-111, 75-2-203, MCA
IMP: 75-2-203, MCA

17.8.340 STANDARD OF PERFORMANCE FOR NEW STATIONARY SOURCES AND EMISSION GUIDELINES FOR EXISTING SOURCES (1) through (5)(e) remain the same.

~~(6) Existing small municipal waste combustion units, as defined in 40 CFR 60.1550(a), and that are not exempt under 40 CFR 60.1555, must:~~

~~(a) comply with the applicable requirements in 40 CFR 60, subpart BBBB;~~

~~(b) achieve final compliance with the Montana small municipal waste combustion unit plan (state plan) or cease operation as expeditiously as practicable but not later than the earlier of the following two dates:~~

~~(i) December 6, 2005; or~~

~~(ii) three years after the effective date of state plan approval by EPA; and~~

~~(c) for Class I units, as defined in 40 CFR 60.1940, for which construction was commenced after June 26, 1987, comply with the dioxins/furans and mercury limits specified in Tables 2 and 3 of 40 CFR 60, subpart BBBB, by the later of the following two dates:~~

~~(i) one year after the effective date of state plan approval; or~~

~~(ii) one year following the issuance of a revised construction or operation permit, if a permit modification is required.~~

AUTH: 75-2-111, 75-2-203, MCA
IMP: 75-2-203, MCA

17.8.767 INCORPORATION BY REFERENCE (1) For the purposes of this subchapter, the board ~~hereby~~ adopts and incorporates by reference:

(a) through (c) remain the same.

(d) 40 CFR Part 60, specifying standards of performance for new stationary sources, except for the revisions to 40 CFR 60.17.21, 24, 41a, 45-46a, 48-52a, 4101-4176 (new subpart HHHH), and Appendix B, as set forth in the final rule published at 70 FR 28606 on May 18, 2005, "Standards of Performance for New and Existing Stationary Sources: Electric Utility Steam Generating Units" (the Clean Air Mercury Rule (CAMR));

(e) through (4) remain the same.

AUTH: 75-2-111, 75-2-204, MCA
IMP: 75-2-211, 75-2-215, MCA

17.8.801 DEFINITIONS In this subchapter, the following definitions apply:

(1) through (26) remain the same.

(27) The following apply to the definition of the term "significant":

(a) "significant" means, in reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

Pollutant and Emissions Rate	
Carbon monoxide:	100 tons per year (tpy)
Nitrogen oxides:	40 tpy
Sulfur dioxide:	40 tpy
Particulate matter:	25 tpy of particulate matter emissions
	15 tpy of PM-10 emissions
Ozone:	40 tpy of volatile organic compounds
Lead:	0.6 tpy
Fluorides:	3 tpy
Sulfuric acid mist:	7 tpy

Hydrogen sulfide (H_2S): 10 tpy
Total reduced sulfur (including H_2S): 10 tpy
Reduced sulfur compounds (including H_2S): 10 tpy
Municipal waste combustor organics (measured as total tetra- through octa-chlorinated dibenzo-p-dioxins and dibenzofurans): $3.2 * 10^{-6}$ megagrams per year ($3.5 * 10^{-6}$ tpy)
Municipal waste combustor metals (measured as particulate matter): 14 megagrams per year (15 tpy)
Municipal waste combustor acid gases (measured as sulfur dioxide and hydrogen chloride): 36 megagrams per year (40 tpy)

(b) through (29) remain the same.

AUTH: 75-2-111, 75-2-203, MCA
IMP: 75-2-202, 75-2-203, 75-2-204, MCA

17.8.802 INCORPORATION BY REFERENCE (1) For the purposes of this subchapter, the board ~~hereby~~ adopts and incorporates by reference the following:

(a) through (c) remain the same.

(d) 40 CFR Part 60, pertaining to standards of performance for new stationary sources, except for the revisions to 40 CFR 60.17, 21, 24, 41a, 45-46a, 48-52a, 4101-4176 (new subpart HHHH), and Appendix B, as set forth in the final rule published at 70 FR 28606 on May 18, 2005, "Standards of Performance for New and Existing Stationary Sources: Electric Utility Steam Generating Units" (the Clean Air Mercury Rule (CAMR));

(e) through (5) remain the same.

AUTH: 75-2-111, 75-2-203, MCA
IMP: 75-2-202, 75-2-203, 75-2-204, MCA

17.8.818 REVIEW OF MAJOR STATIONARY SOURCES AND MAJOR MODIFICATIONS--SOURCE APPLICABILITY AND EXEMPTIONS (1) through (6) remain the same.

(7) The department may exempt a proposed major stationary source or major modification from the requirements of ARM 17.8.822, with respect to monitoring for a particular pollutant, if:

(a) the emissions increase of the pollutant from a new stationary source or the net emissions increase of the pollutant from a modification would cause, in any area, air quality impacts less than the following amounts:

(i) through (viii) remain the same.

(ix) hydrogen sulfide--0.2 µg/m^3, one-hour average;

(ix) remains the same, but is renumbered (x).

(b) and (c) remain the same.

AUTH: 75-2-111, 75-2-203, MCA
IMP: 75-2-202, 75-2-203, 75-2-204, MCA

17.8.902 INCORPORATION BY REFERENCE (1) For the purposes of this subchapter, the board ~~hereby~~ adopts and incorporates by reference the following:

(a) 40 CFR Part 60, pertaining to standards of performance for new stationary sources, except for the revisions to 40 CFR 60.17, 21, 24, 41a, 45-46a, 48-52a, 4101-4176 (new subpart HHHH), and Appendix B, as set forth in the final rule published at 70 FR 28606 on May 18, 2005, "Standards of Performance for New and Existing Stationary Sources: Electric Utility Steam Generating Units" (the Clean Air Mercury Rule (CAMR));

(b) through (5) remain the same.

AUTH: 75-2-111, 75-2-203, MCA
IMP: 75-2-202, 75-2-203, 75-2-204, MCA

17.8.1002 INCORPORATION BY REFERENCE (1) For the purposes of this subchapter, the board ~~hereby~~ adopts and incorporates by reference the following:

(a) 40 CFR Part 60, pertaining to standards of performance for new stationary sources, except for the revisions to 40 CFR 60.17, 21, 24, 41a, 45-46a, 48-52a, 4101-4176 (new subpart HHHH), and Appendix B, as set forth in the final rule published at 70 FR 28606 on May 18, 2005, "Standards of Performance for New and Existing Stationary Sources: Electric Utility Steam Generating Units" (the Clean Air Mercury Rule (CAMR));

(b) through (5) remain the same.

AUTH: 75-2-111, 75-2-203, MCA
IMP: 75-2-202, 75-2-203, 75-2-204, MCA

17.8.1202 INCORPORATION BY REFERENCE (1) For the purposes of this subchapter, the board adopts and incorporates by reference the following:

(a) remains the same.

(b) 40 CFR Part 72, pertaining to the operating permit requirements for acid rain sources subject to Title IV of the FCAA, except for the revisions to 40 CFR 72.2, as set forth in the final rule published at 70 FR 28606 on May 18, 2005, "Standards of Performance for New and Existing Stationary Sources: Electric Utility Steam Generating Units" (the Clean Air Mercury Rule (CAMR));

(c) 40 CFR Part 75, pertaining to the continuous emission monitoring requirements for acid rain sources subject to Title IV of the FCAA, except for the revisions to 40 CFR 75.2, 6, 10, 15, 20-22, 24, 31-33, 38-39, 53, 57-59, 80-84, and Appendices A, B, F, and K, as set forth in the final rule published at 70 FR 28606 on May 18, 2005, "Standards of Performance for New and Existing Stationary Sources: Electric Utility Steam Generating Units" (the Clean Air Mercury Rule (CAMR));

(d) through (5) remain the same.

AUTH: 75-2-217, MCA
IMP: 75-2-217, 75-2-218, MCA

17.8.1502 INCORPORATION BY REFERENCE (1) For purposes of this subchapter, the board ~~hereby~~ adopts and incorporates by reference the following:

~~(a)~~ (d) 40 CFR part 72.2, which contains the definition of utility unit, except for the revisions to 40 CFR 72.2, as set forth in the final rule published at 70 FR 28606 on May 18, 2005, "Standards of Performance for New and Existing Stationary Sources: Electric Utility Steam Generating Units" (the Clean Air Mercury Rule CAMR));

~~(b)~~ (e) 40 CFR part 75, which describes the continuous emission monitoring requirements for acid rain sources subject to Title IV of the FCAA, except for the revisions to 40 CFR 75.2, 6, 10, 15, 20-22, 24, 31-33, 38-39, 53, 57-59, 80-84, and Appendices A, B, F, and K, as set forth in the final rule published at 70 FR 28606 on May 18, 2005, "Standards of Performance for New and Existing Stationary Sources: Electric Utility Steam Generating Units" (the Clean Air Mercury Rule (CAMR));

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

~~(d)~~ (b) 40 CFR part 60.13 and 40 CFR Part 60, Appendix B, which set forth EPA performance specification and test procedures for continuous emission monitoring systems for new stationary sources, except for the revisions to 40 CFR Part 60, Appendix B, as set forth in the final rule published at 70 FR 28606 on May 18, 2005, "Standards of Performance for New and Existing Stationary Sources: Electric Utility Steam Generating Units" (the Clean Air Mercury Rule (CAMR));

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

(f) through (4) remain the same.

AUTH: 75-2-217, 75-2-218, MCA
IMP: 75-2-217, 75-2-218, MCA

REASON: The board is proposing to amend the air quality rules to adopt the current editions of federal regulations, federal statutes, state statutes, and state rules that are incorporated by reference. This is necessary to maintain primacy from the U.S. Environmental Protection Agency (EPA) over air quality regulation in the state.

The board is proposing amendments to ARM 17.8.101 to update grammar and punctuation. The board is also proposing amendments to ARM 17.8.1502 to renumber sections listing CFR incorporations by reference so they will be in numerical order and consistent with the numbering style in other subchapters of ARM Title 17, chapter 8. These editorial amendments are not intended to change the meaning of the rules.

The board is proposing to amend ARM 17.8.102 to adopt revisions to federal regulations published in the Federal Register (FR) between July 1, 2004, and June 30, 2005, that are included in the July 1, 2005, edition of the Code of Federal Regulations (CFR). Revisions include changes to the definitions of volatile organic compounds; removal of ethylene glycol monobutyl ether (EGBE) from the list of hazardous air pollutants; promulgation of national emission standards for hazardous air pollutants (NESHAPs) for plywood and composite wood products and for industrial, commercial and institutional boilers and process heaters; technical amendments to the NESHAPs for secondary aluminum production, catalytic cracking and reforming units at petroleum refineries, solvent extraction for vegetable oil production, stationary combustion turbines, and asphalt processing; and addition of references to certain PM-2.5 precursors to the transportation conformity rule.

The board is proposing to amend ARM 17.8.103(1), 17.8.302(1), 17.8.767(1), 17.8.802(1), 17.8.902(1), 17.8.1002(1), 17.8.1202(1), and 17.8.1502(1) to exclude from incorporating by reference the Federal Standards of Performance for New and Existing Stationary Sources: Electric Utility Steam Generating Units (the Clean Air Mercury Rule (CAMR)). The board is proposing to exclude incorporation of CAMR, because the board intends to propose a Montana mercury rule which may incorporate certain sections of CAMR. If the board does not adopt a Montana mercury rule, the board may consider incorporation by reference of all or part of CAMR at a later date.

The board is proposing to amend ARM 17.8.302(1)(a)(i) and to delete ARM 17.8.340(6) to repeal references to small municipal waste combustion units (SMWCU). On December 6, 2000 (65 FR 76378), the EPA issued a regulation that re-established air pollutant emission guidelines for existing SMWCU, to be codified in 40 CFR Part 60, subpart BBBB. Under 40 CFR 60.1505(b), the state was required to either submit to the EPA a State Plan containing enforceable mechanisms for implementing the admission guidelines in 40 CFR Part 60, subpart BBBB, or to submit a negative declaration letter in place of a State Plan if there were no existing SMWCU in the state. At the time of the issuance of the EPA's regulation, Montana had one existing SMWCU, the Park County incinerator. The state submitted the Montana Small Municipal Waste Combustion Unit Plan to the EPA on October 26, 2001. Amendments to ARM 17.8.302(1)(a), which at that time was designated as 17.8.302(1)(b), and 17.8.340(6) that had been approved by the board on September 21, 2001, provided the enforceable mechanisms for the State Plan. Because the State Plan was never approved by the EPA, the Park County incinerator was subject to federal implementation of the requirements contained in 40 CFR Part 62, subpart JJJ. As of May 2005, the Park County incinerator had been removed, and the facility was being used as a transfer station. Because there are no other SMWCU in the state, a State Plan is not required. Montana submitted a request to the EPA on June 27, 2005, that the EPA withdraw Montana's State Plan. The EPA then requested that the state amend ARM 17.8.302(1)(a) to exclude incorporating 40 CFR 60.1500 through 1940 and tables 1 through 8 (subpart BBBB), pertaining to the emission guidelines and compliance times for SMWCU and to delete ARM 17.8.340(6) so there will be no future conflict with the EPA's regulatory authority if Montana has any SMWCU in the future.

The board is proposing to amend ARM 17.8.801(27) to make the language consistent with 40 CFR 51.166(b)(23)(i), by adding a significance level for hydrogen sulfide (H_2S), and to amend ARM 17.8.818(7)(a), by adding a net emissions increase level for H_2S, to make the language consistent with 40 CFR 51.166(i)(5)(i).

The board will also take testimony on submission of the proposed amendments to the EPA as proposed revisions to the State Implementation Plan (SIP).

4. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to the board secretary at Board of Environmental Review, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana, 59620-0901; faxed to (406) 444-4386; or e-mailed to ber@mt.gov, no later than 5:00 p.m., May 18, 2006. To be

guaranteed consideration, mailed comments must be postmarked on or before that date.

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

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

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

BOARD OF ENVIRONMENTAL REVIEW

By: */s/ Joseph W. Russell*
JOSEPH W. RUSSELL, M.P.H.,
Chairperson

Reviewed by:

/s/ David Rusoff
DAVID RUSOFF, Rule Reviewer

Certified to the Secretary of State, March 27, 2006.

BEFORE THE DEPARTMENT OF CORRECTIONS
OF THE STATE OF MONTANA

In the matter of the proposed amendment of ARM 20.9.101, 20.9.106, 20.9.113, and 20.9.122, involving youth placement committees, and proposed adoption of NEW RULES I through VIII, and repeal of ARM 20.9.123, 20.9.124, 20.9.128, 20.9.129, 20.9.134, 20.9.135, 20.9.140, and 20.9.141 involving the juvenile detention intervention program (JDIP)	)))))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT, ADOPTION, AND REPEAL

TO: All Concerned Persons

1. On May 8, 2006 at 10:00 a.m., a public hearing will be held in Room 24 of the Department of Corrections Annex at 1539 11th Ave., Helena, Montana, to consider the proposed amendment, adoption, and repeal of the above-stated rules.

2. The Department of Corrections (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 department no later than 5:00 p.m. on May 1, 2006 to advise us of the nature of the accommodation that you need. Please contact Myrna Omholt-Mason, Department of Corrections, 1539 11th Ave., P.O. Box 201301, Helena, Montana 59620-1301; telephone (406) 444-3930; fax (406) 444-4920; e-mail momholt-mason@mt.gov.

3. GENERAL STATEMENT OF REASONABLE NECESSITY: The changes in these rules are primarily recommended by the Legislative Audit Division's Performance Audit of the Juvenile Delinquency Intervention Program (JDIP), October 2005, as necessary to clarify allowable expenditures and establish standards for program monitoring and oversight consistent with legislative intent. The department proposes to adopt new rules involving JDIP and place them in a different subchapter to achieve greater clarity in the language and organization of the rules. Changes to rules affecting youth placement committees are generally proposed to correct grammar and clarify intent and meaning. Other specific reasons are listed below.

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

20.9.101 DEFINITIONS For the purpose of ~~this rule~~ subchapter 1 and [NEW SUBCHAPTER I] of these rules, the following definitions apply:

(1) and (2) remain the same.

(3) "Change in placement" means the transfer or physical movement of an offender from a previously approved residential placement ~~to another placement at a~~

~~higher level of supervision~~. It does not include an emergency placement of 45 days or less.

(4) "Committee" means a youth placement committee appointed ~~by the youth court judge~~ pursuant to 41-5-121, MCA.

(5) through (7) remain the same.

~~(8) "Cost containment review panel" means the panel established in 41-5-131, MCA.~~

~~(9) "Community alternatives" means programs, placements, or services provided or funded through the youth court probation office within the community of residence of the youth's parents or guardian, but does not include pre-adjudicatory detention.~~

(8) "Court administrator" means the office of the administrator of the Montana Supreme Court referred to in 41-5-2011, MCA.

(10) and (11) remain the same but are renumbered (9) and (10).

(11) "District" refers to both participating and nonparticipating judicial districts.

(12) remains the same.

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

(14) "Juvenile delinquency intervention program" or "JDIP" means the program established ~~by the Montana legislature and implemented by the department of corrections~~ to more effectively manage juvenile placement services and funding as provided in 41-5-2003, MCA.

(15) "Mental health professional" has the meaning as defined in ~~means a psychiatrist, psychologist or a professional person certified pursuant to 53-21-106, MCA~~ 53-21-102, MCA.

(16) remains the same.

(17) "Panel" means the cost containment review panel as provided for in 41-5-131, MCA.

(18) remains the same.

~~(17)~~(19) "Placement" has the same meaning as "out-of-home placement" as defined in 41-5-103, MCA, and used throughout these rules, but may include shelter care~~, detention,~~ and emergency placements of less than 45 days.

(20) "Placement alternatives" means programs or services in lieu of out-of-home placement for youth referred to youth court.

(21) "Prevention incentive funds" or "PIF" means funds remaining in the participating districts' accounts from the initial budget allocation at the end of a fiscal year. These funds are also described as the youth court intervention and prevention account in 41-5-2011, MCA.

(22) "Recidivism" means a youth has been referred to juvenile probation, received services or placement, and during supervision is referred for another violation or requires a higher level of placement or service.

(19) and (20) remain the same but are renumbered (23) and (24).

~~(21)~~(25) "Referring worker" means the youth court probation officer or case manager charged with supervision and case management of ~~an offender~~ a youth at the time of referral.

~~(22)~~(26) "Residential placement" means placement in a licensed youth care facility other than a state youth correctional facility.

(23) remains the same but is renumbered (27).

(28) "Risk assessment" means an instrument approved by the department for use by youth courts initially to individually assess risks to a youth and determine appropriate intervention or placement, and subsequently to measure the effectiveness of the intervention or placement.

(29) "Service" means intervention activities, other than or in addition to placements, that mitigate risks or fulfill needs identified in an approved risk assessment.

(30) "Supplemental allocation" means funds from the cost containment fund allocated by the department to a district in accordance with [NEW RULE V].

~~(24) "Surplus funds" means funds remaining in the participating district's account from the initial budget allocation at the end of a fiscal year.~~

~~(25) "Unused cost containment funds" means funds allocated to the cost containment fund which remain in the cost containment fund at the end of a fiscal year or funds allocated by the cost containment review panel to a participating or non-participating district which remain in the district's allocation account at the end of a fiscal year.~~

(31) "Youth" means an individual who is less than 18 years of age without regard to sex or emancipation, as defined in 41-5-103, MCA.

~~(26)~~(32) "Youth correctional facility" means ~~a facility for the rehabilitation of delinquent youth such as the~~ Pine Hills Youth Correctional Facility, Riverside Youth Correctional Facility, or a youth correctional facility under contract with the department ~~of corrections~~.

AUTH: 41-5-2003, 41-5-2006, 41-5-2011, 53-1-203, MCA
IMP: 41-5-103, 41-5-121, 41-5-123, 41-5-124, 41-5-125, 41-5-130, 41-5-131, 41-5-132, 41-5-2011, 53-1-203, MCA

REASON: Section (3) removes the restriction that a change in placement may only be made to "higher level of supervision" and allow for changes to lower levels of supervision. Former sections (8) and (9) remove unnecessary definitions. Section (4) deletes specific identification of the entity responsible to appoint youth placement committee members to be consistent with 2003 legislative changes to 41-5-121, MCA. Sections (11) and (12) are amended for clarity and style. Section (13) incorporates the audit recommendation to delete any implied restriction on availability of early intervention program to youth. Sections (14), (15), and (17) are amended for clarity and style. Sections (19) through (32) are amended for clarity and style and in response to the audit recommendations. In particular, section (19) deletes the reference to "detention" because the county, not the department, is responsible to pay for the costs of detention under 41-5-1807(1), MCA. Section (20) inserts a definition for "placement alternatives" to acknowledge that type of placement. Section (28) clarifies the purpose and use of the risk assessment tool

referenced in statute. Former sections (24) and (25) are deleted in lieu of a description of these funds in the body of the rules. In particular, the term "surplus funds" will be substituted with "prevention incentive funds" to more accurately convey that a restriction exists on spending these moneys. In section (31) the definition of "youth" in 41-5-103(45), MCA, is used to clarify that JDIP applies only to youth under the age of 18.

20.9.106 REFERRALS TO THE COMMITTEE (1) and (2) remain the same.

(3) In addition to other requirements set forth in 41-5-2005, MCA, ~~A~~ a referral must include a primary and alternative recommendation which are comparable in levels of care and security. If the primary recommendation for placement is in an in-state youth correctional facility, the alternative recommendation may be listed as "not applicable." The referral must be made in writing and must include the following information:

(a) through (g) remain the same.

(h) a~~n~~ completed risk assessment approved by the department ~~of the youth's treatment needs using a recognized assessment or evaluation instrument which indicates the specific outcomes expected from the treatment or placement and how those outcomes will be measured and documented~~.

(4) through (7) remain the same.

AUTH: 53-1-203, MCA
IMP: 41-5-121, 41-5-122, 41-5-123, 41-5-124, 41-5-125, MCA

REASON: The proposed change ensures that the reader understands there are other requirements in a referral and addresses the fact that there are currently no in-state alternatives to Pine Hills or Riverside. The changes in subsection (3)(h) eliminate the redundancy of defining "risk assessment" in ARM 20.9.101 and clarify that the department must approve the form in order to ensure consistency.

20.9.113 PLACEMENT RECOMMENDATION PROCEDURES (1) In nonparticipating districts, ~~T~~the committee chair shall submit in writing the primary and alternative recommendations prior to disposition to the department juvenile community corrections bureau chief and youth court judge within ~~48 hours~~ two working days of the meeting~~, excluding weekends and legal holidays in non-participating districts~~.

(2) remains the same.

(3) The committee chair shall make reasonable efforts to ~~may~~ notify the presiding youth court judge or department of its recommendation by telephone prior to submitting its written recommendation.

(4) remains the same.

(5) In participating districts, the committee chair shall send the recommendations to the presiding district judge within two working days of the committee meeting.

~~(5)~~(6) In participating districts at disposition, the youth court judge shall determine whether to accept either of the committee's recommendations. The youth court may make a placement after considering the recommendations of the

committee ~~and the youth court shall enter the placement in the CAPS system for payment~~.

(a) and (b) remain the same.

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

~~(8)~~(9) All placements and services must be entered by the youth court accurately into ~~the CAPS~~ an automated system approved by and accessible by the department. A copy of the court order placing the youth and any other documents concerning the youth, including the initial youth placement committee referral packet, shall be provided to the department and the placement or service provider within three working days of placement for monitoring purposes.

(10) Each district shall comply with all entry requirements of the receiving facility or program pertaining to advance notice, required documentation, and minimum qualifications to participate in any treatment programs.

AUTH: 53-1-203, MCA
IMP: 41-5-123, 41-5-124, 41-5-125, MCA

REASON: The changes in section (1) are for style, grammar, and clarity. The distinction between the timelines for notice of committee recommendations to a participating or nonparticipating district are deleted as being unnecessary. Section (3) resolves an ambiguity in the former language. Reference to CAPS in section (9) is deleted to make generic reference to an automated system. Section (10) is necessary to highlight the need to comply with these requirements for efficiency in moving youth in the system.

20.9.122 CONFIDENTIALITY OF COMMITTEE MEETING AND RECORDS

(1) through (3) remain the same.

(4) Recordings or records of committee deliberations used by the department for monitoring or audit purposes may not be disclosed to persons outside of the department or youth court unless such disclosure is authorized by court order or by operation of law ~~of the district or youth court judge~~.

AUTH: 53-1-203, MCA
IMP: 41-5-123, 41-5-124, 41-5-125, MCA

REASON: The changes in section (4) clarify that these records may be subject to disclosure without a court order.

5. The proposed new rules provide as follows:

NEW RULE I COST CONTAINMENT REVIEW PANEL - OPERATIONAL PROCEDURES AND DUTIES (1) Subject to the conflict of interest restrictions in 41-5-131, MCA, the department director shall appoint members of the panel for two-year terms and may reappoint members for subsequent two-year terms.

(2) The panel shall elect a chair and vice-chair from its membership who shall serve until their successors are elected. At least seven members are required to conduct an election.

(3) Meetings shall be held at the call of the chair as necessary to conduct business or upon a request of a majority of members. The panel shall meet in Helena or by telephone or videoconference.

(4) The department shall set aside $5,000 from the cost containment fund to reimburse panel members for travel expenses incurred while engaged in panel business as provided by state law and administrative rule.

(5) The panel shall:

(a) determine the distribution to districts of juvenile placement funds allocated by the department;

(b) make a nonbinding recommendation to the department regarding any department contribution beyond the $1 million minimum to the cost containment fund;

(c) review and make a recommendation regarding a district's request for a supplemental allocation (the department makes the final decision); and

(d) review and make a recommendation to the department on whether to approve a participating district's plan to spend prevention incentive funds (the department makes the final decision).

(6) The panel may request assistance from the department in the development and implementation of internal operating procedures of the panel.

AUTH: 41-5-2006, MCA
IMP: 41-5-131, 41-5-132, 41-5-2002, 41-5-2004, MCA

NEW RULE II DEPARTMENT DUTIES (1) The department shall:

(a) determine the amount of the cost containment fund at the beginning of each fiscal year;

(b) provide districts with monthly budget status reports and other technical assistance to monitor and evaluate expenditure of JDIP funds and development of programs;

(c) review and monitor each district;

(d) provide written notice five business days prior to any visit to gather or inspect records for the monitoring;

(e) provide other reasonable administrative assistance requested by the panel; and

(f) report the results of its monitoring to the legislature.

AUTH: 41-5-130, 41-5-2006, MCA
IMP: 41-5-130, 41-5-131, 41-5-132, 41-5-2002, 41-5-2003, MCA

NEW RULE III ALLOCATION OF JUVENILE PLACEMENT FUNDS TO JUDICIAL DISTRICTS (1) As provided by 41-5-132, MCA, each fiscal year the department shall transfer $1 million from the juvenile placement fund into the cost containment fund. On or before April 30 of each year, the panel shall submit a recommended amount to be allocated to the cost containment fund. The department shall consider the recommendation and in its discretion determine the final amount of the cost containment fund at the beginning of the fiscal year.

(2) On or before April 30 of each year, the panel shall establish a formula to determine the amount of the allocation of juvenile placement funds to each district. The department shall provide each district with the formula and applicable data used to establish the formula.

(3) A district shall make reasonable attempts to confine its spending to the annual allocation, but may, in the event of unusual circumstances such as a youth requiring specialized mental health or sex offender treatment, apply for a supplemental allocation from the cost containment fund as set forth in [NEW RULE V].

AUTH: 41-5-130, 41-5-2006, MCA
IMP: 41-5-130, 41-5-131, 41-5-132, 41-5-2002, 41-5-2004, MCA

NEW RULE IV PARTICIPATING DISTRICTS – DISTINGUISHED (1) On a form provided by the department, a judicial district may elect to participate in JDIP prior to the start of a biennium, but once having made the election, must participate for a complete biennium.

(2) A district that does not participate in JDIP must obtain department approval before spending allocation funds on placements or services. A district that does not participate is not eligible to receive JDIP reimbursement for any service incurred while the youth resides with a custodial parent or legal guardian and is not eligible to retain prevention incentive funds.

(3) Participating districts shall give first priority to youth placements in spending allocation funds and typically reserve 80% of their allocation accounts for placements, but may allocate up to 50% of the account for panel-approved placement alternatives or early intervention alternatives if the participating district demonstrates:

(a) the decrease in the percentage reserved for placement corresponds with a decrease in the number of placements;

(b) the decrease in the percentage reserved for placement does not jeopardize funds available for appropriate placements;

(c) the district would not require a supplemental allocation; and

(d) the district will cease the program(s) if it is anticipated the district will exceed its initial allocation.

AUTH: 41-5-2006, MCA
IMP: 41-5-130, 41-5-131, 41-5-2002, 41-5-2003, 41-5-2005, MCA

NEW RULE V SUPPLEMENTAL ALLOCATIONS FROM COST CONTAINMENT FUND (1) Based on the monthly budget status report provided by the department, a district that has spent at least 80% of its allocation and projects a deficit in its allocation account in a fiscal year but continues to have youth requiring placement, shall, upon request of the department and on a form provided by the department, submit a written application to receive a supplemental allocation from the cost containment fund (also known as the "contingency fund"). The district shall freeze spending on allocation expenditures until the department approves the supplemental allocation.

(2) Supplemental allocations are available only to address unexpected placement or emergent service and not for ongoing program expenditures such as community-based services. The panel will not routinely grant supplemental allocations; however, a district requiring placement of a mentally ill youth or a youth in need of sexual offender treatment who does not meet minimal cognitive requirements of in-state sexual offender treatment programs will receive priority consideration to obtain a supplemental allocation.

(3) Within 20 working days of receipt of the application, the panel will schedule a meeting and notify the district of the time and place of the meeting. The district representative must appear in person to present the request unless the chair approves the district representative to appear by telephone or video conference.

(4) At least five working days before the meeting, the district shall submit to the department designee and each panel member an electronic copy of all documentation in support of its request. At a minimum, the documentation must include a complete summary of the district's prior placement expenditures for the past three years and a plan to mitigate the current expenditures.

(5) The panel shall review the documentation and may request that the district submit supplemental information. In making its decision, the panel may consider the district's historic use of high-cost placements, unusual expenditures that caused the district to exceed its budget, or whether the district has implemented previous panel recommendations for controlling JDIP expenditures.

(6) The department may approve or deny the request in whole or in part and place conditions on any supplemental allocation, including, but not limited to:

(a) restrict the supplemental allocation to a specific type of placement or service;

(b) capping or limiting the supplemental allocation;

(c) require the district to obtain department approval before expending funds on high-cost or out-of-state placements;

(d) require the district to address panel recommendations for controlling expenditures before being eligible for supplemental allocations in subsequent years; or

(e) require the district to mitigate its deficit by adjusting current youth placements.

(7) Within ten working days of the meeting, the panel shall issue a written decision of the reason for granting or denying a supplemental allocation from the cost containment fund. The decision is final and not subject to appeal.

(8) At the end of the fiscal year, the panel shall recommend to the department the use of unallocated cost containment funds by one or more participating districts or the department. Such funds may only be used for youth placement or placement related services or early intervention alternatives.

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

NEW RULE VI PREVENTION INCENTIVE FUNDS (1) At the end of each fiscal year, the department shall obtain a complete and accurate accounting of all placement expenses, establish accruals, and determine the final balance in each

participating district's allocation account. The department shall then nominate all unexpended funds as "prevention incentive funds" and transfer them to the youth intervention and prevention account administered by the court administrator.

(2) If payments owed to providers exceed the accrual established in (1), the court administrator shall pay providers out of the youth intervention and prevention account. If payments owed to providers are less than the accrual, the department shall transfer the remaining accrual balance to the court administrator for placement in the youth intervention and prevention account. Funds shall be distributed to districts according to the proportion of PIF funds initially transferred.

(3) The unexpended funds from nonparticipating districts shall remain with the department to be used solely for youth placement or placement-related services.

(4) Before April 1 of each year, on a form provided by the department, each participating district shall submit a tentative plan to use prevention incentive funds regardless of whether the participating district projects unused funds in its allocation account at fiscal year end. The plan must incorporate lower cost and less restrictive community alternatives or placements and, based on uniform standards for reporting outcomes set forth in [NEW RULE VII]:

(a) be data driven and outcome based;

(b) have a clearly articulated objective;

(c) be supported by credible research, or have data to benchmark performance;

(d) include an evaluation and assessment component; and

(e) comply with state procurement requirements.

(5) The panel shall review the plan and advise the department on the plan's general efficacy and compliance with these rules. The panel may ask the participating district to supplement information in the plan. The department may approve or deny the plan in whole or in part or impose reporting requirements or additional conditions on the use of the funds. The department's decision is final. The department shall notify the court administrator and authorize the release of prevention incentive funds to the participating district according to the approved plan.

(6) A participating district may only use prevention incentive funds for early intervention alternatives which have documented outcomes that relate to reduction of delinquency, dynamic criminogenic factors, or secure residential placements per individuals or the district as a whole. During the first three years of the program, the district may rely on national outcomes. After the first three years of the program, the district must rely on local outcomes.

AUTH: 41-5-130, 41-5-2006, 41-5-2011, MCA
IMP: 41-5-130, 41-5-131, 41-5-2002, 41-5-2004, 41-5-2011, MCA

NEW RULE VII DISTRICT OPERATING STANDARDS - LIMITS ON EXPENDITURES (1) All districts shall keep an accurate account of all expenditures related to youth placement, placement alternatives, or early intervention alternatives regardless of the funding source.

(2) Districts may not use any JDIP funds, whether allocated funds, cost containment funds, supplemental allocation funds, or prevention incentive funds for:

(a) salary, benefits, or training of federal, state, or county employees;

(b) supplies or equipment that the district would normally provide for its employees;

(c) programs or services previously provided by another available source;

(d) placement or service for individuals aged 18 or older; or

(e) transportation costs for youth traveling to or when released from a secure correctional facility.

(3) Districts shall enter expenditures pertaining to an individual youth into an automated accounting system approved by and accessible by the department (e.g., the CAPS system) no later than 30 days after the first day of service. Districts shall enter changes of placement or closure of service within five working days of the action.

(4) Districts shall independently track expenditures for services that do not pertain to an individual youth (and therefore are not capable of entry into the automated system referred to in (1)). Participating districts shall provide the department with copies of all bills or agreements to pay for such services within 30 days of incurring the obligation to pay for the service.

(5) The department may refuse to reimburse expenditures entered or submitted after 30 days unless good cause exists, including, but not limited to:

(a) service providers not billing in a timely manner;

(b) denial of Medicaid reimbursement after a lengthy consideration; or

(c) denial of parents' insurance reimbursement after lengthy consideration.

(6) On a form provided by the department, and no later than 30 days from the last day of each fiscal year quarter, each district shall prepare and forward quarterly reports to the department documenting the use of diversionary and prevention programs and the use of placement services. On or before July 15 of each year, each district shall prepare and forward to the department an annual summary of this information.

(7) With respect to handling juvenile placement funds, each district shall allow the department access to all district records and follow all applicable state of Montana accounting, contracting, and records retention schedules.

(8) Districts shall establish annual baseline data and thereafter track and report annual changes to the baseline with respect to the total number of:

(a) youth intakes from all sources, including another agency, the department, or a parent in regard to a youth being delinquent, or in need of intervention;

(b) individual, "unduplicated" youth in the system during a specified time period;

(c) youth placed out of state;

(d) youth placed at a secure correctional facility; and

(e) youth moving to a higher cost or more restrictive service or placement.

(9) Districts shall maintain data and report:

(a) the proportion of expenditures on services and placements, according to each type of placement, i.e., group home, therapeutic group home, in-state residential treatment, out-of-state residential treatment, foster care, shelter care, or independent living;

(b) comparative scores between the initial risk assessment and the six-month review; and

(c) comparative scores between initial and follow-up assessments of criminogenic risk factors related to preventive services provided to youth who have not been referred to juvenile probation and for whom a risk assessment is not required.

AUTH: 41-5-130, 41-5-2006, MCA
IMP: 41-5-130, 41-5-2002, 41-5-2003, 41-5-2004, 41-5-2005, 41-5-2011, MCA

NEW RULE VIII EVALUATION OF DISTRICTS BY DEPARTMENT (1) The department shall evaluate all districts to:

(a) promote consistency and uniformity in the placement of juvenile offenders;

(b) enable the development of and ensure the use of placement alternatives and early intervention strategies by the districts; and

(c) ensure that districts use funds as authorized and otherwise effectively control placement costs.

(2) In evaluating the districts, the department shall at least once each biennium review district, department, and panel records for the following:

(a) accessibility of district files and records;

(b) timely and accurate submission by district of quarterly and annual reports;

(c) timely and accurate data entry by district of fund expenditures and related information for reimbursement;

(d) timely and accurate requests for prior approval from the panel or department on JDIP expenditures;

(e) whether youth placement committee meetings have been held in accordance with rule;

(f) whether the placement of juvenile offenders is consistent and uniform relevant to risk assessment scores;

(g) proportionate utilization of out-of-state placements, placements, and placement alternatives;

(h) comparative commitments for similar offenses by the district to youth correctional facilities;

(i) comparison of intervention and prevention utilization and outcomes between districts;

(j) outcomes of various interventions and placements based on risk and need assessment;

(k) proper use of approved risk assessment tool;

(l) whether court uses early intervention alternatives and whether they effectively control youth placement costs; and

(m) whether funds are used as required by law and rules.

(3) In the event the department determines a discrepancy in a district's financial accounting, the department may contract with an independent auditor to conduct an audit of the district's account.

(4) If, as a result of the evaluation, the department determines that the district is not in substantial compliance with requirements of Title 41, chapter 5, MCA, pertaining to the juvenile delinquency intervention program, this subchapter, or any

stated recommendation of the panel regarding JDIP funds, the department shall require the district to respond with a plan of action. Failure of the district to submit within a reasonable time an appropriate plan of action or failure to comply with a submitted corrective plan may result in the discontinuation of funding.

AUTH: 41-5-130, 41-5-2006, MCA
IMP: 41-5-131, 41-5-2002, 41-5-2003, 41-5-2004, MCA

6. The rules proposed to be repealed are as follows:

20.9.123 EVALUATION OF JUDICIAL DISTRICTS found at ARM page 20-292.

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

20.9.124 ACCESS TO DISTRICT RECORDS found at ARM page 20-292.

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

20.9.128 REPORT TO THE LEGISLATURE found at ARM page 20-297.

AUTH: 41-5-2006, MCA
IMP: 41-5-2006, MCA

20.9.129 ALLOCATION OF JUVENILE PLACEMENT FUNDS TO JUDICIAL DISTRICTS AND COST CONTAINMENT FUND found at ARM page 20-297.

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

20.9.134 DISTRIBUTION OF FUNDS TO PARTICIPATING DISTRICTS AT THE END OF A FISCAL YEAR found at ARM page 20-301.

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

20.9.135 MONITORING AND AUDITING OF PARTICIPATING AND NONPARTICIPATING DISTRICTS found at ARM page 20-302.

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

20.9.140 DISTRIBUTION OF COST CONTAINMENT found at ARM page 20-305.

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

20.9.141 COST CONTAINMENT REVIEW PANEL found at ARM page 20-305.

AUTH: 41-5-2006, MCA
IMP: 41-5-132, MCA

7. Concerned persons may present their data, views, or arguments concerning the proposed action in writing to Myrna Omholt-Mason at the contact information listed in paragraph 2, and must be received no later than 5:00 p.m. on May 16, 2006.

8 Colleen A. White, Hearings Examiner, will preside over and conduct the hearing.

9. The Department of Corrections 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 all department administrative rulemaking proceedings or other administrative proceedings. Such written request may be mailed or delivered to Myrna Omholt-Mason, at the contact information listed in paragraph 2; or may be made by completing a request form at any rules hearing held by the Department of Corrections.

10. An electronic copy of this Notice of Public Hearing is available through the department's website at www.cor.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.

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

/s/ Bill Slaughter
BILL SLAUGHTER, Director
Department of Corrections

/s/ Colleen A. White
COLLEEN A. WHITE, Rule Reviewer
Department of Corrections

Certified to the Secretary of State March 27, 2006.

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

In the matter of the proposed amendment of ARM 24.126.301 definitions, 24.126.401 fee schedule, 24.126.501, 24.126.507, 24.126.510 and 24.126.511 licensing and scope of practice, 24.126.701 and 24.126.704 licensing and board specific rules, 24.126.910 impairment evaluators, 24.126.2101 renewals-continuing education requirements, 24.126.2301 unprofessional conduct, and the proposed adoption of NEW RULE I fee abatement, and NEW RULE II participation in disaster and emergency care-liability of chiropractor	)))))))))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT AND ADOPTION

TO: All Concerned Persons

1. On April 27, 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 and adoption 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 Chiropractors (board) no later than 5:00 p.m., on April 21, 2006, to advise us of the nature of the accommodation that you need. Please contact Sharon McCullough, Board of Chiropractors, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2390; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail dlibsdchi@mt.gov.

3. GENERAL STATEMENT OF REASONABLE NECESSITY: The 2005 Montana Legislature enacted Chapter 467, Laws of 2005 (House Bill 182), an act generally revising and consolidating professional and occupational licensing laws and distinguishing between department and board or program duties regarding licensure, examination, and fees. The bill was signed by the governor on April 28, 2005, and became effective on July 1, 2005. The board determined it is reasonably necessary to amend certain existing rules to implement the 2005 legislation and comply with the 2005 Montana Legislature's intent to simplify and standardize the licensure and renewal processes for all boards and licensees within the department.

It is reasonable and necessary to amend the rules throughout to achieve consistent use of terminology within the rules of the board and also between the board's and department's statutes and rules. Amendments to certain catchphrases, as well as grammatical, organizational, and formatting changes, are being made to

simplify and streamline the board's rules and to comply with ARM formatting rules. 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:

24.126.301 DEFINITIONS (1) through (3) remain the same.

(4) "New doc seminar" means a program provided by the board that is targeted to new licensees as a source of information on state laws and rules and other various topics. The program is open to all licensed chiropractors.

(4) remains the same but is renumbered (5).

AUTH: 37-1-131, 37-1-319, 37-12-201, MCA
IMP: 37-1-131, 37-12-104, 37-12-201, MCA

REASON: The board determined it is reasonable and necessary to define "new doc seminar" to clarify and implement new provisions of ARM 24.126.2101 as proposed in this notice.

24.126.401 FEE SCHEDULE

(1) Application fee	~~$125~~ 300
(2) Re-examination fee ~~per section~~ of jurisprudence (written~~/practical~~)	~~50~~ 100
(3) Renewal fee	
(a) Active license	~~150~~ 200
(b) Inactive license	~~50~~ 100
(c) Impairment evaluator	25
~~(4) Late renewal fee~~	~~50~~
~~(5) Original license fee~~	~~75~~
~~(6)~~ (4) Temporary permit	~~25~~ 100
~~(7)~~ (5) Application for impairment evaluators	~~100~~ 250
~~(8) Certificate for impairment evaluators~~	~~50~~
~~(9) Renewal of certificate for impairment evaluators~~	~~50~~
~~(10)~~ (6) Application fee for student/interns	~~25~~ 100
~~(11)~~ (7) Application fee for practitioners proposing to serve as preceptors	~~25~~ 100

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

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

REASON: The board has determined that there is reasonable necessity to make the proposed fee changes in order to comply with the provisions of 37-1-134, MCA, and

to keep the board's fees commensurate with program costs. The department, in providing administrative services to the board, has determined that unless the fees are raised as proposed, to accommodate increased board expenditures and meet budgetary needs, the board will have a shortage of operating funds by FY 2007. The current board appropriation of $80,811.00 will be insufficient to sustain a fiscally sound base for the board. The estimated increase in annual revenue is $32,725.00 and the board estimates that approximately 623 licensees and license applicants will be affected by the proposed fee changes.

The board determined it is reasonably necessary to combine license and application fees where necessary into a single licensure fee. This combination will simplify the rule and alleviate confusion among licensees and applicants.

24.126.501 APPLICATIONS (1) Pursuant to the requirements of 37-12-302, MCA, an application for original license, renewal, examination, temporary permit, or ~~reactivation~~ activation of an inactive license must be made on a form provided by the ~~board~~ department and completed and signed by the applicant, with the signature acknowledged before a notary public.

(2) remains the same.

~~(3) The board shall require the applicant to submit a recent, passport-type photograph of the applicant.~~

~~(4) The board shall review fully-completed applications for compliance with board law and rules. The board may request additional information or clarification of information provided in the application as it deems reasonably necessary. Incomplete applications that are received and cannot be resolved in a timely or convenient manner shall be returned to the applicant with a statement regarding incomplete portions.~~

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

~~(6)~~ (4) The ~~board~~ department shall notify the applicant in writing of the results of its evaluation of the application.

(7) and (8) remain the same but are renumbered (5) and (6).

AUTH: 37-1-131, 37-12-201, MCA
IMP: 37-1-131, 37-12-302, 37-12-304, ~~37-12-305,~~ MCA

REASON: It is reasonable and necessary to delete section (3) at the request of the department to further facilitate the process of online licensure renewal as the requirement of a photograph may inhibit and delay the process.

24.126.507 TEMPORARY PERMIT (1) through (3) remain the same.

(4) A notarized statement consenting to the above conditions shall be signed by both the supervising licensed chiropractor and the applicant, and filed with the ~~board~~ department.

(5) remains the same.

AUTH: 37-1-131, 37-1-319, 37-12-201, MCA
IMP: 37-1-305, ~~37-12-305,~~ MCA

24.126.510 ENDORSEMENT (1) remains the same.

AUTH: 37-12-201, MCA
IMP: 37-1-131, 37-1-304, ~~37-12-305,~~ MCA

24.126.511 DISPLAY OF LICENSE (1) The form of license is to be made and approved by the ~~board~~ department and signed by the applicant pursuant to 37-1-104, MCA.

(2) and (3) remain the same.

(4) Licensees shall immediately notify the ~~board~~ department of lost, damaged, or destroyed licenses and obtain a duplicate license by submitting a written request to the ~~board~~ department.

AUTH: ~~37-1-104,~~ 37-1-131, 37-12-201, MCA
IMP: 37-1-104, 37-12-201, MCA

24.126.701 INACTIVE STATUS (1) through (2)(a) remain the same.

(b) proof of completion of 12 hours of approved continuing education in the year preceding ~~reinstatement~~ activation.

AUTH: 37-1-131, ~~37-1-134,~~ 37-1-319, 37-12-201, ~~37-12-307,~~ MCA
IMP: ~~37-1-134,~~ 37-1-319, 37-12-201, ~~37-12-307,~~ MCA

24.126.704 INTERNS AND PRECEPTORS (1) remains the same.

(2) A student intern must complete an application form provided by the ~~board~~ department and furnish current transcripts from the chiropractic college attended.

(3) through (12) remain the same.

(13) All applications for intern/preceptor programs must be approved by the ~~board~~ department prior to starting the program.

AUTH: 37-1-131, 37-12-201, ~~37-12-304,~~ MCA
IMP: 37-12-304, MCA

24.126.910 ~~RECERTIFICATION~~ RENEWAL - DENIAL - REVOCATION

(1) ~~Effective September 2, 2000, a~~ A minimum of four hours of specialized continuing education relevant to impairment evaluation must be demonstrated every four years, or within one year of a new edition to the American Medical Association's guides to the evaluation of permanent impairment. These hours must be demonstrated in order to qualify for certification renewal. This requirement is in addition to the continuing education hours required for annual renewal of licenses to practice chiropractic in this state.

(2) and (3) remain the same.

(4) Impairment evaluator licenses shall be renewed annually.

AUTH: 37-1-136, 37-12-201, MCA
IMP: 37-12-201, MCA

REASON: The board determined it is reasonably necessary for impairment evaluator licenses to renew annually in order to minimize the administrative cost and staff time spent tracking these licenses under the previous four-year renewal cycle.

24.126.2101 RENEWALS - CONTINUING EDUCATION REQUIREMENTS

(1) and (2) remain the same.

(a) In the first full year of licensure, new graduates can fulfill the continuing education requirement by attending one session of the "new doc seminar" in lieu of the 12-hour continuing education requirement. This provision does not apply to out-of-state applicants applying for licensure by endorsement or reciprocity.

(3) ~~For the period beginning September 1, 1997 through September 1, 2000, inclusive, the~~ The board ~~is requiring~~ will require each licensee to demonstrate successful completion of a professional boundary and ethics continuing education course. ~~The course shall be a minimum of four~~ Four hours of professional boundaries and ethics continuing education ~~in length and~~ will be in addition to the 12-hour continuing education annual requirement. Each licensee will be required to complete the course once ~~during that time period~~ every four years beginning September 1, 2006.

(4) through (8) remain the same.

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: It is reasonably necessary to amend the rule as the board determined that the public is adequately protected if new licensees are allowed to substitute attendance of the new doc seminar for completion of the 12 hours of continuing education during the first year of licensure. The board provides important information in the seminar that should alleviate common mistakes new practitioners make. Attendance of the seminar also provides new graduates with the opportunity to ask questions and become familiar with the board's statutes and rules.

The board is amending section (3) to require that Montana licensees update their knowledge and awareness of professional boundaries and ethics every four years. The board notes that many of the complaints before the board deal with these types of issues and is committed to be proactive by keeping professional boundaries and ethics at the forefront of licensees' awareness.

24.126.2301 UNPROFESSIONAL CONDUCT (1) through (1)(e) remain the same.

(f) ~~collecting~~ charging fees ~~or charges~~ for services or treatment different from the fee or charge the licensee submits to a third-party payer for that service or treatment~~,~~ . Free clinics may be offered to the indigent or economically deprived; ~~except as hereinafter provided. This subsection is intended to prohibit offering the above listed practices to the public as well as the actual practices, except that, in instances where the intent is not to collect an excessive remuneration from the third-party payer, but rather to provide services at a reduced rate to a patient unable to afford the deductible or co-payment, the services may be performed for a lesser~~

~~charge or fee. The burden of proof for establishing that this is the case shall be on the licensee;~~

(g) through (r) remain the same.

AUTH: 37-1-131, 37-1-319, 37-12-201, MCA
IMP: 37-1-131, 37-1-316, 37-12-201, MCA

REASON: The board determined it is reasonable and necessary to amend this rule to clarify that it is not ethical and is considered unprofessional conduct for licensees to charge different fees for the same services based on whether or not the patient is covered by a third party payer. Previous language used in the rule was confusing.

5. The proposed new rules provide as follows:

NEW RULE I FEE ABATEMENT (1) The Board of Chiropractors adopts and incorporates by reference the fee abatement rule of the Department of Labor and Industry found at ARM 24.101.301.

(2) A copy of ARM 24.101.301 is available by contacting the Board of Chiropractors, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513.

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 nontypical events. Abatement in such instances will allow the licensees who have paid fees into the board's program to receive 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.

NEW RULE II PARTICIPATION IN DISASTER AND EMERGENCY CARE -- LIABILITY OF CHIROPRACTOR (1) A chiropractor licensed in this state, licensed or authorized to practice in another state, territory, or possession of the United States, or credentialed as a chiropractor by a federal employer who provides medical care response to an emergency or a federal, state, or local disaster may provide that care without supervision as required by this chapter or with whatever supervision is available. The provision of care allowed by this section is limited to the duration of the emergency or disaster.

(2) A chiropractor who supervises a temporary licensee in response to an emergency or disaster as described in (1) need not comply with the requirements of this chapter applicable to supervising chiropractors.

(3) A chiropractor referred to in (1) who voluntarily, gratuitously, and other than in the ordinary course of employment or practice renders emergency chiropractic care during an emergency or disaster described in (1) is not liable for civil damages for a personal injury resulting from an act or omission in providing that care if the injury is caused by simple or ordinary negligence and if the care is provided somewhere other than in a health care facility or a chiropractic office where those services are normally provided.

(4) A chiropractor who supervises a temporary licensee voluntarily and gratuitously providing emergency care at an emergency or disaster described in (1) is not liable for civil damages for a personal injury resulting from an act or omission in supervising the temporary licensee if the injury is caused by simple or ordinary negligence on the part of the temporary licensee providing the care or on the part of the supervising chiropractor.

AUTH: 37-1-131, 37-12-201, MCA
IMP: 37-1-131, 37-12-104, 37-12-201, MCA

REASON: It is reasonable and necessary to adopt New Rule II to address a request from the department for the board to adopt rules governing the process for licensees from other states to provide chiropractic care and potential liability of such emergency workers in Montana in the event of a state or national emergency situation or disaster.

6. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Chiropractors, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to dlibsdchi@mt.gov, and must be received no later than 5:00 p.m., May 5, 2006.

7. 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 www.chiropractor.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.

8. The Board of Chiropractors 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 Chiropractors' administrative rulemaking proceedings or other administrative proceedings. Such written request may be mailed or delivered to the Board of Chiropractors, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2305, e-mailed to dlibsdchi@mt.gov, 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.

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

BOARD OF CHIROPRACTORS
Daniel Prideaux, D.C., President

/s/ DARCEE L. MOE
Darcee L. Moe
Alternate Rule Reviewer

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

Certified by the Secretary of State March 27, 2006

BEFORE THE DEPARTMENT OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the proposed amendment of ARM 32.2.401, pertaining to license fees, and the proposed adoption of New Rule I pertaining to permit fees, and New Rule II pertaining to miscellaneous fees	)))))	NOTICE OF PROPOSED AMENDMENT AND ADOPTION NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On May 6, 2006, the Department of Livestock proposes to amend and adopt the above-stated rules pertaining to Department of Livestock license fees, permits fees, and miscellaneous fees.

2. The Department of Livestock will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Livestock no later than 5:00 p.m. on April 28, 2006, to advise us of the nature of the accommodation that you need. Please contact Marc Bridges, 301 N. Roberts St., Room 308, P.O. Box 202001, Helena, MT 59620-2001; phone: (406) 444-7323; TTD number: 1-800-253-4091; fax: (406) 444-1929; e-mail: mbridges@mt.gov.

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

32.2.401 DEPARTMENT OF LIVESTOCK LICENSE FEES~~, PERMIT FEES, AND MISCELLANEOUS FEES~~ ~~(1) The department of livestock shall charge:~~

~~(a) for the license of garbage feeder as required by 81-2-502, MCA, a fee of $5;~~

~~(b) for recording a new mark or brand, recording a mark or brand transfer, or recording a mark or brand as required by 81-3-107, MCA, a fee of $100;~~

~~(c) for providing a certified copy of a brand or mark record and a duplicate certificate, a fee of $5;~~

~~(d) for inspection of livestock before removal from a county or before change of ownership as required by 81-3-205, MCA, a fee of 50 cents per head; for cow/calf pairs to pasture only, a fee of 50 cents per pair;~~

~~(e) for issuance of a market consignment permit or transportation permit before removal from a county as required by 81-3-205, MCA, a fee of $1 per permit;~~

~~(f) for issuance of a permanent horse transportation permit as required by 81-3-205, MCA, a fee of $15 per head;~~

~~(g) for inspection of livestock before being sold or offered for sale at a licensed livestock market or slaughtered at a licensed slaughterhouse as required by 81-3-205, MCA, a fee of 50 cents per head;~~

~~(h) for releasing an animal, except horses, mules, or asses, for purpose of removal from a licensed livestock market as required by 81-3-205, MCA, a fee of 50 cents per head;~~

~~(i) for inspection of horses, mules, or asses before removal from a county or before change of ownership as required by 81-3-205, MCA, a fee of $6 per head; if more than 10 animals of the same type are offered for inspection on the same day by the same owner, a fee of $1 per head starting with the eleventh animal;~~

~~(j) for inspection of horses, mules, or asses before sold or offered for sale at a licensed livestock market as required by 81-3-205, MCA, a fee of $6 per head;~~

~~(k) for releasing horses, mules or asses as required by 81-3-205, MCA, a fee of $6 per head for purposes of removal from a licensed livestock market;~~

~~(l) for a copy of an original livestock bill of sale as required by 81-3-205, MCA, a fee of $2.50;~~

~~(m) for a permanent horse transportation permit as required by 81-3-211, MCA, a fee of $15; also for rodeo roping steers if single brand and single ownership;~~

~~(n) for an adjoining county transportation permit as required by 81-3-211, MCA, a fee of $10;~~

~~(o) for an adjacent state transportation permit as required by 81-3-214, MCA, a fee of $10;~~

~~(p) for a sheep removal permit as required by 81-5-112, MCA, a fee of $1.00;~~

~~(q) for an aerial hunting permit as required by 81-7-504, MCA, a fee of $50 or portion thereof;~~

~~(r) for a permit to operate a livestock market as required by 81-8-256, MCA, a fee of $100;~~

~~(s) for a livestock broker or dealer permit as required by 81-8-276, MCA, a fee of $100;~~

~~(t) for filing of livestock security interests as required by 81-8-304, MCA, a fee of $25;~~

~~(u) for hide inspection as required by 81-9-112, MCA, a fee of $1 a head;~~

~~(v) for a slaughterhouse, meat packing house, or meat depot license as required by 81-9-201, MCA, a fee of $25;~~

~~(w) for a rendering or disposal plant license as required by 81-9-301, MCA, a fee of $5;~~

~~(x) for a hide dealer or buyer's license as required by 81-9-411, MCA, a fee of $5;~~

~~(y) for an egg dealer's license as required by 81-20-201, MCA, a fee of $5 for retail buying and $20 for wholesale;~~

~~(z) for an egg grader's license as required by 81-20-201, MCA, a fee of $5;~~

~~(aa) for a condensed, evaporated, or powdered milk factory license as required by 81-21-102, MCA, a fee of $50;~~

~~(ab) for a fluid milk plant license as required by 81-21-102, MCA, a fee of $50;~~

~~(ac) for a dairy license as required by 81-21-102, MCA, a fee of $5;~~

~~(ad) for a milk or cream route license as required by 81-22-204, MCA, a fee of $5;~~

~~(ae) for a milk or cream tester's license as required by 81-22-205, MCA, a fee of $10;~~

~~(af) for a manufactured airy products plant license as required by 81-22-208, a fee of $50;~~

~~(ag) for a cream station license as required by 81-22-208, MCA, a fee of $5;~~

~~(ah) for a dairy producing milk for manufacturing purposes license as required by 81-22-208, MCA, a fee of $5;~~

~~(ai) for a grader-weigher-sampler license as required by 81-22-208, MCA, a fee of $5;~~

~~(aj) for a tester license as required by 81-22-208, MCA, a fee of $10;~~

~~(ak) for a hauler license as required by 81-22-208, MCA, a fee of $5;~~

~~(al) for a producer, producer-distributor, distributor, or jobber as required by 81-23-202, MCA, a fee of $10.~~

~~(am) for each game farm animal inspected as required by 81-3-211, MCA, a fee of $3 per head, additionally the inspector may charge his or her necessary actual expenses if required to wait for the animals to be presented for inspection.~~

(1) Condensed, evaporated, or powdered milk factory license as required by 81-21-102, MCA	$5
(2) Cream station license as required by 81-22-208, MCA	5
(3) Dairy license as required by 81-21-102, MCA	5
(4) Dairy producing milk for manufacturing purposes license as required by 81-22-208, MCA	5
(5) Egg dealer's retail buying license as required by 81-20-201, MCA	5
(6) Egg dealer's wholesale license as required by 81-20-201, MCA	20
(7) Egg grader's license as required by 81-20-201, MCA	5
(8) Fluid milk plant license as required by 81-21-102, MCA	50
(9) Grader-weigher-sampler license as required by 81-22-208, MCA	5
(10) Hauler license as required by 81-22-208, MCA	5
(11) Hide dealer or buyer's license as required by 81-9-411, MCA	5
(12) Livestock broker or dealer license as required by 81-8-271 and 81-8-276, MCA	100
(13) Manufactured dairy products plant license as required by 81-22-208, MCA	50
(14) Milk or cream route license as required by 81-22-204, MCA	5
(15) Milk or cream tester's license as required by 81-22-205, MCA	10
(16) Producer, producer-distributor, distributor, or jobber as required by 81-23-202, MCA	10
(17) Rendering or disposal plant license as required by 81-9-301, MCA	5
(18) Satellite video auction market operator as required by 81-8-264, MCA	100
(19) Slaughterhouse, meat packing house, meat depot, or mobile slaughter facility license as required by 81-9-201, MCA	25
(20) Tester license as required by 81-22-208, MCA	10

AUTH: 81-1-102, 81-22-102, MCA
IMP: 81-1-102, 81-2-502, 81-3-107, 81-3-205, 81-3-211, 81-3-214, 81-5-112, 81-7-504, 81-8-256, 81-8-271, 81-8-276, 81-8-304,

81-9-112, 81-9-201, 81-9-301, 81-9-411, 81-20-201, 81-21-102, 81-22-102, 81-22-204, 81-22-205, 81-22-208, 81-23-202, MCA

REASON: ARM 32.2.401 is being amended to reformat the licensing fee rule into a form that will be easier to read, and to add a fee for licensing of satellite video auctions operating in Montana (new section (18)). Section 81-8-264, MCA, calls for a fee for satellite video auction operator to be submitted by applicants. On or before May 1 of each subsequent year, the licensee will remit the annual fee to follow the initial application. The fee is needed to cover the costs of regulating the satellite video auction operation in Montana. Regulation includes performing audits of the custodial account.

The new fee must, by statute, be set at levels commensurate with the costs of licensing and regulation of such operations. The new video satellite auction fee charged by the department will potentially generate $100/year in revenue based on the one entity who may seek a license in Montana.

Section (19) is being amended to add the category of 'mobile slaughter facility' to the list of licenses for which a fee is being charged. Mobile slaughter facility licensing was authorized by the 2005 Legislature in HB 484, and the rules implementing the license have already been proposed for adoption in MAR Notice No. 32-6-180 at page 657 in the 2006 Montana Administrative Register, issue number 5. The licensing fee for mobile slaughter facility license is being added at this time with other amendments to the license fee rule. Approximately one mobile slaughter facility license will be affected, based on a projected number of such licenses to be issued, for a total projected revenue increase of $25 from this fee.

4. The rules proposed for adoption provide as follows:

NEW RULE I DEPARTMENT OF LIVESTOCK PERMIT FEES (1) Aerial hunting permit as required by 81-7-504, MCA $50 or portion thereof

(2) Adjacent state transportation permit as required by 81-3-214, MCA $10

(3) Adjoining county transportation permit as required by 81-3-211, MCA 10

(4) Annual sheep permit for show purposes only within the state of Montana 1

(5) Market consignment permit or transportation permit before removal from a county as required by 81-3-205, MCA 1

(6) Permanent horse transportation permit as required by 81-3-205, MCA 25 per head

(7) Sheep removal permit as required by 81-5-112, MCA 1

AUTH: 81-1-102, 81-22-102, MCA
IMP: 81-3-205, 81-3-211, 81-3-214, 81-5-112, 81-7-504, 81-8-256, 81-8-276, MCA

REASON: New Rule I is being added to separate permit fees from license and miscellaneous fees. The new rule does not change any fee amounts except (6).

Section (6) is being amended to increase the permanent (lifetime) horse transportation permit fee from $15.00 to $25.00. This figure more accurately reflects the time and salary cost expended on issuance of a permanent (lifetime) horse transportation permit. Approximately 7,192 lifetime inspections will be affected, based on the number of lifetime inspections conducted in 2005, for a total projected revenue increase of $71,920 from this fee.

A permanent horse transportation permit, including rodeo roping steers if single brand and single ownership permit, which previously appeared at ARM 32.3.401(1)(m) is being permanently deleted. That permit is not issued by the Department of Livestock as a separate permit, and has not been issued for many years. It is therefore necessary to delete this permit category from the administrative fee rules permanently.

NEW RULE II DEPARTMENT OF LIVESTOCK MISCELLANEOUS FEES

(1) Certified copy of brand or mark record and duplicate certificate $5

(2) Copy of original livestock bill of sale as required by 81-3-205, MCA 10.00

(3) Filing of livestock security interests as required by 81-8-304, MCA 25

(4) Game farm animal inspection as required by 81-3-211, MCA 3 a head (Inspector may also charge necessary actual expenses if required to wait for the animals to be presented for inspection)

(5) Hide inspection as required by 81-9-112, MCA 1 a head

(6) Horses, mules, or asses inspection before removal from a county or before change of ownership as required by 81-3-205, MCA 6 a head

(a) if more than 10 animals of the same type are offered for inspection on the same day by the same owner, starting with the eleventh animal 1 a head

(7) Horses, mules, or asses inspection before sold or offered for sale at a licensed livestock market as required by 81-3-205, MCA 6 a head

(8) Livestock inspection before removal from a county or before change of ownership as required by 81-3-205, MCA 50 cents a head

(a) cow/calf pairs-spring going to pasture only 50 cents per pair

(9) Livestock inspection before being sold or offered for sale at a licensed livestock market or slaughtered at a licensed slaughterhouse as required by 81-3-205, MCA 50 cents a head

(10) Livestock market operator certificate as required by 81-8-251, 81-8-256, MCA 100

(11) Recording a new mark or brand, recording a mark or brand transfer, or recording a mark or brand as required by 81-3-107, MCA 100

(12) Releasing an animal, except horses, mules, or asses, for purpose of removal from a licensed livestock market as required by 81-3-205, MCA 50 cents a head

(13) Releasing horses, mules, or asses, for purpose of removal from a licensed livestock market as required by 81-3-205, MCA 6 a head

AUTH: 81-1-102, 81-22-102, MCA
IMP: 81-3-107, 81-3-205, 81-3-211, 81-8-304, 81-9-112, MCA

REASON: New Rule II is being added to separate miscellaneous fees from license and permit fees. The new rule does not change any fee amounts except (2). Section (2) is being amended to increase the fee for a copy of an original livestock bill of sale. This fee will more accurately reflect the time and salary cost expended on this copy of original bill of sale. Approximately 1,200 duplicate copies will be affected based on the number of duplicate copy requests in 2005, for a total projected revenue increase of $9,000 from this fee.

5. Concerned persons may submit their data, views, or arguments concerning the proposed actions in writing to Marc Bridges, 301 N. Roberts St., Room 308, P.O. Box 202001, Helena, MT 59620-2001, by faxing to (406) 444-1929, or by e-mailing to mbridges@mt.gov to be received no later than 5:00 p.m., May 4, 2006.

6. If persons who are directly affected by the proposed actions wish to express their data, views, and arguments orally or in writing at a public hearing, they must make a written request for a hearing and submit this request along with any written comments they have to the same address as above. The written request for hearing must be received no later than 5:00 p.m., May 4, 2006.

7. If the department receives requests for a public hearing on the proposed actions from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed 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 public hearing will be held at a later date. Notice of the public hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be more than 25, based upon the population of the state.

8. An electronic copy of this proposal notice is available through the department's site at www.mt.gov/liv.

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

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

DEPARTMENT OF LIVESTOCK

BY: /s/ Marc Bridges
Marc Bridges
Executive Officer
Board of Livestock
Department of Livestock

BY: /s/ Carol Grell Morris
Carol Grell Morris
Rule Reviewer

Certified to the Secretary of State March 27, 2006.

BEFORE THE BOARD OF HORSE RACING
DEPARTMENT OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the proposed amendment of ARM 32.28.505 pertaining to purse disbursement	)))))	NOTICE OF PROPOSED AMENDMENT NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On May 6, 2006, the Board of Horse Racing proposes to amend the above-stated rule.

2. The Board of Horse Racing will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Horse Racing no later than 5:00 p.m. on April 27, 2006 to advise us of the nature of the accommodation that you need. Please contact Marlys Stark, P.O. Box 200512, Helena, MT 59620-0512; phone: (406) 444-4287; TTD number: 1-800-253-4091; fax: (406) 444-4305; e-mail: mstark@mt.gov.

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

32.28.505 PURSE DISBURSEMENT FORMULA (1) through (4) remain the same.

(5) Any funds retained by the board as summer simulcast carryover will be forfeited to the board if the track licensee does not apply for or is not granted dates for the following live race season in Montana. The forfeited funds shall be distributed to the remaining live race track licensees by percentage based on amount of handle during the prior live race season. This section shall not apply if the board approves a track licensee's request to utilize all available simulcast and other funds under (6).

(6) If a track licensee receives a jockey injury claim or claims which will require payment of additional insurance deductible amounts beyond a prepaid deductible amount required by an insurance company in advance of the race season, the track may request approval from the board to use carryover funds, winter and summer simulcast funds, and all other funds to pay the additional deductible debt. The track licensee shall specify which of the following methods it has chosen for payment of the debt:

(a) the track licensee will cease live racing and refrain from applying for future race dates. All carryover funds then held by the board will be immediately disbursed to the track licensee for payment of the jockey injury insurance deductible debt. Any future winter and summer simulcast funds, plus all other funds collected by the board and previously earmarked for that track licensee will continue to be

collected by the board and disbursed to that track licensee on a payment schedule selected by the track licensee until the insurance deductible debt is paid in full. The board will then cease collecting or earmarking funds of any type for that track licensee and will redistribute these funds among the remaining live race track licensees; or

(b) the track licensee will continue its live racing program and will apply for future race dates. Any carryover funds, plus future winter and summer simulcast funds, plus all other funds collected by the board and earmarked for that track licensee will continue to be collected by the board and disbursed on a payment schedule selected by the track licensee until the insurance deductible debt is paid in full. The amounts disbursed for payment of the insurance deductible debt will be deducted from the purse and operations amounts disbursed by the board to that track licensee prior to the track licensee's live race season.

AUTH: 23-4-104, 23-4-202, MCA
IMP: 23-4-302, 23-4-304, MCA

REASON: The insurance company which provides jockey injury insurance coverage for the live race tracks in Montana has increased its rates and deductible payments commencing with the 2006 race season. The track licensees are facing potential revenue shortfalls to meet the increased insurance rates, plus potentially catastrophic debts if jockey injuries occur and multiple deductible amounts must be paid. In an effort to assist the track licensees with this situation, the board has proposed this rule amendment to assure track licensees that future simulcast and SB 65 monies will be available to pay any additional jockey injury deductible amounts which may arise during the live race season. Under the proposed rule, a track which is charged additional jockey injury insurance deductibles beyond the initial deductible payment made prior to the start of the race season may apply to the board to use carryover, future simulcast, and other future funds to pay the deductible debt under one of two processes outlined in the rule.

4. Concerned persons may present their data, views, or arguments concerning the proposed amendment in writing to the Board of Horse Racing, Attn: Marlys Stark, P.O. Box 200512, Helena, MT 59620-0512, or by faxing to (406) 444-4305, or by e-mailing to mstark@mt.gov to be received no later than 5:00 p.m., May 4, 2006.

5. If persons who are directly affected by the proposed amendment wish to express their data, views, and arguments orally or in writing at a public hearing, they must make a written request for a hearing and submit this request along with any written comments they have to the same address as above. The request for hearing and comments must be received no later than 5:00 p.m., May 4, 2006.

6. If the board 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 130 based on the 1,300 licensees in Montana.

7. An electronic copy of this proposal notice is available through the department's website at http://mt.gov/liv/default.asp.

8. The Board of Horse Racing maintains a list of interested persons who wish to receive notice of rulemaking actions proposed by the 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 the Board of Horse Racing. Such written request may be mailed to Marlys Stark, Department of Livestock, Board of Horse Racing, P.O. Box 200512, Helena, MT 59620-0512, faxed to (406) 444-4305, or e-mailed to mstark@mt.gov.

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

BOARD OF HORSE RACING
DEPARTMENT OF LIVESTOCK

/s/ Marc Bridges
Marc Bridges
Executive Officer
Department of Livestock

/s/ Carol Grell Morris
Carol Grell Morris
Rule Reviewer

Certified to the Secretary of State March 27, 2006.

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

In the matter of the adoption of Rule I and amendment of ARM 37.37.101, 37.86.2207, 37.88.907, and 37.88.1133 pertaining to implementation of a Children's Mental Health Direct Care Worker Wage Increase	)))))))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION AND AMENDMENT

TO: All Interested Persons

1. On April 26, 2006, at 3:30 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 April 17, 2006, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970; e-mail dphhslegal@mt.gov.

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

RULE I DIRECT CARE WAGE ADD-ON FOR CERTAIN MENTAL HEALTH CARE PROVIDERS (1) Subject to the provisions of this rule, only the providers listed in this rule will be eligible to receive additional reimbursement for wage and benefit improvements for direct care workers. The additional reimbursement will be paid as an add-on to the computed Medicaid payment rate and must be used only for wage and benefit increases to direct care workers as that term is defined at ARM 37.37.101. Eligible providers are:

(a) mental health centers providing community based psychiatric rehabilitation services (CBPRS);

(b) therapeutic group homes;

(c) residential treatment centers; and

(d) therapeutic family care providers.

(2) To receive a direct care add-on, a provider must submit a request for funding to the Department of Public Health and Human Services, Health Resources Division, Children's Mental Health Bureau, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

(3) For state fiscal year 2006, the department will allocate a total of

$142,257.00 per month to fund the direct care add-on. The department will determine a maximum monthly payment for each qualified provider as a pro rata share of the allocated funds taking into account the census of direct care full-time equivalents (FTE), based on a 40-hour week, employed on September 30, 2005 as identified by each qualified provider.

(4) Effective July 1, 2006, the department will evaluate the remaining appropriation and determine the maximum monthly payments as a pro rata share based on the 21-month period from October 1, 2005 through June 30, 2007, taking into account:

(a) the census of direct care worker full-time equivalents (FTE), based on a 40-hour week, employed on September 30, 2005 as identified by each qualified provider;

(b) the ratio of Montana Medicaid youths served by the provider during the month of September 2005 to the total of youths served during the same period by the same provider;

(c) the total adjusted number of direct care worker FTEs employed on September 30, 2005 as reported by all qualified providers; and

(d) the individual provider's portion of the total adjusted direct care worker FTE wages on September 30, 2005.

(5) The direct care add-on amount will be paid in addition to the published Medicaid rate that is established for each service.

(6) No adjustments will be made in the payment amount to account for subsequent changes or adjustments in utilization data or for any other purpose, except that amounts paid are subject to recovery if the facility fails to maintain the required records or to spend the funds in the manner specified in the request for funding.

(7) To receive the separate per hour add-on, each provider must enter into a written agreement with the department and be in compliance with the agreement.

(8) A provider that is not qualified as of September 30, 2005 will not be eligible for a direct care worker add-on in the 21-month period from October 1, 2005 through June 30, 2007.

AUTH: 53-2-201, 53-6-113, MCA
IMP: 53-2-201, 53-6-101, 53-6-111, 53-6-113, MCA

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

37.37.101 THERAPEUTIC YOUTH GROUP HOMES, DEFINITIONS

~~(1)~~ (8) "Therapeutic youth group home" ~~is~~ means a youth care facility licensed by and under contract with the department as a therapeutic youth group home, in which staff who are trained to provide services to emotionally disturbed youth in a therapeutic environment, perform assessments, develop and implement planned treatment interventions designed to address a youth's therapeutic needs in accordance with an individualized written treatment plan, and provide group, individual, and family therapy. Providers of moderate, campus based, and intensive therapeutic youth group home services must directly employ or contract for services

of clinicians, program managers, child care staff, relief staff, and administrative staff.

~~(2)~~ (1) "Basic level" means the supervision and intensity of treatment classified under ARM 37.50.315 as supervision matrix level VI.

~~(3)~~ (6) "Moderate level" means the supervision and intensity of treatment required in a therapeutic youth group home as specified in ARM 37.37.108 to manage and treat children who present emotional and/or behavioral disorders as determined by the department. Therapeutic interventions such as individual and group therapy are provided several times per week. In addition to the treatment, the children are provided with 24-hour awake staff supervision.

~~(4)~~ (2) "Campus based" means the supervision and intensity of treatment required in a therapeutic youth group home as specified in ARM 37.37.111 to manage and treat children who present severe emotional and/or behavioral disorders as determined by the department. Treatment, therapeutic interventions, and supervision are tailored to the age and diagnosis of the children served. Therapeutic interventions are individualized and are provided several times per day. Campus based level care is provided on a campus where treatment is provided throughout the ~~milieu~~ facility. In addition to treatment, the children are provided with 24-hour awake staff supervision.

(3) "Direct care worker" means a Medicaid provider or an employee who is assigned to work directly with the youth or in youth-specific activities for no less than 75% of their hours of employment. A direct care worker is primarily responsible for the implementation of the treatment goals of the youth.

~~(5)~~ (4) "Intensive level" means the supervision and intensity of treatment required in a therapeutic youth group home as specified in ARM 37.37.115 to manage and treat children who present severe emotional and/or behavioral disorders as determined by the department. Treatment, therapeutic interventions, and supervision are tailored to the age and diagnosis of the children served. Therapeutic group and individual interventions are provided several times per day. In addition, specialized behavior management techniques are incorporated into the treatment and supervision of children requiring intensive level services. The children are provided with 24-hour awake supervision.

~~(6)~~ (5) "Lead clinical staff (LCS)" ~~is~~ means an employee of, or under contract with, the moderate, campus based or intensive level therapeutic youth group home provider who is responsible for the supervision and overall provision of treatment services to children in the group home~~(s)~~. The LCS must be a clinical psychologist, master level social worker (MSW), licensed professional counselor (LPC), or have a masters degree in a human services field with a minimum of one year of clinical experience.

(7) "Program manager" ~~is~~ means an employee of the moderate, campus based, or intensive level therapeutic youth group home provider who trains and supervises child care staff, and provides treatment under the clinical supervision of the LCS. Program managers must have a bachelor's degree in a human services field, or the experience or a combination of experience and education~~,~~ equivalent to a bachelor's degree. Human services experience equivalent to a bachelor's degree for a non-degree program manager is ~~6~~ six years. Each year of post-secondary education in human services for a non-degree program manager equals one year of experience.

AUTH: 41-3-1103, 41-3-1142, 52-2-111, 52-2-622, MCA
IMP: 41-3-1102, 41-3-1142, 52-2-111, 52-2-622, MCA

37.86.2207 EARLY AND PERIODIC SCREENING, DIAGNOSTIC, AND TREATMENT SERVICES (EPSDT), REIMBURSEMENT (1) through (1)(d) remain the same.

(2) Reimbursement for outpatient chemical dependency treatment, nutrition, and private duty nursing services is specified in the department's EPSDT ~~f~~Fee ~~s~~Schedule. The department adopts and incorporates by reference the department's EPSDT ~~f~~Fee ~~s~~Schedule dated July 2003. A copy of the fee schedule may be obtained from the Department of Public Health and Human Services, Health Resources Division, ~~Children's Mental Health Bureau~~ Managed Care Bureau, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

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

(4) Reimbursement for the therapeutic portion of therapeutic family care treatment services is the lesser of:

(a) the amount specified in the department's ~~medicaid mental health fee schedule~~ Medicaid Mental Health and Mental Health Services Plan Individuals Under 18 Years of Age Fee Schedule adopted in (3)(a) and a direct care wage add-on as provided in [RULE I], if applicable; or

(b) through (9) remain the same.

(10) The department will not reimburse providers for two services that duplicate one another on the same day. The department adopts and incorporates by reference the ~~matrix of services excluded from simultaneous reimbursement~~ Medicaid Children's Mental Health Plan and Children's Mental Health Services Plan (CHMSP) Services Excluded from Simultaneous Reimbursement dated ~~January 1, 2003~~ September 1, 2005. A copy of the ~~MH (Mental Health) simultaneous Reimbursement Exclusions matrix~~ CHMSP Services Excluded from Simultaneous Reimbursement is posted on the internet at the department's home page at ~~www.dphhs.mt.gov/aboutus/divisions/addictivementaldisorders/services/index.shtml~~ www.dphhs.mt.gov/mentalhealth/children/childrensmentalhealthservicesmatrix.pdf or may be obtained by writing the Department of Public Health and Human Services, Health Resources Division, Children's Mental Health Bureau, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

(11) Information regarding current reimbursement or copies of fee schedules for EPSDT services may be obtained from the Department of Public Health and Human Services, Health Resources Division, ~~Children's Mental Health Bureau~~ Managed Care Bureau, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

AUTH: 53-2-201, 53-6-113, MCA
IMP: 53-2-201, 53-6-101, 53-6-111, 53-6-113, MCA

37.88.907 MENTAL HEALTH CENTER SERVICES, REIMBURSEMENT

(1) Medicaid reimbursement for mental health center services shall be the

lowest of:

(a) the provider's actual (submitted) charge for the service; or

(b) for services provided to adults, the department's ~~m~~Medicaid fee for the service as specified in the department's ~~medicaid mental health fee schedule.~~ Medicaid Mental Health and Mental Health Services Plan Individuals 18 Years of Age and Older Fee Schedule; or

(c) for services provided to children and adolescents, the Medicaid Mental Health and Mental Health Services Plan Individuals Under 18 Years of Age Fee Schedule adopted in ARM 37.86.2207 for services provided to youths as that term is defined at ARM 37.89.103, and a direct care wage add-on as provided in [RULE I], if applicable.

(2) through (3)(d) remain the same.

AUTH: 53-2-201, 53-6-113, MCA
IMP: 53-6-101, 53-6-113, MCA

37.88.1133 RESIDENTIAL TREATMENT CENTERS, REIMBURSEMENT

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

(1) The final rate for services provided to youths as that term is defined at ARM 37.89.103 for residential treatment facility providers located in the state of Montana is:

(a) the rate provided in the department's Medicaid Mental Health and Mental Health Services Plan Individuals Under 18 Years of Age Fee Schedule adopted in ARM 37.86.2207; and

(b) a direct care wage add-on as provided for in [RULE I], if applicable.

(2) The rate in (1) will not be adjusted retrospectively based upon more recent cost data or inflation estimates. Cost settlements will not be performed.

(2) through (9) remain the same but are renumbered (3) through (10).

AUTH: 53-2-201, 53-6-113, MCA
IMP: 53-2-201, 53-6-101, 53-6-111, 53-6-113, MCA

4. The Department of Public Health and Human Services (the department) is proposing the adoption of Rule I, "Separate per Hour Add-On for Certain Mental Health Care Providers" and the amendment of ARM 37.37.101, "Therapeutic Youth Group Homes, Definitions", 37.86.2207, "Early and Periodic Screening, Diagnostic, and Treatment Services (EPSDT), Reimbursement", 37.88.907, "Mental Health Center Services, Reimbursement", and 37.88.1133, "Residential Treatment Centers, Reimbursement". This proposal is necessary to implement a supplemental Medicaid payment that will allow certain providers to increase wages and benefits for direct care workers providing Medicaid children's mental health services. The Montana Legislature appropriated $2,987,368 to the department in the 2005 General Appropriations Act (2005 Laws of Montana, Chapter 607), commonly referred to as "House Bill 2" (HB 2) with explicit restrictions requiring that it must be used during

the 2006-2007 biennium only for the purpose of increasing wages and benefits for direct care workers. Rules are necessary to define the term "direct care worker," to adopt a methodology for distribution of the appropriation and to establish procedures and procedural requirements for administration of the distributions.

Generally, the proposed changes include: 1) a new rule to regulate the payment of direct care add-on reimbursements, 2) a definition of direct care worker, 3) revising the citations to fee schedules referred to in the rules, and 4) updating references to the names of administrative units in the department. If these changes are not adopted, the department would have no authority to distribute the appropriation because existing Medicaid reimbursement rules do not contain a provision for the add-on.

The specific rationale for each proposed change follows.

RULE I

This proposed new rule would specify the categories of provider eligible to receive the add-on, the methodology for computing the add-on amount, and the terms and conditions an eligible provider must comply with. The department is proposing that payments to Montana Medicaid children's mental health service providers, who meet certain conditions, be distributed as a monthly add-on to their Medicaid reimbursement rate. The add-on payment may be used only for wage and benefit increases for direct care workers. The department will enter into agreements with eligible providers to gather and report data documenting increases in direct care worker wages and benefits resulting from the add-on payments.

The department would determine a maximum monthly payment for each qualified provider, commencing October 1, 2005, as a pro rata share of the appropriated funds allocated for increases in Medicaid direct care wages and benefits. This determination would be effective for the entire 21-month period beginning October 1, 2005 and ending June 30, 2007. Effective July 1, 2006, the department would evaluate the remaining appropriation and determine the maximum monthly payments as a pro rata share based on the wage information provided by qualified providers as of September 30, 2005. No "new" qualified providers will be added after September 30, 2005.

In HB2, the 2005 Legislature made a restricted, biennial appropriation for $2,987,368 to improve wages and benefits for children's mental health direct care workers in fiscal years 2006 and 2007. It must be used only for a wage increase for children's mental health direct care workers. HB2 states that the legislature intended that direct care salaries be raised 75 cents an hour and that benefits for direct care workers be raised 26 cents an hour. Because the legislature specified the reimbursement amount, the purposes of the appropriation, and restricted the appropriation to those purposes, no other options were open to consideration by the department.

The department is required by HB 2 to document that the appropriation was used solely for direct care worker wage and benefit increases. The documentation must include the initial wage rates and wage rates after the increase has been applied. The department proposes to collect the information necessary to document the wage increases through agreements with providers.

Providers eligible for a direct care add-on payment would be limited to :

(a) mental health centers providing community based psychiatric rehabilitation services (CBPRS);
(b) therapeutic group homes;
(c) residential treatment centers; and
(d) therapeutic family care providers.

The department chose these providers because they are the only Medicaid providers who have employees meeting the definition of "direct care worker" proposed by the department, and because they have had difficultly recruiting and retaining employees. For further discussion, see the explanation for ARM 37.37.101.

The department interprets the legislature's goal of increasing direct care worker's wages $0.75 an hour and benefits $0.26 an hour as applying only to the portion of time they spend on Medicaid activities. This interpretation is necessary because the legislative appropriation for direct care worker wage and benefit increases contains state special revenue funds and Medicaid federal financial participation.

ARM 37.37.101

The department proposes adding a definition of "direct care worker" to the definitions and renumbering them so they will appear in alphabetical order as required by the Secretary of State's formatting requirements. The department proposes to define direct care workers as employees who spend no less than 75% of their work hours working directly with youth or in youth specific activities. The department suggests a 75% minimum because it would provide a reasonable allowance for training and administrative tasks.

The proposed definition is necessary because the legislature identified workers eligible for the wage and benefit increases only as "direct care workers". HB 2 did not define the term "direct care", it does not specify the kind of work done by a direct care worker and it does not specify a minimum amount of time a worker must spend providing care to children receiving Medicaid mental health services.

The definition proposed by the department was chosen so the wage and benefit increases would go to the lowest paid mental health workers. Those workers should be favored because their positions are the most difficult to recruit and retain. The proposed wage and benefit increases are necessary for children's mental health care providers to compete for workers with retailers and medical service providers.

ARM 37.86.2207

The proposed amendment to this reimbursement rule would refer to Rule I, thereby incorporating the direct care wage add-on. This proposed amendment would implement the direct care wage add-on for providers of certain mental health care services. The necessity for these amendments is explained in the discussion of Rule I above. The department is taking this opportunity to conform the format of the rule to current rulemaking standards.

The department is also taking this opportunity to update its address to reflect a recent reorganization of the division responsible for administering Medicaid outpatient chemical dependency treatment, nutrition, and private duty nursing programs in Montana. This proposal is for administrative purposes and no substantive change is intended by the department.

ARM 37.88.907 and 37.88.1133

The proposed amendments in these rules would add references to the direct care wage add-on provided for in Rule I. These proposed amendments would implement the direct care wage add-on established in Rule I for the therapeutic portion of therapeutic youth group home treatment services, mental health center services, and residential treatment center services. The necessity for these amendments is included in the discussion of Rule I above.

Fiscal Impact

The department expects the effect of the direct care wage add-on to equal $2,987,368, the amount appropriated for the State Fiscal Year 2006-2007 biennium for direct care wage and benefit increases. Of that amount, approximately $2 million is federal funding and about $900,000 is state funding.

Persons affected

This proposal would affect 18 children's mental health providers and approximately 719 direct care workers providing children's mental health services to Medicaid recipients.

5. The department intends to apply the direct care wage add-on retroactive to October 1, 2005. There is no negative impact to providers or employees if these rules are applied retroactively to the dates proposed by the department. There would be a negative impact if they were not applied retroactively.

This rule proposal reflects the implementation plan negotiated with the qualified providers so that the monthly payments could begin October 1, 2005. The department concentrated on implementation and worked closely with the providers to develop the details proposed in this notice. This resulted in the need to make the

proposed changes retroactive.

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 May 4, 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 March 27, 2006.

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

In the matter of the amendment of ARM 37.85.212 pertaining to resource based relative value scale (RBRVS)	)))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Interested Persons

1. On April 26, 2006, at 3:30 p.m., a public hearing will be held in the auditorium of the Department of Public Health and Human Services Building, 111 N. Sanders, Helena, Montana to consider the proposed amendment of the above-stated rule.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice or provide reasonable accommodations at the public hearing site. If you need to request an accommodation, contact the department no later than 5:00 p.m. on April 17, 2006, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970; e-mail dphhslegal@mt.gov.

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

37.85.212 RESOURCE BASED RELATIVE VALUE SCALE (RBRVS) REIMBURSEMENT FOR SPECIFIED PROVIDER TYPES (1) For purposes of this rule, the following definitions apply:

(a) "Anesthesia units" means time and base units used to compute reimbursement under RBRVS for anesthesia services. Base units are those units as defined by the Mmedicare program. Time units are 15 minute intervals during which anesthesia is provided.

(b) "Conversion factor" means a dollar amount by which the relative value units, or the base and time units for anesthesia services, are multiplied in order to convert the relative value units to a fee for a service.

(c) "Policy adjustor" means a factor by which the product of the relative value units and the conversion factor is multiplied to increase or decrease the fees paid by Mmedicaid for certain categories of services.

(d) "Provider's invoice cost" means the actual dollar amount paid by a Mmedicaid provider for a specific item of durable medical equipment (DME) or supply. It does not include any markup added by the provider.

(e) "Relative value unit (RVU)" means a numerical value assigned in the resource based relative value scale to each procedure code used to bill for services provided by a health care provider. The relative value unit assigned to a particular code expresses the relative effort and expense expended by a provider in providing

one service as compared with another service.

(f) "Resource based relative value scale (RBRVS)" means the most current version of the Mmedicare resource based relative value scale contained in the ~~physicians'~~ Mmedicare Physician Ffee Ssschedule adopted by the Ccenters for Mmedicare and Mmedicaid Ssservices (CMS) of the U.S. Ddepartment of Hhealth and Hhuman Ssservices and published at ~~69~~ 70 Federal Register ~~66235~~ 70116 (November ~~15, 2004~~ 21, 2005), effective January 1, ~~2005~~ 2006 which is adopted and incorporated by reference. A copy of the Mmedicare Physician Ffee Ssschedule may be obtained from the Department of Public Health and Human Services, Health Resources Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951. The RBRVS reflects RVUs for estimates of the actual effort and expense involved in providing different health care services.

(g) "Subsequent surgical procedure" means any additional surgical procedure or service, except for add-ons and modifier 51 exempt codes, performed after a primary operation in the same operative session.

(h) "Usual and customary" means those charges that the Mmedicaid provider would charge for a particular service in a majority of cases including Mmedicaid and non-Mmedicaid patients.

(2) Services provided by the following health care professionals will be reimbursed in accordance with the RBRVS methodology set forth in (3):

(a) physicians;
(b) mid-level practitioners;
(c) podiatrists;
(d) physical therapists;
(e) occupational therapists;
(f) speech therapists;
(g) audiologists;
(h) optometrists;
(i) opticians;
(j) providers of clinic services;
(k) providers of EPSDT services;
(l) licensed psychologists;
(m) licensed clinical social workers;
(n) licensed professional counselors;
(o) dentists providing medical services;
(p) providers of oral surgery services;
(q) providers of pathology and laboratory services;
(r) independent diagnostic testing facilities (IDTF); and
(s) school based services.

(3) Except as set forth in (8)~~, (9), (10), and (11)~~ through (12)(a)(vi), the fee for a covered service provided by any of the provider types specified in (2) through (2)(s) is determined by multiplying the RVUs determined in accordance with (7) through (7)(b)(iii) by the conversion factor, which is required to achieve the overall budget appropriation for physician services in House Bill 2 of the 2005 legislative session (the General Appropriations Act of 2005) and then multiplying the product by a factor of one plus or minus the applicable policy adjustor as provided in (4) or (5), if any.

(4) On July 1, 2006, $324,500 total additional funds for state fiscal year 2007 will be applied to well child preventative visits.

~~(4) The reimbursement increases will be effective as follows:~~

~~(a) On July 1, 2005:~~

~~(i) $1,233,000 will be applied to maternity related services;~~

~~(ii) $3,448,000 will be applied to physician related services, that is, those procedures priced by RBRVS and performed by a physician, mid-level practitioner, podiatrist, independent diagnostic testing facility (IDTF), or public health clinic.~~

~~(b) On January 1, 2006, $324,500 additional total funds will be applied to well child preventive visits.~~

~~(c) Policy adjustors will be used to accomplish the funding allocations in (4)(a) and (b).~~

~~(5) A policy adjustor of up to 10% may be applied to family planning services.~~

~~(a) The department's list of specific maternity related services and family planning services as amended through January 1, 2005 is adopted and incorporated by reference. A copy of the list is available on request from the Department of Public Health and Human Services, Health Resources Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.~~

(5) For state fiscal year 2007, policy adjustors will be used to accomplish the targeted funding allocations, which apply to family planning services, maternity services, and well child preventative visits as directed by the legislature. The department's list of services affected by policy adjustors through January 1, 2006 is adopted and incorporated by reference. The list is available from the Department of Public Health and Human Services, Health Resources Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

(6) The RVUs for most services are adopted from the resource based RBRVS. For most services for which the RBRVS does not specify RVUs, the department sets those RVUs.

(7) The RVUs for a M~~m~~edicaid covered service provided by any of the provider types specified in (2) are calculated as follows:

(a) if M~~m~~edicare sets RVUs, the M~~m~~edicare RVUs are applicable;

(b) if M~~m~~edicare does not set RVUs but M~~m~~edicaid sets RVUs, the M~~m~~edicaid RVUs are set in the following manner:

(i) convert the existing dollar value of a fee to an RVU value;

(ii) evaluate the RVU of similar services and assign an RVU value; or

(iii) convert the average by report dollar value of a fee to an RVU value.

(8) Except for physician administered drugs as provided in ARM 37.86.105(3), clinical laboratory services and anesthesia services, if neither M~~m~~edicare nor M~~m~~edicaid sets RVUs, then reimbursement is by report.

(a) Through the by report methodology the department reimburses a percent of the provider's usual and customary charges for a procedure code where no fee has been assigned. The percentage is determined by dividing the previous state fiscal year's total M~~m~~edicaid reimbursement for RBRVS provider covered services by the previous state fiscal year's total M~~m~~edicaid billings.

(b) For state fiscal year ~~2006~~ 2007, the by report rate is ~~43%~~ 45% of the provider's usual and customary charges.

(9) For clinical laboratory services for which there is an established fee:

(a) the department pays the lower of the following for procedure codes with fees:

(i) the provider's usual and customary charges for the service; or

(ii) 60% of the medicare fee schedule for physician offices and independent labs and hospitals functioning as independent labs; or

(iii) the established Mmedicaid fee.

(b) for clinical laboratory services for which there is no established fee, the department pays the lower of the following for procedure codes without fees:

(i) the provider's usual and customary charges for the service;

(ii) the rate established using the by report methodology; or

(A) for purposes of (9)(b) through (9)(b)(iii), the by report methodology means averaging 50 paid claims for the same code that have been submitted within a 12 month span and then multiplying the average by the amount specified in (8)(b).

(iii) the historical comparative value of the procedure as indicated by the reimbursement amount paid by Mmedicaid and other third party payors for the same procedure within the last 12 months.

(10) For anesthesia services the department pays the lower of the following for procedure codes with fees:

(a) the provider's usual and customary charges for the service;

(b) a fee determined by multiplying the anesthesia conversion factor by the sum of the applicable base and time units, and then multiplying the product by a factor of one plus or minus the applicable policy adjustor, if any;

(c) the department pays the lower of the following for procedure codes without fees:

(i) the provider's usual and customary charges for the services; or

(ii) the by report rate.

(11) For equipment and supplies:

(a) the department pays the lower of the following for durable medical equipment (DME) items with fees:

(i) the provider's invoice cost for the DME; or

(ii) the Mmedicaid fee schedule as provided in ARM 37.86.1807.

(b) the department pays the lower of the following for DME items without fees:

(i) the provider's invoice cost for the DME; or

(ii) the by report rate provided in (8)(b).

(c) except for the bundled items as provided in (13), the department pays the lower of the following for supply items with fees:

(i) the provider's invoice cost for the supply item; or

(ii) the Mmedicaid fee schedule as provided in ARM 37.86.1807.

(d) except for bundled items as provided in (13), the department pays the lower of the following for supply items without fees:

(i) the provider's invoice cost for the supply item; or

(ii) the by report rate provided in (8)(b).

(12) Subject to the provisions of (12)(a), when billed with a modifier, payment for procedures established under the provisions of (7) is a percentage of the rate established for the procedures.

(a) The methodology to determine the specific percent for each modifier is as

follows:

(i) The department obtains information from Mmedicare and other third party payers regarding the comparative value utilized for payment of procedures billed with modifiers.

(ii) The department establishes a specific percentage for each modifier based upon the purpose of the modifier, the comparative value of the modified service, and the medical insurance industry trend of reimbursement for the modifier.

(iii) The department's list of the specific percents for the modifiers used by Mmedicaid as amended through January 1, 2005 is adopted and incorporated by reference. A copy of the list is available on request from the Department of Public Health and Human Services, Health Resources Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

(iv) Notwithstanding any other provision, procedure code modifiers "80", "81", "82", and "AS", used by assistant surgeons shall be reimbursed at 16% of the department's fee schedule.

(v) Notwithstanding any other provision, procedure code modifier "62" used by cosurgeons shall be reimbursed at 62.5% of the department's fee schedule for each cosurgeon.

(vi) Notwithstanding any other provision, subsequent surgical procedures shall be reimbursed at 50% of the department's fee schedule.

(13) In applying the RBRVS methodology set forth in this rule, Mmedicaid reimburses in accordance with Mmedicare's policy on the bundling of services, as set forth in the physicians' Mmedicare fee schedule adopted by CMS and published in the Federal Register annually, whereby payment for certain services constitutes payment for certain other services which are considered to be included in those services.

(14) Providers must bill for services using the procedure codes and modifiers set forth, and according to the definitions contained in the federal health care administration's common procedure coding system (HCPCS). Information regarding billing codes, modifiers, and HCPCS is available upon request from the health resources division at the address previously stated in this rule.

AUTH: 53-2-201, 53-6-113, MCA
IMP: 53-2-201, 53-6-101, 53-6-111, 53-6-113, MCA

3. The Medicaid program provides medical assistance to low income and disabled residents of Montana. The State of Montana and the federal government jointly fund the program. The purpose of this rule amendment is to update the Resource Based Relative Value Scale (RBRVS) fees in accordance with the more recently published relative value units (RVUs) released by Center for Medicare and Medicaid (CMS). The RVUs are backed by costly research done to assure services are reimbursed appropriately and related to actual costs. Work units, malpractice liability, and office/facility practice expenses are included in the RVU calculation.

The RBRVS administrative rule is updated annually to incorporate the updated RVUs and legislative appropriation.

Leaving the rule unchanged is not an option as the RVUs must be updated and a new appropriation for fees must be incorporated into rule. New RVUs should be used to allow Montana Medicaid to utilize the most recent and accurate version of the RBRVs methodology. If the rule was not updated, the RBRVS rule methodology would not take into account updated cost analysis.

The 2005 legislative session has appropriated additional funds in the amount of $324,500 to be applied to well child preventative visits. The increase will be applied to physician-related services that are reimbursed via the RBRVS methodology, that is physicians, mid-level practitioners, podiatrists, independent diagnostic testing facilities (IDTFs), and public health clinics.

This rule change has a $324,500 budget impact and will affect 6,000 health care providers and 84,000 Montana Medicaid clients.

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 May 4, 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

Certified to the Secretary of State March 27, 2006.

BEFORE THE DEPARTMENT
OF PUBLIC SERVICE REGULATION
OF THE STATE OF MONTANA

In the matter of the proposed amendment of ARM 38.5.2001, 38.5.8201, and 38.5.8209 and the proposed adoption of New Rule I regarding energy standards for public utilities	)))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT AND ADOPTION

TO: All Concerned Persons

1. On May 3, 2006, at 10:00 a.m., a public hearing will be held in the Bollinger Room, Public Service Commission (PSC) offices, 1701 Prospect Avenue, Helena, Montana, to consider the amendment of ARM 38.5.2001, 38.5.8201, and 38.5.8209 and the adoption of New Rule I.

2. The PSC 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 PSC no later than 5:00 p.m., April 26, 2006, to advise us of the nature of the accommodation you need. Please contact Connie Jones, PSC Secretary, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601, telephone number (406) 444-6170, TTD number (406) 444-6199, facsimile number (406) 444-7618, or e-mail conniej@mt.gov.

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

38.5.2001 GOAL AND POLICY (1) through (3) remain the same.

(4) The guidelines provide the utilities with policy and planning guidance. With the exception of [RULE I], t~~T~~hey do not specify the outcome of the planning process nor mandate particular investment decisions. Each utility's plan should be the result of that utility's unique planning process and judgment.

(5) through (11) remain the same.

AUTH: 69-3-103, 69-3-1204, 69-8-1006, MCA
IMP: 69-3-102, 69-3-106(1), 69-3-201, 69-3-1202, 69-8-1004, 69-8-1005, MCA

38.5.8201 INTRODUCTION AND APPLICABILITY (1) These guidelines provide policy guidance to default supply utilities (DSU) on long-term default electricity supply resource planning and procurement. With the exception of [RULE I], t~~T~~he guidelines do not impose on DSUs specific resource procurement processes nor mandate particular resource acquisitions. Instead, the guidelines describe a process framework for considering resource needs and suggest optimal ways of meeting those needs. Electricity default supply resource decisions affect the public

interest. A DSU can better fulfill its obligations, mitigate risks and achieve resource procurement goals if it includes the public in the portfolio planning process. An independent advisory committee of respected technical and public policy experts may offer the DSU an excellent source of up-front, substantive input that would help mitigate risk and improve resource procurement outcomes in a manner consistent with these guidelines. Consistent with these guidelines, and after an opportunity for public input, the DSU must ultimately make electricity resource acquisition decisions based on economics, reliability, management expertise, and sound judgment.

(2) through (5) remain the same.

AUTH: 69-8-403, 69-8-1006, MCA
IMP: 69-8-403, 69-8-1004, 69-8-1005, MCA

38.5.8209 DEFAULT SUPPLY UTILITY SERVICE RESPONSIBILITIES

(1) A DSU's default service responsibilities are:

(a) to plan and manage its resource portfolio in order to provide adequate, reliable, and efficient annual and long-term default electricity supply services at the lowest total cost; ~~and~~

(b) to provide all or a substantial amount of the emergency electricity supply requirements of retail customers who have electricity supply service contracts with a licensed electricity supplier or marketer that has failed to deliver the required electricity supply. (A DSU is not required to maintain a reserve of electricity supply to fulfill its emergency supply responsibilities. To the greatest extent practicable, a DSU should recover the costs of providing emergency service from the supplier or marketer that failed to deliver the required electricity or the customers that directly benefited from the DSU's provision of emergency service. A DSU must provide emergency service according to commission-approved tariff schedules.); and

(c) to comply with the provisions of the Montana Renewable Power Production and Rural Economic Development Act, codified at 69-8-1001 through 69-8-1008, MCA, and [RULE I].

(2) remains the same.

AUTH: 69-8-403, 69-8-1006, MCA
IMP: 69-8-403, 69-8-1004, 69-8-1005, MCA

4. The proposed new rule provides as follows:

RULE I RENEWABLE ENERGY RESOURCE STANDARD (1) A public utility's default supply resource procurement plan pursuant to ARM 38.5.8201 through 38.5.8227 or integrated least cost resource plan pursuant to ARM 38.5.2001 through 38.5.2012 must thoroughly document compliance with the Montana Renewable Power Production and Rural Economic Development Act, 68-8-1001, et seq, MCA, hereafter renewable resource standards. Public utilities must consider the requirements of this rule an integral part of the planning and procurement processes described in ARM 38.5.8201 through 38.5.8227 and 38.5.2001 through 38.5.2012.

(2) For public utilities operating in Montana within the geographic boundaries of the Western Electricity Coordinating Council, all renewable energy credits used to comply with the renewable resource standards must be tracked and verified through the Western Renewable Energy Generation Information System. For public utilities operating in Montana within the geographic boundaries of Midwest Reliability Organization, all renewable energy credits used to comply with the renewable resource standards must be tracked and verified through the Midwest Renewable Energy Tracking System.

(3) Before entering into a long-term contract to purchase renewable energy credits, with or without associated electricity, for purposes of complying with the renewable resource standards, a public utility must petition the commission to certify that the renewable energy credits were produced by an eligible renewable resource. The petition may stand on its own or may be part of a request for advanced approval of the price(s), term, and quantity in a proposed contract to purchase renewable energy credits, either with or without associated electricity. If the applicable renewable energy tracking system in [RULE I(2)] provides a mechanism for ensuring that renewable energy credits are produced by eligible renewable resources, as defined in 69-8-1003, MCA, a public utility may rely on that mechanism. Otherwise a public utility's petition must contain sufficient information on the source of the renewable energy credits to allow the commission to determine whether the source is an eligible renewable resource.

(4) A public utility may petition the commission for a waiver from full compliance with the renewable energy portfolio standards. The petition must include documentation and evidence showing that the public utility has undertaken all reasonable steps to procure renewable energy credits sufficient to comply with the applicable portfolio standards and could not achieve full compliance due to one or more of the following:

(a) the unavailability of sufficient renewable energy credits;

(b) a determination that integrating additional eligible renewable resources into the electrical grid would jeopardize the reliability of the electrical system despite reasonable efforts to mitigate reliability concerns;

(c) full compliance would cause the public utility to exceed the cost caps in 69-8-1007, MCA; and

(d) other documented reasons beyond the public utility's control.

(5) The commission will rule on a petition for a waiver from full compliance with the renewable portfolio standards after noticing the petition and allowing an opportunity for a public hearing.

(6) A public utility may apply to the commission for advanced approval of a contract for the purchase of renewable energy credits with or without the associated electricity. An application by a public utility for advanced approval must incorporate by reference the public utility's most recent long-term resource plan, must include the public utility's most recent near-term action plan, and must provide:

(a) a complete explanation and justification of all changes, if any, to the public utility's most recent long-term resource plan and near-term action plan, including how the public utility has responded to all commission written comments on the long-term plan relevant to compliance with the renewable resource standards;

(b) a copy of the proposed contract, including all appendices and attachments, if any;

(c) testimony and supporting work papers demonstrating that the contract enables the public utility's compliance with the renewable resource standards in a manner that, to the fullest extent possible, is consistent with ARM Title 38, chapter 5, subchapter 20 or subchapter 82, whichever is applicable to the filing public utility;

(d) a copy of the request for proposals which preceded the proposed contract;

(e) a copy of all bids received;

(f) testimony and work papers demonstrating all due diligence and bid evaluation conducted by the public utility, including the application of bid rating mechanisms and management judgment;

(g) testimony and supporting work papers demonstrating that the price(s), term, and quantity associated with the power purchase agreement are reasonable and in the public interest;

(h) testimony and supporting work papers demonstrating the calculation of the utility's avoided costs and associated cost caps provided for in 69-8-1007, MCA;

(i) a thorough explanation and justification for any other terms in the power purchase agreement for which the public utility is requesting advanced approval; and

(j) testimony and supporting documentation related to any advice received from the public utility's stakeholder advisory committee regarding the proposed contract or the underlying resource/product and actions taken or not taken by the public utility in response to such advice.

(7) The commission will process a petition for advanced approval under the contested case procedures of the Montana Administrative Procedure Act. The commission will consider requests for expedited processing of petitions for advanced approval, but petitions submitted pursuant to this rule are not subject to the 180 day limit in 69-8-421, MCA.

(8) If a public utility determines in its ongoing long-term planning process pursuant to ARM 38.5.8201 through 38.5.8227 or 38.5.2001 through 38.5.2012 that the cost of complying with the renewable resource standards will likely exceed the cost caps in 69-8-1007, MCA, the public utility must submit an application to the commission no later than 180 days prior to the beginning of the compliance year. The application must thoroughly document the public utility's efforts to procure the required renewable energy credits, the calculated cost of compliance, work papers showing the most current calculation of the cost caps, an explanation of the methodology that underlies the calculation of the cost caps, and the amount by which the cost cap would be exceeded if the public utility were to comply with the renewable resource standards. Following notice of the application and an opportunity for a public hearing, the commission will issue an order authorizing or denying full or partial forbearance from the renewable resource standard for that compliance year.

AUTH: 69-8-1006, MCA
IMP: 69-8-1004, 69-8-1005, 69-8-1006, 69-8-1007, MCA

5. Adoption of the amendments and new rule is necessary to comply with the statutory mandate in 69-8-1006(2), MCA, and to generally enforce the provisions of the Montana Renewable Power Production and Rural Economic Development Act.

6. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments (original and 10 copies) may also be submitted to Legal Division, Public Service Commission, 1701 Prospect Avenue, P.O. Box 202601, Helena, MT 59620-2601, and must be received no later than May 4, 2006, or may be submitted to the PSC through the PSC's web-based comment form at http://psc.mt.gov (go to "Contact Us," "Comment on Proceedings Online," then complete and submit the form no later than May 4, 2006). (PLEASE NOTE: When filing comments pursuant to this notice please reference "Docket No. L-06.2.1-RUL.")

7. The PSC, a commissioner, or a duly appointed presiding officer may preside over and conduct the hearing.

8. The Montana Consumer Counsel, 616 Helena Avenue, P.O. Box 201703, Helena, Montana 59620-1703, telephone (406) 444-2771, is available and may be contacted to represent consumer interests in this matter.

9. The PSC maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the PSC. Persons who wish to have their name added to the list should make a written request which includes that name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: electric utilities, providers, and suppliers; natural gas utilities, providers, and suppliers; telecommunications utilities and carriers; water and sewer utilities; common carrier pipelines; motor carriers; rail carriers; and/or administrative procedures. Such written request may be mailed or delivered to Public Service Commission, Legal Division, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601, faxed to Connie Jones at (406) 444-7618, e-mailed to conniej@mt.gov, or may be made by completing a request form at any rules hearing held by the PSC.

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

/s/ Greg Jergeson
Greg Jergeson, Chairman
Public Service Commission

/s/ Robin A. McHugh
Reviewed by Robin A. McHugh

Certified to the Secretary of State March 27, 2006.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the adoption of new Rules I through X regarding definitions, licensing and application requirements, ownership change, examination of title lenders, duration of loans, extensions, reports, schedule of charges, employees' character and fitness, and procedural rules for hearing and discovery proposed for adoption under the Montana Title Loan Act	)	NOTICE OF ADOPTION

TO: All Concerned Persons

1. On July 14, 2005, the Division of Banking and Financial Institutions published MAR Notice No. 2-2-357 regarding the public hearing on the proposed adoption of the above-stated rules at page 1125 of the 2005 Montana Administrative Register, issue number 13. On July 28, 2005, the division published MAR Notice No. 2-2-358 to amend the reasonable necessity pertaining to the above-stated rules at page 1334 of the 2005 Montana Administrative Register, issue number 14. On October 6, 2005, the division published MAR Notice No. 2-2-366 regarding the extension of the comment period of the above-stated rules at page 1839 of the 2005 Montana Administrative Register, issue number 19.

2. After consideration of the comments received, the Division of Banking and Financial Institutions has adopted new rules III (2.59.1405), VI (2.59.1410), and X (2.59.1417) exactly as proposed.

3. The division has adopted the following rules as proposed but with the following changes from the original proposal, matter to be stricken interlined, new matter underlined:

RULE I (2.59.1401) DEFINITIONS For the purposes of the Montana Title Loan Act and this subchapter, the following definitions apply:

(1) remains as proposed.

~~(2) "Day" means 24-hour period of time.~~

(3) and (4) remain as proposed but are renumbered (2) and (3).

~~(5)~~ (4) "Original title loan" means the title loan agreement which is the basis for taking possession of the title and perfecting a security interest ~~on~~ in the titled property.

(6) remains as proposed but is renumbered (5).

~~(7) "Redemption period" means 20 days after licensee has provided notice of default plus three days for mailing.~~

(8) remains as proposed but is renumbered (6).

AUTH: 31-1-802, MCA
IMP: 31-1-804, 31-1-810, 31-1-812, MCA

RULE II (2.59.1402) LICENSING AND APPLICATION REQUIREMENTS – EXCEPTIONS (1) through (2)(b) remain as proposed.

(c) federal and state chartered credit unions;

(d) through (5) remain as proposed.

AUTH: 31-1-802, MCA
IMP: 31-1-804, 31-1-805, 31-1-811, MCA

RULE IV (2.59.1406) EXAMINATION OF TITLE LENDERS (1) The department shall ~~annually~~ conduct an examination of each title loan licensee's lending operations to ensure compliance with both statute and administrative rule.

(2) through (2)(b)(i) remain as proposed.

(ii) use of the ~~department approved~~ loan agreement on file with the department; and

(iii) remains as proposed.

AUTH: 31-1-802, MCA
IMP: 31-1-810, MCA

RULE V (2.59.1409) DURATION OF LOANS – INTEREST – EXTENSIONS

(1) Each original title loan must have a term of 30 days. ~~No interest or fees may be charged beyond the 30-day period without a bona fide extension of the loan in accordance with (2).~~

(2) The loan agreement may provide for automatic 30-day renewal periods beyond the original term if principal and interest are not paid in full on the maturity date. Any automatic 30-day renewal period must be clearly stated on the face of the loan agreement in bold, capital letters. In addition to any other disclosures that may be required by law, licensees must provide the borrower, in the original title loan agreement or by addendum, a statement of the principal and interest due over a six-month period if the borrower fails to make any payments as set forth in Illustration A. Such statement must be initialed by the borrower at the time of the original loan and include the borrower's affirmation that the borrower has been shown and read the statement.

Illustration A

	Principal	Interest Per Month at 25%	Accrued Interest at 25%	Total Amount Due
Original Loan	$500.00	$125.00	$125.00	$625.00
Renewal 1	$500.00	$125.00	$250.00	$750.00
Renewal 2	$500.00	$125.00	$375.00	$875.00
Renewal 3	$500.00	$125.00	$500.00	$1,000.00
Renewal 4	$500.00	$125.00	$625.00	$1,125.00

Renewal 5	$500.00	$125.00	$750.00	$1,250.00
Renewal 6	$500.00	$125.00	$875.00	$1,375.00

~~(2) Automatic extensions or renewals are prohibited. Each extension or renewal must be specifically agreed upon in writing by the borrower at the time the extension is granted.~~

(3) On any loan containing an automatic 30-day renewal provision, at the time of each renewal licensees must provide, in person or by mail at the borrower's last known address, an updated truth in lending statement.

(4) Interest may not compound from one extension or renewal to another.

~~(3) Except as provided in [New Rule VI] for reduction of principal, each agreed upon extension must have a term of 30 days and must contain:~~

~~(a) total principal amount financed;~~

~~(b) total finance charges;~~

~~(c) total amount financed;~~

~~(d) new annual percentage rate calculations;~~

~~(e) new maturity date;~~

~~(f) new collateral redemption date;~~

~~(g) payment of accrued interest from previous loan; and~~

~~(h) signature of the borrower;~~

~~(4)~~ (5) A licensee shall not ~~exceed~~ extend or grant any additional credit other than that which was granted in the original title loan agreement without first requiring full payment of all principal and interest due on the original title loan, or any subsequent extensions, and ~~release~~ releasing the security interest in the titled property.

(5) remains as proposed but is renumbered (6).

AUTH: 31-1-802, MCA
IMP: 31-1-816, MCA

RULE VII (2.59.1413) REPORTS (1) remains as proposed.

(a) any instances of theft ~~or missing funds~~ within 10 days of the discovery of ~~each occurrence~~ the theft;

(b) and (c) remain as proposed.

AUTH: 31-1-802, MCA
IMP: 31-1-815, MCA

RULE VIII (2.59.1414) SCHEDULE OF CHARGES (1) Every licensee under the Montana Title Loan Act shall file with the ~~commissioner~~ department 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) through (2) remain as proposed.

AUTH: 31-1-802, MCA
IMP: 31-1-816, 31-1-817, ~~31-4-818~~ 31-1-818, MCA

RULE IX (2.59.1416) EMPLOYEES' CHARACTER AND FITNESS

(1) Licensees are responsible for conducting appropriate background checks on all ~~applicants for employment~~ new employees hired after May 1, 2006. At a minimum, each licensee shall:

(a) through (2) remain as proposed.

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

AUTH: 31-1-802, MCA
IMP: 31-1-805, MCA

4. The following comments were received and appear with the division's responses:

Comment 1: Comments were received in regard to New Rule I(2) and whether defining a day, as twenty-four hours in each customer's day count, would be different depending upon the time they received their loan.

Response 1: The division agrees and will amend the rule accordingly by deleting that subsection.

Comment 2: Comments were received in regard to the New Rule I(5) stating that the definition of a title loan in the statute should not be amended by rule.

Response 2: The term "original title loan" is used in these rules for the sole purpose of differentiating between the first original title loan and all subsequent extensions or renewals as those terms are used in these new rules. It is not intended to change the definition of a title loan as it is stated in the statute.

Comment 3: Comments were received in regard to New Rule I(7) stating that adding three days to the redemption period is a legislative function not a regulatory function.

Response 3: The division agrees and New Rule I(7) shall be deleted accordingly.

Comment 4: A comment was received in support of New Rule I(7) and the addition of a three-day mailing period for redemption.

Response 4: The division disagrees. Adding three days to the redemption period is a legislative function and cannot be addressed through an administrative rule.

Comment 5: A comment was received in regard to New Rule III suggesting that the division add the sentence "or when any owner first acquires 25% or more ownership" at the end of this rule.

Response 5: The division believes that New Rule III as written contains sufficient language.

Comment 6: Comments were received in regard to New Rule V(1) and whether interest may be charged on title loans after the original 30-day period or any subsequent 30-day period has expired without a written agreement by the borrower. Comments state that such a rule would reward those borrowers that habitually pay late and are contrary to legislative intent.

Response 6: The division has decided not to enact the interest-limiting provisions of New Rule V(1) at this time. The licensees will be required to provide additional disclosures with each original title loan agreement in order to inform the borrower of the financial implications of failing to make payments on the title loan in a timely manner.

Comment 7: A comment was received supporting the 30-day interest limitation in New Rule V(1).

Response 7: The division considered this comment as well as other comments submitted that were in opposition to New Rule V(I). The division agrees with the comments in opposition to New Rule V(1) and adopts New Rule V(1) as amended. See Comment 6.

Comment 8: Comments were received in regard to New Rule V(2) stating that the rule is inconsistent with the statute in that the statute allows unilateral renewals of title loans while New Rule V(2) requires a new agreement.

Response 8: The division agrees and modifies New Rule V(2) accordingly. Instead of a new agreement, licensees will only be required to provide additional disclosures when a loan is extended or renewed.

Comment 9: A comment was received in regard to New Rule V(3)(h) stating that requiring a signature for a renewal or extension was impractical since most borrowers either mail in payments or drop them off after hours.

Response 9: The division agrees and amends New Rule V(3)(h) accordingly. The division has deleted New Rule V(3), but will require an updated truth in lending statement on any loan renewal when the loan agreement contains an automatic 30-day renewal provision. The updated truth in lending statement must be provided to the borrower at the time of each renewal in person or by mail at the borrower's last known address. The updated truth in lending statement contains most of the information that was required by New Rule V(3).

Comment 10: Comments were received in regard to New Rule VI(2)(b) in that it was in contradiction of New Rule V(2). New Rule V(2) prohibits automatic renewals, but New Rule VI(2)(b) requires the principal reduction to begin exactly at 180 days, which assumes that the renewals run continuously without interruption.

Response 10: The division acknowledges the contradiction and therefore amends New Rule V(2) accordingly. New Rule V(2) has been amended to allow automatic renewals. Therefore, New Rule VI(2)(b) is consistent with the automatic renewal provisions in New Rule V and requires principal pay down to begin at 180 days.

Comment 11: A comment was received in regard to New Rule V(4) stating that title licensees should be able to extend additional credit to a customer while a current loan is outstanding.

Response 11: The division disagrees. A title loan may only be issued upon an unencumbered state title for personal property. The original title loan encumbers the title and a new loan may not be consummated without first paying the original loan in full. In addition, allowing refinancing of title loans enables avoidance of the principal pay down provisions of the Montana Title Loan Act. New loans on other unencumbered titled personal property are not prohibited.

Comment 12: Comments were received in regard to New Rule VII that the ten-day reporting period contained in New Rule VII is too difficult for licensees to comply.

Response 12: The division disagrees. Ten days is sufficient time to comply with the reporting requirements outlined in the rule. However, the rule is amended to clarify that the ten-day period begins from discovery of each incident.

Comment 13: Comments were received in regard to New Rule IX stating concerns about employees being prohibited from employment because of a divorce or other civil judgment.

Response 13: The division recognizes the concern, but believes that the statute is sufficiently clear that only criminal behavior or civil judgments that show financial dishonesty such as fraud are subject to the restrictions in the statute. Divorces or other civil judgments that do not pertain to fraud are not grounds for rejection or termination of employment.

Comment 14: Comments were received in regards to New Rule IX stating that the rule should only require an "attempt" to verify employment, and that such attempt should be done after the applicant has been hired.

Response 14: New Rule IX requires that licensees verify and document previous employment prior to hiring. If a licensee cannot verify employment, then they are taking the risk in hiring that person. All the licensee is required to do is document that they were unable to verify employment.

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 March 27, 2006.

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 4.6.202 relating to potato assessment fees	)))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On February 23, 2006, the Montana Department of Agriculture published MAR Notice No. 4-14-162 relating to potato assessment fees at page 380 of the 2006 Montana Administrative Register, Issue Number 4.

2. The agency has amended ARM 4.6.202 exactly as proposed.

3. No comments or testimony were received.

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, March 27, 2006.

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

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

TO: All Concerned Persons

1. On November 10, 2005, the Department of Commerce published MAR Notice No. 8-94-51 regarding the public hearing on the proposed adoption of a rule concerning the administration of the 2006-2007 Federal Community Development Block Grant (CDBG) Program at page 2133 of the 2005 Montana Administrative Register, Issue No. 21.

2. The department has adopted the new rule (ARM 8.94.3722) as proposed. However, the maximum ceiling for housing and public facilities grants will be set at $450,000 rather than $400,000 as proposed in the CDBG Application Guidelines. This is not a change to rule language. See comment and response no. 3.

3. The department has thoroughly considered all comments received. The comments received and the department's response to each follows:

Comment No. 1: Two comments were received in opposition to the proposal to allow the State CDBG Program to fund county applications submitted on behalf of tribal utility authorities. The program proposed that state CDBG funds could be awarded to counties that applied on behalf of tribal utility authorities to assist tribal communities, providing all other federal and state CDBG requirements are met. The comments pointed out that the tribal utility authorities could access the Indian CDBG Program rather than seeking assistance from the State CDBG Program.

Response: Tribal utility authorities can access the Indian CDBG Program; however, Indian CDBG funds are extremely limited. Many more requests for assistance are received than are funds available. The Rocky Mountain region of the HUD Indian CDBG Program serves 32 reservations located in seven states. For federal fiscal year (FFY) 2005, HUD received $9,175,317 in Indian CDBG funds for the region and funded 12 projects out of 22 requests. For FFY 2006, funding was reduced approximately 14% to $7,917,788. As a result, the department does not believe that any changes are necessary.

Comment No. 2: A comment was received that the allocation between housing and public facility projects should remain at the allocation level for federal fiscal year (FFY) 2006, which was 38% for housing projects and 62% for public facility projects.

The commenter disagreed with the method of allocation using an average based on the number of applications received in each category during the last two years.

Response: The CDBG Program has based the funding allocation for the housing and public facility categories on the demand for the two categories for the previous two years since 1984. Using a two-year average adjusts for any variability in the demand for CDBG public facilities funding that may be associated with the biennial cycle of the state's legislatively approved infrastructure funding programs: the Department of Natural Resources and Conservation (DNRC), Renewable Resources Grant and Loan Program (RRGL), and the department's Treasure State Endowment Program (TSEP). In this way, the funding reserve for each category can respond to changing relative demand for CDBG housing and public facilities grants over time. Through this method, the amounts allocated between the two categories change based upon actual past demand. As a result, the department does not believe that any changes are necessary.

Comment No. 3: A comment was received which opposed decreasing the maximum CDBG grant ceiling from $500,000 to $400,000.

Response: Reducing the maximum grant ceiling for CDBG Housing and Public Facility projects will allow the program to continue to fund roughly the same number of projects annually in the face of projected cuts in funding for the CDBG Program. In FFY 2005, the program was cut approximately 5%. Moreover, in FFY 2006, the program was cut approximately 10%. If the State CDBG Program is to continue to fund roughly the same number of communities, it is necessary to reduce the funding ceiling so that more projects can be funded. The department does, however, understand the nature and importance of the comment. Therefore, the CDBG program will set the maximum ceiling for housing and public facilities grants at $450,000 rather than $400,000 as proposed.

Comment No. 4: One comment stated that Capital Improvement Programs (CIPs) make sense in cities and towns with populations of 3,000 or more, but make little sense in smaller communities. Furthermore, the commenter stated that it should not be necessary to require Preliminary Engineering Reports (PERs) or Preliminary Architectural Reports (PARs) as part of submitting a grant application for CDBG funds.

Response: The department agrees with regard to CIPs. The CDBG Program for FFY 2007 will drop the requirement for grant recipients to prepare a CIP; however, applicants will be encouraged to complete a comprehensive CIP to create more effective long-term planning for the construction, maintenance, and financing of local public facility projects. Even smaller communities, including those that are experiencing a decline in population, should be encouraged to have a plan to provide cost efficient public facilities and services for their population. As an incentive to encourage local governments to prepare CIPs, funds budgeted in a CDBG application for completion of a CIP (up to $25,000) will not be included in the scoring of benefit to low and moderate-income persons. The department does not

agree with the comment on PERs and PARs. The department long found that the preparation of the PER or the PAR establishes a firm foundation documenting the need for a project from the standpoint of public health and safety, as well as the adequacy of the proposed technical design. As a result, the department does not believe that any changes are necessary in this area.

COMMUNITY DEVELOPMENT DIVISION
BUSINESS RESOURCES DIVISION
DEPARTMENT OF COMMERCE

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

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

Certified to the Secretary of State March 27, 2006

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 17.8.504, 17.8.505, 17.8.744, and 17.8.1204 and the adoption of new rules I through IX pertaining to establishing a registration system for certain facilities that presently require an air quality permit	NOTICE OF AMENDMENT AND ADOPTION (AIR QUALITY)

TO: All Concerned Persons

1. On December 22, 2005, the Board of Environmental Review published MAR Notice No. 17-238 regarding a notice of public hearing on the proposed amendment and adoption of the above-stated rules at page 2513, 2005 Montana Administrative Register, issue number 24.

2. The board has not adopted the proposed amendment to ARM 17.8.1204. The board has amended ARM 17.8.504, 17.8.505, and 17.8.744, and adopted New Rules IV (17.8.1704) and VIII (17.8.1712) exactly as proposed, and has adopted New Rules I (17.8.1701), II (17.8.1702) III (17.8.1703), V (17.8.1705), VI (17.8.1710), VII (17.8.1711) and IX (17.8.1713) as proposed, but with the following changes, new matter underlined, stricken matter interlined:

NEW RULE I (17.8.1701) DEFINITIONS For the purposes of this subchapter:

(1) through (1)(b) remain as proposed.

(2) "Potential to emit (PTE)" means the maximum capacity of a facility or emitting unit, within physical and operational design, to emit a pollutant. Any physical or operational limitation on the capacity of the facility or emitting unit to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, is treated as part of its design only if the limitation or the effect it would have on emissions is federally enforceable. Secondary emissions are not considered in determining potential to emit.

(3) and (4) remain as proposed.

(5) "Registration eligible facility" means an oil or gas well facility as defined in 75-2-103(13), MCA, and subject to the requirements of ARM 17.8.743.

(6) "VOC piping components" means valves, pumps, compressors, flanges, pressure relief valves and connectors, and other piping components that have VOC emissions.

NEW RULE II (17.8.1702) APPLICABILITY (1) remains as proposed.

(2) The owner or operator of an oil or gas well facility subject to the requirements of ARM Title 17, chapter 8, subchapter 12, is not eligible to register under this subchapter.

NEW RULE III (17.8.1703) REGISTRATION PROCESS AND INFORMATION (1) through (2)(i) remain as proposed.

(3) The owner or operator shall provide the following additional equipment-specific information to the department for each emitting unit, including any air pollution control equipment:

(a) and (b) remain as proposed.

~~(c) serial number;~~

(d) and (e) remain as proposed, but are renumbered (c) and (d).

(4) through (7) remain as proposed.

NEW RULE V (17.8.1705) OPERATING REQUIREMENTS: FACILITY-WIDE (1) and (2) remain as proposed.

(3) The owner or operator of a registered facility shall maintain onsite records showing daily hours of operation and daily production rates and corresponding emission levels for the previous 12 months. The records compiled in accordance with this subchapter must be maintained by the owner or operator for at least five years following the date of the measurement, must be available at the plant site, unless otherwise specified in this subchapter, for inspection by the department, and must be submitted to the department upon request.

NEW RULE VI (17.8.1710) OIL OR GAS WELL FACILITIES GENERAL REQUIREMENTS (1) The owner or operator of ~~an~~ a registration eligible oil or gas well facility may submit to the department a complete registration form, pursuant to ARM 17.8.1701 through 17.8.1705, within 60 days after the initial well completion date for the facility.

(2) The owner or operator of an oil or gas well facility ~~shall limit production, hours of operation and/or fuel consumption such that the facility's potential to emit is less than 100 tons per year (tpy) of any airborne pollutant that is regulated under this chapter, less than 10 tpy of any individual hazardous air pollutant (HAP), and less than 25 tpy of any combination of HAPs. The facility limitations are 12-month rolling limits, calculated monthly~~ who submits an application for a Montana air quality permit to the department prior to the effective date of this subchapter may request that the application be used in lieu of a registration form for registration of the oil or gas well facility by completing the form provided by the department.

(3) ~~The owner or operator of an oil or gas well facility who submits an application for a Montana air quality permit to the department by January 3, 2006, may request that the application be used in lieu of a registration form for registration of the oil or gas well facility by completing the department request form.~~ The owner or operator of a registered oil or gas well facility shall operate all emissions control equipment to provide the maximum air pollution control for which it was designed.

NEW RULE VII (17.8.1711) OIL OR GAS WELL FACILITIES EMISSION CONTROL REQUIREMENTS (1) The owner or operator of a registered oil or gas well facility shall install and operate the following air pollution control equipment and comply with the following air pollution control practices beginning at the time of registration:

(a) ~~volatile organic compound (VOC) vapors greater than 500 British thermal units per standard cubic foot (BTU/scf) from oil or gas wellhead equipment, oil and condensate storage tanks, or loading transport vehicles, with a PTE greater than 15 tpy, must be captured and routed to a gas pipeline if a gas pipeline is located within one-half mile of the oil or gas well facility;~~ VOC vapors of 200 Btu/scf or greater from each piece of oil or gas well facility equipment, with a PTE greater than 15 tpy, must be captured and routed to a gas pipeline, routed to a smokeless combustion device equipped with an electronic ignition device or a continuous burning pilot system, meeting the requirements of 40 CFR 60.18, and operating at a 95% or greater control efficiency, or routed to air pollution control equipment with equal or greater control efficiency than a smokeless combustion device. The phrase "oil or gas well facility equipment" includes, but is not limited to, wellhead assemblies, amine units, prime mover engines, phase separators, heater treatment units, dehydrator units, tanks, and connecting tubing, but does not include equipment such as compressor engines used for transmission of oil or natural gas;

~~(b) VOC vapors greater than 500 BTU/scf from oil and gas wellhead equipment, oil and condensate storage tanks, or loading transport vehicles, with a PTE greater than 15 tpy and located greater than one-half mile from the oil or gas well facility, must be captured and routed to a gas pipeline, or routed to a smokeless combustion device equipped with an electronic ignition device or a continuous burning pilot system and meeting the requirements of 40 CFR 60.18 or routed to control equipment with equal or greater control efficiency than the smokeless combustion device;~~

~~(c)~~ (b) hydrocarbon liquids must be loaded into, or unloaded from, transport vehicles using submerged fill technology;

(d) and (e) remain as proposed, but are renumbered (c) and (d).

NEW RULE IX (17.8.1713) OIL OR GAS WELL FACILITIES RECORDKEEPING AND REPORTING REQUIREMENTS (1) through (3) remain as proposed.

(4) ~~The owner or operator of an oil or gas well facility shall submit calculations to the department, with the registration form, to verify compliance with [NEW RULE VI(2)].~~ The owner or operator of a registration eligible oil or gas well facility with a detectible level of hydrogen sulfide from the well shall submit, with the registration form, an air quality analysis demonstrating compliance with ARM 17.8.210 and 17.8.214.

~~(5) The owner or operator of an oil or gas well facility shall document, by month, the total production, hours of operation, and/or fuel consumption of the facility. By the 25th day of each month, the owner or operator shall total the production, hours of operation, and/or fuel consumption for the previous month. The monthly information shall be used to determine compliance with the limitation stated in [NEW RULE VI(2)].~~

~~(6) The owner or operator of an oil or gas well facility producing in the Madison (Mississipian), Charles, Ratcliffe, Mission Canyon, Sun River Dolomite, or Duperow (Devonian), or Phosphoria/Tensleep (Permian and Pennsylvanian) geological formations shall submit, with the registration form, an air quality modeling~~

~~analysis demonstrating compliance with ARM 17.8.210 through 17.8.214 and 17.8.220 through 17.8.223.~~

~~(7) The owner or operator of an oil or gas well facility shall certify annually, as required by ARM 17.8.1204(3)(b), that the facility's actual emissions are less than those that would require an air quality Title V operating permit, if the owner or operator has established a limit under [NEW RULE VI(2)]. The annual certification shall comply with the certification requirements of ARM 17.8.1207. The annual certification must be submitted by March 1 and may be submitted with the annual emission inventory information.~~

3. The following comments were received and appear with the board's responses:

COMMENT NO. 1: A commentor stated that the abbreviation "PTE" should follow the phrase "potential to emit" in New Rule I(2).

RESPONSE: The board agrees and has made this revision.

COMMENT NO. 2: Commentors asked the board to review the definition of potential to emit (PTE), because they have strong concerns over the interpretation of PTE as it pertains to oil and gas production and/or wellhead facilities. They stated that their understanding is that PTE will include natural gas product if the product flows through a heater/treater or separator. The commentors stated that a treater or separator is not an emitting unit as it is hard-piped in a closed-loop system with the pipeline on either side of the unit. They stated that no product that passes through the heater/treater or separator is emitted to the atmosphere under normal operations, thus, facilities that, under normal operation, sell gas in a sales pipeline should not be required to consider that gas in the PTE calculation.

RESPONSE: The board has not made any changes to the definition of PTE. The definition is provided and applied consistently throughout the Administrative Rules of Montana (ARM) Title 17, chapter 8, subchapter 7, for all facilities affected by these rules. Thus, PTE is applied to all air contaminant sources and is the basis for the air permitting program. In discussions held with the oil and gas industry during development of the Senate Bill 95 rules, regarding permitting of oil and gas wells, the department determined that clarification was needed in the application of the definition of PTE to oil and gas well facilities. The clarification statement released by the department to help the owners and operators of facilities determine their PTE stated:

> "The Department has determined that oil and gas well production that is routed to the pipeline would not be considered in the Potential to Emit (PTE) calculations. However, those emissions from process equipment (dehydrators, separators, heater treaters, tanks, truck load-out, etc.) and the secondary product recovered from process equipment (regardless of whether the secondary product is routed to a pipeline or not) must be considered in the PTE calculations. The PTE calculations must be made based on no controls and the maximum capacity of the equipment."

The definition of PTE states in part that, "Any physical or operational limitation on the capacity of the facility or emitting unit to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, is treated as part of its design only if the limitation or the effect it would have on emissions is federally enforceable." If an owner or operator can accept federally enforceable limitations, such as conditions that require operation of a closed loop system, then these federally enforceable limitations can be taken into account in determining the applicability of other permitting programs such as the Title V Operating Permit and New Source Review programs. Because there is no federally enforceable limit requiring operation in such a manner, the owner or operator cannot take credit for such control or operations in the PTE calculations.

COMMENT NO. 3: A commentor requested clarification on whether two of its operations would be considered to be registration eligible facilities.

RESPONSE: The board did not revise the rules based on this comment. "Oil and gas well facility" is defined in section 75-2-103(13), MCA. An operator who wants a determination on the applicability of this definition to specific facilities may consult with the department.

COMMENT NO. 4: A commentor asked whether additional language is required in ARM 17.8.744 or 17.8.745 to authorize construction of a registration eligible facility. The commentor stated that construction of a facility subject to the department's authority must either be permitted or be specifically excluded from permitting requirements. The commentor stated that registration is required only immediately prior to the commencement of operation of the registration eligible facility, yet, ARM 17.8.744 and ARM 17.8.745 do not specifically allow the commencement of construction of a registration eligible facility.

RESPONSE: The board believes that it's not necessary to clarify when construction may commence. An owner or operator may review section 75-2-211, MCA, to determine when a Montana Air Quality Permit (MAQP) or registration is required. Section 75-2-211(2)(b), MCA, specifically allows 60 days after initial well completion for submission of a permit application to the department, and requirements that are defined in a statute may not unnecessarily be repeated in a rule. Under the amendments to ARM 17.8.744, if a facility is registered, it is exempt from the MAQP requirement.

COMMENT NO. 5: A commentor stated that, in New Rule I(6), the definition of VOC piping components requires clarification to maintain consistency with other regulations for the oil and gas industry because 40 CFR Part 60, Standards of Performance for New Stationary Sources (NSPS), subpart KKK, for onshore natural gas processing plants, establishes under 60.632(f) that a piece of equipment (component) is not in VOC service if it can be demonstrated that the VOC content reasonably can be expected never to exceed 10.0 percent by weight. The commentor stated that this same distinction should be made in New Rule I(6).

RESPONSE: The board has added a definition of "VOC piping components," for which the rules contain inspection requirements. The board has not specified a

threshold level for VOC emissions because the inspection requirement is intended as an easy check for facilities that still will ensure that a facility is being maintained properly. 40 CFR 60, subpart KKK, specifies a threshold for VOC content by weight, but that regulation also requires more sophisticated testing (leak check instrumentation) than sight, sound, and smell checks. The requirement for sight, sound, and smell checks of facility components is necessary for normal business operations. Therefore, the general definition is appropriately set in relation to the extent of monitoring and testing required for the VOC piping components, as defined in the rules.

COMMENT NO. 6: A commentor stated that New Rule II would require registration of all facilities defined as an "oil and gas well facility," however, the intent is to require registration only of facilities defined as an "oil and gas well facility" and that require a MAQP.

RESPONSE: The board agrees that the intent of the rules is to allow registration of oil and gas well facilities in lieu of applying for a permit, and the board has added language to New Rules I and II to clarify the definition of a registration eligible facility.

COMMENT NO. 7: Commentors requested that the board revise New Rule III(3)(c) to delete the requirement to submit the serial number of equipment being registered. They stated that some equipment is not commercially manufactured and does not have a serial number.

RESPONSE: Serial numbers are not required to be provided with an application for a MAQP. Because the registration process is intended to be comparable to the permitting process, and, because serial numbers are not necessary for purposes of determining compliance with operating requirements, the board agrees with the comment and has deleted the serial number requirement from New Rule III(3)(c).

COMMENT NO. 8: A commentor suggested adding the words "if applicable" to the registration information requirements in New Rule III(3) because some emissions control equipment is manufactured on-site and the equipment-specific information required would not exist.

RESPONSE: The board does not believe that further clarification is necessary in New Rule III(3). The information listed in the rule, other than the serial number requirement discussed above, is required for a permit application or registration, regardless of industry type. There have been situations regarding permit applications where required information is not applicable for various reasons, e.g., when an emitting unit and/or control device is "homemade," in which case the department has required the applicant to identify the maker of the emitting unit and/or control device as the manufacturer. When required information is not available, the department can deal with the issue on a case-by-case basis.

COMMENT NO. 9: Several commentors stated that, in New Rule III(4), which requires notice to the department of any changes to registration information, the phrase "any change(s)" is too broad and could cause confusion. They stated that it's

unclear whether the requirement includes all changes, such as removal of an emitting unit, or like-kind replacement of an emitting unit, or only changes to existing emitting equipment that increase emissions. Commentors suggested revising the phrase to require notice only of "any material change(s)."

RESPONSE: The phrase "any changes" in this rule is intended to have the same meaning as the changes requiring notification under the MAQP process, and the board does not agree that the suggested revision would further clarify the changes that are subject to the notice requirement under the registration process. Because the intent of the registration process is to act in lieu of the permitting process, an owner or operator would not be required to notify the department of changes under the registration rule that do not require notice under the permitting process. The registration process allows the department to stay up-to-date with each facility's operations, yet alleviate the administrative burden under the permitting process of obtaining a modified or amended permit. Both like-kind replacement of an emitting unit and addition of a new emitting unit would require notice to the department.

COMMENT NO. 10: A commentor requested clarification of New Rule V(2), regarding monitoring and recording of annual production information, as to whether "corresponding emission levels for the previous 12 months" needs to be calculated on a daily, monthly, or annual basis. The commentor also asked whether the 12-month period is a rolling or calendar (e.g., January 1 through December 31) period.

RESPONSE: The board does not believe that additional language is needed to clarify New Rule V(2). Production information is necessary for the annual emission inventory, which is used to calculate operating fees. The rule states that production information must be gathered on a "calendar year basis."

COMMENT NO. 11: A commentor requested that the board revise New Rule V(3) to require maintenance of monthly records, instead of daily hours of operation and daily production, and stated that monthly records would be consistent with the records already provided to the Montana Board of Oil and Gas (MBOG).

RESPONSE: New Rule V(3) is a standard requirement that will be required of all registered facilities, to determine emission levels and verify compliance. The owner or operator should know the daily hours of operation and production rates for each facility. The rules do not require reporting of the daily information on an ongoing basis, but allow the department to request the information for a specified time frame to review the compliance status of a facility.

COMMENT NO. 12: Several commentors stated that New Rule V(3) should be revised to allow owners or operators to keep records at a central location rather than on-site at each unmanned facility. They stated that this would be consistent with New Rule IX(1), which requires that records of monthly inspections be maintained onsite or at a central field office.

RESPONSE: New Rule V(3) provides general recordkeeping requirements for all registration eligible facilities, while New Rule IX(1) provides a recordkeeping requirement specific to registered oil or gas well facilities. The board believes the requirement in New Rule IX(1) is appropriate for oil and gas well facilities but that

allowing particular records to be maintained off-site may not be appropriate for all emission source categories that may become eligible for registration in future rulemaking proceedings. The board has revised New Rule V(3) to state that the required records must be kept onsite unless otherwise specified in the subchapter, to allow for different requirements for different emission source categories, as may be appropriate.

COMMENT NO. 13: Commentors requested that the board revise New Rule VI(1) and (2), regarding general requirements for registration, to clarify that only the owner or operator of a registered oil and gas well facility is required to comply with the general requirements.

RESPONSE: The board agrees that the clarification is needed to ensure that the general requirements apply only to registered facilities, and the board has revised New Rule VI and the definition of "registration eligible facility" in New Rule I to clarify that intent.

COMMENT NO. 14: Two commentors requested that the board revise New Rule VI(1), which specifies a deadline of 60 days after well completion to submit a registration, to more accurately reflect industry operations. The requested change would allow registration within 60 days after a well's initial production date. They stated that, in some cases, a well could be completed but not produce for a number of days, therefore, 60 days from well completion may not allow enough time to collect production data that would be sufficiently representative to establish the PTE for the facility.

RESPONSE: The board has not made the suggested revision. Submittal of a permit application within 60 days after initial well completion is required by section 75-2-211(2)(b), MCA, and the intent of the registration rules is to operate in lieu of the permitting process.

COMMENT NO. 15: Commentors requested that the board revise New Rule VI(3), which allows use of a permit application submitted by January 3, 2006, in lieu of a registration form, to allow owners or operators who submit an application between January 3, 2006, and the date that the registration rules become effective to request that the submitted application be used as a registration form. They stated that this would meet the intent of allowing registration in lieu of obtaining a MAQP.

RESPONSE: The board agrees with the comments and has revised New Rule VI(3) as requested.

COMMENT NO. 16: A commentor suggested that New Rule VII(1)(a), which requires routing of certain volatile organic compound (VOC) emissions from wellhead equipment to a pipeline, appears to exclude all compressor engines from registration because all compressors are installed to move oil and/or natural gas, which could be confused with "transmission." The commentor does not believe that was the rule's intent.

RESPONSE: The board agrees that the rule was not intended to include transmission. In defining "oil or gas well facility," section 75-2-103(13)(c), MCA, states: "The term does not include equipment such as compressor engines used for

transmission of oil or natural gas." The board has revised New Rule VII(1)(a) to clarify that the term "equipment" does not include compressor engines.

COMMENT NO. 17: Several commentors expressed concerns that routing VOC emissions within one-half mile of a pipeline to the pipeline, as required under New Rule VII(1)(a), could be infeasible, and they requested that the board revise the rule to allow use of a smokeless combustion device or equivalent technology.

RESPONSE: The board agrees with the comments and has revised New Rule VII(1)(a) to allow the option of routing to a pipeline or installing add-on control equipment.

COMMENT NO. 18: Two commentors requested that the board delete New Rule VII(1)(d) and (e), requiring emission control for engines of greater than 85 brake horsepower. They stated that there is no exclusion or variance procedure for engines that may operate for short periods of time during the year and that no supporting evidence has been presented to show that catalysts can perform efficiently on small engines with horsepower down to 85 hp. They stated that, if these requirements are deleted, facility emissions still would be limited by New Rule VI(2), which limits annual emissions to less than 100 tons per year.

RESPONSE: The board has not made the suggested revision. If a facility cannot meet the requirements of New Rule VII(1)(d) and (e), then the owner or operator is required to obtain a MAQP and is subject to a case-by-case best available control technology (BACT) determination. The premise of the registration process is to develop emission controls and other requirements that could apply to a large portion of the industry, but they may not apply to every facility. The board believes that the threshold level for emission control is set appropriately based on BACT determinations made by the department for similar permitted facilities. Also, under Montana's rules, minor sources, as well as major sources, are subject to case-by-case BACT determinations, which, in most cases, limit facility emissions well below 100 tons per year.

COMMENT NO. 19: Two commentors requested that the board revise the language in New Rule IX(5) that states: "By the 25th day of each month, the owner or operator shall total the production, hours of operation, and/or fuel consumption for the previous month." They stated that, because production data is not always available within 25 days after the previous month, the board should revise the rule to allow up to 15 days after monthly production data is submitted to the MBOG.

RESPONSE: The board intended the recordkeeping requirement in proposed New Rule IX(5) as a means to monitor compliance with operating limits established through the registration process to limit emissions below the Title V Operating Permit program threshold. However, the board has determined that it is not appropriate, at this time, to allow owners and operators to establish operating limits through the registration process to stay below the Title V Operating Permit program threshold. Therefore, the board has deleted the requirement.

COMMENT NO. 20: Several commentors asked why a modeling analysis was required under New Rule IX(6) for facilities producing in the formations

identified in that rule. Some commentors stated that, because the purpose of the rule is to be certain that the ambient air quality standards for sulfur dioxide (SO_2) and hydrogen sulfide (H_2S) are protected, the board should revise the rule to protect the standards in any location but limit the required analysis to those pollutants.

RESPONSE: The board required the modeling analysis due to concerns that a facility might violate the national ambient air quality standards for SO_2 in an area that produces sour gas. Upon further review, the board agrees with the comments and has determined that an analysis is necessary for any area that produces H_2S. The board has deleted New Rule IX(6) and revised New Rule IX(4) to require an air quality analysis demonstrating compliance with ARM 17.8.210 and 17.8.214, the ambient standards for SO_2 and H_2S, regardless of a well's location, when there is a detectable level of H_2S from the well.

COMMENT NO. 21: The department commented that the board should add a definition of "VOC piping components," to clarify the components for which monthly leak inspection is required under New Rule VIII.

RESPONSE: The board agrees and has added a definition of the phrase to New Rule I(6).

COMMENT NO. 22: The department commented that the board should revise New Rule VII(1)(a) and (b), regarding emissions control, so that the "equipment" subject to control has the same meaning as used in the definition of "oil or gas well facility" in section 75-2-103(13)(b), MCA.

RESPONSE: The board agrees and has revised New Rule VII(1)(a) to make the usage of the term in the rules consistent with the language of the statute.

COMMENT NO. 23: The department commented that the board should revise New Rule VII(1)(c), regarding control of emissions from loading of hydrocarbons into transport vehicles, to require the use of control both for loading into, and unloading from, transport vehicles.

RESPONSE: The board agrees and has revised the rule as suggested.

COMMENT NO. 24: The department commented that the intent of New Rule VII(1)(d) and (e) was to require emissions control for engines of 85 brake horse power (bhp) or greater, rather than greater than 85 bhp, and the board should revise the rules to be consistent with this intent.

RESPONSE: This revision would be outside the scope of the public notice of proposed rulemaking, therefore, the board cannot make the revision in this proceeding.

Comments received after the department presented proposed revisions at the January 23, 2006, public hearing on the proposed amendments and new rules:

COMMENT NO. 25: A commentor stated that the commentor's understanding from discussions with the department was that a vapor recovery unit (VRU) would be acceptable alternative "control equipment" to meet the VOC vapor recovery requirement in Rule VII(1)(b). The commentor stated that many facilities

intend to use VRUs in lieu of routing to a pipeline or flaring, and that the investment in a VRU is substantial. The commentor stated that the board should revise New Rule VII(1)(b) to state that a vapor recovery unit has a control efficiency that is equal to, or greater than, that of a smokeless combustion device.

RESPONSE: The rule allows use of control technology that has a control efficiency equal to or greater than that of a smokeless combustion device. The board agrees that a VRU has a control efficiency equivalent to that of a smokeless combustion device. However, the board has not made the suggested revision because the board doesn't believe it's necessary to specify in the rule each type of air pollution control equipment that is equivalent to a smokeless combustion device.

COMMENT NO. 26: Commentors stated that, in New Rule IX(6), the board should either revise the rule to add an H_2S threshold at a particular stack height for the air quality modeling requirement or add language allowing use of EPA's Screen 3 model or its equivalent to meet the modeling requirement. The commentors stated that it was their understanding that the purpose of this requirement was to ensure that the ambient air quality standards for SO_2 and H_2S are not exceeded but that, under Section 1.4 of the department's modeling guidelines, modeling is not required for a permit for a minor source, and the threshold for requiring modeling is 50 tons per year (tpy) of SO_2. In nearly all cases, SO_2 emissions from wells would be less than 50 tpy, so modeling should not be required.

RESPONSE: The board agrees that modeling is not necessarily required for all facilities, and the board has revised the rule to require an "air quality analysis," rather than a "modeling analysis," to demonstrate compliance with the SO_2 NAAQS and the state's H_2S standard. There may be times that modeling will be required for this analysis, in which case the owner or operator will need to consult with the department to determine the appropriate model to be used.

COMMENT NO. 27: A commentor expressed support for eliminating the list of geologic formations, in New Rule IX(6), for which an air quality modeling analysis was required, and replacing this language with a requirement to conduct an air quality modeling analysis if any H_2S gas is found. However, the commentor stated that a numeric level for H_2S should be included in the rule. The commentor suggested that the board consider adopting a rule similar to the following rule of the MBOG:

> HYDROGEN SULFIDE GAS (1) The owner or operator of an oil or gas well drilled after the effective date of this rule that produces more than 20 MCF of gas per day containing more than 20 parts per million hydrogen sulfide must submit a hydrogen sulfide gas report to the board with Form 4 after the completion of the well.

The commentor stated that the MBOG does not require special attention until the threshold exceeds 20 ppm and that the State of North Dakota uses a 10 ppm threshold for requiring additional analysis. The commentor stated that 5ppm is readily detectable with a Sensidyne tube or Drager tube, which are hand-held devices that provide a reliable and simple method for checking for H_2S. The

commentor stated that the rule could require an air quality analysis if H_2S is detectable at levels above 5 ppm. The commentor suggested that, if none of these suggested threshold levels are acceptable, the department should undertake a modeling analysis to determine a safe threshold.

RESPONSE: The rules require only a relatively simple analysis if a detectible level of H_2S is found. As revised, this analysis does not necessarily require modeling, and the board expects the owner or operator to follow the industry norm for determining whether there is H_2S in the gas. Therefore, the board does not believe it's necessary to set a threshold H_2S level that requires an air quality analysis.

EPA, Region VIII, submitted the following comments:

COMMENT NO. 28: EPA commented that the board should revise New Rule VII(1)(d) and (e), regarding emission control for stationary engines of greater than 85 bhp, to require control for engines of greater than 35 bhp. EPA stated that it is aware of lower horsepower engines that have NO_x control. Under EPA's Oil and Gas Initiative, EPA Region 8 and the Region 8 states have specified an Existing Engines Proposal for 4-Stroke Engines to require controls on all engines greater than 35 HP. Control down to 35 bhp has been shown to be technically and economically feasible in southwest Wyoming, and Federal Land Managers for the San Juan Basin are recommending control of engines 40 bhp and greater.

RESPONSE: As discussed above, revising the threshold level for emission control is outside the scope of the public notice of proposed rulemaking and cannot be done in this rulemaking proceeding.

COMMENT NO. 29: EPA commented that the board should revise New Rule VII(1)(a) to require that any VOC vapors within a half mile of a pipeline must be routed to a gas pipeline, regardless of the Btu content of the vapors. EPA noted that the department's proposed revisions presented at the January 23, 2006, public hearing would no longer require routing VOC vapors to a pipeline. EPA also stated that there appears to be a gap in the rule between the requirement to treat VOC vapors greater 500 Btu/scf and the requirements of 40 CFR 60.18, referenced in the rule. EPA noted that 40 CFR 60.18 states that flares may be used to treat VOC vapors down to 300 Btu/scf, if steam assisted, and 200 Btu/scf, if not steam assisted. EPA stated that the rules should address this gap.

RESPONSE: The board agrees with the comment and has revised New Rule VII(1)(a) to change the level at which controls must be installed to 200 Btu/scf, which is equivalent to the requirements of 40 CFR 60.18 for nonassisted flares.

COMMENT NO. 30: EPA commented that the rules should state that facilities also need to comply with other SIP requirements, for example, state rules for minimizing fugitive emissions and opacity requirements. EPA noted that the statement in the notice of proposed rulemaking of the reason for the rulemaking stated that registered facilities still would be required to comply with any other applicable requirements not listed in the rules. However, EPA stated that, to make it clear to registered facilities, such language also should be included in the rules.

RESPONSE: The board believes that the suggested clarification is unnecessary, and the board has not made this revision. State agencies should not unnecessarily repeat rules, and a facility is obligated to comply with all applicable requirements of the Administrative Rules of Montana, Title 17, chapter 8, regardless of the location of the requirements within a specific subchapter or permit. For example, although, an air quality permit might not contain the requirement to comply with ARM 17.8.308 (the opacity limitation), or ARM 17.8.340 (a specific New Source Performance Standard), the facility still would be obligated to comply with these rules, and the department could take enforcement action for any violation.

COMMENT NO. 31: EPA noted that the department's proposed revisions presented at the January 23, 2006, public hearing included the requirement that any control equipment be operated to provide the maximum air pollution control for which it was designed, and EPA commented that this should be included in the rules.

RESPONSE: The board agrees and has revised New Rule VI(3) to include this requirement, which is intended to ensure that control equipment is operated properly.

COMMENT NO. 32: EPA commented that the rules should include a definition of the phrase "VOC piping components" used in New Rule VIII(1). EPA noted that the department's proposed revisions presented at the January 23, 2006, public hearing defined the phrase as "VOC emissions from valves, pumps, compressors, flanges, pressure relief valves, and connectors, and other piping components." EPA stated that it was not clear why "VOC piping components" would mean VOC emissions from the various pieces of equipment mentioned in the department's proposed definition.

RESPONSE: The board agrees and has added the department's proposed definition of "VOC piping components" in New Rule I(6), with minor editorial revisions.

COMMENT NO. 33: Based on review of an early, preliminary draft of the rules, EPA commented that the board should revise the rules to include a definition for "emission minimizing technology" if that phrase is used in the rules.

RESPONSE: A definition is not necessary because the phrase is not used in the rules.

COMMENT NO. 34: EPA questioned why the revisions the department proposed at the January 23, 2006, public hearing included a new reference to "potential to emit" in New Rule VI(2). EPA stated that the board's proposed new rules included a definition of "potential to emit" in New Rule I(2), but, as used in the department's proposed revisions to New Rule VI(2), "potential to emit" would have the meaning as defined in the operating permit rules at ARM 17.8.1201(26).

RESPONSE: As discussed above, the board has determined that it is not appropriate for owners or operators of facilities that have a PTE of 100 tons/year or greater to take limits through the registration process to stay below the threshold for regulation under the Title V Operating Permit program. Therefore, the board has deleted New Rule VI(2).

COMMENT NO. 35: EPA commented that the state must provide a quantitative analysis showing that the new rules will not interfere with compliance with the NAAQS or PSD increments before EPA can approve the rules as a revision to the Montana State Implementation Plan (SIP). EPA commented that section 110(l) of the Federal Clean Air Act (FCAA) states that EPA cannot approve a SIP revision that would interfere with any applicable requirement concerning attainment or reasonable further progress, as defined in section 171 of the FCAA, or any other applicable requirement of the FCAA. EPA stated that the state should complete a quantitative analysis that: (1) evaluates the cumulative impacts of the existing oil and gas well facilities; and (2) estimates the cumulative impacts of new oil and gas well facilities expected each year. EPA stated that the state must commit to evaluate the NAAQS and PSD increments in the future and that EPA would work with the department and suggest the type of quantitative analysis necessary for EPA to determine that section 110(l) of the FCAA has been met. EPA noted that the department's proposed revisions to New Rule IX(6), presented at the January 23, 2006, public hearing, would state that an owner or operator of a registration eligible oil and gas well facility, with a detectible level of H_2S from the well, shall submit, with the registration form, an air quality modeling analysis demonstrating compliance with the SO_2 and H_2S ambient air quality standards. EPA stated that the rules also should state that the owner or operator needs to demonstrate compliance with the PSD SO_2 increments. EPA commented that, if some oil and gas well facilities that emit less than 100 tpy of SO_2 may be registration eligible, the board should revise the rules to include provisions for short term SO_2 limits, to assure that the SO_2 NAAQS and PSD increments are protected.

EPA stated it understands, based on discussions with department staff, that the owner or operator of an oil or gas well facility may not register the facility, and must obtain a permit, if compliance with the SO_2 air quality standards can be assured only by installing/using control technology that is not identified in the rules but EPA stated that this is not clearly stated in the rules. EPA commented that the rules should clearly state that, if compliance with ambient air quality standards and PSD increments cannot be achieved with the controls specified in the rules, then the facility is not registration eligible.

RESPONSE: The board believes that EPA's proposed revisions would constitute a change from the current method of handling oil and gas well facilities. The registration process will impose the same operational and control requirements that are required under the permitting program. Also, the registration rules require submission of an analysis if a facility has detectable levels of H_2S emissions. The board believes that the state's SIP submittal need provide only a qualitative explanation of the change to a registration process and a discussion of the universe of emission sources subject to the new rules. The board agrees that the department should periodically review compliance with the PSD increments and the NAAQS. The board does not agree that any further requirements are necessary in the rules for an owner or operator to determine whether a facility is eligible for registration. The registration rules are applicable if the owner or operator can meet the requirements of these rules, otherwise, the exclusion from ARM Title 17, chapter 8,

subchapter 7, is not applicable and the owner or operator is required to apply for a permit.

COMMENT NO. 36: EPA commented that the board should revise New Rule VII to specify the combustion efficiency that smokeless combustion devices must achieve. EPA noted that the rule references 40 CFR 60.18 but that 40 CFR 60.18 does not include a combustion efficiency requirement for flares. EPA stated that, without a specified combustion efficiency, there appears to be a practical enforceability problem because the department's January 23, 2006, proposed revisions to New Rule VII(1)(a) would allow use of other control equipment with equal or greater control efficiency than a smokeless combustion device.

RESPONSE: The board agrees that, because a minimum level of control is being established, with operating parameters that, by EPA guidance, require a control efficiency of at least 95%, the rules also should specify a control efficiency of 95%, and the board has made this revision to New Rule VII(1)(a).

COMMENT NO. 37: EPA commented that New Rule VIII requires monthly inspections of all VOC piping components for leaks and requires repairs of such leaks within a specified period of time but that the rules should specify methods more reliable than sight, sound, and smell to detect leaks, for example, field gas chromatography, photo ionization air monitoring, or portable gas detection instrumentation.

RESPONSE: The board has not made the suggested revision. The inspection and repair requirements are meant to provide for an overall check of facility operations. The rule encourages on-going compliance by requiring an owner or operator to regularly check each facility. This level of monitoring is consistent with the requirements for other similar-sized emission sources in the state's minor source program, and additional testing/monitoring is not necessary. All facilities are required to operate control equipment with at least a 95% control efficiency, and facilities operating a flare are required to meet the requirements of 40 CFR 60.18. Also, New Rule VI(3) requires all facilities to operate their control equipment to provide the maximum control for which it was designed.

COMMENT NO. 38: EPA commented that New Rule VIII should require the owner or operator to make a first attempt at repair for VOC leaks that exceed a certain specified level, e.g., 500 ppm, and that the rule should require the owner or operator to test/monitor all control equipment, e.g., monitor for the presence of a continuous pilot flame using a thermocouple and continuous recording device, to assure that control equipment is operating correctly.

RESPONSE: The board has not made the suggested revisions. New Rule VIII(2) requires the owner or operator to make a first attempt to repair any leaking VOC equipment at any VOC level, and the sight, sound, and smell monitoring requirements, which are appropriate for these types of emission sources, would not allow the owner or operator to identify a specific level of leak.

COMMENT NO. 39: EPA and two other commentors suggested revisions to New Rule VI(2), which requires an owner or operator to limit operation so that the

facility's PTE is less than 100 tpy. The two other commentors suggested that it appears that the only way for a facility to remain below major source regulatory thresholds is through some sort of curtailment. They stated they do not believe that was the intent of the rules and suggested the following revised language: "The owner or operator of a registration eligible oil or gas well facility shall add emissions controls, limit production, hours of operation and/or fuel consumption such that the facility's potential to emit is less than 100 tons per year . . . ."

EPA commented that one of the main tenets of any rule used to limit potential to emit is that the rule must be enforceable as a practical matter. EPA stated that a January 25, 1995, memorandum entitled "Options for Limiting the Potential to Emit (PTE) of a Stationary Source Under Section 112 and Title V of the Clean Air Act (Act)," from John S. Seitz, Director, Office of Air Quality Planning and Standards, and Robert I. Van Heuvelen, Director, Office of Regulatory Enforcement, to Regional Air Division Directors provides guidance on exclusionary or prohibitory rules. EPA stated that Attachment #4 to the memorandum mentioned above describes six enforceability criteria which a rule must meet to make limits enforceable as a practical matter. In general, practical enforceability for a source-specific permit term means that the provision must specify: (1) a technically accurate limitation and the portions of the source subject to the limitation; (2) the time period for the limitation (hourly, daily, monthly, annually); and (3) the method to determine compliance, including appropriate monitoring, recordkeeping and reporting requirements. EPA stated that, for rules that apply to categories of emission sources, practical enforceability additionally requires that a rule: (4) identify the categories of sources covered by the rule; (5) where coverage is optional, provide for notice to the permitting authority of an election to be covered by the rule; and (6) recognize the enforcement consequences relevant to the rule. EPA stated that it reviewed the proposed new rules against the six criteria contained in EPA's guidance.

RESPONSE: As discussed above, after reviewing the comments received, the board has determined that the registration process is not an appropriate process, at this time, to allow an owner or operator to take a limit to stay below the Title V Operating Permit threshold. The owners and operators of the few facilities that have a PTE of 100 tons/year or greater will have to obtain either a MAQP, containing further conditions limiting PTE to less than 100 tons/year, or obtain a MAQP and a Title V Operating Permit.

Reviewed by: BOARD OF ENVIRONMENTAL REVIEW

/s/ David Rusoff
DAVID RUSOFF
Rule Reviewer

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

Certified to the Secretary of State, March 27, 2006.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I State Solid Waste Management and Resource Recovery Plan	))))	NOTICE OF ADOPTION (SOLID WASTE)

TO: All Concerned Persons

1. On October 27, 2005, the Board of Environmental Review published MAR Notice No. 17-235 regarding a notice of public hearing on the proposed adoption of the above-stated rule at page 2016, 2005 Montana Administrative Register, issue number 20.

2. The board has adopted New Rule I (17.50.301) exactly as proposed.

3. The following comments were received and appear with the board's responses:

COMMENT NO. 1: One commentor asked whether DEQ can enforce progress toward meeting the new and updated solid waste reduction goals, which include recycling and compost targets for the state. The new goals, which are set by the Legislature in the Montana statutes at 75-10-803, MCA, are discussed in Chapter 5.

RESPONSE: As stated throughout the draft plan, the recycling and composting goals are voluntary. They are not implemented by mandatory rules. The intent of the plan is to achieve the goals by educating the public through workshops, by offering incentives to consumers and the private sector through recycling tax credits, by having available a mobile glass pulverizer that can allow glass to be reused, and by having the state use its purchasing power, for instance, to increase the demand for and use of recycled paper. No modification to the plan is necessary.

COMMENT NO. 2: A commentor asked whether the department can measure progress toward achieving the recycling and composting goals.

RESPONSE: In the draft plan at page 39, Chapter 5, Integrated Waste Management, and pages 141-42, Appendix B, the department described how it seeks to measure progress toward meeting the recycling and composting goals set in law and in the plan. The department surveys solid waste landfills, transfer facilities, composters, and recyclers to determine the amount of waste disposed of and the amounts composted and recycled. The comment has been adequately addressed in the plan, and no modification is needed.

COMMENT NO. 3: A commentor addressed brominated flame retardants in Electronics Recycling (discussed in Chapter 12, Special Wastes). The commentor:

a. disagreed with the classification, on page 109 of the plan, of brominated flame retardants (BFRs) as hazardous materials. The commentor cited research published by the European Union, the U.S. National Academy of Sciences, and the U.S. Consumer Product Safety Commission as indicating that the primary BFRs used in electronics applications are not hazardous.

b. disagreed with the statement on page 109 of the plan that: "Due to the halogenated substances found in plastics, both dioxins and furans are generated as a consequence of recycling the metal content of electronic waste." The commentor also disagreed with a statement on page 109 of the plan that most recyclers refrain from recycling electronics waste because the recycling of plastics containing BFRs creates a risk of emissions of dioxins and furans, and because it is difficult to distinguish plastics with BFRs from those without BFRs. The commentor stated that these assertions were incorrect, and requested that they be modified. The commentor cited a research poster presented at a conference, "Dioxin 2004," that cited several published research papers for the proposition that the burning of brominated plastics does not increase dioxin or furan emissions, and that such emissions are "well within" standards. BFRs are one type of halogenated substance. The commentor also criticized the statement at p. 109 of the plan that the extrusion of plastics with BFRs, which is part of recycling, created a risk of generating dioxins and furans. The commenter cited research indicating that there is no increased risk of generating dioxins or furans from the extrusion of plastic.

c. stated that the recycling of plastics, including those that contain flame retardants, should be encouraged, not discouraged, by public policy. The commentor disagreed with statements in the plan (Chapter 12, Special Wastes, Barrier 6 on p. 111) that recycling of electronic wastes in the third world has produced harmful effects to health and the environment, that improper recycling of these wastes has been worse than landfilling, and that people might be reluctant to recycle if they thought the recycling would harm people and the environment in other countries.

RESPONSE: The board responds to the comments as follows:

a. A hazardous substance "means a substance that because of its quantity, concentration, or physical, chemical, or infectious characteristics may pose an imminent and substantial threat to public health, safety, or welfare or the environment and is: 1) defined as hazardous in the federal Superfund law; 2) defined by the Environmental Protection Agency (EPA) as hazardous in Superfund regulations; or 3) is defined as a hazardous waste under the federal hazardous waste laws, which means it must be either a listed hazardous waste, or be hazardous because of a characteristic (ignitability, corrosivity, reactivity, or toxicity). See 75-10-701(8), MCA, 75-10-403, MCA, and ARM 17.53.301 and 40 CFR 261.3 and 261.20.

BFRs on printed circuit boards, cables, and plastic casings are not a hazardous substance as defined in Montana law or rule. Therefore, the board is modifying the plan to eliminate BFRs from the list under the heading "Hazardous

Materials in Computer Waste" in Chapter 12, Special Wastes, Computer Waste, on page 109.

There is controversy about the safety of BFRs. A review article, "Brominated Flame Retardant: Cause for Concern," by an Environmental Protection Agency scientist in Environmental Health Perspectives Vol. 112, No. 1 (January 2004), a publication of the National Institute of Environmental Health Sciences, stated that: "The widespread production and use of BFRs; strong evidence of increasing contamination of the environment, wildlife, and people; and limited knowledge of potential effects heighten the importance of identifying emerging issues associated with the use of BFRs. … Overall, the toxicology database is very limited; the current literature is incomplete and often conflicting. Available data, however, raise concern over the use of certain classes of brominated flame retardants."

b. Plastics are associated with electronics waste, and, in the past, plastics containing brominated flame retardants (in computer casings, for example) were burned in uncontrolled situations to reduce their volume and to expose the metal for recycling. Dioxins and furans were produced in these circumstances. Now, many recyclers are separating plastics from metals, so the plastics are not always being burned in uncontrolled situations. However, some dioxins and furans are created when plastics are burned or heated between about 300 and 900 degrees Fahrenheit. Properly controlled heating or combustion minimizes but does not eliminate the production of dioxins and furans.

In addition, research cited by the commentor indicates that the use of brominated flame retardants in plastic does not increase the production of dioxins or furans when the plastic is burned. However, other sources indicate that heating or burning of plastics containing BFRs does create dioxins and furans. See World Health Organization, "Polybrominated Dibenzo-p-Dioxins and Dibenzofurans," Environmental Health Criteria, No 205, 1998, summarized at http://www.who.int/bookorders/anglais/detart1.jsp?sesslan=1&codlan=1&codcol=16&codcch=205 and cited in http://www.computertakeback.com/the_problem/bfr.cfm.

Therefore, the board has made the following modifications to the plan: The discussion under the recycling heading, page 109, was changed to recognize that the recycling of metals associated with plastics produces some dioxins and furans, but that it is unclear if the presence of BFRs increases the total amounts of dioxins or furans produced.

Because plastics containing BFRs <u>are</u> now being recycled from electronics waste, the board has deleted the discussion in the same paragraph stating that most recyclers do not process any plastics from electronics waste.

c. Regarding the last comment, concerning the past negative effects of improper recycling practices of electronics wastes, it is possible that those past practices may have exposed residents of third world countries to potentially harmful heavy metals, and Montanans may be reluctant to recycle electronic wastes because they may be aware of these concerns. These past practices, and the awareness of them, are properly listed in the plan as a barrier to recycling of electronic wastes.

The proper recycling of plastics, including those that contain brominated flame retardants, should be encouraged by public policy, and the plan sets policy to encourage such recycling with the changes to a. and b. above.

However, because the proposed plan was accurate in listing the risks from past practices, and the public's awareness of them, as a barrier, a modification to barrier number 6 is unnecessary.

Reviewed by: BOARD OF ENVIRONMENTAL REVIEW

/s/ John F. North
JOHN F. NORTH
Rule Reviewer

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

Certified to the Secretary of State, March 27, 2006.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 17.56.101, 17.56.102, 17.56.308, 17.56.309, 17.56.310, 17.56.701, 17.56.815, 17.56.903, and 17.56.1001 pertaining to underground storage tanks	NOTICE OF AMENDMENT (UNDERGROUND STORAGE TANKS)

TO: All Concerned Persons

1. On January 26, 2006, the Department of Environmental Quality published MAR Notice No. 17-241 regarding a notice of public hearing on the proposed amendment of the above-stated rules at page 115, 2006 Montana Administrative Register, issue number 2.

2. The department has amended ARM 17.56.101, 17.56.102, 17.56.309, 17.56.701, 17.56.903, and 17.56.1001 exactly as proposed, and has amended ARM 17.56.308, 17.56.310, and 17.56.815 as proposed, but with the following changes (new matter underlined, deleted matter interlined):

17.56.308 OPERATING PERMIT REQUIRED (1) After March 31, 2003, except as provided in (9), a person may not place a regulated substance in, dispense a regulated substance from, or otherwise operate an underground storage tank system unless the owner or operator has a valid operating permit and an operating tag for the system.

(2) through (4) remain as proposed.

(5) ~~Operating permits must be kept legible and must be posted in a place that is visible to delivery personnel whenever petroleum deliveries are conducted.~~ The department shall issue an operating tag for each underground storage tank for which the department has issued an operating permit as described in (2) and (4). The operating tag must be visibly affixed by the owner or operator to each tank's fill pipe or to another visible part of the tank if affixing the tag to the fill pipe is impracticable. If an operating permit is revoked, the owner or operator must remove each operating tag and return it to the department within 30 days of receipt of revocation.

(6) The department may suspend, revoke, or determine not to renew an operating permit and tag issued under this rule upon its finding that there is substantial evidence that:

(a) through (c) remain as proposed.

(7) Except as provided in (8), the department shall suspend or revoke an operating permit and tag issued under this rule according to the provisions of 75-11-512, MCA.

(8) If the department determines that noncompliance with Title 75, chapter 11, part 5, MCA, or rules adopted thereunder, poses an immediate or substantial threat to the public health, safety, or environment, it may immediately revoke the operating permit and tag. A permittee whose operating permit ~~has~~ and tag have been revoked in accordance with this rule may request a hearing before the

department. The department shall schedule a hearing within 10 days of the request for hearing.

(9) remains as proposed.

17.56.310 CONDITIONAL, ONE-TIME FILL AND EMERGENCY OPERATING PERMITS (1) For an underground storage tank system installed after December 31, 2001, the department shall issue a conditional operating permit and tag upon the submission of all documentation required by ARM 17.56.1305, related to the installation of that underground storage tank system.

(2) remains as proposed.

(3) A conditional operating permit and tag issued under (1) or (2) expires 180 days after issuance.

(4) through (5)(b) remain as proposed.

(6) The department may issue an emergency operating permit to allow operation of an UST without a valid operating permit and tag when operation of the UST is necessary to protect the safety and welfare of persons, property, or national security from imminent harm or threat of harm.

(a) through (d) remain as proposed.

17.56.815 MONTANA PETROLEUM TANK RELEASE CLEANUP FUND

(1) remains as proposed.

(2) If an owner or operator ~~applies~~ uses the petroleum tank release cleanup fund as partial satisfaction of the coverage requirements of ARM 17.56.805, the owner or operator may ~~satisfy the remaining portion of the required coverage~~ demonstrate that remaining coverage requirements are met by certifying a tangible net worth equal to that amount.

(3) remains as proposed.

3. The following comments were received and appear with the department's responses:

COMMENT NO. 1: It appears that the authority for all subchapter 8 rules was never updated when the statute was split to separate hazardous waste regulation from underground storage tank regulation. Section 75-10-405, MCA, should be changed to 75-11-505, MCA.

RESPONSE: The authority citation for ARM 17.56.815 has been corrected. The authority citations for all other ARM Title 17, chapter 56, subchapter 8 rules will be updated in a future rulemaking.

COMMENT NO. 2: In ARM 17.56.805(2) the third line duplicates, in part, the second line. Delete "financial responsibility for taking corrective" in the third line of the rule.

RESPONSE: The suggested amendment to ARM 17.56.805(2) is outside the scope of this rulemaking, because ARM 17.56.805 is not being revised in this rulemaking. However, the department agrees with the comment and will consider the suggested amendment in a future rulemaking.

COMMENT NO. 3: With respect to the proposed revision to ARM 17.56.815, change the word "applies" to "utilizes" and change "satisfy the remaining portion of the required coverage" to "demonstrate remaining coverage requirements are met."

RESPONSE: The department agrees with the comment and has amended ARM 17.56.815.

COMMENT NO. 4: ARM 17.56.815 should be expanded to include a subsection requiring updated financial assurance information at any time a violation is issued.

RESPONSE: The department believes that the suggested updating of financial assurance information at any time a violation is issued would burden facilities more than necessary in meeting financial responsibility requirements. As stated in the reason for this rule amendment: "Because upgrade requirements, third party inspections, and market forces have driven many fueling facilities out of business, the department does not wish to burden facilities more than necessary in meeting financial responsibility requirements."

COMMENT NO. 5: A comment was received opposing the abolition of the operating tag program.

RESPONSE: The department agrees with the comment and has restored the original operating tag provisions in ARM 17.56.308 and 17.56.310. The department believes the Environmental Protection Agency will promulgate regulations pursuant to the Energy Policy Act of 2005 that would require "tagging" to notify delivery entities whether a tank has been labeled "deliverable" or "undeliverable." Therefore, the department will retain its operating tag program.

Reviewed by:

DEPARTMENT OF ENVIRONMENTAL QUALITY

/s/ James M. Madden
JAMES M. MADDEN
Rule Reviewer

By: */s/ Richard H. Opper*
RICHARD H. OPPER
Director

Certified to the Secretary of State, March 27, 2006.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of ARM 24.11.101, 24.11.204, 24.11.206, 24.11.315, 24.11.316, 24.11.440, 24.11.441, 24.11.443, 24.11.445, 24.11.450A, 24.11.451, 24.11.454A, 24.11.461, and the adoption of NEW RULE I, all related to unemployment insurance laws	))))))))))))))	NOTICE OF AMENDMENT AND ADOPTION

TO: All Concerned Persons

1. On February 9, 2006, the Department of Labor and Industry published MAR Notice No. 24-11-200 regarding the public hearing on the proposed amendment and adoption of the above-stated rules, all relating to unemployment insurance laws at page 284 of the 2006 Montana Administrative Register, issue no. 3.

2. On March 3, 2006, the department held a public hearing in Helena regarding the above-stated rules. No comments were received from the public. One written comment was received prior to the closing date of March 20, 2006.

3. The department has thoroughly considered the comment received. The following is a summary of the comment received and the department's response to the comment:

COMMENT 1: A comment was received regarding the amendment to ARM 24.11.461 which lists specific acts of misconduct that disqualify an individual from receiving unemployment insurance benefits. The addition to the rule in (d) adds the following definition of misconduct to the list: "false statements made as part of a job application process, including, but not limited to deliberate falsification of the individual's work record, educational or licensure achievements." The comment asserted that the language of the reasonable necessity statement following the proposed rule could be read to add an additional element of proof which is not included in the language of the rule itself. The statement indicated the new definition is intended to address situations where the "worker submitted falsified information during the job application process and the worker was advised of the consequences of submitting false information during the application process." The comment pointed out that the reasonable necessity statement suggests an employer would have to prove that the employee made false statements and also prove that the employee was advised during the application process of the consequences of submitting false information.

RESPONSE 1: The department agrees that this issue should be clarified. The department did not intend by virtue of the reasonable necessity statement to add an element of proof. Rather, the department intends that to prove this form of misconduct, an employer need only prove a false statement was made by an employee. The department believes that the language of the proposed rule itself is clear and that any confusion is only due to the improper implication in the reasonable necessity statement. The department considers this response as the only action needed to clarify the meaning of the rule.

4. After consideration of the comment, the department has amended the above-stated rules exactly as proposed.

5. The department has adopted NEW RULE I (ARM 24.11.447) 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 March 27, 2006.

BEFORE THE BOARD OF PERSONNEL APPEALS
DEPARTMENT OF LABOR AND INDUSTRY
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 24.26.508, and the repeal of ARM 24.26.513 related to the consolidation of wage and classification appeals	))))))	NOTICE OF AMENDMENT AND REPEAL

TO: All Concerned Persons

1. On February 9, 2006, the Department of Labor and Industry published MAR Notice No. 24-26-201 regarding the public hearing on the proposed amendment and repeal of the above-stated rules relating to the consolidation of wage and classification appeals at page 296 of the 2006 Montana Administrative Register, issue no. 3.

2. On March 3, 2006, the department held a public hearing in Helena regarding the above-stated rules. No comments were received from the public. No additional written comments were received prior to the closing date of March 20, 2006.

3. The department has amended ARM 24.26.508 exactly as proposed.

4. The department has repealed ARM 24.26.513 as proposed.

/s/ MARK CADWALLADER	/s/ KEITH KELLY
Mark Cadwallader,	Keith Kelly, Commissioner
Alternate Rule Reviewer	DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State March 27, 2006.

BEFORE THE BOARD OF REAL ESTATE APPRAISERS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of ARM 24.207.504, 24.207.506, 24.207.509, and 24.207.516 pertaining to licensing	)))	CORRECTED NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On January 12, 2006, the Board of Real Estate Appraisers (board) published MAR Notice No. 24-207-25 regarding the public hearing on the proposed amendment of the above-stated rules, at page 52 of the 2006 Montana Administrative Register, issue no. 1. On March 23, 2006, the board published the notice of amendment at page 765 of the 2006 Montana Administrative Register, issue no. 6.

2. In preparing replacement pages for the first quarter of 2006, the following errors were discovered. In a previous amendment to ARM 24.207.504, sections were renumbered but the internal reference was inadvertently missed. This internal reference is being corrected to indicate (2) which clearly identifies the approved course standards. ARM 24.207.506 is changed to correct a typographical error. ARM 24.207.509 is corrected to remove an unnecessary period, and ARM 24.207.516 is corrected to change a semicolon to a period at the end of the subsection. The rules, as amended in corrected form, read as follows, deleted matter interlined, new matter underlined:

24.207.504 QUALIFYING EDUCATION REQUIREMENTS (1) and (2) remain as adopted.

(3) The following may be approved as providers of educational and training courses provided the standards set forth in ~~(3)~~(2)(a) through (e) are met:

(a) through (12) remain as adopted.

AUTH: 37-1-131, 37-54-105, MCA
IMP: 37-1-131, 37-54-105, 37-54-202, MCA

24.207.506 QUALIFYING EDUCATION REQUIREMENTS FOR RESIDENTIAL CERTIFICATION (1) Applicants for certification as certified residential real estate appraisers shall provide evidence of completion of 120 hours ~~or~~ of board approved instruction, 15 hours of which must cover the USPAP as promulgated by the Appraisal Foundation and at least 15 hours of which must cover report writing.

(2) through (4) remain as adopted.

AUTH: 37-1-131, 37-54-105, MCA
IMP: 37-1-131, 37-54-105, 37-54-303, MCA

24.207.509 QUALIFYING EXPERIENCE (1) through (9)(k) remain as adopted.

(l) institutional (nursing home, hospital, school, church, government building, etc.)~~.~~ 60

(10) and (11) remain as adopted.

AUTH: 37-1-131, 37-54-105, MCA
IMP: 37-1-131, 37-54-105, 37-54-202, 37-54-303, MCA

24.207.516 INACTIVE TO ACTIVE LICENSE (1) remains as adopted.

(a) file an updated application form with the board office and pay the required fee in accordance with ARM 24.207.401~~;~~ .

AUTH: 37-1-131, 37-1-319, 37-54-105, 37-54-310, MCA
IMP: 37-1-131, 37-1-319, 37-54-105, 37-54-310, MCA

3. The corrected replacement pages were submitted to the Secretary of State's office for the quarter ending on March 31, 2006.

BOARD OF REAL ESTATE APPRAISERS
TIM MOORE, 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 March 27, 2006

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I (ARM 42.2.308) and II (ARM 42.2.309) relating to gains calculations and voluntary disclosure	))))	NOTICE OF ADOPTION

TO: All Concerned Persons

1. On February 9, 2006, the department published MAR Notice No. 42-2-758 regarding the proposed adoption of the above-stated rules relating to gains calculations and voluntary disclosure at page 314 of the 2006 Montana Administrative Register, issue no. 3.

2. A public hearing was held on March 2, 2006, to consider the proposed adoption. No oral comments were received during the hearing. Written comments were received subsequent to the hearing and are summarized as follows along with the response of the department:

COMMENT NO. 1: Mr. Scott Adams, Kalispell, wrote to object to the department's intent to adopt the rules. Mr. Adams stated that he believes the state already suffers from a perception of being anti-business and anti-development and implementing these rules will do nothing to add to that perception and it will encourage investors to take their 1031 money elsewhere.

RESPONSE NO. 1: Neither of the proposed rules changes the state's tax treatment of these transactions. Instead, the rules faithfully implement state law concerning deferred gains attributable to the sale of property in Montana. It is not within the discretion of the department to fail to implement the law based on what may or may not be perceptions concerning those laws. The department proposed New Rule I in response to comments requesting guidance in calculating the gain attributable to Montana. New Rule II creates an incentive for affected taxpayers to voluntarily report the income and avoid being liable for the full amount of penalties and interest.

COMMENT NO. 2: Mr. Adams also stated that it is his opinion that the cost to implement and efficiently collect Montana source income in the manner presented will far outweigh the tax revenue collected.

RESPONSE NO. 2: The department anticipates that no additional staff resources will be required to enforce the previously adopted rule that clarified Montana's source income law. The department will apply the law and rules concerning these transactions in the normal and regular course of administering all provisions of Montana's income tax law.

COMMENT NO. 3: Ms. Jane Egan, Executive Director, Montana Society of

Certified Public Accounts (society) submitted written comments stating that the society believes the proposed rules are generally appropriate and reasonable. The society offered several comments and questions.

New Rule I states generally that the gain shown on form 8824 is generally the amount of Montana source income. This amount is reduced by the gain attributable to any out-of-state property that has been deferred from a prior exchange into Montana. The Society inquired about the case where there has been a prior non-Montana exchange, form 8824 will not show Montana's portion of the deferred gain. When a form 8824 is required to be filed with the department, does the department also require a form 8824 from the prior exchange? Also, proposed New Rule I should provide that Montana source income does not include non-Montana deferred gain.

RESPONSE NO. 3: This particular rule does not require that the form 8824 showing the Montana exchange be filed with the department. It merely explains that the information needed to determine the amount of Montana source gain is contained within the form or forms already required for federal income tax purposes. In order to determine the amount of Montana source gain when Montana property that was acquired in a prior exchange is exchanged out, a nonresident would need to have the information contained in form 8824 for the prior exchange in order to determine the amount of gain that is Montana source income.

Proposed New Rule I already does provide that Montana source income does not include gain attributable to out-of-state property that has been deferred from a prior exchange.

COMMENT NO. 4: New Rule I also addresses how to calculate the deferred gain on a sale of single property. The society stated that in a 1031 exchange there can be an exchange of one property for a number of other properties or a number of properties for one property. This could happen in exchanges into Montana and exchanges out of Montana. How is the Montana's portion of deferred gain going to be calculated in these situations? Does the proposed rule apply to property other than real estate?

RESPONSE NO. 4: The rule applies to all exchange of tangible property, not just real estate.

When multiple properties are received in an exchange for one item of Montana property, the aggregate value of the multiple properties and the amount of boot received, determines the amount of gain realized in the transaction – they sum up to the total sales price for the Montana property. As provided in 26 CFR 1.1031(j)-1, the amount of gain deferred is allocated among the multiple properties received. This federal allocation formula applies to the determination of Montana source gain. A taxable sale of any of the multiple items received would trigger corresponding recognition of that asset’s share of deferred Montana source gain.

When multiple Montana properties are exchanged for a single out-of-state property, as provided in 26 CFR 1.1031(j)-1, the sales price is allocated among the Montana properties. This federal allocation formula applies to the determination of

Montana source gain. A nonresident's taxable sale of the single out-of-state property would trigger recognition of all deferred Montana source gain.

COMMENT NO. 5: New Rule I states that the gain shown on form 8824 is generally the amount of Montana source income. The society asked what happens when a nonresident defers some Montana gain in a 1031 exchange to an out-of-state property and later the nonresident dies. The property is transferred to the decedent's heir who sells the property. The heir does not file a form 8824 or a Montana return. Is any of the gain taxable to Montana? Even if the heir did a 1031 exchange and later sold the property where he filed form 8824 under his name, is any of the deferred gain taxable to Montana? If so, why?

RESPONSE NO. 5: When an heir receives a fair market value step-up in basis, the amount of gain realized on the exchange (the Montana source income realized) will never be recognized for federal or Montana income tax purposes.

COMMENT NO. 6: New Rule I states the deferred gain is reportable to Montana when it is recognized for federal purposes. The society asked if the Montana tax liability on the deferred gain is due when it is reported to Montana. Is there going to be any tax payment (such as withholding, estimated tax, etc.) required by the department at the time the gain on the Montana property is deferred to property outside of Montana? If yes, please explain the statutory authority allowing withholding.

RESPONSE NO. 6: The department does not anticipate implementing a withholding requirement. The normal rules for estimated payments apply. Under 15-30-241, MCA (the statute spells out that no estimates are due if there was no tax in the prior period), the nonresident would not be liable for interest on any underpayment if they had no Montana tax liability the previous year.

COMMENT NO. 7: New Rule II states that if a person who transferred property in a 1031 exchange and who has not met their Montana filing requirements and tax obligations can do so without penalty and interest during a certain period of time. The society stated that under 15-30-142, MCA, Montana's filing requirements are defined and were spelled out in the 2002, 2003, 2004, and 2005 income tax packets. Have the filing requirements changed? If so, how and please give the legislative authority that changed 15-30-142, MCA. In addition, if a nonresident met the filing requirements stated in the Montana booklet between 2002 and 2005 and filed a return, are they eligible for any relief of penalty and interest? It would seem quite unfair that a person who met the filing requirements is treated differently than a person who did not meet the filing requirements.

RESPONSE NO. 7: The filing requirements have not changed. When a nonresident has Montana source income and exceeds certain income thresholds, he or she is required to file a Montana individual income tax return as provided in 15-30-142, MCA. These rules clarify when a nonresident has Montana source income triggering the requirement to file a Montana return. Nonresidents may not have

appreciated that they need to file a Montana return.

The compliance initiative is available to nonresidents who filed a return and must now file an amended return as well as nonresidents who did not file a return.

COMMENT NO. 8: Rule II has a "voluntary disclosure program" that runs between May 1, 2006 and August 31, 2006. The society stated that since this proposed program is directed to nonresidents who deferred gain on Montana property, how is the department going to communicate the new proposed requirements to them? If a person does not know about new requirements, how can they comply? The society also stated that the voluntary disclosure period is too short - it should go through the end of the calendar year.

RESPONSE NO. 8: The rules adoption procedure provides public notice. The department also intends to send information about the voluntary compliance initiative to national practitioner news services.

The taxpayer only needs to come forward and identify themselves to the department within the four months of the program in order to benefit from the penalty and interest waiver provision.

The length of the compliance initiative is consistent with voluntary compliance initiatives that have been successfully administered by other state tax agencies.

3. The department adopts New Rules I (ARM 42.2.308) and II (ARM 42.2.309) as proposed.

4. An electronic copy of this Adoption Notice is available through the department's site on the World Wide Web at www.mt.gov/revenue, under "for your reference"; "DOR administrative rules"; and "upcoming events and proposed rule changes." The department strives to make the electronic copy of this Adoption Notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the department strives to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems.

/s/ Dave Ohler for Cleo Anderson	/s/ Dan R. Bucks
CLEO ANDERSON	DAN R. BUCKS
Rule Reviewer	Director of Revenue

Certified to Secretary of State March 27, 2006

VOLUME NO. 51 OPINION NO. 15

ADMINISTRATION, DEPARTMENT OF - Cooperative purchasing procedures between municipalities and the state;
CITIES AND TOWNS - Cooperative purchasing procedures between municipalities and the state;
LOCAL GOVERNMENT - Cooperative purchasing procedures between municipalities and the state;
MUNICIPAL GOVERNMENT - Cooperative purchasing procedures between municipalities and the state;
PUBLIC FUNDS - Cooperative purchasing procedures between municipalities and the state;
STATUTORY CONSTRUCTION - Harmonizing statutes that are in pari materia;
MONTANA CODE ANNOTATED - Titles 7, 18; sections 1-2-101, -102, 7-5-4302, 18-4-401 to -407, -402.

HELD: A municipality may choose to participate in cooperative purchasing with the Department of Administration of the State of Montana pursuant to Mont. Code Ann. §§ 18-4-401 to -407 without first seeking its own competitive bids as an alternative to the competitive bidding requirements set forth in Mont. Code Ann. § 7-5-4302.

March 16, 2006

Mr. Jim Nugent
Missoula City Attorney
435 Ryman Street
Missoula, MT 59802

Dear Mr. Nugent:

You have requested my opinion on the relationship between a statute that imposes competitive, advertised bid requirements upon certain municipal government purchases, Mont. Code Ann. § 7-5-4302, and the statute that authorizes local governments to enter into cooperative purchasing agreements with the State of Montana, Mont. Code Ann. §§ 18-4-401 to -407. I have rephrased your question as follows:

> When a municipality seeks to purchase a service or an item of personal property, and the cost of the service or property exceeds $50,000, may the municipality participate in a cooperative purchasing agreement with the Department of Administration of the State of Montana without first seeking its own competitive bids under the procedures established in Mont. Code Ann. § 7-5-4302?

Mont. Code Ann. § 7-5-4302 originated in legislation first passed in 1907. It sets forth a statutory procedure for the purchase of certain goods and services by

municipalities. The legislature recognized the benefits of soliciting competitive bids. The procedure therefore requires advertisement for bids for the goods or services. After advertisement and submission of bids the contract must be let to the "lowest responsible bidder." This procedure only now applies only to the purchase of goods or services having a value in excess of $50,000.

In 1983 the legislature enacted Mont. Code Ann. §§ 18-4-401 to -407 establishing an alternative purchasing process. This statute also contains a competitive bidding requirement. In passing this law, the legislature hoped that municipalities and other "local procurement units" would benefit from cooperatively soliciting bids for goods and services with the state and other government units. Presumably the greater collective purchasing power of the units would result in savings for the participating entities. This statute makes no reference to Mont. Code Ann. § 7-5-4302. Accordingly there is no express requirement that a local government engage in a separate competitive advertised bidding process under Mont. Code Ann. § 7-5-4302 before entering into an agreement with the state to make cooperative purchases. The rules of statutory construction prevent the addition of such a requirement if it is not found in the statute itself. Mont. Code Ann. § 1-2-101.

"In the construction of a statute, the intention of the legislature is to be pursued if possible." Mont. Code Ann. § 1-2-102. This is "[t]he cardinal principle of statutory construction." Baker Nat'l Ins. Agency v. Montana Dep't of Revenue, 175 Mont. 9, 15, 571 P.2d 1156, 1160 (1977). When the legislature has expressed its intent more than once in the same subject area, the later enactment generally will prevail over a prior statute in the event of a conflict. State ex rel. Jenkins v. Carisch Theatres, 172 Mont. 453, 458, 564 P.2d 1316, 1319; 1A Sutherland Statutory Construction § 22.22 (6th ed. 2002).

Another rule of statutory construction mandates that "[s]tatutes which are not inconsistent with one another, and which relate to the same subject matter, are in pari materia and should be construed together and effect given to both if it is possible to do so." Register Life Ins. Co. v. Kenniston, 99 Mont. 191, 197, 43 P.2d 251, 254 (1935). The Supreme Court "must presume that the legislature would not pass meaningless legislation, and must harmonize statutes relating to the same subject, as much as possible, giving effect to each." ISC Distribs. v. Trevor, 273 Mont. 185, 201, 903 P.2d 170, 179 (1995).

A final principle is applicable to the question presented: "A statute will not be interpreted to defeat its object or purpose, and the objects sought to be achieved by the legislature are of prime consideration in interpreting it." Dover Ranch v. County of Yellowstone, 187 Mont. 276, 284, 609 P.2d 711, 715 (1980).

With these concepts in mind, I have reached the following conclusions.

First: The statutes in question are related and address the same subject matter so they must be read together, harmonized and each given effect if possible. The

intent of the legislature must be followed if possible. In so doing, the later expression of intent should be given deference.

Second: The object and intention of the legislature in passing the cooperative purchasing statute is unambiguous. The legislature wanted to provide local procurement units, a term that includes municipalities, with the ability to take advantage of the benefits of purchasing jointly with the state. The legislature established the procedures to be followed in Mont. Code Ann. §§ 18-4-401 to -407. The legislature did not repeal the existing municipal purchasing statute. Nor did it require a municipality to first use the competitive bidding steps defined in Mont. Code Ann.§ 7-5-4302 and then proceed through the second competitive bidding process required in the cooperative purchasing statute. These facts establish a legislative intent to leave in place two independent, alternative procedures for the purchase of goods and services by municipalities.

Third: There is no inconsistency between the statutes and therefore no need to resolve conflict between them. It is possible to give full effect to each and it is only reasonable and logical to infer a legislative intent to do so.

In 1983 the municipal competitive bidding statute had been in existence for over seventy-five years. The legislature could have repealed the statute or amended it, but it chose to do neither. Instead it passed Mont. Code Ann. §§ 18-4-401 to -407 and thereby expressed its intent that this statute should provide an alternative purchasing procedure available to municipalities. The 1983 act deals with the same subject for municipalities as does Mont Code Ann. § 7-5-4302. The statutes must be harmonized to give as much effect as possible to each. This is accomplished by inferring from the later expression of legislative intent a goal to provide municipalities with two separate alternatives to purchase certain goods or services: one defined by Title 7 and the other defined in Title 18. This construction gives full effect to each statute and completely harmonizes the two.

THEREFORE, IT IS MY OPINION:

> A municipality may choose to participate in cooperative purchasing with the Department of Administration of the State of Montana pursuant to Mont. Code Ann. §§ 18-4-401 to -407 without first seeking its own competitive bids as an alternative to the competitive bidding requirements set forth in Mont. Code Ann. § 7-5-4302.

Very truly yours,

/s/ Mike McGrath
MIKE McGRATH
Attorney General

mm/je/jym

VOLUME NO. 51 OPINION NO. 16

INSURANCE - Mont. Code Ann. § 49-2-309 requires inclusion of coverage for prescription contraceptives and related medical services;
INSURANCE - Mont. Code Ann. § 49-2-303 requires inclusion of coverage for prescription contraceptives and related medical services;
PRESCRIPTION DRUGS - Mont. Code Ann. § 49-2-309 requires inclusion of coverage for prescription contraceptives and related medical services. Mont. Code Ann. § 49-2-303 requires inclusion of coverage for prescription contraceptives and related medical services;
ADMINISTRATIVE RULES OF MONTANA - Section 24.9.1407;
MONTANA CODE ANNOTATED - Sections 49-2-303, (1), (a), -309, (1);
UNITED STATES CODE - 42 U.S.C. § 2000e-2(a)(1), (2), (k).

HELD:

1. When an employer provides an insurance policy providing prescription drug coverage and other medical services, the Montana unisex insurance law, Mont. Code Ann. § 49-2-309, requires inclusion of coverage for prescription contraceptives and related medical services.

2. When an employee benefit plan provides prescription drug coverage and other medical services, the Montana Human Rights Act, Mont. Code Ann. § 49-2-303, requires inclusion of coverage for prescription contraceptives and related medical services.

March 28, 2006

Senator Jon Tester
President, Montana Senate
P.O. Box 200500
Helena, MT 59620-0500

Dear Senator Tester:

You have requested my opinion on questions that I have phrased as follows:

1. Is it a violation of the provision of Montana's unisex insurance law prohibiting sex discrimination in insurance plans, Mont. Code Ann. § 49-2-309, if an insurance policy providing prescription drug coverage and other medical services excludes coverage for prescription contraceptives and related medical services?

2. Is it a violation of the provision of Montana's Human Rights Act prohibiting sex discrimination in employment, Mont. Code Ann. § 49-2-303, if an employee benefit plan providing prescription

drug coverage and other medical services excludes coverage for prescription contraceptives and related medical services?

A. Montana's unisex insurance statute

Montana's unisex insurance statute provides, in pertinent part:

> It is an unlawful discriminatory practice for a financial institution or person to discriminate solely on the basis of sex or marital status in the issuance or operation of any type of insurance policy, plan, or coverage or in any pension or retirement plan, program, or coverage, including discrimination in regard to rates or premiums and payments or benefits.

Mont. Code Ann. § 49-2-309(1).

The plain language of the statute prohibits discrimination based on sex in the issuance or operation of an insurance plan. The Montana Supreme Court has found that an insurer is in violation of the unisex insurance statute if it provides men with comprehensive coverage for medical expenses, but does not provide women with similar comprehensive coverage. Bankers Life & Casualty Co. v. Peterson, 263 Mont. 156, 163, 866 P.2d 241, 245 (1993).

In Peterson, several women filed a claim with the Montana Human Rights Commission after their insurer denied them coverage for standard maternity expenses. The women alleged that refusal to provide coverage for maternity expenses constituted unlawful sex discrimination in violation of the unisex insurance statute. The Commission held for the women, the district court affirmed the Commission's conclusion, and the insurer appealed to the Montana Supreme Court.

Previously, the Court had concluded that treating women differently based upon their capacity to become pregnant constituted sex discrimination. Mountain States Tel. & Tel. Co. v. Comm'r of Labor & Indus., 187 Mont. 22, 38-39, 608 P.2d 1047, 1056 (1980). The Court in that case noted:

> [p]regnancy is a condition unique to women, and the ability to become pregnant is a primary characteristic of the female sex. Thus, any classification which relies on pregnancy as the determinative criterion is a distinction based on sex. . . . "By definition, [placing pregnancy in a class by itself] discriminates on account of sex; for it is the capacity to become pregnant which primarily differentiates the female from the male."

187 Mont. at 39 (citation omitted). Relying on Mountain States, the Montana Supreme Court concluded in Peterson that discrimination based upon pregnancy is discrimination based on sex and is specifically prohibited by the Montana unisex insurance statute. 263 Mont. at 161 (also citing, Miller-Wohl Co., Inc. v.

Commissioner of Labor, 214 Mont. 238, 692 P.2d 1243 (1984)).

The Court specifically rejected the insurer's argument that covering pregnancy-related expenses would constitute reverse discrimination against men because men would be paying premiums for benefits only received by women. The Court noted that the policy at issue only contained a gender-specific exclusion related to pregnancy; no male gender specific exclusions were listed. Peterson, 263 Mont. at 164. "Absent male gender-specific exclusions in Bankers Life's policy, women are paying premiums for benefits only men receive." Id. The Court concluded that providing comprehensive benefits to both males and females cannot constitute discrimination to either class. Id.

Montana's unisex insurance statute makes it unlawful for a "financial institution or person to discriminate solely on the basis of sex or marital status in the issuance or operation of any type of insurance policy, plan, or coverage. . . ." Mont. Code Ann. § 49-2-309(1). In applying this statute, the Supreme Court of Montana concluded that omitting pregnancy coverage from any insurance policy is, "on its face, sex discrimination in violation of the [the unisex insurance statute]" as the statute is "intended to cover all discriminations in insurance policies that are based solely on sex." Peterson, 263 Mont. at 162 (emphasis supplied). Contraception and related medical services such as gynecological visits, are virtually the only way for women to prevent and control the timing of pregnancy. Just as exclusion of pregnancy coverage constitutes sex discrimination because "distinctions based on pregnancy are sex-linked," it follows that exclusion of coverage for prescription contraceptives and related medical services would also be sex discrimination and a violation of Montana's unisex insurance statute.

B. Montana's Human Rights Act

The Human Rights Act provides:

> (1) It is an unlawful discriminatory practice for:
> (a) an employer to refuse employment to a person, to bar a person from employment, or to discriminate against a person in compensation or in a term, condition, or privilege of employment because of race, creed, religion, color, or national origin or because of age, physical or mental disability, marital status, or sex when the reasonable demands of the position do not require an age, physical or mental disability, marital status, or sex distinction . . . .

Mont. Code Ann. § 49-2-303.

Montana courts have not ruled on whether it constitutes sex discrimination under the Human Rights Act if an employer's comprehensive benefits package excludes insurance coverage for prescription contraceptives and related medical services. However, federal law, specifically Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-2(a)(1) ("Title VII"), requires employers that offer their employees

comprehensive health plans to include prescription contraceptives.

Like Montana's Human Rights Act, Title VII provides:

> Unlawful employment practices
>
> (a) Employer practices
> It shall be an unlawful employment practice for an employer--
>
> > (1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or
> > (2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

42 U.S.C. § 2000e-2(a)(1), (2). It is well settled that it is unlawful under Title VII of the Civil Rights Act of 1964 for an employer to discriminate on the basis of sex with regard to fringe benefits, including health insurance. Moreover, Title VII, as amended by the Pregnancy Discrimination Act of 1978 (PDA), provides further specificity to Title VII's general prohibition against discrimination "because of sex."

> The terms "because of sex" or "on the basis of sex:" [in Title VII] include, but are not limited to, because of or on the basis of pregnancy, childbirth, or related medical conditions; and women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purposes . . . as other persons not so affected but similar in their ability to work . . . .

42 U.S.C. § 2000e-2(k).

In International Union, UAW v. Johnson Controls, 499 U.S. 187 (1991), Johnson Controls implemented a policy that excluded women who were pregnant or capable of being pregnant from being placed in jobs involving lead exposure. In its use of the words "capable of bearing children," Johnson Controls explicitly classified on the basis of the potential for pregnancy. The Court found that "[u]nder the PDA, such a classification must be regarded, for Title VII purposes, in the same light as explicit sex discrimination." Johnson Controls, 499 U.S. at 199. The Court concluded that such a policy was not justifiable by any known legal exception and was prohibited by Title VII. Johnson Controls, 499 U.S. at 211. Under Johnson Controls, the condition that contraception addresses, the potential for pregnancy, was found to be a pregnancy-related condition. Johnson Controls, 499 U.S. at 199. Thus, singling out

prescription contraceptive drugs and services for disadvantageous treatment in an employer's health plan must also violate the PDA and Title VII's basic nondiscrimination policies.

The Equal Employment Opportunity Commission (EEOC), the agency responsible for Title VII enforcement, has specifically ruled that an employer's failure to provide insurance coverage for prescription contraceptive drugs and devices, when other prescription drugs and devices are covered, constitutes unlawful sex discrimination under the PDA. EEOC Decision-contraception, 12/14/2000. Specifically, the EEOC has stated that to avoid violating Title VII, employers must (1) cover the expenses of prescription contraception to the same extent, and on the same terms, that they cover the expenses of other drugs, devices and preventive care; (2) offer the same coverage for contraception-related outpatient services as is offered for other outpatient services; and (3) cover the full range of prescription contraceptive choices in each of the health plans offered to employees. Id.

In addition, two federal district courts have confirmed this interpretation of Title VII. First, the United States District Court for the Western District of Washington ruled that an employer was violating Title VII by failing to provide insurance coverage for contraception in an employee health plan that covered other prescription drugs and devices. Erickson v. Bartell Drug Co., 141 F. Supp. 2d 1266 (W.D. Wash. 2001). The Erickson court noted:

> The PDA is not a begrudging recognition of a limited grant of rights to a strictly defined group of women who happen to be pregnant. Read in the context of Title VII as a whole, it is a broad acknowledgment of the intent of Congress to outlaw any and all discrimination against any and all women in the terms and conditions of their employment, including the benefits an employer provides to its employees. Male and female employees have different, sex-based disability and healthcare needs, and the law is no longer blind to the fact that only women can get pregnant, bear children, or use prescription contraception. The special or increased healthcare needs associated with a woman's unique sex-based characteristics must be met to the same extent, and on the same terms, as other healthcare needs.

141 F. Supp. 2d at 1271. The court ordered Bartell Drug Co. to cover "each of the available options for prescription contraception to the same extent, and on the same terms, that it covers other drugs, devices, and preventative care," as well as related physician visits and outpatient services. 141 F. Supp. 2d at 1277.

More recently, in a class action suit against Union Pacific Railroad for excluding prescription contraception from its employee insurance plan, the United States District Court for the District of Nebraska concurred with the Erickson decision. In re Union Pac. R.R. Empl. Practices Litig., 378 F. Supp. 2d 1139 (D. Neb. 2005). The Nebraska Court similarly found that the exclusion of all FDA-approved prescription contraceptive methods violates Title VII because it "treats medical care women need

to prevent pregnancy less favorably than it treats medical care needed to prevent other medical conditions that are no greater threat to employees' health than is pregnancy." 378 F. Supp. 2d at 1149. Other federal courts considering this question have similarly concluded that an employer's exclusion of prescription contraception from an employee insurance plan gives rise to a claim for sex discrimination under Title VII. See, e.g., Cooley v. DaimlerChrysler Corp., 281 F. Supp. 2d 979 (E.D. Mo. 2003); EEOC v. United Parcel Serv., 141 F. Supp. 2d 1216 (D. Minn. 2001).

Like federal law (Title VII) Montana's employment discrimination law provides that "[i]t is an unlawful discriminatory practice" for an employer to discriminate against an employee "in a term, condition, or privilege of employment" because of sex. Mont. Code Ann. § 303(1)(a). Since the Montana Human Rights Commission has adopted a regulation that adopts EEOC guidelines on sex discrimination, Mont. Admin. R. 24.9.1407, and since the Montana courts have found rulings under the federal statutes to be persuasive in the application of Montana's laws, see, e.g. Harrison v. Chance, 244 Mont. 215, 797 P.2d 200, 204 (1990), the federal rulings described above are important guideposts in resolving the issue you present.

As with Title VII, Montana case law demonstrates that because pregnancy is unique to women, differential treatment related to pregnancy and related medical conditions such as gynecological visits, is discrimination on the basis of sex, and is prohibited. Bankers Life, 263 Mont. at 163; Mountain States Telephone, 187 Mont. at 38-39; Miller-Wohl, 214 Mont. at 260. As the condition that contraception addresses, the potential for pregnancy, has been deemed a pregnancy-related condition, the analysis outlined above is applicable under Montana's Human Rights Act.

THEREFORE, IT IS MY OPINION:

1. When an employer provides an insurance policy providing prescription drug coverage and other medical services, the Montana unisex insurance law, Mont. Code Ann. § 49-2-309, requires inclusion of coverage for prescription contraceptives and related medical services.

2. When an employee benefit plan provides prescription drug coverage and other medical services, the Montana Human Rights Act, Mont. Code Ann. § 49-2-303, requires inclusion of coverage for prescription contraceptives and related medical services.

Very truly yours,

/s/ Mike McGrath
MIKE McGRATH
Attorney General

mm/pdb/jym

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.

2.59.1501 and other rules - Definitions - Application Procedure Required to Engage in Deposit Lending - Reports - Schedule of Charges - Employees' Character and Fitness - Electronic Deductions - Income Verification, p. 375, 614

(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, 526

AGRICULTURE, Department of, Title 4

I-III Cherry Research and Marketing Development Program, p. 771, 1279

4.6.202 Potato Assessment Fees, p. 380

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

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, 758
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, 532

(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, 528
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, 540

TRANSPORTATION, Department of, Title 18

CORRECTIONS, Department of, Title 20

JUSTICE, Department of, Title 23

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, 553
I-XIV and other rules - Department and All Boards - Fees - Licensing - Renewals, p. 383
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, 679
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, 546
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, 567

(Board of Alternative Health Care)
I & II Fee Abatement - License Renewal for Activated Military Reservists, p. 706

(Board of Architects)

24.114.301 and other rules - Definitions - General Provisions - Licensing - Renewals - Unprofessional Conduct - Screening Panel - Complaint Procedure, p. 620

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

(Board of Barbers and Cosmetologists)

24.121.301 and other rules - Definitions - Fees - Variances - Applications for Licensure - Out-of-State Applicants - School Requirements - School Operating Standards - Student Withdrawal, Transfer, or Graduating - Teacher-Training Curriculum - Continuing Education-Instructors/Inactive Instructors - Unprofessional Conduct - Fee Abatement - Continuing Education-Licensees/Inactive Licensees - Field Trips, p. 629

(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 Funeral Service)

24.147.302 and other rules - Definitions - Substantive Rules - Licensing - Mortuary Requirements - Crematory Rules - Cemetery Regulation Rules - Branch Facilities - Prearranged Funeral Agreements - Continuing Education - Complaint Filing - Fee Abatement - Renewal of Cemetery Licenses - Cemetery Authority Rules, p. 642

(Board of Medical Examiners)

I & II Medical Assistants - Fee Abatement, p. 1882, 2676, 759

24.156.1601 and other rules - Physician Assistant Licensure, p. 483

(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 Occupational Therapy Practice)

24.165.401 and other rule - Fees - Fee Abatement, p. 495

24.165.404 and other rules - Application for Licensure - Examinations - Continuing Education, p. 710

(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, 764

(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
24.183.2101 and other rule - Expiration of License - Renewal - Expired Certificate - Renewal Grace Period, p. 713

(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, 765
24.207.505 and other rules - Qualifying Education Requirements for Licensed Real Estate Appraisers - Qualifying Education Requirements for

Residential Certification - Qualifying Education Requirements for General Certification - Trainee Requirements, p. 716
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, 766

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
32.6.701 and other rules - Animal Feeding, Slaughter, and Disposal, p. 657
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, 680

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, 767

36.11.304 and other rules - 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, p. 499
36.12.101 Municipal Use of Water, p. 2316, 199
36.19.106 Reclamation and Development Grants Program, p. 1746, 2468
36.21.415 Fee Schedule for Water Well Contractors, p. 720

(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, 575
I-IV Montana Clean Indoor Air Act, p. 1665, 2079
I-XIV State Trauma Care System, p. 723
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
37.36.604 and other rule - Montana Telecommunications Access Program (MTAP), p. 510
37.37.316 and other rules - Youth Foster Homes - Further Amendment of Rule V, p. 2379, 524
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, 574
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, 768
37.86.1004 and other rule - Medicaid Dental Reimbursement and Coverage, p. 733, 1073

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