

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 16

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 The Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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 print 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 Services, at (406) 444-2055.

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BEFORE THE DEPARTMENT OF ADMINISTRATION  
OF THE STATE OF MONTANA

In the matter of the adoption of New	)	NOTICE OF PUBLIC HEARING ON
Rule I and the amendment of ARM	)	PROPOSED ADOPTION AND
2.5.120, 2.5.201, 2.5.202, 2.5.301	)	AMENDMENT
through 2.5.303, 2.5.401, 2.5.402,	)	
2.5.404 through 2.5.408, 2.5.501	)	
through 2.5.503, 2.5.601 through	)	
2.5.604, 2.5.606 through 2.5.609,	)	
2.5.701, 2.5.702, and 2.5.801 pertaining	)	
to procurement of supplies and services	)	
and surplus property	)	

TO: All Concerned Persons

1. On September 12, 2007, at 11:00 a.m., a public hearing will be held in Room 165 of the Mitchell Building, 125 North Sanders, Helena, Montana, to consider the proposed adoption and amendment of the above-stated rules.

2. The department will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice. If you require an accommodation, contact the State Procurement Bureau no later than 5:00 p.m. on September 4, 2007, to advise us of the nature of the accommodation that you need. Please contact Gretchen Bingman, State Procurement Bureau, 125 North Sanders, Helena, MT 59620; telephone (406) 444-7210; Montana Relay Service 711; facsimile (406) 444-2529; e-mail to gbingman@mt.gov.

3. The proposed new rule provides as follows:

NEW RULE I CONTRACT RENEWAL (1) Prior to issuing a contract renewal, an agency must provide a written justification outlining the basis for renewal. Reasons illustrating justification for renewal may include, but are not limited to:

- (a) acceptable or outstanding performance of contract specifications;
- (b) cost-effectiveness of continuation of the contract; and/or
- (c) the requirements of the contract remain significantly the same.

AUTH: 18-4-221, MCA

IMP: 18-4-313, MCA

STATEMENT OF REASONABLE NECESSITY: This new rule is reasonably necessary to provide guidelines for agencies in developing renewal justifications to document the evaluation of the contract performance and appropriateness of renewal.

4. The rules as proposed to be amended provide as follows, stricken matter

interlined, new matter underlined:

2.5.120 THE STATE EMPLOYEES' CHARITABLE GIVING CAMPAIGN

(1) remains the same.

AUTH: 18-4-221, MCA

IMP: ~~18-4-221~~ 18-4-222, MCA

2.5.201 DEFINITIONS In these rules, words and terms ~~defined in Title 18, chapter 4, MCA,~~ shall have the same meaning as in defined in Title 18, chapter 4, MCA, the statutes and, unless the context clearly requires otherwise or a different meaning is prescribed for a particular ~~section~~ rule, the following definitions apply:

(1) "Agency" means an agency, bureau, commission, committee, council, department, governmental corporation, institution, legislative body, or other entity, instrumentality, or official of the executive, legislative, or judicial branch of ~~the state government,~~ including the Board of Regents and the Montana University System.

(2) remains the same.

(3) "Alternate bid" means a bid submitted in knowing variance from the specifications, terms, conditions, or provisions of the solicitation. Such a bid is acceptable only when the variance is deemed immaterial.

(4) remains the same.

(5) "Bid" means the executed document ~~submitted by a "bidder"~~ in response to an invitation for bid. "Bidder" means a person submitting a bid.

(6) remains the same.

(7) "Central Stores" means the proprietary program operated by the division's Property and Supply Bureau which develops standard specifications, procures, warehouses, and delivers certain supplies for state agencies. ~~The bureau also operates the state and federal surplus programs for eligible donees.~~

(8) and (9) remain the same.

(10) "Debar" or "debarment" means an action taken or decision made by the department, other than temporary determinations of nonresponsibility or suspension, that prohibits a vendor from proposing, bidding on, or receiving state contracts for a specific period of time or until certain conditions have been met.

(11) through (16) remain the same.

(17) "FOB" or "f.o.b." means free on board; a term used in conjunction with an identified physical location to determine:

(a) remains the same.

(b) the point at which title for the shipment passes from seller to buyer.

Deliveries are usually "FOB destination" which means a shipment is to be delivered to the destination designated by the buyers.

(18) through (20) remain the same.

(21) "Nonexclusive contract" means that state agencies are not required to purchase this supply or service from the contract holder(s) and may obtain the necessary ~~service or supply~~ or service from a different source following the requirements of Title 18, MCA, and their agency procurement delegation agreement.

(22) through (30) remain the same.

(31) "Responsible bidder or offeror" means a person who has the capability

in all respects to ~~perform~~ fully perform the contract requirements and the integrity and reliability that will ensure good faith performance.

(32) through (36) remain the same.

(37) "State Procurement Bureau" means ~~that the~~ the bureau of the division responsible for procuring or supervising the procurement of all supplies and services needed by the state, ~~excluding those services procured by the Property and Supply Bureau and publications and graphics bureau~~ Print and Mail Services Bureau.

(38) and (39) remain the same.

~~(40) "Term contract" means a contract in which supplies or services are offered at a predetermined unit price for a specific period of time.~~

(41) through (44) remain the same, but are renumbered (40) through (43).

AUTH: 18-1-114, 18-4-221, MCA

IMP: 18-4-221, MCA

#### 2.5.202 DEPARTMENT OF ADMINISTRATION RESPONSIBILITIES

(1) remains the same.

(2) ~~The department's general services~~ division will establish a vendors list, determine eligibility for residence preference of vendors for purchases made under Title 18, chapter 4, MCA, investigate complaints against vendors, and remove vendors from the state list as described in ARM 2.5.401, 2.5.402, ~~2.5.403~~, and 2.5.407.

(3) ~~The department's general services~~ division shall process requisitions for agencies, for items not delegated, in accordance with ARM 2.5.302.

(4) Except as indicated in ARM 2.5.301, ~~the department's general services~~ division will identify and purchase all controlled items.

(5) through (5)(d) remain the same.

(6) ~~The department's general services~~ division delegates its procurement authority as follows:

(a) through (c)(iv) remain the same.

(7) ~~The department's general services~~ division will provide training to agencies on purchasing in accordance with delegated responsibilities.

(8) ~~The department's general services~~ division may perform reviews of agency purchasing procedures to ~~insure~~ ensure compliance with the delegation agreement, these rules, and Title 18, chapter 4, MCA.

(9) remains the same.

AUTH: 18-4-221, MCA

IMP: 2-17-301, 2-17-512, 18-4-221, 18-4-222, MCA

2.5.301 DELEGATION OF PURCHASING AUTHORITY (1) remains the same.

(2) Delegation and competitive procedures are not necessary for the following purchases:

(a) through (j) remain the same.

(k) fresh fruits and vegetables; ~~and~~

(l) food products produced in Montana, subject to the provisions of 18-4-132,

MCA:

(m) advertising placed in publications or on radio, television, or other electronic means. Development, design, and distribution of the advertising is not included in this exception;

(n) educational instructors and guidance counselors for inmates under the supervision of the Department of Corrections; and

(o) books and periodicals purchased by the Montana State Library.

AUTH: 18-4-221, MCA

IMP: 18-4-132, 18-4-221, 18-4-222, 18-4-302, MCA

STATEMENT OF REASONABLE NECESSITY: Senate Bill No. 328 of the 2007 Legislature provides that food products produced in Montana may be procured by direct purchase under certain circumstances. The department is adding (2)(l) to make this option plain in rule. Newspaper, radio, and television advertisements are typically only available from limited vendors within a target area and so are excluded from competitive procedures. Due to the limited availability of many books and periodicals, the State Library is given authority to make book and periodical purchases without competition when available only from a single vendor.

2.5.302 REQUISITIONS FROM THE AGENCIES TO THE DIVISION (1) All agencies must complete the division's requisition form when a state purchase order or contract is required from the division. The requisition must be signed or electronically approved by an authorized agency official. Only items of a like nature (items ordinarily procurable from the same vendor) to be billed to one location shall be combined on one requisition. A separate requisition is required for each billing location. The requisition must be accompanied by specifications as described in ARM 2.5.501. Completed requisitions for:

(a) coarse paper, computer paper, computer software supported by Information Technology Services Division, fine paper, forms, flags, fire extinguishers, janitorial supplies, and office supplies shall be forwarded to the Property and Supply Bureau;

(b) requisitions for printing shall be forwarded to the Print and Mail Services Bureau; and-

(c) Completed requisitions for supplies and services (not listed above) shall be forwarded to the State Procurement Bureau.

(2) Agencies must obtain written approval as required for equipment described in ARM 2.5.202(5). Written approval must accompany the requisition.

(3) Upon receipt of a requisition, the division will initiate and schedule the solicitation. ~~The division will send a copy of the solicitation to the requesting agency for review prior to bid opening.~~

(4) through (4)(b) remain the same.

(c) has no evidence of approvals required in (2) ~~above~~; or

(d) through (5)(b) remain the same.

AUTH: 18-4-221, MCA

IMP: 18-4-221, MCA



2.5.303 ENFORCING THE CONTRACT (1) Except for items purchased and warehoused by the division's ~~central stores program~~ Property and Supply Bureau, agencies are responsible for receiving supplies and services procured on their behalf by the department. Receiving means inspecting the supply or service and checking it against the contract to ensure that it is acceptable, complete, and in compliance with the terms of the contract.

(2) and (3) remain the same.

AUTH: 18-4-221, MCA

IMP: 18-4-221, MCA

2.5.401 VENDORS LIST (1) The General Services Division maintains an online vendors list for all supply and service commodities. Names and addresses on the vendors lists shall be available for public inspection, ~~but these lists~~ this list shall not be used for private promotional, commercial, or market purposes as per 2-6-109, MCA.

(2) ~~To get be placed~~ to be placed on the vendors list, a vendor must register with the division ~~on a form supplied by the division~~, online at <http://www.vendor.mt.gov/>. Each vendor is responsible for keeping their information current, including categories, quote groups, and items of information sufficient to identify the supplies or services the vendor wishes to supply provide.

AUTH: 18-4-221, MCA

IMP: 18-4-221, MCA

2.5.402 SUSPENSION OR DEBARMENT FROM CONTRACT ELIGIBILITY

(1) The division has the authority to temporarily suspend a vendor from consideration for further contracts with the state if the division has probable cause to believe that the vendor has engaged in activities that could lead to debarment from contract eligibility. ~~Debarment applies both to a firm or an individual. In the case of a firm, it may be applied against any or all businesses in which a firm has involvement or over which it has ownership or control. In the case of an individual, debarment may be applied to and enforced against any and all businesses in which the individual has any level of interest, ownership or control.~~ The causes for debarment include the following:

(a) through (g) remain the same.

(2) Debarment may apply to either a firm or an individual.

(a) In the case of a firm, it may be applied against any or all businesses in which a firm has involvement or over which it has ownership or control.

(b) In the case of an individual, debarment may be applied to and enforced against any and all businesses in which the individual has any level of interest, ownership, or control.

~~(2)~~ (3) If there is probable cause to believe that any of the situations in (1) exist ~~as set out in (1)~~, the division shall mail a notice of suspension to the affected vendor or individual. The notice must state that:

(a) remains the same.

(b) bids or proposals will not be accepted from the suspended vendor or contracts awarded to the suspended vendor during the period of suspension; and

(c) the suspension is effective upon the date of issuance of the notice of suspension and, unless the suspension is terminated by the division or a court, ~~it will~~ remains in effect for a period not to exceed 90 calendar days.

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

(a) remains the same.

(b) notification of the vendor's right to a contested case hearing on the matter in accordance with the procedures set forth in Title 2, chapter 4, part 6, MCA; and

(c) remains the same.

~~(4)~~ (5) A written request for hearing must be received by the director from the vendor within 20 calendar days after the date of the mailing of the notice of debarment. Failure to timely request a hearing will constitute a waiver by the vendor of the opportunity for a contested case hearing and appeal and will result in the director or director's designee entering an order supporting the vendor's debarment ~~from contracting with the state for a specified period of time or until certain conditions are met.~~

~~(5)~~ (6) Upon timely receipt of a written request for a contested case hearing, the director shall appoint a hearing examiner in accordance with the procedures set forth in Title 2, chapter 4, part 6, MCA, to hear evidence in the matter and come to a determination as to whether the facts support the decision to debar the vendor ~~from contracting with the state for a specified period of time or until certain conditions are met.~~

~~(6)~~ (7) The division shall maintain a list of debarred vendors on its web site at <http://www.discoveringmontana.com/doa/gsd>  
<http://gsd.mt.gov/procurement/debarredsuspendvendors.asp>.

AUTH: 18-4-221, MCA

IMP: 18-4-241, 18-4-308, MCA

2.5.404 BID AND PROPOSAL PREPARATION (1) and (2) remain the same.

(3) The price for each item must be stated and shall be clearly shown in the space provided on the form included as part of the bid. Only one unit price shall be shown for each item unless specific provision is made in the form for an optional figure. The price of each item shall be extended to show the total price for the quantity requested. In case of error in extension, the unit price shall prevail.

(4) through (7) remain the same.

(8) Vendors will must offer a firm price for 30 days after a bid ~~or proposal~~ opening, or 120 days after a proposal opening, pending award, unless otherwise provided for in the invitation for bids or request for proposals.

(9) remains the same.

AUTH: 18-4-221, MCA

IMP: 18-4-221, 18-4-303, MCA

2.5.405 BLIND VENDORS' BIDDING PREFERENCE (1) A blind person wishing to claim the vending facility preference provided in 18-5-502, MCA, must

complete the determination form provided by the State Procurement Bureau. The form must be completed by an ophthalmologist, physician skilled in diseases of the eye, or a ~~state of Montana~~, Department of Public Health and Human Services, visual services counselor.

(2) A determination form shall be submitted with each individual bid. The determination form shall be valid for six months. At the end of the six-month period, a new determination form will be required or submitted with bids. A new determination form will be required for renewal of a contract if the contract renewal date exceeds six months from the completion date of the original determination form.

AUTH: ~~18-5-501~~ 18-5-504, MCA  
IMP: ~~18-5-501~~ 18-5-502, MCA

2.5.406 VENDOR PROTEST (1) through (2)(b) remain the same.

~~(3) "Days" mean calendar days as defined in ARM 2.5.201.~~

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

AUTH: 18-4-221, 18-4-242, MCA  
IMP: 18-1-402, ~~18-4-221~~, 18-4-242, MCA

2.5.407 DETERMINATION OF RESPONSIVENESS/STANDARDS OF RESPONSIBILITY (1) and (2) remain the same.

(3) If a determination of nonresponsiveness is made, nonresponsive bids ~~and or offers will be~~ are disqualified and eliminated from further consideration.

(4) through (4)(e) remain the same.

(5) If requested, a bidder or offeror must supply information concerning responsibility to the procurement officer ~~concerning responsibility~~ in a timely and convincing manner. If the bidder or offeror fails to supply the requested information, the procurement officer may base a determination of responsibility upon any available information, or may find the bidder or offeror nonresponsible.

(6) through (8) remain the same.

AUTH: 18-4-221, MCA  
IMP: 18-1-308, MCA

2.5.408 RECIPROCAL PREFERENCE (1) remains the same.

(2) A reciprocal preference is applied only to an invitation for bids for supplies and printing, or an invitation for bids for nonconstruction services for public works as defined in 18-2-401~~(9)~~, MCA, but only in the event that federal funds are not involved in the anticipated purchase. In addition, a reciprocal preference is only applied if it will benefit a Montana resident bidder as defined in 18-1-103, MCA.

(3) through (5) remain the same.

AUTH: 18-1-114, 18-4-221, MCA  
IMP: 18-1-102, 18-7-107, MCA

2.5.501 SPECIFICATIONS (1) Specifications shall clearly describe the

state's requirements and allow for the obtaining of a supply or service which is adequate, ~~and suitable, and cost-effective~~ for the state's needs in a cost effective manner. Specifications may take into account, to the extent practicable, the costs of ownership and operation as well as initial acquisition costs and shall permit maximum practicable competition consistent with this purpose.

(2) Specifications shall, to the extent practicable, emphasize functional or performance criteria and limit design or other detailed physical descriptions to those necessary to meet the needs of the state. To facilitate the use of the criteria, an agency shall attempt to include as a part of their requisitions the principal functional or performance needs to be met, and any compatibility requirements.

(3) remains the same.

(4) Brand name items or descriptions may be used to indicate standards of quality, performance, and/or use desired.

(5) remains the same.

(6) A specification for a specific brand of supplies or services may be used if the requesting agency has a documented need to maintain a standard of performance and compatibility with existing supplies, equipment, or staff experience.

(7) through (7)(c)(iv) remain the same.

(d) description of other requirements, such as warranty, training, parts, manuals, service, etc.;

(e) description of any unusual conditions, such as installation, field tests, fiscal year funding source, etc.;

(f) date commodity is to be delivered.;

(g) location where commodity is to be delivered.;

(h) name, address, and phone number of agency contact person; and

(i) receiving procedures (if testing, sampling, or other evaluation will be performed when commodity is delivered to determine acceptability) must be described.

AUTH: 18-4-232, MCA

IMP: 18-4-231, 18-4-232, 18-4-233, through 18-4-234, MCA

#### 2.5.502 BID, PROPOSAL, AND CONTRACT PERFORMANCE SECURITY

~~(1) The state may, at its discretion, if the state requires bid or proposal security and/or contract performance security for the procurement of services and supplies, the types of security that may be used are those specified in 18-4-312, MCA.~~

~~(2) Bid or proposal security and contract performance security requirements must be stated in the invitation for bids or the request for proposals.~~

~~(3) The preferred types of security are bonds as described in 18-4-312(3)(a), MCA, and cash as described in 18-4-312(3)(c) and (d), MCA. The security must be payable to the state of Montana and the contract performance security must remain in effect for the entire contract period. The department will supply bid and proposal security bond and contract performance security bond forms when security is required. These are the only acceptable forms for surety bond or irrevocable letter of credit submission.~~

~~(a) If a certificate of deposit, money market certificate, cashier's check,~~

~~certified check, irrevocable letter of credit, bank money order, or bank draft is determined to be acceptable, it must be issued from a federally chartered or state-chartered bank or savings and loan association that is insured by or for which insurance is administered by the federal deposit insurance corporation or that is drawn and issued by a credit union insured by the national credit union share insurance fund.~~

~~(b) Irrevocable letters of credit in excess of \$100,000 from a single financial institution will not be accepted as security for contracts.~~

~~(c) remains the same, but is renumbered (3).~~

~~(d) (4) Certificates of deposit or money market certificates will not be accepted as security for bid, proposal, or contract security unless the certificates are assigned only to the state. All interest income from these certificates must accrue only to the contractor and not the state.~~

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

~~(6) (7) Factors to consider in requiring contract performance security and in determining the amount of security include:~~

~~(a) through (e) remain the same.~~

~~(f) damages chargeable to the state if the contractor defaults; and~~

~~(g) remains the same.~~

~~(7) remains the same, but is renumbered (8).~~

AUTH: 18-4-221, MCA

IMP: 18-1-201, 18-4-312, MCA

STATEMENT OF REASONABLE NECESSITY: House Bill No. 67 of the 2005 Legislature removed the stipulation that an irrevocable letter of credit provided as bid or contract security could not exceed \$100,000. ARM 2.5.502 is being amended to reflect this change as well as to clarify the language and remove unnecessary wording that is repetitive of statute.

2.5.503 PUBLIC NOTICE (1) and (2) remain the same.

(3) Where appropriate, the state may require payment of a fee or a deposit for supplying the invitation for bids or request for proposals.

(4) remains the same.

(5) Notice of public meetings conducted to evaluate requests for proposals must be posted to the division's web site no less than 72 hours in advance of the meeting.

AUTH: 18-4-221, MCA

IMP: 18-4-303, 18-4-304, MCA

STATEMENT OF REASONABLE NECESSITY: The addition of ARM 2.5.203(5) is necessary to specify the minimum time requirement for posting of evaluation meetings.

2.5.601 COMPETITIVE SEALED BIDS (1) through (3) remain the same.

(4) Where a brand name specification is used in a solicitation, the solicitation

shall contain explanatory language that the use of a brand name is for the purpose of describing the standard of quality, performance, and characteristics desired, and is not intended to limit or restrict competition. When bidding an "or equal" product, the burden of persuasion is on the bidder ~~that has not been specified~~ to convince the procurement officer that their product is, in fact, equal to the one specified. The procurement officer is given the responsibility and judgment for making a final determination ~~on~~ of whether a proposed substitution is equal to the brand name specified.

(5) and (6) remain the same.

(7) Bids shall be opened publicly at the time, date, and place designated in the invitation for bid.

(8) through (11) remain the same.

(12) In the case if a tie bid, the ~~The~~ discretion of the division or the head of a purchasing agency, will be used to resolve tie such bids, except that a bidder offering American-made products or supplies must be given preference.

(13) through (15) remain the same.

AUTH: 18-4-221, MCA

IMP: 18-4-303, MCA

STATEMENT OF REASONABLE NECESSITY: Senate Bill 459 (2007) amended 18-4-303, MCA, to provide for a preference to be given to an offeror of American-made products in the case of a tie bid. This information is added to rule to make clear that requirement.

2.5.602 COMPETITIVE SEALED PROPOSALS (1) remains the same.

(2) Competitive sealed proposals, solicited through a request for proposals, may be practical when one or more of the following conditions exist:

(a) through (d) remain the same.

(e) price will only be one of ~~several~~ the criteria considered in determining an award, ~~if evaluated at all.~~

(3) The request for proposals must be prepared in accordance with ARM 2.5.601 ~~(2) through (5)~~ and must also include:

(a) through (5) remain the same.

(6) Proposals shall be time-stamped upon receipt and held in a secure place by an employee of the agency until the ~~established time~~ due date specified in the request for proposals.

(7) remains the same.

(8) For the purpose of conducting discussions, proposals shall be initially classified as:

~~(a)~~ responsive; or

~~(b)~~ nonresponsive.

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

(A) through (C) remain the same, but are renumbered (i) through (iii).

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

(9) Discussions including oral presentations, interviews, demonstrations, responses to specific questions, modifications, and negotiations may be held with

one or more offerors to:

(a) and (b) remain the same.

~~(c) Discussions may include oral presentations, interviews, demonstrations, responses to specific questions, modifications, and negotiations.~~

(d) remains the same, but is renumbered (10).

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

AUTH: 18-4-221, MCA

IMP: 18-4-304, MCA

2.5.603 SMALL PURCHASES OR LIMITED SOLICITATIONS OF SUPPLIES AND SERVICES (1) through (3) remain the same.

(4) This rule does not apply to controlled items purchased through exclusive term contracts, requisition time schedules, the Central Stores Program, or the Print and Mail Services Bureau unless specifically delegated in a written delegation agreement to the agency.

(5) through (6)(d) remain the same.

AUTH: 18-4-221, MCA

IMP: 18-4-305, MCA

2.5.604 SOLE SOURCE PROCUREMENT (1) through (6)(b) remain the same.

(c) renewal of software license agreements; ~~or~~

(d) purchase or renewal of maintenance agreements for software or hardware; ~~or~~ and

(e) remains the same.

AUTH: 18-4-221, MCA

IMP: 18-4-306, MCA

2.5.606 PROCUREMENT OF USED EQUIPMENT (1) through (3) remain the same.

(a) consideration of the type, use, and life expectancy of new versus used equipment;

(b) through (d) remain the same.

(e) investigation of manufacturer or brand and availability of warranty, maintenance, and parts; and

(f) remains the same.

AUTH: 18-4-221, MCA

IMP: 18-4-221, MCA

2.5.607 PROCUREMENT FROM SHELTERED WORKSHOPS OR WORK ACTIVITY CENTERS (1) remains the same.

(2) The division ~~will~~ maintains a list of certified sheltered workshops or work activity centers, as defined in 18-5-101, MCA, located in the state. The list ~~will~~

includes the supplies and services provided by each. The list ~~will be~~ is available to ~~user agencies on the division's web site at~~ http://gsd.mt.gov/procurement/shelteredworkshops.asp.

AUTH: 18-5-102, MCA  
IMP: 18-5-102, 18-5-103, MCA

2.5.608 DIRECT NEGOTIATION (1) When none of the responses to invitations for bids or requests for proposals received in response to a valid solicitation are from a responsible and responsive bidder or offeror, as defined in 18-4-301, MCA, the procurement officer may:

(a) and (b) remain the same.

(2) Subject to conditions in (1) and the intent of 18-4-122, MCA, the determination as to whether a procurement will be made by direct negotiation must:

(a) be in writing; ~~must~~

(b) state the basis for the direct negotiation and for the selection of a particular vendor; ~~and must~~

(c) be approved by the department.

AUTH: 18-4-133, 18-4-221, MCA  
IMP: 18-4-133, MCA

2.5.609 ALTERNATIVE PROCUREMENT METHODS (1) An agency may request authorization from the ~~department~~ division to pursue an alternative procurement method for obtaining a supply or service.

(2) If an alternative procurement method is approved, the ~~department~~ division shall:

(a) through (c) remain the same.

AUTH: 18-4-221, 18-4-302, MCA  
IMP: 18-4-302, MCA

2.5.701 AUTHORITY TO DISPOSE OF SUPPLIES (1) remains the same.

(2) State agencies shall notify the division's property and supply bureau of all surplus supplies ~~on forms available at the bureau~~. The entity may suggest a dollar value per item or per lot, but the suggestion does not constitute the minimum sale or transfer amount. The figures are not public information prior to transfer or sale.

AUTH: 18-4-226, MCA  
IMP: 18-4-226, MCA

2.5.702 DISPOSITION OF SURPLUS SUPPLIES (1) The division's ~~property and supply bureau~~ may transfer surplus supplies to other state agencies and other units of government.

(2) Surplus supplies may be offered to the public by the division's ~~property and supply bureau~~ through competitive sealed bids, public auction, established markets, or posted prices. It is recognized, however, that some types and classes of



items can be sold or disposed of more readily and advantageously by other means, including barter. In such cases, and also where the nature of the supply or unusual circumstances call for its sale to be restricted or controlled, the division may employ such other means, including appraisal, if the division makes a written determination that such procedure is advantageous to the state.

(a) On sales greater than \$300, only United States postal money orders, certified checks, cashier's checks, or business checks may be accepted.

(3) If a sale is to be made by competitive sealed bidding, notice of the sale must be given at least ten days before the date set for opening bids by posting the bid on the state's bids and proposals web site at

<http://mt.gov/doa/gsd/osbs/default.asp> <http://gsd.mt.gov/osbs/default.asp>.

(a) through (8) remain the same.

AUTH: 18-4-226, MCA

IMP: 18-4-226, MCA

2.5.801 ADOPTION OF STATE PLAN OF OPERATION - FEDERAL SURPLUS PROPERTY (1) As authorized by 18-5-202, MCA, the Department of Administration (~~hereinafter department~~) hereby adopts and incorporates by reference the "State of Montana, Federal Surplus Property Plan of Operation in Compliance with 41 FR 101-44 and Public Law 94-519" (~~referred herein as the State Plan of Operation~~) promulgated by the department and filed with the General Services Administration of the United States government on July 1, 1977, and as revised March 19, 1984, pursuant to section 201(j)(4) of the Federal Property and Administrative Services Act of 1949 (40 USC 484).

(2) The State Plan of Operation establishes the operating procedure and practices to be followed by the department for the fair and equitable distribution of federal surplus personal property to those units of state and local government and certain nonprofit, tax-exempt, educational, and health institutions as are determined to be eligible to receive such surplus personal property under section 203(j) of the act.

(3) Copies of the State Plan of Operation may be obtained from the Department of Administration, General Services Division, P.O. Box 200137, Helena, Montana 59620-0137.

AUTH: 18-5-202, MCA

IMP: 18-5-202, MCA

STATEMENT OF REASONABLE NECESSITY: Except as noted with individual rules, these proposed rule amendments are a result of the division's biennial review of rules and are being made to conform the rules to the current requirements of the Secretary of State's office. Improvements to rule language, grammatical changes, and updates to web addresses are included to clarify and correct rule text where appropriate. In addition, corrections and updates to statutes cited as giving authority and/or being implemented by rule are being made as part of this required review.

5. Concerned persons may present their data, views, or arguments, either

orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Gretchen Bingman, State Procurement Bureau, 125 North Sanders, Helena, MT 59620; telephone (406) 444-7210; facsimile (406) 444-2529; e-mail to [gbingman@mt.gov](mailto:gbingman@mt.gov), and must be received no later than 5:00 p.m., September 21, 2007.

6. Brad Sanders, Bureau Chief, State Procurement Bureau, has been designated to preside over and conduct the hearing.

7. An electronic copy of this Notice of Proposed Adoption and Amendment is available through the department's web site at <http://doa.mt.gov/AdministrativeRules.asp>. The department strives to make the electronic copy of this notice conform to the official version of the notice as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site 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 State Procurement Bureau maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this office. Persons who wish to have their name added to the mailing list shall make a written request which includes the name and mailing address or e-mail address of the person to receive notices and specifies that the person wishes to receive notices regarding State Procurement Bureau and/or Property and Supply Bureau rulemaking actions. Such written requests may be mailed or delivered to Gretchen Bingman, State Procurement Bureau, 125 North Sanders, Helena, MT 59620; faxed to the office at (406) 444-2529; e-mailed to [gbingman@mt.gov](mailto:gbingman@mt.gov); or may be made by completing a request form at any rules hearing held by the department.

9. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled. Senator Larry Jent, the primary bill sponsor of HB 67 (2005), was notified on July 31, 2007, by regular mail. Senator Donald Steinbeisser, the primary bill sponsor of SB 328 (2007), was notified on July 31, 2007, by regular mail. Senator Jim Elliott, the primary bill sponsor of SB 459 (2007), was notified on July 31, 2007, by regular mail.

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 August 13, 2007.

BEFORE THE DEPARTMENT OF ADMINISTRATION  
OF THE STATE OF MONTANA

In the matter of the repeal of ARM ) NOTICE OF PROPOSED REPEAL  
2.6.101 pertaining to insurance )  
requirements ) NO PUBLIC HEARING  
) CONTEMPLATED

TO: All Concerned Persons

1. On October 5, 2007, the Department of Administration proposes to repeal the above-stated rule.

2. The Department of Administration will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Administration no later than 5:00 p.m. on August 31, 2007, to advise us of the nature of the accommodation that you need. Please contact Kristie Rhodes, Department of Administration, 1625 11th Avenue, Helena, Montana, 59620; telephone (406) 444-2421; fax (406) 444-2592; Montana Relay Service 711; or e-mail krhodes@mt.gov.

3. The department proposes to repeal the following rule:

2.6.101 INSURANCE REQUIREMENTS found at page 2-261 of the Administrative Rules of Montana.

AUTH: 2-9-201, MCA  
IMP: 2-9-201, MCA

REASON: The department is proposing to repeal ARM 2.6.101 because the insurance requirements for independent contractors are outdated and no longer apply.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Brett Dahl, Department of Administration, 1625 11th Avenue, Helena, Montana, 59620; telephone (406) 444-2421; fax (406) 444-2592; or e-mail bdahl@mt.gov, and must be received no later than 5:00 p.m., September 20, 2007.

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 to Brett Dahl at the above address no later than 5:00 p.m., September 20, 2007.

6. If the agency receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons 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 directly affected has been determined to be greater than 25 persons based on an estimated number of contracts issued yearly.

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Such written request may be mailed or delivered to the contact person in 4 above or may be made by completing a request form at any rules hearing held by the department.

8. An electronic copy of this Proposal Notice is available through the department's web site at <http://doa.mt.gov/AdministrativeRules.asp>. 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 works to keep its web site accessible at all times, concerned persons should be aware that the web site 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.

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 August 13, 2007.

BEFORE THE TEACHERS' RETIREMENT BOARD  
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PROPOSED
ARM 2.44.301A, 2.44.305, 2.44.401,	)	AMENDMENT AND REPEAL
2.44.515, 2.44.522, and 2.44.523,	)	
and repeal of ARM 2.44.513	)	
pertaining to Definitions, Optional	)	NO PUBLIC HEARING
Retirement Program, Calculating	)	CONTEMPLATED
Service Credits, Corrections of	)	
Errors, Family Law Orders,	)	
Withholding of Insurance Premium	)	
from Retirement Benefit	)	

TO: All Concerned Persons

1. On October 5, 2007, the Teachers' Retirement Board proposes to amend and repeal the above-stated rules.

2. The Teachers' Retirement Board will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Teachers' Retirement System (TRS) no later than 5:00 p.m. on September 10, 2007, to advise us of the nature of the accommodation that you need. Please contact Rita Karnopp, Teachers' Retirement System, P.O. Box 200139, Helena, Montana 59620; telephone (406) 444-3754; fax (406) 444-2641; TDD/TTY (406) 444-1421; or e-mail rkarnopp@mt.gov.

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

2.44.301A DEFINITIONS For the purpose of this chapter, the following definitions apply:

(1) remains the same.

(2) "Contingent beneficiary" means a beneficiary designated to receive payments if all primary beneficiaries are deceased. Contingent beneficiaries will be awarded benefits on a share-and-share-alike basis, unless specified otherwise on the member's designation form.

~~(2)~~(3) "Enrolled actuary" means a person who is enrolled by the Joint Board for the Enrollment of Actuaries established under Subtitle C of the Title III of the Employee Retirement Income Security Act of 1974.

(4) "Paraprofessional" means someone who provides instructional support which includes:

(a) one-on-one tutoring;

(b) classroom management, such as organizing instructional materials;

(c) instructional assistance in a computer laboratory;

(d) conducting parental involvement activities;

(e) a translator; or  
(f) instructional support services under the direct supervision of a highly qualified teacher.

(5) "Primary beneficiary" means a beneficiary or beneficiaries designated to receive payments upon the death of an active, inactive or retired member, or alternate payee. Primary beneficiaries will be awarded benefits on a share-and-share-alike basis, unless specified otherwise on the member's designation form.

~~(3)~~(6) "Service credits" or "creditable service" means the number of years credited to a member's account for which contributions have been received as required by statute or rule.

~~(4)~~(7) "School term or school year" means the fiscal year July 1 through June 30.

AUTH: 19-20-201, MCA

IMP: 19-20-101, 19-20-204, 19-20-302, MCA

Reason: The terms "contingent" and "primary" beneficiaries are not defined in statute. However, contingent and primary beneficiaries are a fundamental component used to determine benefits; therefore, these terms are used in various administrative rules to identify potential and/or eligible benefit recipients and need to be clearly understood. HB 81 2007 regular session, clarified that paraprofessionals must be members of TRS. It is necessary to define "paraprofessionals" because some districts classify both their instructional and noninstructional support staff as "paraprofessionals".

2.44.305 OPTIONAL RETIREMENT PROGRAM FOR CERTAIN MEMBERS OF THE MONTANA UNIVERSITY SYSTEM (1) through (1)(c) remain the same.

~~(2) Members of the Montana university system, electing to participate in the optional retirement program, will not be eligible for retirement benefits under Title 19, chapter 4, parts 8 and 9 until they have terminated their employment.~~

~~(3) Retirees returning to employment within a unit of the university system and electing to participate in the optional retirement program will be reinstated to the status of an inactive vested member of the teachers' retirement system and their monthly benefit will be cancelled.~~

AUTH: 19-20-201, MCA

IMP: 19-20-302, 19-20-621, MCA

Reason: The substantive provisions of sections (2) and (3) were included in HB 81, of the 2007 regular session. The Montana Administrative Procedure Act prohibits unnecessary repetition of statute language in administrative rule.

2.44.401 CALCULATING SERVICE CREDITS (1) The basic period of time for calculating service credit shall be the ~~school term~~ fiscal year July 1 through June 30. Service Generally, service credit in the Montana Teachers' Retirement System shall be based upon the following unless otherwise provided by rule or statute:

~~(a) nine months or 180 days of full-time employment shall equal 1.0 year service credit for any employment eligible to be qualified under the teachers' retirement system.~~

~~(b) twelve months or 360 days in a school term shall equal 1.0 year service credit for military service qualified in the teachers' retirement system.~~

~~(c)(a) Service credit for Public Employees' Retirement System service qualified in the Teachers' Retirement System shall be credited to the member's account at the same rate earned under and reported to the Public Employees' Retirement System.~~

~~(2)(b) A member employed part-time less than full-time during the school term fiscal year shall receive part-time service credit based on the total full-time equivalent number of hours, days, or months verified by his employer reported to the Teachers' Retirement System, divided by the number of hours, days, or months reported of equivalent full-time service. For the purpose of this subsection, seven hours shall be considered one day.~~

~~(3)(2) For employees of the university system and community colleges, part-time service credit shall be prorated based upon the portion of the full-time contract completed and/or the daily rate of pay if available.~~

AUTH: 19-20-201, MCA

IMP: 19-20-204, 19-20-401, 19-20-402, 19-20-403, 19-20-404, 19-20-405, 19-20-406, 19-20-407, 19-20-408, 19-20-409, 19-20-410, 19-20-411, MCA

Reason: The definition of full-time service was clarified in House Bill 63 amendments adopted in the 2007 regular session. The amendments propose to strike subsection (1)(b) because the provision is duplicated in ARM 2.44.402.

2.44.515 CORRECTION OF ERRORS ON CONTRIBUTIONS AND OVERPAYMENTS (1) through (3) remain the same.

~~(4) Interest shall accrue on contributions not reported or amounts overpaid to members at the actuarial assumed rate. Interest will accrue from the date the contributions were due, or the date the error occurred.~~

~~(5) If payment is received within 30 days of notification of the amount due, interest may be waived if less than \$5.00 or if the board finds that the error was caused by the teachers' retirement system.~~

AUTH: 19-20-201, MCA

IMP: 19-20-208, 19-20-716, MCA

Reason: Sections (4) and (5) are no longer necessary because HB 81 (2007) codified the process for correcting errors on contributions and overpayments.

2.44.522 FAMILY LAW ORDER -- CONTENTS AND DURATION (1) The board will make available to the public a checklist of required and optional family law order (FLO) characteristics and representative model forms approved for inclusion in a proposed FLO Family Law Order (FLO).

~~(2) A FLO may order the splitting and payment of the sums payable to specific participants from a retirement system. The term participant will be construed to include all possible appropriate participants unless specifically defined in the FLO. If specific participants are not named, retirement benefits or amounts payable to another upon the death of any and all participants will be allocated according to the terms of the FLO. Specific designations of participant(s) in a FLO may include:~~

~~(a) An individual "member" (active, inactive or retired).~~

~~(b) "Primary" and/or designated beneficiary(ies)" eligible to receive lump sum payment(s) upon the death of an active or inactive member of the system and "designated beneficiary" designated at the time of retirement to receive continuing retirement benefits upon the death of the retired member.~~

~~(3) Payments under a FLO must be the same type and form as, and for no greater amount or duration than, those available to any participant from the account being assigned. A benefit, option or payment available for another at the discretion of the participant may be subject to a FLO. Only the participant can be required to designate a specific option or request a refund. (For example, if a participant may choose a beneficiary, the FLO may require the participant to name a specific alternate payee as a beneficiary or require that a portion of the named beneficiary's payment be paid to the alternate payee.)~~

~~(4)(2) If benefits are currently payable to the participant(s), the FLO may specify a future effective date. However; however, no a FLO may not provide for payments to an alternate payee prior to the date on which the participant first becomes eligible for payment from the retirement system TRS.~~

~~(5) Unless otherwise specified in the FLO, payments to an alternate payee will continue only until benefits cease to be paid to any participant. Payments to an alternate payee may be further limited in the FLO to:~~

~~(a) the life of the participant whose payment rights are being transferred,~~

~~(b) a specified maximum time,~~

~~(c) the life of the alternate payee, or~~

~~(d) the life of a designated participant.~~

~~(6)(3) Two basic types of payment distributions are allowed to alternate payees: "defined sum fixed amount" and "proportionate payments actuarially equivalent benefit."~~

~~(a) A "defined sum fixed amount" must designate a specific total dollar amount to be paid to the alternate payee over a specified period of time, or a specified monthly amount payable for the life of the participant, neither of which can be greater than the total monthly benefit payable to the participant, in the form of a fixed dollar amount payable for a designated maximum number of months. (For example: "A sum of \$9,000 to be paid at a rate of \$150 per month for 60 monthly payments or until benefits cease, whichever comes first".) If the fixed monthly payment designated is more than the total monthly benefit or payment to the participant, the lesser amount will be paid, for the designated number of months or until any benefits cease. The defined sum, the designated monthly dollar amount, and the designated number of months will not be increased by subsequent conditions or events.~~



~~(b) "Proportionate payments" An "actuarially equivalent benefit" is payable for the life of the alternate payee. may be ordered by designating either a fixed percentage of benefits payable or a formula describing how the percentage must be calculated at the time payments begin. The fixed percentage must indicate a specific percentage of each payment to be paid to the alternate payee, either as a percentage or as a fraction for which the numerator and denominator are indicated. (For example: "50% of any withdrawal of member contributions.") A formula calculating a fixed percentage may use either years or dollar amounts to establish a proportionate benefit for an alternate payee. (For example: "a fixed percentage of benefits which is equal to 50% of 7 years divided by the total number of years of service used to calculate the participant's benefit" or "a fixed percentage of benefits which is described by dividing \$150 per month by the total monthly benefit amount payable for service retirement when participant's payments begin".) All proportionate payments to the alternate payee will include the same proportion of any guaranteed annual benefit allowance, cost of living allowance, post-retirement adjustment or similar increase payable to the participant in any month during which the FLO is in effect.~~

AUTH: 19-20-201, MCA  
IMP: 19-20-305, MCA

Reason: The statute governing family law orders was significantly rewritten by the 2007 Legislature in HB 81. The changes are intended to eliminate language no longer necessary, and to clarify the standard formula for dividing benefits.

#### 2.44.523 FAMILY LAW ORDERS -- APPROVAL AND IMPLEMENTATION

~~(1) A participant or alternate payee must submit a certified copy of a court judgment, decree, or order containing a proposed family law order (FLO) to the board for approval. The board may delegate has delegated authority for approval of a proposed FLO to the executive director of TRS.~~

~~(2) No FLO is effective prior to October 1, 1993. The effective date for a required initiation or change in a type or form of benefit, option, payment, or beneficiary designation will be the date the participant properly executes and files the appropriate corresponding form with the board. Unless a later date is specified in the proposed FLO, the effective date for purposes of allocating benefits and payments in progress is the first day of the month following receipt of a certified copy of the FLO.~~

~~(3) Beginning on the appropriate effective date, payments to the participant, if any, will be adjusted as directed in the proposed FLO and payments to be received by the alternate payee(s), if any, will be retained by the board. If the proposed FLO is approved, retained payments will be paid to the alternate payee(s); if not approved, to the participant. For purposes of allocating a lump sum payment, a certified copy of the FLO must be received before the payment is mailed or otherwise conveyed to the participant.~~

~~(4) through (8) remain the same.~~

AUTH: 19-20-201, MCA

IMP: 19-20-305, MCA

Reason: The changes are intended to eliminate extraneous verbiage, and to clarify that the effective date of a Family Law Order cannot be prior to the first of the month following the month of receipt of the Family Law Order by the Teachers' Retirement System, and to comply with the amendments included in HB 81.

4. The rule proposed for repeal is as follows:

2.44.513 WITHHOLDING OF GROUP INSURANCE PREMIUM FROM RETIREMENT BENEFIT located at page 2-3266, Administrative Rules of Montana. This rule would not be replaced.

AUTH: 19-20-201, MCA

IMP: 19-4-1101, MCA

Reason: This rule is no longer necessary because changes in HB 81 (2007) clarified that each employer must use the TRS online withholding system.

5. Concerned persons may submit their data, views, or arguments concerning the proposed actions in writing to: David L. Senn, Teachers' Retirement System, P.O. Box 200139, Helena, Montana 59620; telephone (406) 444-3376; fax (406) 444-2641; or e-mail dsenn@mt.gov, and must be received no later than 5:00 p.m., September 20, 2007.

6. If persons who are directly affected by the proposed actions 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 to David L. Senn at the above address no later than 5:00 p.m., September 20, 2007.

7. If the agency receives requests for a public hearing on the proposed actions from either 10% or 25, whichever is less, of the persons directly affected by the proposed actions; 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 has been determined to be 3,890 persons based on the total active, inactive, and retired membership of the Teachers' Retirement System.

8. The Teachers' Retirement System 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 for which program the person wishes to receive notices. Such written request may be mailed or delivered to the contact person in paragraph 2 above or

may be made by completing a request form at any rules hearing held by the Teachers' Retirement System.

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

10. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled. The primary sponsors were notified by e-mail on July 16, 2007, that the agency has begun work on the proposed rules.

/s/ Dal Smilie  
Dal Smilie  
Rule Reviewer

/s/ David L. Senn  
David L. Senn  
Executive Director  
Teachers' Retirement System

Certified to the Secretary of State August 13, 2007.

BEFORE THE STATE LOTTERY COMMISSION  
DEPARTMENT OF ADMINISTRATION  
OF THE STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF PROPOSED  
ARM 2.63.1201 and the repeal of ) AMENDMENT AND REPEAL  
ARM 2.63.1007, concerning the State )  
Lottery's procedures pertaining to ) NO PUBLIC HEARING  
prizes and sales incentives ) CONTEMPLATED

TO: All Concerned Persons

1. On October 12, 2007, the State Lottery Commission proposes to amend and repeal the above-stated rules.

2. The State Lottery Commission will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the State Lottery Commission no later than 5:00 p.m. on September 4, 2007, to advise us of the nature of the accommodation that you need. Please contact John Tarr, State Lottery, P.O. Box 200544, Helena, MT 59620-0544, telephone (406) 444-5804, fax (406) 444-5830, e-mail jtarr@mt.gov.

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

2.63.1201 PRIZES (1) and (2) remain the same.

(3) The claimant's name, city of residence, and amount of prize is public information. The lottery may use a claimant's name and photograph for publicity and advertising purposes only upon written authorization by the claimant.

(4) through (7) remain the same.

(8) Upon validation of a winning claim, a check, electronic transfer, or warrant for the amount of the prize shall be issued to the claimant, less any applicable state or federal income tax withholding.

(9) through (11) remain the same.

(12) If the commission enters into an agreement to participate in a game for prizes over \$100,000 that requires payment periods of more than 20 years or yearly installment payments of less than \$20,000 as a condition of participation, the commission may adopt the installment payment amounts and time periods necessary to comply with the conditions of the game.

~~(12)~~ (13) All prizes payable at the death of a winner, shall be paid to a designated beneficiary, the estate of the deceased, or to a person designated by judicial order.

AUTH: 23-7-202, MCA  
IMP: 23-7-202, 23-7-211, MCA

REASON: The amendment to (3) clarifies that the information may not only be used for publicity, but may also be used for advertising purposes. The amendment to (8) allows the Lottery to provide the option of electronic transfer of prize winnings directly to the claimants account. A new (12) is added to clarify the exception provided for in 23-7-311(3)(b), MCA, concerning the 20-year maximum pay out period and \$20,000 minimum annual installment for prize payouts. The Lottery currently participates in Multi-State Lottery (MUSL) games requiring payment periods of more than 20 years.

4. The department proposes to repeal the following rule:

2.63.1007 SALES STAFF INCENTIVE PLAN found at page 2-6542 of the Administrative Rules of Montana.

AUTH: 23-7-202, MCA

IMP: 23-7-202, MCA

REASON: There is no further funding for the Sales Staff Incentive Plan.

5. Concerned persons may submit their data, views, or arguments concerning the proposed actions in writing to: John Tarr, Montana Lottery, P.O. Box 200544, Helena, MT 59620-0544, telephone (406) 444-5804, fax (406) 444-5830, e-mail jtarr@mt.gov, and must be received no later than 5:00 p.m., September 20, 2007.

6. If persons who are directly affected by the proposed actions 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 to John Tarr at the above address no later than 5:00 p.m., September 20, 2007.

7. If the commission receives requests for a public hearing on the proposed actions from either 10% or 25, whichever is less, of the persons directly affected by the proposed actions; 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 directly affected has been determined to be 30 persons based on the number of lottery retailers in the state.

8. The State Lottery Commission 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 for which program the person wishes to receive notices. Such written request may be mailed or delivered to the contact person in 5 above or may be made by completing a request form at any rules hearing held by the commission.

9. An electronic copy of this Proposal Notice is available through the Department of Administration's web site at <http://doa.mt.gov/AdministrativeRules.asp>. 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 works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

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

By: /s/ Robert Crippen  
Robert Crippen, Chair  
Montana Lottery Commission

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

Certified to the Secretary of State August 13, 2007.

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

In the matter of the repeal of ARM ) NOTICE OF PROPOSED REPEAL  
12.6.401 pertaining to time zones )  
 ) NO PUBLIC HEARING  
 ) CONTEMPLATED

TO: All Concerned Persons

1. On September 27, 2007, the Department of Fish, Wildlife and Parks Commission (commission) proposes to repeal the above-stated rule.

2. The commission will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., September 4, 2007, to advise us of the nature of the accommodation that you need. Please contact Jessica Snyder, Department of Fish, Wildlife and Parks, 1420 East Sixth Avenue, P.O. Box 200701, Helena, Montana 59620-0701; telephone (406) 444-4594; fax (406) 444-7456; or e-mail [jesnyder@mt.gov](mailto:jesnyder@mt.gov).

3. The commission proposes to repeal the following rule:

12.6.401 TIME ZONES found at page 12-309 of the Administrative Rules of Montana.

AUTH: 87-1-304  
IMP: 87-1-304

4. The commission is proposing to repeal ARM 12.6.401 to be consistent with the annual hunting regulations that contain the sunrise and sunset tables that are currently used for each hunting season. The commission no longer uses the tables in ARM 12.6.401.

5. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to Jessica Snyder, Department of Fish, Wildlife and Parks, 1420 East Sixth Avenue, P.O. Box 200701, Helena, Montana 59620-0701; telephone (406) 444-4594; fax (406) 444-7456; or e-mail [jesnyder@mt.gov](mailto:jesnyder@mt.gov), and must be received no later than September 20, 2007.

6. If persons who are directly affected by the proposed action wish to express their data, views, and 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 to Jessica Snyder, P.O. Box 200701, Helena, Montana 59620-0701, or e-mail them to [jesnyder@mt.gov](mailto:jesnyder@mt.gov). A written request for a hearing must be received no later than September 20, 2007.

7. If the commission 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 zero based on the fact that the annual publication of the hunting regulations contain the sunrise and sunset information that is used for determining hunting hours. The tables in ARM 12.6.401 are not used and therefore have no effect.

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

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

/s/ Steve Doherty  
Steve Doherty, Chairman  
Fish, Wildlife and Parks  
Commission

/s/ Robert N. Lane  
Robert N. Lane  
Rule Reviewer

Certified to the Secretary of State August 13, 2007



BEFORE THE DEPARTMENT OF CORRECTIONS  
OF THE STATE OF MONTANA

In the matter of the adoption of new rules ) NOTICE OF PUBLIC  
I through VI pertaining to security and ) HEARING ON PROPOSED  
confidentiality of youth records ) ADOPTION

TO: All Concerned Persons

1. On September 13, 2007, at 10:00 a.m. a public hearing will be held in Room 24 of the Department of Corrections Annex at 515 N. Sanders, Helena, Montana, to consider the proposed adoption of the above-stated rules.

2. The Department of Corrections 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 September 6, 2007, to advise us of the nature of the accommodation that you need. Please contact Myrna Omholt-Mason, 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. The new rules are necessary to implement the provisions of Title 41, chapter 5, part 2, MCA, which requires the Department of Corrections to adopt appropriate control methods to ensure adequate integrity, security, and confidentiality of any electronic records of a youth, collected, generated, disseminated, or maintained by the department in any management information system, as authorized under Title 53, chapter 1, part 2, MCA.

4. The proposed new rules provide as follows:

NEW RULE I DEFINITIONS As used in this subchapter, the following definitions apply:

(1) "Access capability" means authority granted to an individual which allows viewing of data residing in a computer system file. Access capability is generally managed through assignments of a user ID and password.

(2) "Administrative systems and applications" means any computer system/application programming which supports administrative activities of the Department of Corrections. This includes systems or applications supporting both the central administration and the administrative units of the various bureaus of the department.

(3) "Central office file" means an electronic record that is maintained in the central office of the Department of Corrections on each youth offender under the jurisdiction or responsibility of the Youth Services Division.

(4) "Data" means any data related to the records maintained in any youth data system developed by or used by the Department of Corrections Youth Services Division.

(5) "Data owner" means the Department of Corrections employee responsible for the data in the youth data system (e.g., a division or department head). The division head of the Youth Services Division in the Department of Corrections, as well as the department director, are the data owners. Responsibilities include evaluation/approving requests for access to specific data or groups of data.

(6) "Data security officer" means an employee from the Information Technology Bureau responsible for evaluating and monitoring system access. The data security officer will evaluate requests for access to application databases.

(7) "Electronic records" means records created or stored by electronic means, including but not limited to, computer files, scanned images, files on tape, disks, or internal memory.

(8) "Management information system" means the computer systems in an organization that provide information about its business operations, as well as the personnel in the Department of Corrections who manage these systems.

(9) "Offender field file" means the electronic record that is created and maintained in the field offices of juvenile parole officers or youth correctional facilities that consists of legal documents, reports, submissions, statements, and support materials used to make decisions about the offender in regard to custody, treatment programs, supervision, parole, and general case management. These records contain the complete adjudication referral documents that authorize the Youth Services Division to maintain legal custody and/or supervision of offenders. These files are used on a daily basis for routine case management and for making decisions about offenders in regard to placements, custody, treatment, and supervision.

(10) "Public information" means information that is available or distributed to the general public either regularly or upon request.

(11) "Restricted information, moderately sensitive/highly sensitive" means information intended for use only by individuals who require that information in the course of performing their agency responsibilities, or information protected by federal and state regulations. Requests for access to this information must be authorized by the applicable division administrator or department director.

(12) "Systems and applications" means any computer system/application programming which supports activities of the Department of Corrections.

(13) "Update capability" means access capability which allows an individual to alter, add, or delete data in a computer system file.

(14) "User ID" means a character string which identifies an individual to a computer system, enabling access and/or update capabilities.

(15) "Youth Community Corrections Bureau" means the bureau within the Youth Services Division that is responsible for the statewide supervision and habilitation of youth offenders including community transition centers, parole, financial and program services, interstate compact of juveniles, juvenile detention licensing, and numerous contracts providing placement and services for youth.

(16) "Youth Services Division" means a division of the Department of Corrections consisting of juvenile corrections programs including Pine Hills Youth Correctional Facility, Riverside Youth Correctional Facility, and the Youth Community Corrections Bureau.

AUTH: 41-5-220, MCA  
IMP: 41-5-220, MCA

REASON: The agency proposes New Rule I, Definitions, to define terms used in the body of New Rules II through VI.

NEW RULE II DEPARTMENT OF CORRECTIONS RULES FOR MANAGEMENT OF ELECTRONIC YOUTH DATA SYSTEMS (1) The Department of Corrections Youth Services Division is responsible for the protection of its information assets, including all electronically created and stored data regarding the youth under its care and custody. The department will allow the use, access, and disclosure of such information only in accordance with its interest and applicable laws and regulations. All department employees providing services or working with the department's information are responsible for protecting it from unauthorized access, modification, destruction, or disclosure.

(2) The Department of Corrections shall follow all current state of Montana Enterprise policies governing user responsibility, security of electronic information, workstation care, and virus detection and prevention. Where the Department of Corrections' policies and written procedures are more restrictive than Enterprise policies, the department's policies and procedures must be followed.

(3) The records maintained in any youth data system developed by or used by the department shall be maintained totally separate and apart from electronic records developed or used for the adult population supervised by the department. The youth data system may be a separate entity of a system used for the adult population.

AUTH: 41-5-220, MCA  
IMP: 41-5-215, 41-5-216, 41-5-220, 52-2-203, 52-2-211, MCA

NEW RULE III DEPARTMENT OF CORRECTIONS RULES FOR DESTRUCTION OF YOUTH RECORDS (1) The Department of Corrections shall ensure that any entity receiving youth information as allowed by law is informed of its obligation to destroy the information when its purpose is fulfilled and no later than the date that the record is sealed.

(2) If the department provides copies of any electronic youth record to another agency, the other agency must destroy the record when the records have fulfilled their purpose or have been sealed, whichever occurs first.

(3) The department shall institute procedures to identify electronic records to be sealed and destroyed and to seal or destroy such records in a timely manner.

AUTH: 41-5-220, MCA  
IMP: 41-5-215, 41-5-216, 41-5-220, 52-2-203, 52-2-211, MCA

NEW RULE IV APPLICATION OF RULES REGARDING ACCESS AND UPDATE CAPABILITIES/RESTRICTIONS (1) Access and update capabilities and restrictions shall apply to all Department of Corrections Youth Services Division data

stored on computers used for Department of Corrections Youth Services Division purposes.

(2) The data owner, as the supervisor, is responsible for the data residing in the youth data system. These responsibilities include:

- (a) ensuring proper operating controls over the application in order to maintain a secure processing environment;
- (b) ensuring accuracy and quality of data residing in the application; and
- (c) approving all requests for access to and update capability for the specific application.

(3) On an annual basis, the data owner and the data security officer will review the current set of access and update capabilities granted to each individual on the system in order to ensure that no changes are necessary.

AUTH: 41-5-215, 41-5-216, 41-5-220, MCA

IMP: 41-5-215, 41-5-216, 41-5-220, 52-2-203, 52-2-211, MCA

#### NEW RULE V MAINTAINING CONFIDENTIALITY OF RESTRICTED DATA

(1) It will be the responsibility of the data owner to ensure that all individuals with access to restricted data are aware of the confidential nature of the information and the limitations, in terms of disclosure, that apply. Each individual who is granted a user ID and password shall be responsible for maintaining confidentiality over appropriate information without exception. The release of restricted data without the express approval of the data owner will result in appropriate disciplinary action, including possible dismissal.

AUTH: 41-5-216, 41-5-220, MCA

IMP: 41-5-215, 41-5-216, 41-5-220, MCA

#### NEW RULE VI REPORTING DATA SECURITY BREACHES (1) Data

owners and data security officers are responsible for reporting security breaches identified during the course of their responsibilities.

(2) All individuals with responsibility over or access to youth data system are expected to follow the policies and procedures of the Department of Corrections and to exercise discretion with regard to such information. Any individual with access to the youth data system who engages in unauthorized use, disclosure, alteration, or destruction of data in violation of the policy will be subject to appropriate disciplinary action, including possible dismissal and/or legal action.

AUTH: 41-5-216, 41-5-220, MCA

IMP: 41-5-216, 41-5-220, MCA

5. Concerned persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Myrna Omholt-Mason at the contact information listed in paragraph 2, and must be received no later than 5 p.m. on September 20, 2007.

6. 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 adult community corrections, youth services, board of pardons and parole, private correctional facilities, or general departmental rulemakings. 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.

7. An electronic copy of this Notice of Public Hearing is available through the department's web site at [www.cor.mt.gov](http://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. However, the department advises that it will decide any conflict between the official version and the electronic version in favor of the official printed version. In addition, the department advises that the web site may be inaccessible at times, due to system maintenance or technical problems.

8. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was notified on July 30, 2007, by regular mail.

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

/s/ Mike Ferriter  
MIKE FERRITER  
Director of Corrections

/s/ Colleen A. White  
COLLEEN A. WHITE  
Rule Reviewer

Certified to the Secretary of State July 31, 2007.

BEFORE THE DEPARTMENT OF JUSTICE  
OF THE STATE OF MONTANA

In the matter of the proposed amendment )	NOTICE OF PUBLIC HEARING
of ARM 23.16.209, 23.16.2102, and )	ON PROPOSED AMENDMENT
23.16.2105, concerning possession )	
and display of antique slot machines, )	
approved accounting and reporting )	
system availability date, and general )	
specifications of approved automated )	
accounting and reporting systems )	

TO: All Concerned Persons

1. On September 13, 2007, at 9:00 a.m., the Montana Department of Justice will hold a public hearing in the conference room at the Gambling Control Division, 2550 Prospect Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Justice 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 September 6, 2007, to advise us of the nature of the accommodation that you need. Please contact Rick Ask, Gambling Control Division, 2550 Prospect Avenue, P.O. Box 201424, Helena, MT 59620-1424; telephone (406) 444-1971; Fax (406) 444-9157; Montana Relay Service 711; or e-mail rask@mt.gov.

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

23.16.209 DISPLAY OF ILLEGAL GAMBLING DEVICES AND ANTIQUE ILLEGAL GAMBLING DEVICES (1) through (4)(c) remain the same.

(5) To qualify as an antique gambling device, a slot machine must have been manufactured more than 25 years prior to the date of possession, may be restored but must possess mostly original cabinet parts and castings, the mechanical mechanism must be substantially original in parts and design, and the machine must display its original serial number or show evidence where the original serial number once existed but was removed.

AUTH: 23-5-115, MCA  
IMP: 23-5-152, 23-5-153, MCA

RATIONALE AND JUSTIFICATION: This proposed amendment is intended to clarify what constitutes an antique slot machine. The division was requested to opine whether restored slot machines that contain new mechanical workings could constitute antique illegal gambling devices such that they could be legally possessed

and displayed under the law relating to antique gambling devices. Upon inspection of renovated and remanufactured slot machines for sale, review of other states' laws dealing with antique slot machines, and after requesting and considering input of licensed antique gambling device dealers in Montana, the division proposes these amendments to specify what components are necessary for an antique slot machine to qualify as an antique illegal gambling device.

23.16.2102 APPROVED ACCOUNTING AND REPORTING SYSTEM AVAILABILITY IN RELATION TO MULTI-GAME AGREEMENTS (1) For purposes of determining when an approved automated accounting system is available under the terms of multi-game video gambling machine agreements, the availability date shall be January 1, 2008, which is a date ~~no~~ not sooner than 180 days after the department ~~has~~ approved at least two commercially available systems under ARM 23.16.2105 for tier II systems, and when tax reporting ~~is~~ was available through the department's internet web site.

AUTH: 23-5-621, MCA  
IMP: 23-5-637, MCA

RATIONALE AND JUSTIFICATION: These proposed amendments logically follow the existing rule's definition of an availability date as being no sooner than 180 days after approval of at least two commercially available reporting systems. Because two such systems became commercially available before July 1, 2007, the division proposes to declare January 1, 2008, as the relevant triggering date under the terms of multi-game agreements for machine owners to electronically report video gambling machine tax information to the state.

23.16.2105 GENERAL SPECIFICATIONS OF APPROVED AUTOMATED ACCOUNTING AND REPORTING SYSTEMS (1) through (2)(a)(i)(I) remain the same.

(J) soft meter total cents in, total cents played, total cents won, total cents paid; ~~and~~

(K) accounting system software version; and

(L) Program ID;

(ii) through (b)(i)(O) remain the same.

(P) number of games won if available; ~~and~~

(Q) accounting system software version; and

(R) Program ID if changed since last transmission.

(3) through (6) remain the same.

AUTH: 23-5-115, 23-5-621, MCA  
IMP: 23-5-631, 23-5-637, MCA

RATIONALE AND JUSTIFICATION: These proposed amendments will require the video gambling machine's program identification data to be reported to the division under the approved automated accounting and reporting systems via an Excel Bulk Change spreadsheet, along with the other information already required under this

rule. Some video gambling machines report credits in nickel or quarter denominations, while most modern video gambling machines report credits which equal a penny. This program identification information is necessary to allow the division to identify the correct credit denomination for the individual machines reported in GenTax, and this will assist in the prompt and accurate calculation of taxes.

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 Rick Ask, Gambling Control Division, 2550 Prospect Avenue, P.O. Box 201424, Helena, MT 59620-1424; Fax (406) 444-9157; or e-mail [rask@mt.gov](mailto:rask@mt.gov), and must be received no later than September 20, 2007.

5. Cregg Coughlin, Assistant Attorney General, Gambling Control Division, has been designated to preside over and conduct the hearing.

6. The Department of Justice 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 of rules regarding the Crime Control Division, the Central Services Division, the Forensic Sciences Division, the Gambling Control Division, the Highway Patrol Division, the Law Enforcement Academy, the Division of Criminal Investigation, the Legal Services Division, the Consumer Protection Division, the Motor Vehicle Division, the Justice Information Systems Division, or any combination thereof. Such written request may be mailed or delivered to Rick Ask, 2550 Prospect Avenue, P.O. Box 201424, Helena, MT 59620-1424; Fax (406) 444-9157; or e-mail [rask@mt.gov](mailto:rask@mt.gov), or may be made by completing a request form at any rules hearing held by the Department of Justice.

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

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

/s/ Jon Ellingson  
JON ELLINGSON  
Rule Reviewer

Certified to the Secretary of State August 13, 2007.



BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY  
STATE OF MONTANA

In the matter of the proposed amendment ) NOTICE OF PUBLIC HEARING  
of ARM 24.29.1529 related to allowable ) ON PROPOSED AMENDMENT  
charges for prescription drugs under a )  
workers' compensation claim )

TO: All Concerned Persons

1. On September 14, 2007, at 10:00 a.m., the Department of Labor and Industry (department) will hold a public hearing to be held in the first floor conference room (room 104), Walt Sullivan Building, 1327 Lockey Avenue, Helena, Montana to consider the proposed amendment of the above-stated rule.

2. The 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 September 7, 2007, to advise us of the nature of the accommodation that you need. Please contact the Workers' Compensation Regulations Bureau, Employment Relations Division, Department of Labor and Industry, Attn: Keith Messmer, P.O. Box 8011, Helena, MT 59624-8011; telephone (406) 444-6541; fax (406) 444-3465; TDD (406) 444-5549; or e-mail kmessmer@mt.gov.

3. On June 29, 2007, the department held a public hearing to consider the proposed adoption of the above-stated rule. Based on written comments received, the department decided to adopt the rule as soon as possible in order to promulgate the rule in a timely manner. The rule is adopted elsewhere in this issue of the Register.

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

24.29.1529 PRESCRIPTION DRUGS FEE SCHEDULE (1) through (1)(c) remain the same.

(d) For the purposes of this rule, average wholesale prices must be updated weekly monthly.

(2) remains the same.

AUTH: 39-71-203, MCA  
IMP: 39-71-727, 39-71-743, MCA

REASON: There is reasonable necessity to amend ARM 24.29.1529 to specify that the average wholesale price of a drug be updated monthly rather than weekly because it has recently come to the attention of the department that updating the

price weekly rather than monthly will dramatically increase the administrative costs for payers without producing a corresponding savings in the drug prices.

5. Concerned persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Keith Messmer, Bureau Chief, Workers' Compensation Regulations Bureau, Employment Relations Division, Department of Labor and Industry, P.O. Box 8011, Helena, Montana 59624-8011; by facsimile to (406) 444-3465; or by e-mail to [kmessmer@mt.gov](mailto:kmessmer@mt.gov), and must be received no later than 5:00 p.m., September 21, 2007.

6. An electronic copy of this Notice of Public Hearing is available through the department's web site at <http://dli.mt.gov/events/calendar.asp>, under the Calendar of Events, Administrative Rules Hearings Section. The department strives to make the electronic copy of this Notice of Public Hearing conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems, and that a person's difficulties in sending an e-mail do not excuse late submission of comments.

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all Department of Labor and Industry administrative rulemaking proceedings or other administrative proceedings. Such written request may be mailed or delivered to the Department of Labor and Industry, attention: Mark Cadwallader, 1327 Lockey Avenue, P.O. Box 1728, Helena, Montana 59624-1728, faxed to the department at (406) 444-1394, e-mailed to [mcadwallader@mt.gov](mailto:mcadwallader@mt.gov), or may be made by completing a request form at any rules hearing held by the agency.

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

9. The department's Hearings Bureau has been designated to preside over and conduct this hearing.

/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 August 13, 2007

BEFORE THE DEPARTMENT OF MILITARY AFFAIRS  
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PROPOSED
ARM 34.7.102 eligibility, 34.7.103	)	AMENDMENT AND REPEAL
limitations on reimbursement,	)	
34.7.104 application for	)	NO PUBLIC HEARING
reimbursement, 34.7.105 termination	)	CONTEMPLATED
date; further appropriation required,	)	
pertaining to military life insurance	)	
reimbursement, and the repeal of	)	
ARM 34.7.106 termination date;	)	
United States assumes payment of	)	
premiums or increases death gratuity,	)	
pertaining to military life insurance	)	
reimbursement	)	

TO: All Concerned Persons

1. On September 22, 2007, the Department of Military Affairs proposes to amend and repeal the above-stated rules.

2. The Department of Military Affairs will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., September 10, 2007, to advise us of the nature of the accommodation that you need. Please contact Karen Revious, Administrator, Centralized Services, Department of Military Affairs, ATTN: Centralized Services, P.O. Box 4789, 1900 Williams Street, Fort Harrison, Montana 59636-4789; telephone (406) 324-3330; fax (406) 324-3335; or e-mail kprevious@mt.gov.

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

34.7.102 ELIGIBILITY (1) A service member who served on active duty in a contingency operation after ~~May 6, 2005~~ February 28, 2006, is eligible for reimbursement of SGLI premiums paid under the service members' group life insurance program described at 38 USC 1965 through 1980.

AUTH: 10-1-1104, MCA  
IMP: 10-1-1104, MCA

34.7.103 LIMITATIONS ON REIMBURSEMENT (1) The amount of paid premiums to be reimbursed may not exceed ~~\$46.25~~ 17.50 per month for each month the service member was on active duty in a contingency operation after ~~May 6, 2005~~ February 28, 2006.

(2) remains the same.

AUTH: 10-1-1104, MCA

IMP: 10-1-1104, MCA

34.7.104 APPLICATION FOR REIMBURSEMENT (1) remains the same.

(2) A service member must submit DMAMT form DMA 10-1 within ~~six~~ 12 months of demobilization from active duty service in a contingency operation or from the date that these administrative rules become effective, whichever is later, to receive reimbursement.

AUTH: 10-1-1104, MCA

IMP: 10-1-1104, MCA

34.7.105 TERMINATION DATE; FURTHER APPROPRIATION REQUIRED

(1) ARM 34.7.101 through 34.7.106 terminate June 30, ~~2008~~ 2009, unless further appropriation is made by the Montana Legislature for continuance of the reimbursement program.

AUTH: 10-1-1104, MCA

IMP: 10-1-1104, MCA

4. The department proposes to repeal the following rule:

34.7.106 TERMINATION DATE; UNITED STATES ASSUMES PAYMENT OF PREMIUMS OR INCREASES DEATH GRATUITY found at page 34-1106 of the Administrative Rules of Montana.

AUTH: 10-1-1104, MCA

IMP: 10-1-1104, MCA

REASON: House Bill 155, passed during the 60th legislative session, amended 10-1-1104, MCA. The above-stated amendments and repeal are necessary to update the rules in accordance with the new law.

5. Concerned persons may submit their data, views, or arguments concerning the proposed actions in writing to: Karen Revious, Administrator, Centralized Services, Department of Military Affairs, ATTN: Centralized Services, P.O. Box 4789, 1900 Williams Street, Fort Harrison, Montana 59636-4789; telephone (406) 324-3330; fax (406) 324-3335; or e-mail kprevious@mt.gov, and must be received no later than 5:00 p.m., September 20, 2007.

6. If persons who are directly affected by the proposed actions 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 to Karen Revious at the above address no later than 5:00 p.m., September 20, 2007.

7. If the agency receives requests for a public hearing on the proposed actions from either 10% or 25, whichever is less, of the persons directly affected by the proposed actions; 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 directly affected has been determined to be 425 based on the number of people eligible for the insurance.

8. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Such written request may be mailed or delivered to the contact person in 5 above or may be made by completing a request form at any rules hearing held by the department.

9. An electronic copy of this Proposal Notice is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of State 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 Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

10. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was notified by regular mail on August 13, 2007.

/s/ Karen Revious  
Karen Revious  
Rule Reviewer

/s/ Randall D. Mosley  
Randall D. Mosley  
The Adjutant General  
Department of Military Affairs

Certified to the Secretary of State August 13, 2007.

BEFORE THE DEPARTMENT OF MILITARY AFFAIRS  
OF THE STATE OF MONTANA

In the matter of the adoption of ) NOTICE OF PROPOSED  
New Rules I through XV pertaining to ) ADOPTION  
the Montana military family relief fund )  
) NO PUBLIC HEARING  
) CONTEMPLATED

TO: All Concerned Persons

1. On September 22, 2007, the Department of Military Affairs proposes to adopt the above-stated rules.

2. The Department of Military Affairs will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 1:00 p.m., September 10, 2007, to advise us of the nature of the accommodation that you need. Please contact Karen Revious, Administrator, Centralized Services, Department of Military Affairs, ATTN: Centralized Services, P.O. Box 4789, 1900 Williams Street, Fort Harrison, Montana 59636-4789; telephone (406) 324-3330; fax (406) 324-3335; or e-mail kprevious@mt.gov.

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

NEW RULE I DEFINITIONS For purposes of this chapter, the following definitions apply:

(1) "Active duty" has the meaning provided in 38 USC 1965(1)(A) and generally means full-time duty in the armed forces, other than active duty for training.

(2) "Application" means MMFRF Form 1, MMFRF Form 2, or MMFRF Form 3, as applicable, and the supporting documentation required by these rules.

(3) "Contingency operation" means an assignment within the provisions of 10 USC 101(a)(13).

(4) "Family member" means a person who has been approved as a dependent of a member and is enrolled as a dependent of the member in the defense enrollment eligibility reporting system of the United States Department of Defense.

(5) "Fund" means the Montana military family relief fund established in Ch. 311, L. 2007.

(6) "Member" means a Montana resident who is a member of the Montana national guard or reserve, as defined in 38 USC 101, and who on or after July 1, 2007, is in active duty for federal service in a contingency operation.

(7) "National guard" has the meaning provided in 10-1-101, MCA.

(8) "Reserve" means a Montana resident who is a member of a reserve component, as defined in 38 USC 101, of the United States armed forces.

AUTH: Ch. 311, L. 2007

IMP: Ch. 311, L. 2007

NEW RULE II APPLICATION FOR STATUS-BASED GRANT (1) The grant applicant must include and/or show proof of the following:

(a) Completed MMFRF Form 1.

(b) He or she is a family member or the guardian of a family member; the member is a resident of Montana; and the member was activated for federal service in a contingency operation for at least 30 consecutive days.

(i) Proof of active duty for federal service in a contingency operation will consist of a copy of the orders issued by an authorized headquarters ordering the member to such duty for more than 30 days.

(ii) If a custodial parent or guardian is applying for a grant on behalf of a family member, then the custodial parent or guardian must provide proof of guardianship of a family member currently enrolled in the Defense Enrollment Eligibility Reporting System (DEERS).

AUTH: Ch. 311, L. 2007

IMP: Ch. 311, L. 2007

NEW RULE III APPLICATION FOR NEEDS-BASED GRANT (1) The grant applicant must include and/or show proof of the following:

(a) Completed MMFRF Form 2.

(b) He or she is a member or a family member; the member is a resident of Montana; and the member was activated for federal service in a contingency operation for at least 30 consecutive days.

(c) The applicant may supply one or both of the following to support the application:

(i) a copy of a payroll record from the member's civilian employer that indicates the member's monthly salary plus a copy of a military payroll record that indicates the member's monthly salary; alternatively, the applicant must provide proof that the member's monthly military pay and allowances, combined, are at least 30% less than the member's monthly civilian wages or income; or

(ii) proof that the member or family member is experiencing a significant emergency that warrants financial assistance, including, but not limited to, specific monetary expenses related to clothing, food, housing, utilities, medical services, medical prescriptions, insurance, or vehicle payments. Such proof shall include, but is not limited to, a copy of a bill, invoice, estimate, cancellation notice, or any other similar record.

(d) Proof of active duty for federal service in a contingency operation will consist of a copy of the orders issued by an authorized headquarters ordering the member to such duty for more than 30 days.

(e) If a custodial parent or guardian is applying for a grant on behalf of a family member, then the custodial parent or guardian must provide proof of guardianship of a family member currently enrolled in Defense Enrollment Eligibility Reporting System (DEERS).

AUTH: Ch. 311, L. 2007

IMP: Ch. 311, L. 2007

NEW RULE IV APPLICATION FOR CASUALTY-BASED GRANT (1) The grant applicant must include and/or show proof of the following:

(a) Completed MMFRF Form 3.

(b) He or she is a member; the member is a resident of Montana; and the member was activated for federal service in a contingency operation for at least 30 consecutive days.

(c) The Purple Heart is proof of a nonfatal injury received in the course of or related to combat as a direct result of hostile action.

(d) The Adjutant General is authorized to waive the 30-day requirement in (1)(b) upon a written request indicating the circumstances justifying such a waiver. The Adjutant General may use discretion in granting or denying such requests.

(e) Proof of active duty for federal service in a contingency operation will consist of a copy of the orders issued by an authorized headquarters ordering the member to such duty for more than 30 days.

AUTH: Ch. 311, L. 2007

IMP: Ch. 311, L. 2007

NEW RULE V INELIGIBILITY FOR GRANTS (1) A member, who at any time prior to the disbursement of funds pursuant to a grant application receives a punitive discharge or an administrative discharge with service characterized as Under Other Than Honorable Conditions, is ineligible for any grant.

(2) A family member of a member described in (1) is ineligible for any grant.

AUTH: Ch. 311, L. 2007

IMP: Ch. 311, L. 2007

NEW RULE VI INELIGIBILITY FOR STATUS-BASED AND NEEDS-BASED GRANTS (1) A member or family member is ineligible for status-based and needs-based grants if, at the time grant application is made, the member holds a rank or pay grade, as those terms are used in Titles 10 and 37 of the United States Code, of:

(a) O-4 (major or lieutenant commander) or higher, if a commissioned officer;

or

(b) W-4 (chief warrant officer, W-4) or higher, if a warrant officer.

AUTH: Ch. 311, L. 2007

IMP: Ch. 311, L. 2007

NEW RULE VII INELIGIBILITY FOR CASUALTY-BASED GRANT (1) A member is ineligible for a casualty-based grant if:

(a) the injury is as a result of a self-inflicted wound, willful negligence by the member, or other misconduct by the member; or



(b) the injury occurs when the member is in an absence without leave, deserter, dropped from the rolls, or other unauthorized duty status.

AUTH: Ch. 311, L. 2007

IMP: Ch. 311, L. 2007

NEW RULE VIII STATUS-BASED GRANT LEVELS AND LIMITS (1) All status-based grants will be a flat rate of \$250, unless funds are unavailable.

(2) A family member may receive a grant only one time per State of Montana fiscal year, and only one time per active duty contingency order.

AUTH: Ch. 311, L. 2007

IMP: Ch. 311, L. 2007

NEW RULE IX NEEDS-BASED GRANT LEVELS AND LIMITS (1) Grant payments to a member and/or family member shall not exceed \$2,000 per active duty contingency order.

(2) No additional applications from a member and/or a member's family shall be accepted within a 180-day time frame from receipt of any prior applications.

(3) The Adjutant General is authorized to waive the requirements in (2) upon a written request indicating the circumstances justifying such a waiver. The Adjutant General may use discretion in granting or denying such requests; however, in no event shall payments authorized by this section exceed \$2,000 per active duty contingency order per member and/or family member.

AUTH: Ch. 311, L. 2007

IMP: Ch. 311, L. 2007

NEW RULE X CASUALTY-BASED GRANT LEVELS AND LIMITS (1) All casualty-based grants will be a flat rate of \$2,000, unless funds are unavailable.

(2) A member may receive only one casualty-based grant for injuries sustained during or arising out of the same contingency operation.

AUTH: Ch. 311, L. 2007

IMP: Ch. 311, L. 2007

NEW RULE XI GRANT APPLICATION AND REQUIRED DOCUMENTATION (1) The rules for governing the acceptance of applications are as follows:

(a) Applicants must request, complete, and submit a MMFRF Form 1, MMFRF Form 2, or MMFRF Form 3, as applicable, provided by the Montana Department of Military Affairs.

(b) All necessary documentation, as stated in [NEW RULES II, III, IV], must be included with the application.

(c) Applications must be received by the Department of Military Affairs while the member is mobilized on active duty for federal service in a contingency operation.

(d) Applications may be submitted via facsimile or e-mail, but the original application must be submitted before any grant payments can be authorized.

(e) Incomplete applications will be returned to the applicant.

(f) The Department of Military Affairs, upon receipt of an application, will verify required information under the Defense Enrollment Eligibility Reporting System (DEERS) and will then process the application for payment. The application shall be processed in an expeditious manner.

(g) Applications for casualty-based grants shall take precedence over all others.

AUTH: Ch. 311, L. 2007

IMP: Ch. 311, L. 2007

NEW RULE XII NEEDS-BASED GRANT APPLICATION COMMITTEE

REVIEW (1) A committee of three members shall review all needs-based grant applications and shall recommend to the Adjutant General approval or denial of each application, and if approval, the proposed amount.

(2) The committee shall be comprised of the Director of the Department of Public Health and Human Services or his/her designee, the Commissioner of Labor and Industry or his/her designee, and the budget director or his/her designee.

(3) Prior to reviewing the grant applications, the committee members will collect any information regarding assistance their respective agencies are currently providing to the member or family members.

AUTH: Ch. 311, L. 2007

IMP: Ch. 311, L. 2007

NEW RULE XIII GRANT APPROVAL OR DENIAL

(1) The Adjutant General shall review all needs-based grant applications and the recommendations of the committee made under [NEW RULE XII]. After review, the Adjutant General shall either approve or deny each needs-based grant application, and if approving the grant, the amount of said grant. The department shall notify the applicant in writing whether the applicant's application for a grant has been approved or denied and the amount of the grant if approved.

(2) If the Adjutant General denies a grant application, the Adjutant General shall explain the basis for the denial to the applicant in writing.

AUTH: Ch. 311, L. 2007

IMP: Ch. 311, L. 2007

NEW RULE XIV APPEAL OF GRANT REQUEST DENIAL

(1) An applicant whose grant request is denied may appeal the decision to the Adjutant General in writing.

(2) In writing, the applicant must specifically address the basis for the original denial and provide further proof as to why the applicant's grant request should be approved. Resubmission of the original application without additional proof will result in automatic denial of appeal.

(3) The Adjutant General shall consider the applicant's appeal and either affirm or deny the appeal in writing.

(4) There is no further appeal if the Adjutant General denies the applicant's appeal.

AUTH: Ch. 311, L. 2007

IMP: Ch. 311, L. 2007

NEW RULE XV GRANT PAYMENTS (1) Payments will be made to an applicant, or to the family member who is entitled to the payment if the applicant is a custodial parent or guardian, who is determined eligible under [NEW RULES II, III, IX, and XII]. Payments will not be made to creditors, and payments will be subject to applicable deductions.

(2) The timeliness of payment will be determined by the amount of funds available at the time of application.

(3) If adequate funds are not available, the application will be held in a queue until funds are available.

(4) Payments for casualty-based grants shall take precedence over all grants. All other payments shall be paid in the order in which they were received and determined eligible.

AUTH: Ch. 311, L. 2007

IMP: Ch. 311, L. 2007

REASON: House Bill 179, passed during the 60th legislative session, created a fund from which grants could be awarded to Montana national guard and reserve military members and/or their families. The purpose of the fund is to aid members of the Montana national guard or reserve component who have been activated for federal service in a contingency operation and the families of members.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Karen Revious, Administrator, Centralized Services, Department of Military Affairs, ATTN: Centralized Services, P.O. Box 4789, 1900 Williams Street, Fort Harrison, Montana 59636-4789; telephone (406) 324-3330; fax (406) 324-3335; or e-mail krevious@mt.gov, and must be received no later than 5:00 p.m., September 20, 2007.

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 to Karen Revious at the above address no later than 5:00 p.m., September 20, 2007.

6. If the agency receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons 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 directly affected has been determined to be 425 based on the number of people or families eligible for the fund.

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Such written request may be mailed or delivered to the contact person in 4 above or may be made by completing a request form at any rules hearing held by the department.

8. An electronic copy of this Proposal Notice is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of State 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 Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

9. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was notified by regular mail on August 13, 2007.

/s/ Karen Revious  
Karen Revious  
Rule Reviewer

/s/ Randall D. Mosley  
Randall D. Mosley  
The Adjutant General  
Department of Military Affairs

Certified to the Secretary of State August 13, 2007.

BEFORE THE DEPARTMENT OF NATURAL RESOURCES  
AND CONSERVATION OF THE STATE OF MONTANA

In the matter of the proposed )  
amendment of ARM 36.12.101, )  
definitions and ARM 36.12.120, basin )  
closure area exceptions and compliance )

NOTICE OF PUBLIC HEARING  
ON PROPOSED AMENDMENT

To: All Concerned Persons

1. On September 26, 2007, at 9:00 a.m., the Department of Natural Resources and Conservation will hold a public hearing in the Department of Public Health and Human Services Auditorium, 111 North Sanders, Helena, Montana, to consider the amendment of the above-stated rules.

2. The 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 September 14, 2007, to advise us of the nature of the accommodation that you need. Please contact Kim Overcast, Montana Department of Natural Resources and Conservation, 1424 9th Avenue, Helena, MT 59620, telephone (406) 444-6614, fax (406) 444-0533, or e-mail to kovercast@mt.gov.

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

36.12.101 DEFINITIONS Unless the context requires otherwise, to aid in the implementation of the Montana Water Use Act and as used in these rules:

(1) through (7) remain the same.

~~(8) "Augmentation plan" means a plan to provide water to a source of supply and its tributaries to mitigate the depletion effects of a permit or change authorization. The augmentation water right priority date is important to the success of any augmentation plan since call can be made on that water right. Examples of augmentation include, but are not limited to augmenting the source of supply with water from a nontributary source, or retiring all or a portion of senior water rights in the same source of supply in amounts equal to or greater than the depletion effects of the permit or change application.~~

(9) through (32) remain the same but are renumbered (8) through (31).

~~(33) "Immediately or directly connected to surface water" means ground water which, when pumped at the flow rate requested in the application and during the proposed period of diversion, induces surface water infiltration.~~

~~(34) "Induced surface water infiltration" means that water being pumped from a ground water source is pulling surface water into the cone of depression.~~

(35) through (39) remain the same but are renumbered (32) through (36).

(37) "Net depletion" for the purposes of 85-2-360, MCA, means the calculated volume, rate, timing, and location of reductions to surface water resulting

from a proposed groundwater appropriation that is not offset by the corresponding accretions to surface water by water that is not consumed and subsequently returned to the surface water.

(40) through (50) remain the same but are renumbered (38) through (48).

(49) "Potentially affected area" means, as referred to in basin closure rules and in the context of a net depletion analysis, the area or estimated area where groundwater will be affected by a proposed project. The identified area is not required to exceed the boundaries of the drainage subdivisions established by the Office of Water Data Coordination, United States Geological Survey, and used by the Water Court, unless the applicant chooses to expand the boundaries.

(51) through (79) remain the same but are renumbered (50) through (78).

AUTH: 85-2-370, MCA

IMP: 85-2-360 through 85-2-364, 85-2-368, MCA

### 36.12.120 BASIN CLOSURE AREA EXCEPTIONS AND COMPLIANCE

(1) through (5) remain the same.

~~(6) Augmentation plans are allowed in basin closure areas. An augmentation plan must mitigate the effects to the surface water source that would be depleted because of a proposed application.~~

~~(7) Augmentation must occur in the depleted reach and during the season of depletion.~~

~~(8) An augmentation plan must include a measuring plan to ensure that the source being depleted is receiving the benefits of the augmentation.~~

~~(9) If an augmentation plan requires more than one application, all applications will be processed simultaneously. If any of the augmentation applications is terminated or denied, all related applications will be terminated or denied.~~

~~(10) If an augmentation plan includes the filing of a Notice of Completion of Groundwater Development, the water must be from a nontributary source. The Notice of Completion must be filed with the department as soon as the water is used for augmentation.~~

~~(11) In basin closure areas that allow applications for ground water that is not immediately or directly connected to surface water, information must be included in the document required in (2) demonstrating that the application qualifies as a ground water exception.~~

~~(12) The department will not determine an application to be for a permit to appropriate ground water unless the department can determine from the information provided that the cone of depression or zone of influence of a pumping well will not induce surface water infiltration during the proposed period of diversion.~~

~~(13) The department hydrologist shall make a written determination that the evidence submitted by an applicant is sufficient on which to base a determination that the proposed source aquifer is not hydraulically connected or if hydraulically connected to surface water, will not induce surface water infiltration.~~

~~(14) An applicant must address whether the source aquifer is hydraulically connected to any surface water sources that lie within an estimated or actual delineated zone of influence. An applicant may use the results of an appropriate~~

nearby aquifer test to approximate the zone of influence. Depending on circumstances, such as proposed flow rate and volume, cyclic pumping, well depth, or distance to surface water, an applicant may be able to demonstrate that there is not nor will there be a hydraulic connection to surface water when water is pumped at the proposed flow rate during the period of diversion.

(a) High and low transmissivity and storativity values can be evaluated and used to estimate a zone of influence. The applicant must determine if the source aquifer is hydraulically connected to surface water within the delineated zone of influence.

(b) Relative or absolute elevations of groundwater levels and beds of surface water sources are needed to evaluate whether a hydraulic connection exists.

(c) Water level data may be obtained from existing wells located within the zone of influence or at the surface water source.

(d) If existing wells are not available, the installation of small diameter wells, pits, wellpoints, or piezometers, including those adjacent to or in the surface water source, can be used to determine the existence of a hydraulic connection.

(e) If an applicant demonstrates that the static groundwater level is greater than 10 feet below the bed of a surface water source, the source aquifer is not considered hydraulically connected to surface water at that location. Further testing for induced surface water infiltration at the tested location is not required.

(f) If an applicant demonstrates that the static ground water level is less than 10 feet below the bed of a surface water source, additional proof is required to show whether the source aquifer is hydraulically connected to surface water. Additional proof must include an evaluation of capillary pressure, saturation, and unsaturated flow between the bed of the surface water source and the water table, and diurnal and seasonal fluctuations of static water levels. If additional proof is not provided, the source aquifer is considered to be hydraulically connected to surface water at that location. Further testing must be conducted to determine whether pumping the proposed well will induce surface water infiltration during the proposed period of diversion.

(15) An aquifer test must be conducted using methods described in ARM 36.12.121 that will determine the aquifer properties needed to determine the zone of influence for the period of diversion and the potential for drawdown to induce infiltration of surface water within the zone of influence.

(a) One or more observation wells may be needed to measure ground water levels between the proposed production well and surface water sources and to determine hydraulic gradients before and during aquifer testing.

(b) Staff gage(s) must be installed in surface water source(s) adjacent to the observation well(s) to monitor stage(s) during the aquifer test for comparison with ground water level(s).

(c) Relative or absolute elevations of ground water levels and surface water stages must be compared to determine whether the hydraulic gradient between the source aquifer and gaining surface water sources is reversed or whether the hydraulic gradient between losing surface water sources and the source aquifer is steepened. The occurrence of either during the aquifer test constitutes induced surface water infiltration.

~~(d) To evaluate whether induced surface water infiltration will occur during the period of diversion, an applicant must project drawdown to the surface water sources for the period of diversion using aquifer properties determined from the aquifer test. Analytical equations, an analytical ground water flow model, or a numerical ground water flow model may be used to evaluate whether induced surface water infiltration will occur.~~

~~(e) An applicant must evaluate whether a surface water body or reach is losing or gaining to evaluate whether a proposed well will induce surface water infiltration.~~

~~(i) If the applicant projects that drawdown will reach a losing surface water source that is hydraulically connected to groundwater during the period of diversion, the department will determine that pumping the proposed well will induce surface water infiltration.~~

~~(ii) For gaining surface water sources, the hydraulic gradient must be compared with the slope of the cone of depression that would be created during the period of diversion. If the comparison shows that the slope of the cone of depression is greater than the hydraulic gradient, the department will determine that pumping the proposed well will induce surface water infiltration.~~

~~(16) For groundwater pits, the department will determine that evaporation losses do not induce surface water. If water is being pumped from the pit, then a hydraulic analysis is required to determine if pumping will induce surface water infiltration.~~

(6) A net depletion analysis must include hydrogeologic data or a model developed by a hydrogeologist, a qualified scientist, or a qualified licensed professional engineer.

(a) The net depletion analysis must include but is not limited to analysis of the following factors within the potentially affected area:

(i) The degree of hydraulic connection between the source aquifer and all potentially affected surface water. Surface water means, in addition to ARM 36.12.101(63) and for the purposes of 85-2-360 through 85-2-362, MCA, includes but is not limited to rivers, streams, irrigation canals, or drains.

(ii) The average monthly flow rate and volume of water consumed for a proposed project.

(iii) Propagation of drawdown from a well or other groundwater diversion and rate, timing, and location of any resulting surface water depletion effects.

(iv) The volume, rate, timing, and locations of accretions to surface water by water that is not consumed and is subsequently returned to surface water.

(b) The determination of the degree of hydraulic connection between a source aquifer and surface water within the potentially affected area must include an analysis of geology and static groundwater elevations relative to the elevation of surface water beds. Such analysis must include:

(i) Groundwater boundaries identified by the applicant for the potentially affected area. The identified area does not need to extend beyond the boundaries of the water right basins used by the department and established by the Office of Water Data Coordination, United States Geological Survey and used by the Water Court, unless the applicant chooses to expand the boundaries. The following



information must be included with the application to establish the location of the aquifer boundaries:

(A) a description of how the potentially affected area was delineated;

(B) geologic maps (including stratigraphy and structure), well-log data, and aquifer testing;

(C) the extent (vertical and lateral) and properties of a source aquifer (hydraulic conductivity, transmissivity, storage coefficient, flow direction, rate of movement, and water availability) and any confining layers; and

(D) the presence of any faults, all relative to the locations of potentially affected surface water.

(ii) Evidence and supporting information of the degree of hydraulic connection between the source aquifer and surface water sources located within the potentially affected area, including but not limited to rivers, springs, creeks, streams, reservoirs, lakes, irrigation canals, or drains that may or may not show a net depletion. The assessment may include, but is not limited to the following:

(A) map showing locations of potentially affected surface water;

(B) the distance between the proposed points of diversion and potentially affected surface water;

(C) geologic map from United States Geological Survey or Montana Bureau of Mines and Geology of the potentially affected area;

(D) using existing test and production well logs, cross-section(s) showing source aquifer and any confining layers;

(E) aquifer test results and interpretation of those results;

(F) locations where bedrock aquifers outcrop beneath surface water and where alluvial aquifers exist in the potentially affected area;

(G) relevant stream-flow data from United States Geological Survey or other published source for rivers, springs, creeks, streams, reservoirs, lakes, irrigation canals, or drains within the potentially affected area;

(H) relative elevations of groundwater and surface water beds in the potentially affected area, as determined by measuring static water levels in wells that have been surveyed relative to surface water bed elevations;

(I) hydrographs of groundwater levels and surface water flows in the area of potential effect;

(J) monitored groundwater levels and measured surface water gains and losses; and

(K) any surface water measurements that have been made by the applicant, or another, including but not limited to canal, drain, water commissioner, or other stream gauging records.

(iii) Existing water rights - an applicant must provide the following information:

(A) a list and map of the points of diversion of surface water appropriation rights, including but not limited to rivers, springs, creeks, streams, reservoirs, lakes, irrigation canals, or drains located within the potentially affected area; and

(B) a list and map of the points of diversion of groundwater rights on record with the department that are located within the potentially affected area.

(c) The flow rate diverted and the volume of water consumed by a proposed project must include an analysis of:

(i) the flow rate and period of diversion of water actually diverted for the proposed project as compared to that diverted for like beneficial uses; and  
(ii) estimates of the volume consumed by evaporation, plant transpiration (evapotranspiration), interception losses, depression storage losses, and all other forms of consumption associated with the proposed project. Interception losses include that portion of precipitation which wets and adheres to surface objects, such as vegetation and other cover, and is returned to the atmosphere through evaporation. Depression storage losses include that portion of precipitation that is trapped in small surface depressions and returned to the atmosphere through evaporation:

(A) consumed water calculation - the following methods may be used to determine the rate and volume of water consumed by the proposed project:

(I) for irrigation or lawn and garden use, the potential evapotranspiration losses via measurements or computations using a method that is scientifically defensible;

(II) household consumption estimates from generally accepted published data and guidelines; and

(III) wastewater treatment estimates considering evaporation rates from lagoons and evapotranspiration rates from disposal beds or flow measurements from similar existing systems.

(d) An analysis of the drawdown must include the volume, rate, timing, and location of any resulting surface water depletion effects, within the potentially affected area caused by pumping the proposed well or other groundwater diversion, including at a minimum, but is not limited to the following:

(i) the distance between a well and any potentially affected surface water;

(ii) depth of a well;

(iii) aquifer properties from aquifer tests, existing data, or other previous studies;

(iv) the location of all wells or other sources of groundwater of record within the potentially affected area;

(v) the degree of connection between the surface water and the source aquifer to the proposed well;

(vi) pumping schedule for the proposed project;

(vii) confining layer properties from source aquifer testing; and

(viii) location and type of source aquifer boundaries.

(e) An evaluation of potential return flows to a source aquifer or surface water source within the potentially affected area must be included and must identify the volume, rate, timing, and location of return flows.

(i) In addition to ARM 36.12.101(57) and for the purposes of 85-2-361, MCA, return flows includes but is not limited to any treated wastewater if the treated wastewater will be used as part of an aquifer recharge plan.

(f) Drawdown from a well and the volume, rate, timing, and location of any resulting gross surface water depletion which depends on:

(i) the distance between a well and surface water;

(ii) the depth of the well;

(iii) aquifer properties;

(iv) location of aquifer boundaries; and

(v) the degree of hydraulic connection between surface water and the source aquifer to the well.

(g) A water balance table must be included that describes the monthly and total annual water balance for the proposal. It must include an accounting of the following:

(i) the volume of water that would be diverted;

(ii) the volume of water that would be consumed;

(iii) the volume of water that would return to an aquifer and to surface water;

and

(iv) the volume of net depletion to surface water, including but not limited to rivers, springs, creeks, streams, reservoirs, lakes, irrigation canals, or drains.

(h) Information required by the hydrogeologic assessment may not be sufficient to meet applicable criteria under 85-2-311, MCA, including but not limited to adverse effect to a prior appropriator. The applicant for a beneficial water use permit pursuant to 85-2-311, MCA, is responsible for providing sufficient evidence to meet all applicable criteria.

AUTH: 85-2-370, MCA

IMP: 85-2-360 through 85-2-364, 85-2-368, MCA

REASONABLE NECESSITY: House Bill 831, passed by Montana's 60th Legislature, and effective on May 3, 2007, revised water laws in basin closure areas. These rules clarify the sections of HB 831 pertaining to net depletion and remove current sections made obsolete by the new statute. The rules are needed to ensure that both the department and water right applicants understand the definitions of and the requirements for applications affected by the new statute.

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 in writing to Kim Overcast, Department of Natural Resources and Conservation, 1424 9th Avenue, Helena, MT 59620; fax (406) 444-5918; or e-mail [kovercast@mt.gov](mailto:kovercast@mt.gov), and must be postmarked no later than September 26, 2007.

5. Kim Overcast, Department of Natural Resources and Conservation, has been designated to preside over and conduct the hearing.

6. An electronic copy of this Notice of Public Hearing on Proposed Amendment is available through the department's site on the World Wide Web at <http://www.dnrc.mt.gov>. The department strives to make the electronic copy of this Notice of Public Hearing on Proposed Amendment 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.

7. The agency maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name

and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding conservation districts and resource development, forestry, oil and gas conservation, trust land management, water resources, or combination thereof. Such written request may be mailed or delivered to Legal Unit, Department of Natural Resources and Conservation, 1625 11th Avenue, Helena, MT 59620, faxed to the office at (406) 444-2684, or may be made by completing a request form at any rules hearing held by the agency.

8. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled. The bill sponsor was notified by regular mail on July 20, 2007.

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

/s/ Mary Sexton

MARY SEXTON

Director

Natural Resources and Conservation

/s/ Anne Yates

ANNE YATES

Rule Reviewer

Certified to the Secretary of State on August 13, 2007.

BEFORE THE COMMISSIONER OF POLITICAL PRACTICES  
OF THE STATE OF MONTANA

In the matter of the proposed	)	NOTICE OF PROPOSED
amendment of ARM 44.10.331	)	AMENDMENT
relating to limitations on	)	
receipts from political	)	NO PUBLIC HEARING
committees to legislative	)	CONTEMPLATED
candidates	)	

TO: All Concerned Persons

1. On September 24, 2007, the Commissioner of Political Practices (the commissioner) proposes to amend the above-stated rule.

2. The commissioner will make reasonable accommodations for people with disabilities who wish to participate and need an alternative accessible form of this notice. If you require an accommodation, contact the commissioner no later than 5:00 p.m., September 17, 2007, to advise us of the nature of the accommodation that you need. Please contact Dennis Unsworth, Commissioner of Political Practices, P.O. Box 202401, 1205 Eighth Avenue, Helena, Montana 59620-2401; telephone (406)444-2942; Fax (406)444-1643; e-mail dunsworth@mt.gov.

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

44.10.331 LIMITATIONS ON RECEIPTS FROM POLITICAL COMMITTEES

(1) Pursuant to the operation specified in 13-37-218, MCA, limits on total combined contributions from political committees other than political party committees to legislative candidates are as follows:

(a) a candidate for the state House of Representatives may receive no more than ~~\$1400~~ \$1500;

(b) a candidate for the state Senate may receive no more than ~~\$2300~~ \$2450.

(2) These limits apply to total combined receipts for the entire election cycle of ~~2006~~ 2008.

(3) Pursuant to 13-37-218, MCA, in-kind contributions must be included in computing these limitation totals.

AUTH: 13-37-114, 13-37-218, MCA

IMP: 13-37-218, 15-30-101(8), MCA

Reasonable Necessity: Section 13-37-218, MCA, requires the commissioner to periodically adjust the limitations established in that statute, and to publish the revised limitations as a rule.

The Bureau of Labor Statistics supplied the Consumer Price Index information. The information is used to determine the inflation factor to be applied to the aggregate contribution limits for House and Senate candidates. This information is required by

13-37-218, MCA and appears in ARM 44.10.331. It must be revised after June of every odd numbered year.

4. Concerned persons may submit their data, views, or arguments concerning the proposed amendment in writing to the Commissioner of Political Practices, P.O. Box 202401, 1205 Eighth Avenue, Helena, Montana 59620-2401, or by e-mail to [dunsworth@mt.gov](mailto:dunsworth@mt.gov). Written requests for hearing must be received no later than September 22, 2007.

5. If those directly affected by this proposed amendment wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a public hearing and submit this request, along with any written comments, to the address shown above. Written requests for hearing must be received no later than September 22, 2007.

6. If the agency receives requests for a public hearing on the proposed amendment from either 10 percent or 25, whichever is less, of those 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 no less than 25 members who will be directly affected, a hearing will be scheduled 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 132 based on the number of registered candidates and political committees in the 2004 election cycle.

7. An electronic copy of this Notice of Proposed Amendment is available at [www.politicalpractices.mt.gov](http://www.politicalpractices.mt.gov), under "public meetings/notices" and "administrative rule notices." The agency strives to make the electronic copy of this Notice of Proposed Amendment conform to the official version of the Notice as printed in the Montana Administrative Register, but advises that in the event of a discrepancy between the official printed text of the Notice and the electronic version, only the official printed text will be considered. In addition, although the agency strives to keep its web site accessible at all times, be aware that the web site 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 commissioner maintains a list of those who wish to receive notices of rulemaking actions proposed by this agency. Those who wish to have their names 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 concerning campaign finance, ethics, or lobbying. Such written request may be mailed or delivered to the Commissioner of Political Practices at P.O. Box 202401, 1205 Eighth Avenue, Helena, MT 59620 or faxed to (406) 444-1643, or may be made by completing a request form at any rules hearing held by the Commissioner of Political Practices.

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

By: /s/ Dennis Unsworth  
Dennis Unsworth  
Commissioner

By: /s/ Jim Scheier  
Jim Scheier  
Assistant Attorney General  
Rule Reviewer

Certified to the Secretary of State on August 13, 2007.

BEFORE THE SECRETARY OF STATE  
OF THE STATE OF MONTANA

In the matter of the proposed	)	NOTICE OF PUBLIC HEARING ON
amendment of ARM 44.14.301,	)	PROPOSED AMENDMENT AND
44.14.302, and 44.14.304 through	)	REPEAL
44.14.312, and the proposed repeal	)	
of ARM 44.14.303 pertaining to	)	
records and information management	)	
fees	)	

TO: All Concerned Persons

1. On September 12, 2007, a public hearing will be held at 10:00 a.m. in the Secretary of State's Office Conference Room, Room 260, State Capitol Building, Helena, Montana, to consider the proposed amendment and repeal of the above-stated rules.

2. The Secretary of State will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Secretary of State no later than 5:00 p.m. on September 5, 2007, to advise us of the nature of the accommodation that you need. Please contact Janice Doggett, Secretary of State's Office, P.O. Box 202801, Helena, MT 59620-2801; telephone (406) 444-5375; FAX (406) 444-3976; e-mail jdoggett@mt.gov.

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

44.14.301 FEES FOR 16MM MICROFILM SERVICES (1) The following fees will be charged for 16mm microfilm images: ~~per 1000 pages or any portion thereof:~~

(a) <del>MRD-2 5" x 8" paperwork</del>	<del>_____</del>	\$ 34.12
(b)(a) MRD-2 8 1/2" x 11" and legal (manual)	67.57	\$ .165
(c)(b) B & H Auto Exposure	38.58	.103
(d)(c) 8" x 11" or 8" x 14" paperwork (rotary)	30.00	.079
(e)(d) 8" x 11" or 8" x 14" computer printout (rotary)	30.00	.079
(f)(e) extreme size and weight variance (rotary)	34.50	.079
(g)(f) cards - fixed weight and color (rotary)	15.75	.015
(h)(g) cards - mixed weight and color (rotary)	26.25	.026

AUTH: 2-6-103, MCA  
IMP: 2-6-110, MCA

44.14.302 FEES FOR 35MM MICROFILM SERVICES (1) The following fees will be charged for 35mm microfilm images: ~~per 1000 pages or any portion thereof:~~



(a) <del>12" x 12" aerial photos</del>		<del>\$ 68.25</del>
(b)(a) 16" x 20" bound books	63.00	<u>\$ 2855</u>
(c)(b) 24" x 34" newspapers	115.50	<u>.27160</u>
(d)(c) 24" x 34" bound newspapers	136.50	<u>.27160</u>
(e)(d) 48" x 48" blueprints/maps	288.75	<u>1.09</u>

AUTH: 2-6-103, MCA  
IMP: 2-6-110, MCA

44.14.304 FEES FOR FILM PROCESSING (1) The following fees will be charged for film processing:

(a) 16mm, each 100 foot roll	<del>\$3.62</del>	<u>\$ 7.24</u>
(b) 16mm, each 215 foot roll	7.10	<u>14.20</u>
(c) 35mm, each 100 foot roll	6.35	<u>7.70</u>
(d) <del>16mm, each 3M cartridge</del>		<del>4.73</del>

AUTH: 2-6-103, MCA  
IMP: 2-6-110, MCA

44.14.305 FEES FOR FILM INSPECTING (1) The following fees will be charged for film inspection:

(a) each 100 foot roll inspection	<del>\$ 3.65</del>	<u>\$ 10.64</u>
(b) each 215 foot roll inspection	5.23	<u>21.29</u>
(c) each film splice		0.79
(d) <del>each 3M cartridge Load</del>		<del>2.25</del>

AUTH: 2-6-103, MCA  
IMP: 2-6-110, MCA

44.14.306 FEES FOR FILM DUPLICATION (1) The following fees will be charged for film duplicating:

(a) 16mm, each 100 foot roll	<del>\$ 6.81</del>	<u>\$ 11.76</u>
(b) 16mm, each 215 foot roll		13.03
(c) 35mm, each 100 foot roll	9.24	<u>11.80</u>
(d) 105mm, each microfiche or jacket	0.16	<u>0.379</u>
(e) each reader <del>or</del> /printer copy		0.50
(f) 16mm, 100 foot roll (silver)	9.92	<u>20.65</u>
(g) 35mm, 100 foot roll (silver)	14.54	<u>24.50</u>
(h) <del>photocopies/own labor (each copy)</del>		<del>0.10</del>
(i) <del>photocopies/our labor (each copy)</del>		<del>0.50</del>

AUTH: 2-6-103, MCA  
IMP: 2-6-110, MCA

44.14.307 FEES FOR JACKET LOADING/TITLING (1) The following fees will be charged for jacket loading and titling:

(a) 16mm, each 5 channel jacket	\$0.3150	<u>\$ 0.8590</u>
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(b) agency's own jacket (each)		0.2887
(c) 35mm, 1 and 2 channel jacket (each)	<del>0.3150</del>	<u>0.8590</u>
(d) loading 16mm aperture card (each)	<del>0.2625</del>	<u>0.8590</u>
(e) jacket title (each)	<del>0.2625</del>	<u>0.7980</u>
(f) jacket notching (each)		<u>0.0525</u>
(g)(f) jacket updating (per hour)	<del>18.00</del>	<u>24.00</u>

AUTH: 2-6-103, MCA

IMP: 2-6-110, MCA

44.14.308 MISCELLANEOUS FEES (1) The following miscellaneous fees will be charged:

(a) fiche title (per title)		<del>\$ .2625</del>
(b)(a) indexing and document preparation (per hour)	<del>18.00</del>	<u>\$ 24.00</u>
(b) photocopies/own labor (each copy)		<u>0.10</u>
(c) photocopies/our labor (each copy)		<u>0.50</u>
(e)(d) camera rental (per day)		<u>95.00</u>

AUTH: 2-6-103, MCA

IMP: 2-6-110, MCA

44.14.309 MISCELLANEOUS SUPPLIES (1) The following fees will be charged for filming supplies based on actual cost by supplier:

(a) each NMI reader bulb	<del>\$10.75</del>	<u>\$ 11.85</u>
(b) 16mm, each 100 foot roll film	<del>6.68</del>	<u>7.10</u>
(c) 16mm, each 215 foot roll film		<u>12.95</u>
(d)(c) 35mm, each 100 foot roll film	<del>13.95</del>	<u>15.00</u>
(e)(d) each box of splicing tape	<del>15.00</del>	<u>16.50</u>
(f)(e) jackets (1 box 16mm/1000)	<del>65.00</del>	<u>74.91</u>
(g)(f) fiche envelopes (1 box/1000)		<u>37.50</u>
(h) microfiche reader/printer (records management bureau copies)		<u>0.50</u>
(i) microfiche reader/printer (agency copies)		<u>0.25</u>
(j)(g) postage/freight (cost based on actual fee)		<u>Actual</u>

AUTH: 2-6-103, MCA

IMP: 2-6-110, MCA

44.14.310 FEES FOR RECORDS CENTER SERVICES (1) The following fees shall be charged for services provided for records housed in the state records center:

(a) storage per square foot, per month		<u>\$0.2565</u>
(b) storage per cubic foot, per month	<del>0.2950</del>	<u>0.31</u>
(c) each retrieval/re-file, each	<del>1.50</del>	<u>1.00</u>
(d) each emergency retrieval, each	<del>6.25</del>	<u>13.36</u>
(e) hourly charge for large retrievals, delivery, interfiling, per hour	<del>22.50</del>	<u>25.00</u>
(f) hourly charge for records disposal, per hour	<del>22.50</del>	<u>25.00</u>
(g) each disk pack storage		<u>2.00</u>

<del>(h)(g)</del> hourly charge for shredding confidential records, <u>per hour</u>	<del>23.05</del>	<u>25.00</u>
<del>(i)(h)</del> tape storage, <del>in vault</del> per inch		0.55

AUTH: 2-6-103, MCA

IMP: 2-6-201, 2-6-202, 2-6-203, 2-6-206, MCA

44.14.311 FEES FOR RECORDS CENTER BOXES (1) The following fees shall be charged for each storage box based upon the supplier costs:

(a) standard size A 15" x 12" x 10"	<del>\$1.34</del>	<u>\$ 1.47</u>
(b) standard size B 15" x 12" x 4 1/2"	<del>1.34</del>	<u>1.47</u>
(c) drawing and map storage boxes size 24" x 12" x 10"	<del>1.34</del>	<u>3.22</u>

AUTH: 2-6-201, MCA

IMP: 2-6-202, 2-6-203, 2-6-206, MCA

44.14.312 FEES FOR IMAGING SERVICES (1) The following fees shall be charged for imaging services:

(a) each image	<del>\$0.055</del>	<u>\$ 0.106</u>
(b) <del>hourly charge for</del> indexing/document preparation, <u>per hour</u>	<del>18.00</del>	<u>24.00</u>

AUTH: 2-6-201, MCA

IMP: 2-6-202, 2-6-203, 2-6-206, MCA

4. The rule proposed to be repealed provides as follows:

44.14.303 FEES FOR 105MM MICROFILM SERVICES found at page 44-765 of the Administrative Rules of Montana.

AUTH: 2-6-103, MCA

IMP: 2-6-110, MCA

5. STATEMENT OF REASONABLE NECESSITY: The proposed cost increase will affect all state agencies, Montana counties, and the universities in the amount of \$22,079.59 in records center costs and \$128,702.24 in document conversion costs. These rates have been calculated after an 11-year static fee structure. As a cost-commensurate agency 2-15-402, MCA, it has become apparent that the division is not providing services rendered at rates that match the production of services. The services in ARM 44.14.303 are no longer offered.

6. Concerned persons may present their data, views, or arguments concerning the proposed actions, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Patti Borsberry, Secretary of State's Office, P.O. Box 202801, Helena, Montana 59620-2801, or by e-mailing pborsberry@mt.gov, and must be received no later than 5:00 p.m., September 20, 2007.

7. The Secretary of State maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding administrative rules, corporations, elections, notaries, records, uniform commercial code, or combination thereof. Such written request may be mailed or delivered to the Secretary of State's Office, Administrative Rules Services, 1236 Sixth Avenue, P.O. Box 202801, Helena, MT 59620-2801, e-mailed to jabranscum@mt.gov, faxed to the office at (406) 444-4263, or may be made by completing a request form at any rules hearing held by the Secretary of State's Office.

8. Janice Doggett, Secretary of State's Office, P.O. Box 202801, Helena, Montana 59620-2801, has been designated to preside over and conduct the hearing.

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

/s/ W. Ralph Peck for  
BRAD JOHNSON  
Secretary of State

/s/ Janice Doggett  
JANICE DOGGETT  
Rule Reviewer

Dated this 13th day of August 2007.

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

In the matter of the adoption of NEW ) NOTICE OF ADOPTION  
RULE I (ARM 6.6.901), NEW RULE II )  
(ARM 6.6.902), NEW RULE III (ARM )  
6.6.903), NEW RULE IV (ARM )  
6.6.904), NEW RULE V (ARM )  
6.6.905), NEW RULE VI (ARM )  
6.6.906), NEW RULE VII (ARM )  
6.6.907), NEW RULE VIII (ARM )  
6.6.908), and IX (ARM 6.6.909) )  
pertaining to Military Sales Practices )

TO: All Concerned Persons

1. On July 5, 2007, the State Auditor and Commissioner of Insurance published MAR Notice No. 6-167 regarding the public hearing on the proposed adoption of the above-stated rules at page 902 of the 2007 Montana Administrative Register, issue number 13.

2. On July 25, 2007, the State Auditor and Commissioner of Insurance held a public hearing to consider the proposed adoption of the above-stated rules. In addition, a written comment was received before the comment deadline.

3. The State Auditor and Commissioner of Insurance has adopted New Rule I (ARM 6.6.901) PURPOSE, New Rule II (ARM 6.6.902) SCOPE, New Rule III (ARM 6.6.903) AUTHORITY, New Rule IV (ARM 6.6.904) EXEMPTIONS, New Rule V (ARM 6.6.905) DEFINITIONS, New Rule VI (ARM 6.6.906) PRACTICES DECLARED FALSE, MISLEADING, DECEPTIVE, OR UNFAIR ON A MILITARY INSTALLATION, New Rule VII (ARM 6.6.907) PRACTICES DECLARED FALSE, MISLEADING, DECEPTIVE, OR UNFAIR REGARDLESS OF LOCATION, and New Rule VIII (ARM 6.6.908) SEVERABILITY, exactly as proposed.

4. The department has thoroughly considered the comment and testimony received. A summary of the comment and testimony received and the department's responses are as follows:

COMMENT 1: Dave Adams of State Farm Insurance Companies commented that the effective date as presented in the proposal notice provides insurers with less than two months to come into compliance with the proposed rules. State Farm strongly recommended that the department give insurance companies at least six months to implement these rules, as provided in the NAIC Model. The January 1, 2008, effective date in the NAIC Model was the product of extensive discussions among the NAIC Executive Committee Military Sales Working Group, and reflects an important compromise with life insurers and producers. Implementation of these rules will require companies to establish a compliance plan, train their insurance

producers, and perhaps make system changes. To ensure that all companies both large and small can adequately implement these rules, State Farm recommends an effective date of six months after adoption.

RESPONSE 1: Based on Mr. Adams comment, the department adopts the NAIC Model proposed effective date of January 1, 2008, as more appropriate.

COMMENT 2: Don Allen, representing National Association of Insurance and Financial Advisors (NAIFA-MT), also suggested that the effective date of these rules be changed to January 1, 2008.

RESPONSE 2: The department agrees.

5. After consideration of the comment and testimony received, the department has adopted the following New Rule IX (ARM 6.6.909) with the following change, stricken matter interlined, new matter underlined:

NEW RULE IX (ARM 6.6.909) EFFECTIVE DATE (1) ~~[New Rules I through IX]~~ ARM 6.6.901 through 6.6.909 shall become effective ~~September 27, 2007~~ January 1, 2008, and shall apply to acts or practices committed on or after the effective date.

/s/ Christina L. Goe  
Christina L. Goe  
Rule Reviewer

/s/ Patrick M. Driscoll  
Patrick M. Driscoll  
Staff Attorney  
State Auditor/Commissioner of Insurance

Certified to the Secretary of State August 13, 2007

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

In the matter of the repeal of a	)	
temporary emergency rule closing the	)	NOTICE OF REPEAL OF A
Missouri River from American Bar	)	TEMPORARY EMERGENCY RULE
Gulch to Beartooth Landing, Lewis	)	
and Clark County, MT	)	

TO: All Concerned Persons

1. On July 26, 2007, the Fish, Wildlife and Parks Commission (commission) adopted a temporary emergency rule closing the Missouri River from American Bar Gulch to Beartooth Landing. There was an immediate need for a source of water for aircraft dropping water on fires along and adjacent to the Missouri River in the Gates of the Mountains and Upper Holter Lake. This situation constituted an imminent peril to the public health, safety, and welfare of anyone using the river. Within the rule, the commission delegated its authority to the Department of Fish, Wildlife and Parks to determine, in consultation with the commissioner in the region, when the river was again safe for public use. Notice of this rule action was published on August 9, 2007, at page 1094 of the 2007 Montana Administrative Register, Issue No. 15.

2. As conditions have substantially changed and public safety is no longer an issue, the temporary emergency rule closing the Missouri River from American Bar Gulch to Beartooth Landing, MAR Notice No. 12-334, is no longer necessary. As this situation no longer constitutes an imminent peril to public health, safety, and welfare, the commission is repealing the rule. The repealing of the rule will be sent as a press release to newspapers throughout the state. Also, signs informing the public of the closure will be removed at access points. The repeal notice will be sent to interested parties, and published in Issue No. 16 of the 2007 Montana Administrative Register.

3. The repeal of the temporary emergency rule is effective August 5, 2007, 8:00 a.m.

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

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

/s/ Robert N. Lane  
Robert N. Lane  
Rule Reviewer

Certified to the Secretary of State August 5, 2007.

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

In the matter of the adoption of a )  
temporary emergency rule closing ) NOTICE OF ADOPTION OF A  
Placid Lake and Seeley Lake, ) TEMPORARY EMERGENCY RULE  
Missoula County, MT )

TO: All Concerned Persons

1. The Fish, Wildlife and Parks Commission (commission) believes the following reasons justify the adoption of a temporary emergency rule:

(a) There is an immediate need for a source of water for aircraft dropping water on the Jocko Lakes fire.

(b) The aircraft scoop water while hovering over the surface of the water. Other aircrafts used require at least 5,000 feet of clearance in order to slow down, scoop water into the airplane, and lift off again.

(c) Persons on Placid Lake and Seeley Lake recreating while aircraft are loading water would be subjected to immediate and extreme danger. Furthermore, flight crews would be subjected to increased and additional peril if aircraft had to maneuver to avoid recreationists.

(d) Therefore, as this situation constitutes an imminent peril to public health, safety, and welfare, and this threat cannot be averted or remedied by any other administrative act, the commission adopts the following temporary emergency rule. The emergency rule will be sent as a press release to newspapers throughout the state. Also, signs informing the public of the closure will be posted at access points. The rule will be sent to interested parties, and published as a temporary emergency rule in Issue No. 16 of the 2007 Montana Administrative Register.

2. The commission will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of the notice. If you require an accommodation, contact the department no later than 5:00 p.m. on August 30, 2007, to advise us of the nature of the accommodation that you need. Please contact Jessica Snyder, Fish, Wildlife and Parks, 1420 East Sixth Avenue, P.O. Box 200701, Helena, MT 59620-0701; telephone (406) 444-4594; fax (406) 444-7456; or e-mail [jesnyder@mt.gov](mailto:jesnyder@mt.gov).

3. The temporary emergency rule is effective August 10, 2007 when this rule notice is filed with the Secretary of State.

4. The text of the temporary emergency rule provides as follows:

RULE I PLACID LAKE AND SEELEY LAKE TEMPORARY EMERGENCY CLOSURE (1) Placid Lake and Seeley Lake are located in Missoula County.

(2) Placid Lake and Seeley Lake are closed to all boating, floating, and swimming and any other public occupation of the lakes.



(3) This rule is effective as long as Placid Lake or Seeley Lake is needed as a source of water for fighting wildfires. The commission delegates its authority to the department, in consultation with the commissioner in the region, to determine when Placid Lake and Seeley Lake are again safe for boating, floating, and swimming and any other occupation of the water and to rescind the temporary emergency closure.

AUTH: 2-4-303, 87-1-303, MCA  
IMP: 2-4-303, 87-1-303, MCA

5. The rationale for the temporary emergency rule is as set forth in paragraph 1.

6. This rule will expire as soon as the department determines the lakes are again safe for boating, floating, and swimming and any other occupation of the lakes. This will depend on the extent and duration of wildfires in the area. Signs restricting use of the lakes will be removed when the rule is no longer effective. Notice of repeal of this emergency rule will be published in the Montana Administrative Register.

7. Concerned persons are encouraged to submit their comments to the department. They should submit their comments along with their names and addresses to Jessica Snyder, Legal Unit, Department of Fish, Wildlife and Parks, 1420 East Sixth Avenue, P.O. Box 200701, Helena, Montana 59620-0701; telephone (406) 444-4594; fax (406) 444-7456; or e-mail [jesnyder@mt.gov](mailto:jesnyder@mt.gov). Any comments must be received no later than August 31, 2007.

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

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

/s/ Larry G. Peterman  
Larry G. Peterman,  
Chief of Field Operations  
Department of Fish, Wildlife and Parks  
Acting Secretary  
Fish, Wildlife and Parks Commission

/s/ Robert N. Lane  
Robert N. Lane  
Rule Reviewer

Certified to the Secretary of State August 10, 2007.

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

In the matter of the adoption of a )  
temporary emergency rule closing ) NOTICE OF ADOPTION OF A  
Lake Inez, Missoula County, MT ) TEMPORARY EMERGENCY RULE

TO: All Concerned Persons

1. The Fish, Wildlife and Parks Commission (commission) believes the following reasons justify the adoption of a temporary emergency rule:

(a) There is an immediate need for a source of water for aircraft dropping water on the Jocko Lakes fire.

(b) The CL 215 Scooper aircraft lands on the lake, immediately throttles up while pumping in 1500 gallons of water, and takes off without ever stopping. Helicopters may also be dipping out of the lake as well.

(c) Persons on Lake Inez recreating while aircraft are loading water would be subjected to potential collisions that could result in injury or death. Furthermore, flight crews would be subjected to increased and additional peril if aircraft had to maneuver to avoid recreationists.

(d) Therefore, as this situation constitutes an imminent peril to public health, safety, and welfare, and this threat cannot be averted or remedied by any other administrative act, the commission adopts the following temporary emergency rule. The emergency rule will be sent as a press release to newspapers throughout the state. Also, signs informing the public of the closure will be posted at access points. The rule will be sent to interested parties, and published as a temporary emergency rule in Issue No. 16 of the 2007 Montana Administrative Register.

2. The commission will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of the notice. If you require an accommodation, contact the department no later than 5:00 p.m. on August 30, 2007, to advise us of the nature of the accommodation that you need. Please contact Jessica Snyder, Fish, Wildlife and Parks, 1420 East Sixth Avenue, P.O. Box 200701, Helena, MT 59620-0701; telephone (406) 444-4594; fax (406) 444-7456; or e-mail [jesnyder@mt.gov](mailto:jesnyder@mt.gov).

3. The temporary emergency rule is effective August 14, 2007 when this rule notice is filed with the Secretary of State.

4. The text of the temporary emergency rule provides as follows:

RULE I LAKE INEZ TEMPORARY EMERGENCY CLOSURE (1) Lake Inez is located in Missoula County.

(2) Lake Inez is closed to all boating, floating, and swimming and any other public occupation of the lakes.

(3) This rule is effective as long as Lake Inez is needed as a source of water for fighting wildfires. The commission delegates its authority to the department, in consultation with the commissioner in the region, to determine when Lake Inez is again safe for boating, floating, and swimming and any other occupation of the water and to rescind the temporary emergency closure.

AUTH: 2-4-303, 87-1-303, MCA  
IMP: 2-4-303, 87-1-303, MCA

5. The rationale for the temporary emergency rule is as set forth in paragraph 1.

6. This rule will expire as soon as the department determines the lake is again safe for boating, floating, and swimming and any other occupation of the lake. This will depend on the extent and duration of wildfires in the area. Signs restricting use of the lake will be removed when the rule is no longer effective. Notice of repeal of this emergency rule will be published in the Montana Administrative Register.

7. Concerned persons are encouraged to submit their comments to the department. They should submit their comments along with their names and addresses to Jessica Snyder, Legal Unit, Department of Fish, Wildlife and Parks, 1420 East Sixth Avenue, P.O. Box 200701, Helena, Montana 59620-0701; telephone (406) 444-4594; fax (406) 444-7456; or e-mail [jesnyder@mt.gov](mailto:jesnyder@mt.gov). Any comments must be received no later than August 31, 2007.

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

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

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

/s/ Robert N. Lane  
Robert N. Lane  
Rule Reviewer

Certified to the Secretary of State August 14, 2007.

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

In the matter of the amendment of ) NOTICE OF AMENDMENT  
ARM 12.6.2203, 12.6.2205, )  
12.6.2210, and 12.6.2215 pertaining )  
to exotic species )

To: All Concerned Persons

1. On May 10, 2007, the Fish, Wildlife and Parks Commission (commission) published MAR Notice No. 12-325 regarding a public hearing on the proposed amendment of the above-stated rules at page 560 of the 2007 Montana Administrative Register, Issue No. 9. On May 24, 2007 the commission published MAR Notice No. 12-330 verifying the time of the public hearing at page 632 of the 2007 Montana Administrative Register, Issue No. 10.

2. The commission has amended ARM 12.6.2203, 12.6.2205, 12.6.2210, and 12.6.2215 as proposed.

3. The commission received two comments opposing one of the rule amendments, and one general comment on the involvement of the Department of Fish, Wildlife and Parks (department) with exotic wildlife management. A summary of the comments appears below with the commission's responses:

Comment 1: One individual thought taking care of native wildlife should be the department's sole responsibility, not exotic wildlife management. This person was also concerned about exotic wildlife being released into the wild.

Response: The state Legislature gave the commission, after the commission considers advice from an exotic wildlife classification review committee, the responsibility to adopt rules regarding the regulation of exotic wildlife within the state (HB 770, 1985 and SB 442, 2003). One purpose of these rules is to protect people, native animals, and habitat from the release of exotic wildlife into the wild. While the commission agrees that the department has a full plate in managing native wildlife, failure of the commission to fulfill its responsibility by not adopting rules to regulate exotic wildlife could make the department's management responsibilities more difficult and endanger people and native wildlife.

Comment 2: Two individuals opposed prohibiting the five species of giant constrictors. Both comments suggested a controlled/regulated status would be more appropriate than prohibited. They both stated that these snake species could not survive in the wild in Montana and that they pose a minimal threat to human life. Comparisons were made between the fatalities caused by constrictors, dogs, and horses.

Response: The five constrictor species being listed as prohibited pose significant threats to health and human safety. The comments stated that only 0.4 human fatalities occur per year as a result of giant constrictors compared to the 14 per year from dog attacks. However, when the number of households that own a dog is compared to the number of households that own giant constrictors, it becomes obvious that the proportion of fatalities as a result of dog attacks would be significantly less than that caused by giant constrictors. Additionally, wild animals are inherently less predictable and more dangerous than domestic animals. Many constrictors are currently classified as noncontrolled and can be kept as pets. Only the five largest and most dangerous constrictors are being listed as prohibited, so there are still many opportunities for the public to own constrictors.

/s/ Steve Doherty  
Steve Doherty, Chairman  
Fish, Wildlife and Parks  
Commission

/s/ Bill Schenk  
Bill Schenk  
Rule Reviewer

Certified to the Secretary of State August 13, 2007.

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, 17.56.104, )  
17.56.105, 17.56.201 through 17.56.203,) )  
17.56.301 through 17.56.304, 17.56.308 )  
through 17.56.310, 17.56.403, )  
17.56.407, 17.56.408, 17.56.701 through )  
17.56.705, 17.56.801 through 17.56.803,) )  
17.56.805 through 17.56.811, 17.56.816,) )  
17.56.817, 17.56.820 through 17.56.825,) )  
17.56.827, 17.56.828, 17.56.901, )  
17.56.1002, 17.56.1003 through )  
17.56.1005, and 17.56.1422; the )  
adoption of new rule I; and the repeal of )  
ARM 17.56.120 and 17.56.121 )  
pertaining to the management of )  
underground storage tanks, )  
incorporation by reference, and )  
assessment of administrative penalties )  
)  
)

NOTICE OF AMENDMENT,  
ADOPTION, AND REPEAL  
  
(UNDERGROUND STORAGE  
TANKS)

TO: All Concerned Persons

1. On July 5, 2007, the Department of Environmental Quality published MAR Notice No. 17-260 regarding a notice of public hearing on the proposed amendment, adoption, and repeal of the above-stated rules at page 915, 2007 Montana Administrative Register, issue number 13.

2. The department has amended ARM 17.56.101, 17.56.102, 17.56.104, 17.56.105, 17.56.201 through 17.56.203, 17.56.301 through 17.56.304, 17.56.308 through 17.56.310, 17.56.403, 17.56.407, 17.56.408, 17.56.701 through 17.56.705, 17.56.801 through 17.56.803, 17.56.805 through 17.56.811, 17.56.816, 17.56.817, 17.56.820 through 17.56.825, 17.56.827, 17.56.828, 17.56.901, 17.56.1002, 17.56.1003 through 17.56.1005, and 17.56.1422, and repealed ARM 17.56.120 and 17.56.121 exactly as proposed. The department has adopted New Rule I (17.56.204) as proposed, but with the following changes, new matter underlined, stricken matter interlined:

NEW RULE I (17.56.204) SECONDARY CONTAINMENT, UNDER-  
DISPENSER CONTAINMENT, AND INTERSTITIAL MONITORING (1) through  
(1)(c) remain as proposed.

(2) Any pressurized product piping regulated under this chapter that is installed or replaced must:

(a) remains as proposed.

- (b) terminate in a liquid tight sump at each end. The sumps must:
  - (i) and (ii) remain as proposed.
  - (iii) allow for visual inspection and access to the components in the containment system and/or otherwise allow the system to be monitored; and
  - (c) employ approved continuous interstitial monitoring, as described in ARM 17.56.407(1)(g) and (2), as a monthly leak detection method; ~~and~~
  - ~~(d) employ an automatic line leak detector.~~
  - (3) through (5)(d) remain as proposed.

3. The following comments were received and appear with the board's responses:

COMMENT NO. 1: A tank manufacturer commented that manufacturers should be allowed to repair tanks without obtaining an installation license. The commentor noted that the rules recognize the expertise of manufacturers in repair situations. For example, the rules require that tank repair be performed under the on-site supervision of a manufacturer's authorized representative or that the tank owner obtain the manufacturer's certification that the repaired tank meet the manufacturer's design standards. ARM 17.56.304(3)(b). Because the rules include tank repair in the definition of "installation," a person must have an installer license to perform the repairs. To obtain a license, a person must have experience in underground storage tank system installation and closure. The manufacturer cannot meet this requirement because it is not an installer or closer of tanks or tank systems. The commentor recommended that the definition of "installation" in ARM 17.56.101(32) be amended to exclude repairs and modifications performed by the manufacturer. This will allow the manufacturer to honor its product warranty in the event tank repairs are needed.

RESPONSE: The definition of "installation" provided in 75-11-203(6), MCA, includes the repair of an underground storage tank. Also, the definition of "installation" provided in ARM 17.56.101(32) includes the repair of an underground storage tank. The term "repair" means to restore a damaged or leaking tank or underground storage tank system component to the manufacturer's original design standards. Therefore, the requirement in ARM 17.56.1303(1), that a person shall obtain a permit to close or install an underground storage tank, is appropriately applied to a person who repairs underground storage tanks.

Because repairs are included in the statutory definition of "installation" or "to install," an exemption for repairs must first be codified in statute before it can be adopted in the administrative rules. The department is not considering such a revision to the statute at this time.

If the manufacturer's personnel cannot meet the requirements for obtaining an installation permit, the manufacturer could contract with independent tank installers that have installation permits to honor its product warranty in the event tank repairs are needed.

COMMENT NO. 2: A commentor stated that an automatic line leak detector would not work properly with product piping that is pressurized by gravity or on lines between a master dispenser and its satellite dispenser.

RESPONSE: The department agrees with the comment. The department has removed the requirement for automatic line leak detectors for pressurized product piping with continuous interstitial monitoring. The department will study the use and effectiveness of automatic line leak detectors with continuous interstitial monitoring methods on pressurized product piping. In a future rulemaking, the department will reconsider the requirements for the use of automatic line leak detectors with continuous interstitial monitoring methods on pressurized product piping.

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, August 13, 2007.



BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY  
STATE OF MONTANA

In the matter of the amendment ) NOTICE OF AMENDMENT  
of ARM 24.29.1416, and the ) AND ADOPTION  
adoption of NEW RULE I both related to )  
allowable charges for prescription drugs )  
under a workers' compensation claim )

TO: All Concerned Persons

1. On June 7, 2007, the department published MAR Notice No. 24-29-218 regarding the public hearing on the proposed amendment and adoption of the above-stated rules at page 753 of the 2007 Montana Administrative Register, issue no. 11.

2. On June 29, 2007, a public hearing was held in Helena concerning the proposed rules at which oral and written comments were received. Additional comments were received prior to the closing date of July 6, 2007.

3. The department has thoroughly considered the comments and testimony received on the proposed new rules. The following is a summary of the comments received, along with the department's response to those comments:

Comment 1: There were several comments voicing concern that the cuts to the previous prescription drug fee schedule, both to the drug reimbursement rate and to the dispensing fee, were too drastic and would lead to Montana having some of the lowest prescription drug reimbursement rates in the nation. The comments indicated some surrounding states have higher rates and that some studies show dispensing fees to be as much as \$13. The commenters expressed concern that the adoption of the proposed rates could cause key pharmacy chains or individual stores to discontinue dispensing to workers' compensation patients in the state of Montana. According to the commenters, this could potentially lead to a financial burden being placed on injured workers if they are required to pay cash up-front to obtain a prescription or have limited access to obtaining prescriptions.

Response 1: In drafting these rules, the department analyzed current contracts for prescription drug reimbursement between preferred provider organizations (PPOs) and Montana Plan II and Plan III workers' compensation insurance carriers. These contracts constitute at least 60% of the existing workers' compensation prescription drug market in Montana. The department also compared rates from almost 30 other states. The department established the generic reimbursement rates to bring the rates reasonably closer to the rates in those contracts. In response to comments received however, the department further researched brand-name rates and is amending the brand-name prescription drug reimbursement rate in the rule to more closely reflect the market-negotiated rates. As indicated below, brand names will be reimbursed at AWP minus 10% rather than AWP minus 15% as originally proposed.

In addition, the department agrees that it is important to maintain pharmacy and prescription availability for injured workers. The department does not believe the rate cuts will lower accessibility at this time because the rates approximate existing rates in the workers' compensation market in Montana. However, the department will monitor this issue and adjust rates if needed in the next annual adoption of the prescription drug fee schedule.

Comment 2: Several persons commented that there are significant differences between the costs to supply prescription drugs on a workers' compensation claim versus the costs to supply prescription drugs to other health claims. The commenters included differences such as lack of billing information, additional time spent adjusting fees after liability has been accepted, negotiating and collecting payment, and carrying accounts receivable longer than other claims. The commenters noted a study researching these differences. The commenters indicated these differences require higher reimbursements for workers' compensation prescriptions and make it inappropriate to set reimbursement rates at about the same amount as Medicaid levels. In addition, a pharmacy benefit manager commented that the rates could likely make offering its services in Montana cost prohibitive for insurers and that insurers would then lose the additional claims administration and monitoring services it provides.

Response 2: According to data compiled from Plan II and Plan III Montana workers' compensation insurers, PPO and pharmacy benefit manager (PBM) contracts that have been in place for more than one and a half years have reimbursement rates equal to or lower than those proposed in this administrative rule. These contracts include and account for the differences in the cost to process workers' compensation prescription claims. The proposed rule represents an average of the currently existing workers' compensation reimbursement rates in Montana for at least 60% of the workers' compensation market. The proposed rule brings the last remaining portion of the workers' compensation market in Montana in line with the rates already in existence for the majority of workers' compensation prescriptions.

Comment 3: A comment was received that ARM 24.29.1416(1) should be clarified to add "prescription drugs" and "medical equipment and supplies" to the list of items covered by the rule.

Response 3: The department agrees and has amended the rule accordingly.

Comment 4: One commenter urged a smaller percentage reduction for generic drugs, out of concern that the proposed rates might create an incentive for the use of brand-name drugs over the use of generic drugs.

Response 4: The language in 39-71-727(1) and (2), MCA, clearly requires the use of generic drugs over the use of brand-name drugs according to its provisions. The department believes the statute properly addresses this concern already.

Comment 5: There was a concern about whether the new rule would maintain the injured workers' ability to choose a pharmacy or provider and not punish providers for providing out of network care.

Response 5: In order to promote cost containment of medical care, the current language in 39-71-1102, MCA, encourages the development of preferred provider organizations by insurers. After the injured worker is notified in writing by the insurer of a preferred provider, the insurer is not liable for any charges from a nonpreferred provider. This does not prohibit the injured worker from choosing the initial treating physician. In addition, the new rule states if the injured worker has personally paid for prescription drugs prior to the acceptance of the claim, the injured worker is entitled to a refund of the price paid once liability for the claim has been accepted by the insurer.

Comment 6: One commenter suggested the reimbursement rate for brand name and generic drugs should be limited to the lesser of the price paid or the fee scheduled amount. The commenter stated that the "lesser of" language is standard for the industry and that this language prevents a pharmacy from being reimbursed for more than it charged for a drug.

Response 6: The department agrees and has amended the rule accordingly.

Comment 7: A commenter suggested clarifying that insurers reimburse for prescription drugs only when the injured worker produces a written receipt.

Response 7: The department believes the requirement of proper written documentation is a good idea and has amended the rule accordingly.

Comment 8: The same commenter suggested pharmacies must, upon request, reimburse an insurer for the difference in the amount paid by the injured worker and the amount provided by the fee schedule.

Response 8: The department agrees this clarification is needed, as this was the original intent of the rule. The rule is amended accordingly.

Comment 9: A third-party payer of medical bills agreed it is important to reimburse injured workers for out of pocket prescription expenses which may occur early in the life of a claim as outlined in New Rule I. The commenter indicated the rule acts as a disincentive to prevent claimants from paying for prescription drugs above fee scheduled amounts.

Response 9: The department acknowledges the comments. However, the department notes the commenter is incorrect on the final point in that a claimant is reimbursed the full amount paid for prescriptions prior to acceptance of liability by an insurer. The insurer is then entitled to a refund from the pharmacy of the amount above the fee scheduled amount as indicated in the amendments below.

Comment 10: A commenter expressed the concern that the use of average wholesale price (AWP) instead of the cost to a pharmacy inflates the cost to the insurer since it does not reflect the net cost actually paid by a pharmacy.

Response 10: Based on a recent national study of the means by which states' workers' compensation programs reimburse drug prescription, 27 out of 29 states utilized AWP for their rate schedule. The department therefore feels this is currently the best methodology to use in determining a prescription drug fee schedule until a better mechanism is developed.

4. The department has amended the following rule as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

24.29.1416 APPLICABILITY OF DATE OF INJURY, DATE OF SERVICE

(1) The amounts of the following types of payments are determined according to the specific department rates in effect on the date the medical service is provided, regardless of the date of injury:

- (a) medical fees; ~~and~~
- (b) hospital charges;
- (c) prescription drugs; and
- (d) medical equipment and supplies.

AUTH: 39-71-203, MCA

IMP: 39-71-704, MCA

5. The department has adopted the following rule as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

NEW RULE I (24.29.1529) PRESCRIPTION DRUGS FEE SCHEDULE

(1) and (1)(a) remain as proposed.

(b) Reimbursement rates to retail pharmacies for brand-name drugs are limited to the lesser of the average wholesale price (AWP), minus ~~45~~ 10 percent, or the price charged for ~~of~~ the product at the time of dispensing, plus a dispensing fee, not to exceed \$3.00 per product.

(c) Reimbursement rates to retail pharmacies for generic-name drugs are limited to the lesser of the AWP, minus 25 percent, or the price charged for ~~of~~ the product at the time of dispensing, plus a dispensing fee, not to exceed \$3.00 per product.

(d) and (2) remain as proposed.

(a) The insurer, when accepting liability for a condition for which a prescription drug has been prescribed, must, upon receiving a proper receipt, reimburse the injured worker the retail price paid.

(b) After the injured worker has been reimbursed by the insurer, the pharmacy must, upon request by the insurer, reimburse the insurer for the difference

in the amount paid by the injured worker and the amount provided by the fee schedule.

AUTH: 39-71-203, MCA  
IMP: 39-71-727, 39-71-743, MCA

/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 August 13, 2007

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

In the matter of the amendment of ARM ) NOTICE OF AMENDMENT  
37.86.3701, 37.86.3702, 37.86.3705, )  
37.88.101, 37.88.901, 37.88.1116, and )  
37.89.103 pertaining to case )  
management services for youth with )  
serious emotional disturbance )

TO: All Interested Persons

1. On May 24, 2007, the Department of Public Health and Human Services published MAR Notice No. 37-407 pertaining to the public hearing on the proposed amendment of the above-stated rules, at page 660 of the 2007 Montana Administrative Register, issue number 10.

2. The department has amended ARM 37.86.3705, 37.88.901, 37.88.1116, and 37.89.103 as proposed.

3. The department has amended the following rules as proposed with the following changes from the original proposal. Matter to be added is underlined. Matter to be deleted is interlined.

37.86.3701 CASE MANAGEMENT SERVICES FOR YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE, DEFINITIONS (1) through (3)(g) remain as proposed.

(4) "Crisis plan" means an individualized plan for the client that identifies potential problems that, if left unaddressed, may lead to the client experiencing a mental health crisis. ~~This must include, but is not limited to:~~

~~(a) helping the client and family identify what to do when a mental health crisis occurs;~~

~~(b) identifying specific resources for the client and family prior to a mental health crisis;~~

~~(c) informing the client and family of the case manager's sub-crisis role in responding to a crisis;~~

~~(d) informing the client and family of the other treatment team member's roles in responding to a crisis;~~

~~(e) informing the client and family of the mental health center's crisis telephone service; and~~

~~(f) assisting the client and family in developing the necessary skills to manage some of their own crises.~~

(5) "Crisis response" means the immediate action taken by an individual trained to respond to mental health emergencies when a person presents as a danger to self or others. A case manager must take immediate action to contact an appropriately trained individual or emergency service responder if they believe a

client presents a danger to self or others. Crisis response must be made in a manner consistent with the least restrictive alternative measures or settings available for the client's condition. Crisis response may include contact with a client's family members if necessary and appropriate.

(6) through (8) remain as proposed.

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

IMP: 53-6-101, MCA

37.86.3702 CASE MANAGEMENT SERVICES FOR YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE, ELIGIBILITY (1) remains as proposed.

(2) "Serious emotional disturbance (SED)" means with respect to a youth ~~between~~ from the ages of six and through 17 years of age that the youth meets requirements of (2)(a) and (2)(b).

(a) The youth has been determined by a licensed mental health professional as having a mental disorder with a primary diagnosis falling within one of the following DSM-IV (or successor) classifications when applied to the youth's current presentation (current means within the past 12 calendar months unless otherwise specified in the DSM-IV) and the diagnosis has a severity specifier of moderate or severe:

(i) through (xvii) remain as proposed.

(xviii) bulimia nervosa (severe) (307.51); ~~and~~

(xix) intermittent explosive disorder (312.34); ~~and~~

(xx) attention deficit/hyperactivity disorder (314.00, 314.01, 314.9) when accompanied by at least one of the diagnoses listed above.

(b) through (c)(vi) remain as proposed.

(3) A youth must be reassessed annually by a licensed mental health professional, as to whether or not they continue to meet the criteria for having a serious emotional disturbance. For the initial or for an annual reassessment, the clinical assessment must document how the youth meets the criteria for having a serious emotional disturbance.

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

IMP: 53-6-101, MCA

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

(a) the client has been determined to have a serious emotional disturbance as defined in ARM 37.86.3702, with the following exceptions identified in (1)(b);:

~~(i) a youth is not required to have a serious emotional disturbance for group outpatient therapy or the first 24 sessions of individual and family outpatient therapy services per state fiscal year, unless they are provided concurrently with a service requiring prior authorization or comprehensive school and community treatment. Youth must have a mental health diagnosis, as designated by the department, for group outpatient therapy and/or the first 24 sessions of individual and family~~

~~outpatient therapy services per state fiscal year; or~~

(b) a youth is required to have a mental health diagnosis designated by the department, and not required to have a serious emotional disturbance to receive the following services:

(i) group outpatient therapy; and

(ii) the first 24 sessions per state fiscal year of individual and family outpatient therapy.

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

~~(b) (d) for prior authorized services, the serious emotional disturbance has been determined~~ verified by the department or its designee.

(2) through (11) remain as proposed.

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

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

4. After receiving public comment, the department has amended the following rule (see comment and response #3). Matter to be added is underlined. Matter to be deleted is interlined.

37.86.3706 CASE MANAGEMENT SERVICES FOR YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE, SERVICE REQUIREMENTS (1) through (2)(h) remain the same.

(3) The case plan must include a crisis plan that must minimally:

(a) help the client and family identify what to do when a mental health crisis occurs;

(b) identify specific resources for the client and family prior to a mental health crisis;

(c) inform the client and family of the case manager's sub crisis role in responding to a crisis;

(d) identify treatment team member's roles in responding to a crisis;

(e) include the mental health center's crisis telephone service; and

(f) assist the client and family in developing the necessary skills to manage some of their own crises.

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

AUTH: 53-6-113, MCA

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

5. The department has thoroughly considered all commentary received. The comments received and the department's response to each follow:

COMMENT #1: Opposition was expressed to the proposed change and for not allowing targeted case management (TCM) to provide youth assistance in daily living. It has been the commentor's experience that many youth with a serious emotional disturbance (SED) also have developmental delays that impair their ability



to learn many skills, including basic skills in daily living. Learning these skills is also important for SED youth transitioning to adult life. Early and Periodic Screening, Diagnostic, and Treatment Services (EPSDT) requires that states provide rehabilitative services. Rehabilitative services include training in basic living skills, social skills, counseling, and therapy.

The Center for Medicaid and Medicare Services (CMS) does not prohibit this service, nor does it limit case management services to the four core services listed in the proposal. Given Montana's very limited resources in rural areas, utilizing case managers to provide these rehabilitative services seems both cost effective and essential.

If the Children's Mental Health Bureau (CMHB) creates and funds an equally effective, lower cost position for teaching daily living skills to youth with SED and make it as widely available as case management, commentor would support this function being deleted from case management.

**RESPONSE:** Community based psychiatric rehabilitation and support (CBPRS) services are available to Medicaid SED youth, and is defined in ARM 37.88.901(5). CBPRS services include but are not limited to "(ii) assisting the consumer to develop communication skills, develop self-management of psychiatric symptoms, and develop social networks necessary to minimize social isolation and increase opportunities for a socially integrated life; (iii) assisting the consumer to develop daily living skills and behaviors necessary for maintenance of a home and family, an appropriate education, employment or vocational situation, and productive leisure and social activities."

Per ARM 37.106.1906 Mental Health Center Licensure, community based psychiatric rehabilitation and support services are one of five core services a mental health center must provide to be licensed.

The department disagrees with your interpretation of case management. The Social Security Act 1915(g) defines "case management services" as services which will assist individuals eligible under the plan in gaining access to needed medical, social, educational, and other services.

**COMMENT #2:** Several commentors from one agency recommended deleting "strength based" in case planning. It is already required in ARM 37.86.3706. Strength based is subjective and inconsistent with established medical necessity guidelines and incongruent with mental health center licensing rules. Prior authorization (PA) and utilization review (UR) is based on problems, symptoms, and difficulties.

**RESPONSE:** The department agrees that identifying the youth and families strengths and potentials is already required in ARM 37.86.3706 for the case management plan. The department wishes to emphasize the importance of focusing on the youth and family's strengths to assist them in making progress with their

problems. Prior authorization and utilization review is based on the youth and family's problems, symptoms, and difficulties. Utilizing the youth and family's strengths to address and overcome their problems is a clinical tool. Strength based case management plans reframe the youth and family's problems to address or take steps to eliminate or build competencies based on the individual's skills or periods of stability.

The mental health center licensing administrative rules for treatment plans do not include identifying the youth and family's strengths and potentials; however, the rules are not seen as being incongruent. Training on the development of strength based case management plans and review of the mental health center licensing rules may be beneficial.

COMMENT #3: One commentor recommended moving the crisis plan requirement from ARM 37.86.3701 to 37.86.3706.

RESPONSE: The department agrees and will move the crisis plan requirements found in ARM 37.86.3701(4)(a) through (f) to 37.86.3706. ARM 37.86.3706(3) will be renumbered to (4). The new (3) will state:

- (3) The case plan must include a crisis plan that must minimally:
- (a) help the client and family identify what to do when a mental health crisis occurs;
- (b) identify specific resources for the client and family prior to a mental health crisis;
- (c) inform the client and family of the case manager's sub crisis role in responding to a crisis;
- (d) identify treatment team member's roles in responding to a crisis;
- (e) include the mental health center's crisis telephone service; and
- (f) assist the client and family in developing the necessary skills to manage some of their own crises.

COMMENT #4: The clarification of the requirement for crisis planning, sub crisis response, monitoring, follow-up, and timely action is appropriate; however, it may be irrelevant if crisis services are not available.

RESPONSE: TCMs respond to a youth and family's urgent problems that if left unaddressed could become a crisis. TCMs assist SED youth and families implement their crisis plan as needed.

COMMENT #5: The terms "sub crisis" and "timely action" should be deleted, they are subjective and unmeasurable. Many of the problems faced by our clients and their families are "urgent problems" that if left unaddressed could lead to the client experiencing a mental health crisis.

Case managers are on the front line in Montana managing crisis events with SED youth. They also thought the terms "appropriately trained individual" and

"emergency responder" were unclear. This change will severely limit the ability of case managers to stabilize crisis situations.

RESPONSE: Requirements for an appropriately trained individual are defined in the mental health center (ARM 37.106.1945) Crisis Telephone Services rule. Mental health center emergency procedure requirements are found in ARM 37.106.1927, that address contacting emergency service responders. The language in the rule will be changed to emergency service responders instead of emergency responders. See responses #8, 9, and 15 regarding "sub crisis" and "timely action".

COMMENT #6: Please define a mental health emergency as defined in ARM 37.86.3701(5). What constitutes a mental health crisis in the context of working with youth and families?

RESPONSE: Mental health emergency is defined in ARM 37.89.103 under the Mental Health Services Plan section of the rule as a serious medical or behavioral condition resulting from mental illness which arises unexpectedly and manifests symptoms of sufficient severity to require immediate care to avoid jeopardy to the life or health of the member or harm to another person by the member.

COMMENT #7: Crises response service seems to be designed with the notion that Montana has a crisis service system that can be activated by a case manager. Given we do not have a crises system or any clearly identified funding, rules, or support for this type of system invoked by the rule, how should case managers really respond to crisis situations?

RESPONSE: Mental Health Center Licensure administrative rules require that the center have a plan for emergency procedures (ARM 37.106.1927) and that they provide crisis telephone services to their clients in ARM 37.106.1945.

COMMENT #8: Does a "sub-crises" response include transporting clients if necessary to avert a mental health crisis? If it does not, what actions are case managers expected to take in a "sub-crises" situation?

RESPONSE: TCM may transport a client to avert a mental health crisis. However, the travel time is not reimbursable by Medicaid Mental Health Services. In a sub crisis or urgent situation, the TCM may request prior authorization from Medicaid Transportation Services and if authorized receive reimbursement for mileage. For emergency transportation, authorization is requested after the transportation has been provided within the time frame allotted by Medicaid Transportation.

Sub crisis means urgent. TCMs respond to sub crisis situations and problem-solve the youth or family's presenting urgent problem or assist them to implement the crisis plan.

COMMENT #9: What is the definition of timely action? Does this suggest some level of responsibility to provide direct services in some circumstances? If so, the

rule needs to articulate how and when this responsibility should be met.

RESPONSE: There are times when a TCM will need to assist the family in accessing needed services quickly, within a day or two. The wording does not intend to suggest that the TCM has a responsibility to provide direct services, it means the coordination and referral to needed services must be timely, based on the needs of the youth and family.

COMMENT #10: The current definition of SED found in ARM 37.86.3702(2) includes attention deficit hyperactivity disorder (ADHD) if accompanied by one of the other diagnoses in (2)(a)(i) through (xix). Commentor would like the department's response to address that the removal of ADHD does not mean it should go untreated when the condition occurs concurrently with one of more of the conditions in (2)(a)(i) through (xix) of the SED definition.

RESPONSE: The department agrees, and for the reasons stated above will leave ADHD in the rule.

COMMENT #11: One commentor opposed removing ADHD from the list of qualifying SED diagnoses. The rationale for dropping ADHD was because it was redundant. Commentor does not believe as the rule currently exists, that ADHD needs to be moderate or severe and that ADHD can be the primary diagnosis when accompanied by one of the qualifying diagnoses.

RESPONSE: The department disagrees with part of the comment. Current administrative rule requires all the diagnoses in the SED definition found at ARM 37.86.3702(2)(a) to have a severity specifier of moderate or severe, even ADHD. However, ADHD may be the primary diagnoses if accompanied by at least one of the other qualifying SED diagnoses.

COMMENT #12: What is the state policy with regards to treating children suffering from ADHD or attention deficit disorder (ADD)?

RESPONSE: Attention deficit/hyperactivity disorder with a severity specifier of moderate or severe when accompanied by at least one of the diagnoses listed in ARM 37.86.3702(2)(a) is a covered SED diagnosis. Attention deficit disorder is not.

COMMENT #13: The rationale in the proposed rule notice was incorrect for removing the other agency service needs in the SED definition. Currently the SED definition requires the youth to meet (2)(a) and either (2)(b) or (2)(c). In the proposed rule notice it would appear to interpret the current language of ARM 37.86.3702 to require that the student meet (2)(a), (2)(b), and (2)(c).

The proposed change would affect the definition of SED by removing (2)(c) as an option for meeting the criteria for eligibility in circumstances where the student does not meet the criteria in (2)(b). This change could have a significant impact on the number of children eligible for services. We would ask that the department

reconsider the removal of (2)(c). If the department chooses to eliminate (2)(c) as proposed, then we would strongly encourage the department to add the following language to (2)(b): "(vii) has been determined eligible for special education as a student having emotional disturbance under 10.16.3015, MCA." (sic)

RESPONSE: The department agrees that the language in the proposed rule notice rationale could have been stated more clearly. Currently the SED definition requires the youth to meet (2)(a) and either (2)(b) or (2)(c). The department is proposing to eliminate (2)(c) and not make the youth wait to receive needed mental health services until they need the special services of another state agency. The department believes youth meeting the criteria for an emotional disturbance for special education in ARM (not MCA) 10.16.3015 may meet the functional impairment requirement in the SED definition without adding the proposed language. For youth that meet the criteria for having an emotional disturbance for special education and not the functional impairment for SED, some outpatient therapy services are available for non-SED youth.

COMMENT #14: One commentor was concerned with the omission of children ages three to five that were previously served.

RESPONSE: Children under six are still in the new SED definition in ARM 37.86.3702(2)(c) through (c)(vi). Children under six were previously addressed in (2)(d) through (d)(vi). (2)(d) through (d)(vi) were renumbered (2)(c) through (c)(vi).

COMMENT #15: A crisis plan in the case management plan is appropriate; however, there needs to be further clarification between "crisis" and "sub-crisis" response. A functional description should be added. Timely action should include the number of days for crisis, sub crisis and regular referrals as well as "appropriately trained individual" and "crisis responder". Consideration should be given to deleting "sub-crisis response" due to its subjectivity.

RESPONSE: The department disagrees with deleting sub crisis response. Sub crisis response means responding to urgent problems and crisis response means responding to a client who presents a danger to self or others. The department does not believe a functional definition is necessary. Please refer to response #5 for the definition of an "appropriately trained individual" and "emergency responder".

COMMENT #16: Please clarify ARM 37.86.3705, as it is confusing because the definition of crisis response suggests that case managers don't do crisis response but refer clients to those who do.

RESPONSE: Per the definition of "crisis response" in ARM 37.86.3701(5) a case manager must take immediate action to contact an appropriately trained individual or emergency service responder if they believe a client presents a danger to self or others.

COMMENT #17: The language is confusing regarding outpatient therapy for non-

SED youth except CSCT and prior authorized services. Perhaps there is a way to rewrite this section by stating in a separate section the services that are available for youth who have not yet been identified as SED.

RESPONSE: The department agrees and has revised the language for clarity to read:

"(1) Mental health services for a Medicaid youth under the Montana Medicaid program will be reimbursed only if the following requirements are met:

(a) the client has been determined to have a serious emotional disturbance as defined in ARM 37.86.3702, with exceptions identified in (1)(b);

(b) a youth is required to have a mental health diagnosis designated by the department, and not required to have a serious emotional disturbance to receive the following services:

(i) group outpatient therapy; and

(ii) the first 24 sessions per state fiscal year of individual and family outpatient therapy.

(c) the department has determined prior to treatment on a case by case basis that treatment is medically necessary for early intervention and prevention of a more serious emotional disturbance. . ."

COMMENT #18: How will the department determine if a youth has a serious emotional disturbance.

RESPONSE: Providers will continue to be required to determine whether or not a youth has a serious emotional disturbance. The proposed language will be changed to "verified" and ARM 37.88.101(1)(b) renumbered to (1)(d) and read: "(d) for prior authorized services, the serious emotional disturbance has been verified by the department or it's designee."

COMMENT #19: Several commentors do not support allowing non-SED Medicaid youth to access outpatient therapy. They agree it is a positive benefit but is it at the expense of other services like case management? What is the projected cost for reestablishing this benefit? This service was cut in 2002 due to budget constraints. Why add a costly Medicaid service when financial concerns seem to be driving the proposal to prior authorize case management services.

Is the change to serve non-SED youth a result of the department abdicating its responsibility to monitor providers of outpatient therapy services to ensure youth are SED?

What is the evidence that this benefit alone will affect utilization rates of case management? If early intervention is the intended outcome of the change, the proposed change should support a concurrent benefit of case management as an effective strategy for treatment and management of milder mental health diagnoses.

RESPONSE: Allowing Medicaid reimbursement for outpatient therapy for non-SED

youth is a preventive approach to intervene early so problems or conditions with youth do not become more serious.

It is not the intent of the department to abdicate their responsibility to monitor providers to ensure the youth they serve are SED.

It is not the department's intent to affect case management utilization rates by allowing outpatient therapy to non-SED youth.

COMMENT #20: One commentor supported the rule change allowing some outpatient therapy services to be provided to non-SED youth. This effort is consistent with Early Periodic Screening, Diagnosis, and Treatment (EPSDT) requirements that Medicaid eligible children have access to all medically necessary services regardless of diagnosis or disability. The earlier we can provide appropriate community supports and services to children at risk, the more likely we can resolve issues before they become crises or long term problems.

While several commentors opposed providing outpatient therapy service to non-SED youth at this time due to the proposal that TCM services be prior authorized, they did acknowledge the benefit of early intervention for youth with mental health issues.

RESPONSE: Thank you for your support. The department agrees that early intervention through outpatient therapy to non-SED youth can mitigate problems from becoming more severe.

COMMENT #21: The amended rule to allow individual, group, or family therapy without an initial diagnosis of SED will allow for earlier intervention and treatment. The lowering of the criteria for SED youth to qualify for CM services certainly enables providers to serve youth in a preventative manner but it must be recognized that both of these changes will result in higher numbers of youth served and potentially more cost to the system.

RESPONSE: The rule change allows a non-SED youth to receive group outpatient therapy services without limit. The rule change allows a non-SED youth to receive individual and family outpatient therapy up to 24 sessions per SFY. The youth needs to be SED to receive individual and family outpatient therapy services beyond 24 sessions in a SFY. The rule change does NOT allow non-SED youth to receive TCM services prior to the 60 unit TCM authorization requirement.

COMMENT #22: Several commentors disagree with the proposed change to prior authorize case management. What are the costs associated with implementing a prior authorization and UR system for case management? This managed care approach had abysmal results, 1997-2000, creating artificial barriers in accessing needed levels of care, disruption in continuity of care, expensive managed care decisions, higher out-of-home placements, diversion of youth into parallel systems and hospital emergency rooms, less investment in developing community based alternatives. Several commentors who oppose prior authorization believe TCM

services are a central and necessary component for a system of care.

RESPONSE: The cost of prior authorization has been factored into the cost savings in the proposed rule notice. TCM services will be available for SED youth who meet the medical necessity criteria established. TCM services may play a central role in a system of care. One of the key components in developing a system of care is supporting and empowering parents. Some parents are capable of accessing needed services for their SED youth.

COMMENT #23: Are TCM services limited to 60 units per year? It is inconceivable to understand how the proposed 60 unit annual benefit can achieve the goals of resiliency and recovery in so short a period of time. To propose such a limited benefit is to misunderstand the amount of time needed to stabilize crises and to develop therapeutic relationships with SED youth and families.

RESPONSE: It appears the commentor does not understand the proposed rule change. TCM services need to be authorized at 60 units before more can be provided. Sixty units is not an annual benefit.

COMMENT #24: Use existing retrospective review processes rather than prior authorization for TCM services. It will be more cost efficient.

RESPONSE: Prior authorization is being proposed to manage the appropriate use of TCM services. Retrospective reviews would be conducted after a youth and family receive TCM services. If the department used retrospective reviews to manage the appropriate use of TCM services and found inappropriate services had been provided, the department would need to take back money from the providers. The department disagrees that retrospective reviews are less expensive. However, the department has the authority to conduct retrospective reviews of Medicaid paid services at any time.

COMMENT #25: Per the department's rationale, prior authorization and UR would provide "an effective way to assure the efficient use of funds". The commentor questions if these methods are effective for residential treatment center (RTC) and therapeutic group home (TGH) services given that closer monitoring of TGH and RTC services through prior authorization and utilization review has not resulted in a decrease in utilization. This would contradict the notion that this process would demonstrate cost effectiveness for TCM services.

RESPONSE: If prior authorization of TCM services does not prove to be an effective management tool, the department will not continue to use it.

COMMENT #26: The state of Montana demonstrated an ability to develop a well funded continuum of care for SED youth in the community between 1994-1997. The aggressive application of this philosophy developed an effective community based system of care that resulted in a dramatic reduction in the utilization of higher levels of care. CMHB needs to incentivize local communities to develop community based



systems of care for SED youth.

RESPONSE: The department does provide incentives for the development of local systems of care with the SAMHSA Children's Mental Health Initiative or System of Care grant, with the development of local Kid's Management Authorities; and with the Community-Based Alternative to Psychiatric Residential Treatment Facilities Project from the Deficit Reduction Act Grant of 2005. The Medicaid Mental Health program also provides an array of community based mental health services for youth and families.

COMMENT #27: Prior authorization and UR will disrupt the "first line of defense" for SED youth and their families and defeat the design of targeted youth case management which is to empower parents to learn to become advocates for themselves and their youth. Proposing to manage the utilization of the "first line of defense" in order to decrease its availability seems antithetical to system of care principles and should not be implemented. (TCM as the "first line of defense" was referenced from the Children's Mental Health Bureau (CMHB) 2007 Block Grant application.)

RESPONSE: The "first line of defense" is not prior authorized until 60 units. TCM services will be available to SED youth who meet the established medical necessity criteria. The prior authorization process will be designed to minimize disruption regarding the SED youth's continuation of case management services. The department believes TCM services can be an effective service for SED youth and their families, particularly those with multi-agency needs. The department also believes that parents provided with some support and knowledge of the system are capable of accessing services for their SED youth.

COMMENT #28: The department should develop a standardized form for all providers to document SED eligibility to include diagnoses, functional impairment, and justification, which would make retrospective reviews easier and ensure providers are aware of eligibility criteria.

Piggybacking SED eligibility and prior authorization together will create redundancies in that multiple providers will be required to provide SED eligibility information with their PA request. This will increase costs for the department and mental health centers.

RESPONSE: The department is not proposing a standardized SED eligibility form for providers at this time and believes the SED definition found in ARM 37.86.3702(2) is quite clear. Rather than proposing a standardized SED eligibility form the department will clarify the process in ARM 37.86.3702 and add the following language: "(3) Youth must be reassessed annually by a licensed mental health professional, as to whether or not they continue to meet the criteria for having a serious emotional disturbance. For the initial or for an annual reassessment, the clinical assessment must document how the youth meets the criteria for having a serious emotional disturbance." Mental health centers are required in Licensure

Rule to complete a clinical intake assessment, ARM 37.106.1915.

The department is developing a standardized tool for prior authorization. This form will request information from the provider that documents how the youth meets the SED definition and medical necessity criteria for TCM services.

The department understands the concerns regarding SED verification for all prior authorized services and will develop a process for implementing the SED verification on prior authorization forms. The department will inform and educate the service providers of the new requirements before implementing the SED verification.

COMMENT #29: Requiring prior authorization beyond 60 units is not reasonable. The commentor recommended unlimited case management services for the first 90 days of care or 30 hours, whichever comes first. Please see the response to comment #25.

RESPONSE: The average TCM client received 125 units of service in SFY 2006. In essence, the commentor's proposal would keep the service as it is. The department does not agree with this for reasons stated above.

COMMENT #30: If case managers are required to submit continued stay requests will this function be a billable event?

RESPONSE: No.

COMMENT #31: The department should begin to pursue the possibility of performance based contracts to ensure quality results and limit cost.

RESPONSE: The department agrees and would appreciate the commentor's assistance in moving to outcome based TCM services.

COMMENT #32: In response to the department's rationale for prior authorizing TCM services, several commentors from one agency said that given only 36% of Medicaid eligible individuals under 18 years of age identified as having a serious emotional disturbance are receiving case management services, it would appear that those youth with the greatest need are in fact the ones accessing the service. The department's rationale was that "over the past several years, the costs related to TCM for SED youth have increased at a rate greater than the corresponding increase in the total number of SED youth served." What specifically are those rates? In SFY 2002, 4,035 Medicaid youth received case management services and in SFY 2006, approximately 3,456; a decrease of 421 youth. In 2002 there were 56,500 children under the age of 19 enrolled in Medicaid. Between 2000 and 2004 the number of Medicaid eligible youth in Montana grew by 9,494. One could assume a similar rate of increase between 2004 and 2007. This would indicate far fewer SED youth are receiving case management services and those children and families getting TCM services are presenting with a myriad of more complex, pervasive challenges given that costs related to TCM services have increased. To

propose a decrease or limit the amount of TCM services a youth and family receive ignores the reality of these client's situations and implies youth and families are receiving more TCM services than they require. From the SFY 2005 Montana Consumer Satisfaction Project it would appear families would prefer more case management contact, not less.

RESPONSE: The following data is from Medicaid paid claims and indicates:

1. the "cost per youth" for youth receiving TCM services increased for SFY 2005 and 2006; and
2. the projected net payment for TCM services for SFY 2007 is slightly above the net payment for SFY 2006; and
3. the percentage of youth receiving TCM services increased greater than the increase in the total number of youth served by Children's Mental Health in SFY 2005 and 2006.

Targeted Case Management (TCM) Services:

TCM Based on DOP**	TCM Net Payments	TCM Youth Served	% Change in TCM Youth Served	Cost per TCM Youth	% Change in Cost per TCM Youth
SFY 2002	\$6,248,800	3,826		\$1,633	
SFY 2003	\$4,850,667	3,567	-7%	\$1,359	-17%
SFY 2004	\$3,833,831	2,951	-20%	\$1,299	-4%
SFY 2005	\$4,633,729	3,276	11%	\$1,414	9%
SFY 2006	\$5,192,170	3,456	5%	\$1,502	6%
SFY 2007	\$4,604,408*	3,332	-4%	\$1,381	-8%*
SFY 2007 Projection	\$5,212,458				

\* As of June, 31, 2007, with 365 days to bill Medicaid. \*\*Date of Payment

TCM Based on DOP**	Total Served in Children's Mental Health	% Change in Total Served in Children's Mental Health	TCM Youth Served	% Receiving TCM
SFY 2002	9,151		3,826	42%
SFY 2003	9,422	3%	3,567	38%
SFY 2004	9,208	-2%	2,951	32%
SFY 2005	9,480	3%	3,276	35%
SFY 2006	9,551	1%	3,456	36%
SFY 2007	9,217*	-3%	3,332	36%

\* As of June 31, 2007, with 365 days to bill Medicaid. \*\*Date of Payment

COMMENT #33: Several commentors disagreed with the implication that ineffective case management services are responsible for the increase in out-of-home and residential psychiatric care and the department's rationale that if TCM services were

being used effectively, it could be expected that the number of youth in out-of-home and residential psychiatric care would be decreasing. One commentor points out other reasons for an increase in residential psychiatric care that includes clients being more disturbed and the limited room and board payment available for community based therapeutic living services. Another asks if there is research to support the department's rationale.

RESPONSE: The department's rationale is based on Medicaid paid claim reports, our knowledge of service requirements, and working with local treatment teams and providers. TCM service requirements include serving the client in the least restrictive and most culturally appropriate therapeutic environment possible for the client. The department acknowledges as valid some of the commentor's additional reasons for increases in residential psychiatric care.

COMMENT #34: At the same time the department is proposing to limit the number of TCM hours to SED youth and families, the department is increasing the paperwork requirements by adding a "crisis plan" requirement in rule, and a "transition plan" in the TCM contract, along with the prior authorization paperwork. This means less time to provide TCM services. Will there be any cost savings by adding additional paperwork for prior authorization, at both the State and Mental Health Center level?

RESPONSE: The department is proposing to prior authorize TCM units beyond 60 in a state fiscal year. The intent is to "manage" and not simply "limit" TCM services. Some SED youth and their families will easily meet the medical necessity criteria for continued services.

Both the crisis and transition plan are new required components of the TCM plan. One is covered in the rule and one is covered in the TCM contract. In working with SED youth and their families, urgent or crisis situations should be anticipated and planned for, as a result of the TCMs role in coordination, referral, and crisis response. In providing TCM services to older adolescents, the TCM should anticipate their transitional needs if the TCM services are individualized and based on the adolescent's needs. The department is taking this opportunity to clarify with the new crisis plan requirement in the case management plan what is meant by coordination, referral, sub crisis, and crisis response.

COMMENT #35: It currently takes a week or longer for prior authorization determinations to be made. With adding the SED eligibility determination, I am concerned the time frame will be longer and will leave providers in the position of continuing services that may not be reimbursed. With managed care in the 1990s, we learned the authorization of case management resulted in disrupted care, barriers to accessing medically necessary services, and harm to clients.

RESPONSE: The department will follow up with the utilization review contractor regarding the length of time it currently takes to receive prior authorization. It should not take a week or longer to receive authorization, if all the clinical information

requested on the form is submitted. The department is always willing to review problems regarding the prior authorization process with providers. The department will develop a prior authorization process that allows a request to be made prior to youth having received 60 units of TCM.

COMMENT #36: Without knowing more about the prior authorization review process and authorization spans beyond the initial 60 units it is hard to respond to this proposed rule change. It appears the goal is to reduce access and save money currently spent on case management. The cost of implementing this plan is likely to outweigh the state's projected savings unless the cost is anticipated to be shifted to providers for uncompensated care.

RESPONSE: The goal is to reduce Medicaid funds paid to mental health centers providing services to non-SED youth receiving TCM services or SED youth who do not meet the medical necessity criteria established by the department for TCM services. It is not the department's intent for mental health centers to provide uncompensated care.

COMMENT #37: Has the department projected the uncompensated cost to providers of implementing the prior authorization process? Is this cost a factor in the rulemaking process? As a provider, we have not had any inquiries into these costs nor can they be fully projected until the state has a plan for implementation. The impact of the rule for prior authorization on consumers, providers, and the state cannot be evaluated given the information currently available or at least the information currently being publicly shared.

RESPONSE: No. Administrative costs are built into the reimbursement rate for TCM services. With existing Medicaid and Mental Health Center Licensure requirements, the TCM provider should already have most if not all of the client information available to them that will be requested by the department for the prior authorization of TCM services beyond 60 units. Prior authorization will require some additional paperwork on the part of the TCM providers.

COMMENT #38: On what basis does the department assume 10% of client services do not meet medical necessity criteria?

RESPONSE: The cost of TCM services increased 12% in SFY 2006. The total number of Medicaid eligible SED youth served for this time period remained relatively the same. Ten percent is an estimate.

COMMENT #39: Montana has few crisis support services for children and limited mental health services. Montana is experiencing a crisis due to the lack of child psychiatrists, psychiatrists, and qualified mental health practitioners in general and this is especially true for those who accept Medicaid reimbursement. Case management performs necessary intervention services when other providers are unavailable or inaccessible.

EPSDT only allows certain utilization controls if they do not delay the delivery of care and are consistent with the preventative thrust of EPSDT. Prior authorization almost always delays the provision of services.

RESPONSE: There is no authorization requirement for the first 60 units of TCM services per state fiscal year. The prior authorization process developed will allow providers enough time to request additional TCM services without a gap in service, if the information requested is submitted timely, the youth is SED and meets the established medical necessity criteria. Delays in authorization are generally due to the provider not submitting the required information necessary to make a determination of medical necessity.

The department agrees that TCMs provide a valuable service to SED youth and their families by responding to urgent problems that if left unaddressed could lead to the youth experiencing a crisis. The department agrees that the crisis service needs for SED youth and their families are different than the service needs for SDMI adults and that TCMs play an important role in addressing urgent problems before they develop into a crisis. The department contracts with mental health centers to provide TCM services. All mental health centers are required to provide crisis telephone services to their clients. This is a TCM scope of practice issue and not meant to meet all the crisis needs of SED youth and their families.

COMMENT #40: Case management is a cost effective service available across Montana in circumstances and locations where access to other support services may be delayed, limited, or inaccessible. CMHB notes that case management has not reduced the reliance on residential treatment or out-of-state placements. It is quite likely that many other factors significantly affect and are responsible for the state's reliance on high-cost treatment options. Other reasons for the state's reliance on these high cost placements include: an increase in autism spectrum disorders (ASD), children becoming more violent and sexualized at earlier ages, and the methamphetamine epidemic. Cutting case management is focusing on the wrong solution to reduce residential treatment and out-of-state placements. The children's mental health system has other failures that contribute to the state's reliance on residential or out-of-state placements and include the department's failure to develop low-cost, effective community based support and crisis services for youth.

RESPONSE: Please see the response to comment #39.

COMMENT #41: One commentor opposes ARM 37.88.101(2)(d) because it allows for changes to case management rule "as provided for in other rules." The rules should be available in one readily accessible source, the Administrative Rules of Montana. Private in-house rules that only become known when a conflict develops are not appropriate, efficient, or a fair way to allocate state resources. Nor do they allow for public input so that the rules reflect all the relevant issues.

RESPONSE: The department believes the commentor is referencing ARM

37.88.101(2)(d), which is the Medicaid Mental Health Services Authorization Requirement rule and not the TCM section of the administrative rule. Subsection (2)(d) references other administrative rules that pertain to authorization requirements and not private in-house rules.

COMMENT #42: Services to children have protective priority when cuts must be made. Per 53-6-101, MCA, the Legislature has directed the department to administer the Medicaid program by protecting those persons who are most vulnerable and in need, protecting the quality of care of services, and giving priority to services that employ the science of prevention to reduce disability and illness. Per 53-6-101(3)(g), MCA, the Legislature has prioritized the Medicaid services of highest priority, which include EPSDT services for children under 21. Therefore, if cuts must be made in the Medicaid budget, they should not be made in children's services.

RESPONSE: The department believes the commentor is referring to the department's proposed rule change to lower the age of eligibility from "up to 21" to "up to 20" in ARM 37.88.901 and 37.89.103, and our proposal to prior authorize TCM services after 60 units in ARM 37.88.101.

Prior authorizing TCM services is an attempt to protect services for those most in need of these services. SED youth are the most vulnerable. The department believes there may be some mismanagement of TCM services by the mental health centers and that some youth receiving TCM services are not SED. TCM services are being prior authorized after 60 units, not cut. TCM services to non-SED youth will not be provided, nor will services be provided to youths who do not meet the established medical necessity criteria.

COMMENT #43: The department should reconsider its proposal to lower the age of eligibility and proposed new language for the definition of child or adolescent. Under the provisions of 20-5-101, MCA, schools have the option to admit individuals who are 19 years of age or older. The new language would leave schools to serve some 20 and 21 year olds with a serious emotional disturbance on their own. The loss of publicly funded mental health services could pressure schools to limit enrollment to age 19. While there are few individuals with a serious emotional disturbance ages 20 and above still enrolled in public school, the impact of the proposed change could be significant for those few cases. State law defines a youth's age, for the purpose of enrollment in a public school, as the age of the student on or before September 10, for the entire school year. The proposed new language would also avoid the student losing eligibility for mental health services in the middle of the school year. The proposed new language would read: "Child or adolescent means a person 17 years of age and younger or a person who is enrolled in a public secondary school."

RESPONSE: It is the department's understanding that most public schools already limit the age of individuals enrolled to age 19. The department is attempting to be consistent with current practices. Early and Periodic Screening, Diagnostic, and Treatment Services (EPSDT) requirements would address exceptions to this rule.

Also, EPSDT does not differentiate between youth and adult services.

COMMENT #44: One commentor opposed the reduction in the age of children eligible for mental health services under the Medicaid and the State Plan from "under 21 years of age" to "under 20 years of age" and the requirement that they are still in school. EPSDT provides that children receiving Medicaid receive all medically necessary services offered to anyone in the state plan until age 21. Per 53-6-101(3)(g), MCA, there is no requirement that the child or youth still be in school. Inconsistencies between federal EPSDT rules, state EPSDT rules, and CMHB requirements lead to confusion and barriers in accessing medically necessary services and wasted resources. Commentor supports keeping "under 21 years of age."

RESPONSE: The requirement that youth are still in school is not a new proposal. The proposed changes were made to bring consistency to the definition of "child or adolescent" in Medicaid ARM 37.88.901 and "youth" in Mental Health Service Plan (MHSP) ARM 37.89.103. The Medicaid definition said "is enrolled in secondary school" and the MHSP definition said "is enrolled in a special education program". For young adults age 18 to 21, not in school, with a qualifying SDMI diagnosis, it is generally more appropriate for them to receive services from the adult mental health system. EPSDT requirements do not differentiate between youth and adult mental health services.

COMMENT #45: What is the projected cost of Utilization Review for TCM services? What is the cost to the CMHB per authorization review for case management services? What is the projected cost of SED eligibility determination? What is the projected cost of allowing outpatient therapy for non-SED Medicaid eligible children and youth? What is the percentage of budget overrun attributable to TCM services on page 14 of the proposed rule notice as compared to residential treatment, therapeutic group home, and inpatient hospital care?

RESPONSE: The department is still negotiating with our utilization review contractor to prior authorize TCM services after 60 units and to verify SED eligibility. An estimated cost of \$145,500 was used in projecting the cost savings in the proposed rule notice in the "Estimated Budget Effects" section on page 17, for prior authorization. The department is considering combining the cost of the TCM prior authorization review and SED verification.

The department is reviewing previous SFY financial reports and making projections on the cost of offering individual, family, and group outpatient therapy to non-SED youth.

Page 15 of the proposed rule notice indicated that residential psychiatric care (or RTC) was up 17% from SFY 2005 to SFY 2006. The rate of reimbursement for in-state RTCs was increased 6% during this time period. Fewer youth were served by in-state RTCs and more youth were served by out-of-state RTCs.



Inpatient hospital care increased 72% from SFY 2005 to SFY 2006, from \$1,953,915 to \$3,679,543. There are a number of reasons for the increase in inpatient hospital care: 1) different billing practices with 365 days to bill Medicaid; 2) inpatient hospital costs include both physical and psychiatric care; 3) an increase in the number of youth receiving inpatient hospital services in out-of-state facilities; 4) inpatient hospital costs were down 45% from SFY 2004 to SFY 2005.

Therapeutic youth group home services increased 4% from SFY 2005 to SFY 2006. They had a 6% rate increase for this time period.

COMMENT #46: One commentor had several comments about the TCM contract, one regarding strengthening the Kids Management Authority language and one concern about softening the requirement regarding face-to-face contact with youth and families.

RESPONSE: The comments are outside the scope of the proposed administrative rule changes. However, the department appreciates the commentor's recommendations and concerns and looks forward to working with the commentor on the next TCM contract.

COMMENT #47: The department should strengthen its commitment to ongoing monitoring and evaluation of case management providers to ensure quality and compliance.

RESPONSE: The department agrees and appreciates the support for monitoring, evaluation, and quality services.

/s/ Russell E. Cater  
Rule Reviewer

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

Certified to the Secretary of State August 13, 2007.

## **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 P.O. 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.<br>Update the rule by checking the accumulative table and the table of contents in the last Montana Administrative Register issued. |
| Statute       | 2. Go to cross reference table at end of each number and title which lists MCA section numbers and department corresponding ARM rule numbers.                     |

## ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through June 30, 2007. This table includes those rules adopted during the period July 1 through September 30, 2007, 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 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 June 30, 2007, 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 2006 and 2007 Montana Administrative Register.

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## BOARD APPOINTEES AND VACANCIES

Section 2-15-108, MCA, passed by the 1991 Legislature, directed that all appointing authorities of all appointive boards, commissions, committees, and councils of state government take positive action to attain gender balance and proportional representation of minority residents to the greatest extent possible.

One directive of 2-15-108, MCA, is that the Secretary of State publish monthly in the ***Montana Administrative Register*** a list of appointees and upcoming or current vacancies on those boards and councils.

In this issue, appointments effective in July 2007 appear. Vacancies scheduled to appear from September 1, 2007, through November 30, 2007, are listed, as are current vacancies due to resignations or other reasons. Individuals interested in serving on a board should refer to the bill that created the board for details about the number of members to be appointed and necessary qualifications.

Each month, the previous month's appointees are printed, and current and upcoming vacancies for the next three months are published.

### IMPORTANT

Membership on boards and commissions changes constantly. The following lists are current as of August 1, 2007.

For the most up-to-date information of the status of membership, or for more detailed information on the qualifications and requirements to serve on a board, contact the appointing authority.

**BOARD AND COUNCIL APPOINTEES FROM JULY 2007**

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Acting Coordinator of Indian Affairs</b> (Governor) Mr. Major Robinson Helena Qualifications (if required): none specified	Governor	not listed	7/1/2007 0/0/0
<b>Board of Funeral Service</b> (Labor and Industry) Mr. Ronald E. Brothers Hamilton Qualifications (if required): mortician	Governor	Nelson	7/1/2007 7/1/2012
Mr. John Tarr Helena Qualifications (if required): public representative	Governor	Ruppert	7/1/2007 7/1/2012
Mr. Bart Thompson Helena Qualifications (if required): cemetarian	Governor	Scherer	7/1/2007 7/1/2012
<b>Board of Regents</b> (Higher Education) Ms. Kerra Melvin Butte Qualifications (if required): student	Governor	O'Loughlin	7/1/2007 6/30/2008
<b>Economic Development Advisory Council</b> (Commerce) Ms. Corlene Martin Choteau Qualifications (if required): public representative	Governor	reappointed	7/25/2007 7/23/2010

**BOARD AND COUNCIL APPOINTEES FROM JULY 2007**

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Economic Development Advisory Council (Commerce) cont.</b>			
Mr. Tony Rudbach Missoula Qualifications (if required): public representative	Governor	reappointed	7/25/2007 7/23/2010
Mr. Jim Smitham Butte Qualifications (if required): public representative	Governor	reappointed	7/25/2007 7/23/2010
Mr. Paul Tuss Havre Qualifications (if required): public representative	Governor	reappointed	7/25/2007 7/23/2010
<b>Electrical Board (Labor and Industry)</b>			
Ms. Marlene Egan Helena Qualifications (if required): public representative	Governor	Holden	7/1/2007 7/1/2012
<b>Information Technology Managers Advisory Council (Administration)</b>			
Mr. Barney Benkelman Helena Qualifications (if required): none specified	Director	not listed	7/1/2007 7/1/2008
Mr. Mike Bousliman Helena Qualifications (if required): none specified	Director	not listed	7/1/2007 7/1/2008

**BOARD AND COUNCIL APPOINTEES FROM JULY 2007**

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Information Technology Managers Advisory Council (Administration) cont.</b>			
Mr. Rick Bush Helena Qualifications (if required): none specified	Director	not listed	7/1/2007 7/1/2008
Mr. Dick Clark Helena Qualifications (if required): none specified	Director	not listed	7/1/2007 7/1/2008
Mr. John Daugherty Helena Qualifications (if required): none specified	Director	not listed	7/1/2007 7/1/2008
Mr. Mike Jacobson Helena Qualifications (if required): none specified	Director	not listed	7/1/2007 7/1/2008
Mr. Art Pembroke Helena Qualifications (if required): none specified	Director	not listed	7/1/2007 7/1/2008
Ms. Tammy Peterson Helena Qualifications (if required): none specified	Director	not listed	7/1/2007 7/1/2008

**BOARD AND COUNCIL APPOINTEES FROM JULY 2007**

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Mental Disabilities Board of Visitors (Governor)</b>			
Ms. Susan W. Duffy Missoula	Governor	Moddrell	7/1/2007 7/1/2009
Qualifications (if required): consumer of developmental disability services			
Ms. Suzanne Hopkins Lewistown	Governor	reappointed	7/1/2007 7/1/2009
Qualifications (if required): consumer of mental health services			
Ms. Teresa Lewis Harlem	Governor	reappointed	7/1/2007 7/1/2009
Qualifications (if required): consumer of mental health services			
<b>Montana Campaign Finance Reform Advisory Council (Secretary of State)</b>			
Mr. Steve Brown Helena	Secretary of State	not listed	7/10/2007 7/10/2009
Qualifications (if required): none specified			
Sen. Duane Grimes Clancy	Secretary of State	not listed	7/10/2007 7/10/2009
Qualifications (if required): none specified			
Sen. Lorents Grosfield Big Timber	Secretary of State	not listed	7/10/2007 7/10/2009
Qualifications (if required): none specified			



**BOARD AND COUNCIL APPOINTEES FROM JULY 2007**

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Montana Campaign Finance Reform Advisory Council</b> (Secretary of State) cont.			
Attorney General Joseph P. Mazurek Helena Qualifications (if required): none specified	Secretary of State	not listed	7/10/2007 7/10/2009
Sen. Debbie Shea Butte Qualifications (if required): none specified	Secretary of State	not listed	7/10/2007 7/10/2009
Ms. Linda Vaughey Helena Qualifications (if required): none specified	Secretary of State	not listed	7/10/2007 7/10/2009
Rep. Cindy Younkin Bozeman Qualifications (if required): none specified	Secretary of State	not listed	7/10/2007 7/10/2009
<b>Professional Engineers and Professional Land Surveyors</b> (Labor and Industry)			
Mr. Vic Cundy Bozeman Qualifications (if required): licensed mechanical engineer/instructor	Governor	reappointed	7/24/2007 7/1/2011
Mr. James Hahn Billings Qualifications (if required): licensed land surveyor	Governor	reappointed	7/24/2007 7/1/2011

**BOARD AND COUNCIL APPOINTEES FROM JULY 2007**

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Professional Engineers and Professional Land Surveyors (Labor and Industry) cont.</b>			
Mr. Casey E. Johnston Butte Qualifications (if required): licensed electrical engineer	Governor	reappointed	7/24/2007 7/1/2011
Mr. Archie L. Nunn Helena Qualifications (if required): public representative	Governor	Blaire	7/24/2007 7/1/2010
Mr. Tom Tanner Arlee Qualifications (if required): public representative	Governor	Ferguson	7/24/2007 7/1/2011
<b>Public Defender Commission (Administration)</b>			
Ms. Betty Bichsel Edgar Qualifications (if required): employee of an organization providing addictive behavior counseling	Governor	reappointed	7/1/2007 7/1/2010
Ms. Wendy Holton Helena Qualifications (if required): attorney nominated by the State Bar	Governor	reappointed	7/1/2007 7/1/2010

## BOARD AND COUNCIL APPOINTEES FROM JULY 2007

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Public Defender Commission</b> (Administration) cont.			
Mr. Mike Sherwood Missoula	Governor	reappointed	7/1/2007 7/1/2010
Qualifications (if required): attorney nominated by the Montana Supreme Court			
Ms. Tara Veazey Helena	Governor	reappointed	7/1/2007 7/1/2010
Qualifications (if required): member of an organization advocating on behalf of indigent persons			
<b>Research and Commercialization Technology Board</b> (Commerce)			
Mr. Jim Davison Anaconda	Governor	reappointed	7/1/2007 7/1/2009
Qualifications (if required): public representative			
<b>State Employee Charitable Giving Campaign Advisory Council</b> (Administration)			
Ms. Kathy Miller Helena	Director	Engler	7/9/2007 2/14/2009
Qualifications (if required): independent charities representative			
<b>State Workforce Investment Board</b> (Labor and Industry)			
Sen. John Brueggeman Polson	President of the Senate	Perry	7/25/2007 0/0/0
Qualifications (if required): not listed			
<b>Teachers' Retirement Board</b> (Administration)			
Ms. Kari Peiffer Kalispell	Governor	reappointed	7/1/2007 7/1/2012
Qualifications (if required): teacher/member			

**BOARD AND COUNCIL APPOINTEES FROM JULY 2007**

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Tourism Advisory Council (Commerce)</b>			
Ms. Sandra Cahill Livingston Qualifications (if required): resident of Yellowstone Country	Governor	Vermillion	7/1/2007 7/1/2008
Ms. Rhonda Fitzgerald Whitefish Qualifications (if required): resident of Glacier Country	Governor	reappointed	7/1/2007 7/1/2010
Ms. Vicki Hucke Helena Qualifications (if required): resident of Goldwest Country	Governor	reappointed	7/1/2007 7/1/2010
Mr. Stan Ozark Glasgow Qualifications (if required): resident of Missouri River Country	Governor	reappointed	7/1/2007 7/1/2010
Ms. Sandy Watts Garryowen Qualifications (if required): resident of Custer Country	Governor	Staves	7/1/2007 7/1/2010
<b>Traumatic Brain Injury Advisory Council (Public Health and Human Services)</b>			
Ms. Julia Hammerquist Kalispell Qualifications (if required): traumatic brain injury survivor	Governor	Patrick	7/24/2007 1/1/2009

**VACANCIES ON BOARDS AND COUNCILS -- SEPTEMBER 1, 2007 through NOVEMBER 30, 2007**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Alternative Health Care Board</b> (Labor and Industry) Dr. Michael Bergkamp, Helena Qualifications (if required): naturopath	Governor	9/1/2007
Dr. Kathleen Stevens, Billings Qualifications (if required): physician	Governor	9/1/2007
<b>Board of Barbers and Cosmetologists</b> (Labor and Industry) Ms. Darlene Battaiola, Butte Qualifications (if required): cosmetologist	Governor	10/1/2007
Ms. Sharon Richie, Hamilton Qualifications (if required): barber	Governor	10/1/2007
Ms. Maggie Burton-Blize, Missoula Qualifications (if required): barber	Governor	10/1/2007
<b>Board of Medical Examiners</b> (Governor) Dr. Daniel Alzheimer, Helena Qualifications (if required): doctor of medicine	Governor	9/1/2007
Dr. James D. Upchurch, Crow Agency Qualifications (if required): doctor of medicine	Governor	9/1/2007
<b>Board of Outfitters</b> (Labor and Industry) Mr. Kelly Flynn, Townsend Qualifications (if required): hunting and fishing outfitter	Governor	10/1/2007

**VACANCIES ON BOARDS AND COUNCILS -- SEPTEMBER 1, 2007 through NOVEMBER 30, 2007**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Board of Psychologists</b> (Labor and Industry) Ms. Pat Colberg, Billings Qualifications (if required): public member	Governor	9/1/2007
<b>Capital Finance Advisory Council</b> (Governor) Attorney General Mike McGrath, Helena Qualifications (if required): Attorney General	Governor	11/22/2007
Rep. David Ewer, Helena Qualifications (if required): Budget Director	Governor	11/22/2007
Director Janet Kelly, Helena Qualifications (if required): Department of Administration Director	Governor	11/22/2007
Sen. Rick Laible, Victor Qualifications (if required): state senator	Governor	11/22/2007
Director Mary Sexton, Helena Qualifications (if required): Department of Natural Resources and Conservation	Governor	11/22/2007
Ms. Karen B. Fagg, Billings Qualifications (if required): Board of Investments representative	Governor	11/22/2007
Rep. Kevin Furey, Milltown Qualifications (if required): state representative	Governor	11/22/2007
Director Tony Preite, Helena Qualifications (if required): Department of Commerce Director	Governor	11/22/2007

**VACANCIES ON BOARDS AND COUNCILS -- SEPTEMBER 1, 2007 through NOVEMBER 30, 2007**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Capital Finance Advisory Council</b> (Governor) cont. Director Richard Opper, Helena Qualifications (if required): Department of Environmental Quality Director	Governor	11/22/2007
Director Jim Lynch, Helena Qualifications (if required): Department of Transportation Director	Governor	11/22/2007
Mr. J.P. Crowley, Helena Qualifications (if required): Board of Housing representative	Governor	11/22/2007
Secretary of State Brad Johnson, Helena Qualifications (if required): Secretary of State	Governor	11/22/2007
Mr. Bill Kearns, Townsend Qualifications (if required): Facility Finance Authority representative	Governor	11/22/2007
Mr. Mark Semmons, Great Falls Qualifications (if required): Board of Regents representative	Governor	11/22/2007
<b>Corrections Advisory Council</b> (Corrections) Rep. Dorothy Bradley, Bozeman Qualifications (if required): public representative	Governor	9/8/2007
Sen. Mike Cooney, Helena Qualifications (if required): public representative	Governor	9/8/2007
Judge Joe L. Hegel, Forsyth Qualifications (if required): public representative	Governor	9/8/2007

**VACANCIES ON BOARDS AND COUNCILS -- SEPTEMBER 1, 2007 through NOVEMBER 30, 2007**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Corrections Advisory Council</b> (Corrections) cont. Rep. William T. "Red" Menahan, Anaconda Qualifications (if required): public representative	Governor	9/8/2007
Sen. Jim Shockley, Victor Qualifications (if required): public representative	Governor	9/8/2007
Lt. Governor John Bohlinger, Helena Qualifications (if required): public representative	Governor	9/8/2007
Sen. Trudi Schmidt, Great Falls Qualifications (if required): public representative	Governor	9/8/2007
Ms. Valarie Weber-Rasch, Billings Qualifications (if required): public representative	Governor	9/8/2007
Rep. Gail Gutsche, Missoula Qualifications (if required): public representative	Governor	9/8/2007
Sen. Steve Gallus, Butte Qualifications (if required): public representative	Governor	9/8/2007
Sen. Larry Jent, Bozeman Qualifications (if required): public representative	Governor	9/8/2007
Rep. Tim Callahan, Great Falls Qualifications (if required): public representative	Governor	9/8/2007



**VACANCIES ON BOARDS AND COUNCILS -- SEPTEMBER 1, 2007 through NOVEMBER 30, 2007**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Corrections Advisory Council</b> (Corrections) cont. Ms. Gloria Edwards, Bozeman Qualifications (if required): public representative	Governor	9/8/2007
Rep. Veronica Small-Eastman, Lodge Grass Qualifications (if required): public representative	Governor	9/8/2007
Mr. Allan Underdal, Shelby Qualifications (if required): public representative	Governor	9/8/2007
Mr. Robert Ross, Billings Qualifications (if required): public representative	Governor	9/8/2007
Ms. Mikie Baker-Hajek, Great Falls Qualifications (if required): victims' advocate	Governor	9/8/2007
Ms. Emily Matt Salois, Missoula Qualifications (if required): public representative	Governor	9/8/2007
Mr. Dave Castle, Great Falls Qualifications (if required): public representative	Governor	9/8/2007
County Attorney George Corn, Hamilton Qualifications (if required): public representative	Governor	9/8/2007
Chief William Dial, Whitefish Qualifications (if required): public representative	Governor	9/8/2007

**VACANCIES ON BOARDS AND COUNCILS -- SEPTEMBER 1, 2007 through NOVEMBER 30, 2007**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Corrections Advisory Council</b> (Corrections) cont. Commissioner Adam Gartner, Glendive Qualifications (if required): public representative	Governor	9/8/2007
Mr. Emery Jones, Missoula Qualifications (if required): public representative	Governor	9/8/2007
Mr. Carl Venne, Crow Agency Qualifications (if required): public representative	Governor	9/8/2007
Ms. Penny Kipp, Pablo Qualifications (if required): having competency in addressing problems facing youth	Governor	9/8/2007
<b>Montana Organic Commodity Advisory Council</b> (Agriculture) Ms. Laura Garber, Hamilton Qualifications (if required): organic producer	Director	11/7/2007
Ms. Andre Giles, Fort Benton Qualifications (if required): organic handler	Director	11/7/2007
Mr. Mark Bruckner, Malta Qualifications (if required): organic producer	Director	11/7/2007
<b>State Emergency Response Commission</b> (Military Affairs) Sen. Barry "Spook" Stang, Helena Qualifications (if required): representing Trucking Association	Governor	10/1/2007

**VACANCIES ON BOARDS AND COUNCILS -- SEPTEMBER 1, 2007 through NOVEMBER 30, 2007**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>State Emergency Response Commission</b> (Military Affairs) cont. Mr. Mike Tooley, Helena Qualifications (if required): representing Montana Department of Justice	Governor	10/1/2007
Ms. Linda Williams, Fort Benton Qualifications (if required): representing DES Association	Governor	10/1/2007
Mr. Daniel Dennehy, Butte Qualifications (if required): representing Local Emergency Planning Committee	Governor	10/1/2007
Mr. Tom Ellerhoff, Helena Qualifications (if required): representing Department of Environmental Quality	Governor	10/1/2007
Mr. Bill Rhoads, Butte Qualifications (if required): representing a Utility Company	Governor	10/1/2007
Sheriff Clifford Brophy, Columbus Qualifications (if required): representing a Law Enforcement Association	Governor	10/1/2007
Mr. Seldon Weedon, Great Falls Qualifications (if required): representing Fire Training School	Governor	10/1/2007
Mr. Jim Greene, Helena Qualifications (if required): representing Disaster and Emergency Services	Governor	10/1/2007
Mr. Royce A. Shipley, Great Falls Qualifications (if required): representing Malmstrom Air Force Base	Governor	10/1/2007

**VACANCIES ON BOARDS AND COUNCILS -- SEPTEMBER 1, 2007 through NOVEMBER 30, 2007**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>State Emergency Response Commission</b> (Military Affairs) cont. Mr. Steve Larson, Helena Qualifications (if required): representing Fire Service Association	Governor	10/1/2007
Mr. Jim Johnson, Missoula Qualifications (if required): representing a Railroad Company	Governor	10/1/2007
Mr. Tim Burton, Helena Qualifications (if required): representing League of Cities and Towns	Governor	10/1/2007
Ms. Jolene Jacobson, Polson Qualifications (if required): representing Tribal Emergency Response Committee	Governor	10/1/2007
Ms. Sally Buckles, Boulder Qualifications (if required): representing Emergency Management Association	Governor	10/1/2007
Mr. Stephen Brueske, Great Falls Qualifications (if required): representing National Weather Service	Governor	10/1/2007
Commissioner Ed Tinsley, Helena Qualifications (if required): representing Montana Association of Counties	Governor	10/1/2007
Mr. Mike Vogel, Bozeman Qualifications (if required): representing the University System	Governor	10/1/2007

**VACANCIES ON BOARDS AND COUNCILS -- SEPTEMBER 1, 2007 through NOVEMBER 30, 2007**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>State Emergency Response Commission (Military Affairs) cont.</b>		
Ms. Sally Johnson, Helena Qualifications (if required): representing Department of Public Health and Human Services	Governor	10/1/2007
Mr. Joe Marcotte, Billings Qualifications (if required): representing Hospitals	Governor	10/1/2007
Mr. Jim DeTienne, Helena Qualifications (if required): Department of Public Health and Human Services	Governor	10/1/2007
Major Don Emerson, Helena Qualifications (if required): Montana National Guard representative	Governor	10/1/2007
Mr. Ted Mead, Missoula Qualifications (if required): Department of Natural Resources and Conservation representative	Governor	10/1/2007
Mr. D. L. Moore M.D., Billings Qualifications (if required): public health representative	Governor	10/1/2007
Ms. Sheena Wilson, Helena Qualifications (if required): Governor's office representative	Governor	10/1/2007
Ms. Cheryl Richman, Helena Qualifications (if required): Department of Transportation representative	Governor	10/1/2007
Mr. Ron Jendro, Helena Qualifications (if required): Department of Fish, Wildlife and Parks representative	Governor	10/1/2007

**VACANCIES ON BOARDS AND COUNCILS -- SEPTEMBER 1, 2007 through NOVEMBER 30, 2007**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Trauma Care Committee</b> (Public Health and Human Services)		
Mr. Joseph D. Hansen, Big Timber Qualifications (if required): representative of the Eastern Region Trauma Advisory Committee	Governor	11/2/2007
Dr. Gregory J. Moore, Missoula Qualifications (if required): representative of the Western Region Trauma Advisory Committee	Governor	11/2/2007
Mr. Michael P. McGree, Butte Qualifications (if required): representative of private ambulance operators	Governor	11/2/2007
Dr. Kirby Peden, Big Timber Qualifications (if required): representative of the Eastern Region Trauma Advisory Committee	Governor	11/2/2007
Mr. Tim Sinton, Choteau Qualifications (if required): representative of the Central Region Trauma Advisory Committee	Governor	11/2/2007
Mr. John Bleicher, Missoula Qualifications (if required): representative of Montana Trauma Coordinators	Governor	11/2/2007
Ms. Pauline Linnell, Bigfork Qualifications (if required): representative of Montana Emergency Medical Services Association	Governor	11/2/2007
Mr. William Taylor, Bigfork Qualifications (if required): representative of Montana Emergency Nurses Association	Governor	11/2/2007

**VACANCIES ON BOARDS AND COUNCILS -- SEPTEMBER 1, 2007 through NOVEMBER 30, 2007**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<p><b>Trauma Care Committee</b> (Public Health and Human Services) cont.            Mr. Randall Combs, Lame Deer            Qualifications (if required): representative of Indian Health Service</p>	Governor	11/2/2007
<p>Dr. James Bentler, Billings            Qualifications (if required): American College of Emergency Physicians representative</p>	Governor	11/2/2007
<p>Dr. Dennis Maier, Billings            Qualifications (if required): American College of Surgeons/Trauma Committee representative</p>	Governor	11/2/2007
<p><b>Water and Waste Water Operators' Advisory Council</b> (Environmental Quality)            Mr. Donald Coffman, Harlem            Qualifications (if required): water treatment plant operator</p>	Governor	10/16/2007