ISSUE NO. 24

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 The Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

Page Number

TABLE OF CONTENTS

NOTICE SECTION

COMMERCE, Department of, Title 8

8-112-64 (Montana Heritage Preservation and Development Commission) Notice of Public Hearing on Proposed Transfer and Adoption - Sale of Real and Personal Property by the Montana Heritage Preservation and Development Commission. 2026-2034

ENVIRONMENTAL QUALITY, Department of, Title 17

17-265 (Board of Environmental Review and Department) (Water Quality) (Subdivisions) (CECRA) (Underground Storage Tanks) Notice of Public Hearing on Proposed Amendment - Department Circular DEQ-7. 2035-2042

17-266 (Board of Environmental Review) (Water Quality) Notice of Public Hearing on Proposed Amendment - Surface Water Quality. 2043-2045

17-267 Notice of Public Hearing on Proposed Adoption - Definitions - Certification of Energy Production, Transportation, and Research Facilities for Tax Abatement and Classification. 2046-2050

LABOR AND INDUSTRY, Department of, Title 24

24-174-57 (Board of Pharmacy) Notice of Public Hearing on Proposed Amendment - Fee Schedule. 2051-2053

Page Number

LABOR AND INDUSTRY, Continued

24-222-22 (Board of Speech-Language Pathologists and Audiologists) Notice of Public Hearing on Proposed Amendment - Definitions - Licensure - Temporary Practice Permits - Supervision - Functions of Aides or Assistants - Continuing Education. 2054-2061

24-225-33 (Board of Veterinary Medicine) Notice of Public Hearing on Proposed Amendment and Adoption - Fees - Infectious Waste - Licensing - Embryo Transfer - Euthanasia Technicians and Agencies - Complaints - Screening Panel - Nonroutine Applications. 2062-2074

NATURAL RESOURCES AND CONSERVATION, Department of, Title 36

36-22-125 Notice of Public Hearing on Proposed Amendment - Forms - Form and Special Fees. 2075-2081

PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

37-424 Notice of Public Hearing on Proposed Adoption - Newborn Hearing Screening. 2082-2093

37-425 Notice of Public Hearing on Proposed Amendment - Automated External Defibrillators. 2094-2099

37-426 Notice of Public Hearing on Proposed Adoption - Home and Community Services for Seriously Emotionally Disturbed Youth. 2100-2119

RULE SECTION

ADMINISTRATION, Department of, Title 2

AMD REP (Teachers' Retirement Board) Definitions - Optional Retirement Program - Calculating Service Credits - Corrections of Errors - Family Law Orders - Withholding of Insurance Premium from Retirement Benefit. 2120

AMD REP (Teachers' Retirement Board) Independent Contractors - Calculating Service Credits - Termination Pay - Earned Compensation - Benefit Adjustments. 2121-2122

AMD (State Compensation Insurance Fund) Classifications of Employments. 2123

ENVIRONMENTAL QUALITY, Department of, Title 17

AMD NEW (Underground Storage Tanks) Reporting and Numbering Petroleum Releases. 2124-2125

Page Number

JUSTICE, Department of, Title 23

AMD (Gambling Control Division) Application Time Limit for Utilizing an Approved Automated Accounting and Reporting System as Part of a Vending Agreement. 2126

PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

NEW Vital Statistics.
AMD
REP 2127-2130

AMD Medicaid Eligibility. 2131

AMD Medicaid Real Property Liens. 2132-2133

AMD Durable Medical Equipment - Medical Supplies. 2134

PUBLIC SERVICE REGULATION, Department of, Title 38

AMD Protective Orders - Protection of Confidential Information.
REP 2135-2139

AMD Cogeneration and Small Power Production. 2140-2144

AMD Pipeline Safety. 2145

NEW Renewable Energy Standards for Public Utilities and
AMD Electricity Suppliers. 2146-2150

REVENUE, Department of, Title 42

NEW Mineral Royalty Backup Withholding.
AMD 2151-2154

AMD Property Taxes - Appraisal Plan Definitions - Disabled Veterans. 2155

NEW Property Tax Refund Hardship Request. 2156

Page Number

INTERPRETATION SECTION

Opinions of the Attorney General.

4 Correctional Facilities - Authority of a Multijurisdictional Detention Center to House Inmates Committed to an Out-of-State Correctional Facility - Corrections, Department of - Authority of the Department to Determine Whether Convicted Offenders From Out of State May Be Housed at a Multijurisdictional Detention Center - Felons - Authority of a Multijurisdictional Detention Center to Contract for the Confinement of Out-of-State Felons - Local Government - Prisoners. 2157-2166

SPECIAL NOTICE AND TABLE SECTION

Function of Administrative Rule Review Committee. 2167-2168

How to Use ARM and MAR. 2169

Accumulative Table. 2170-2179

Boards and Councils Appointees. 2180-2187

Vacancies on Boards and Councils. 2188-2194

BEFORE THE MONTANA HERITAGE PRESERVATION
AND DEVELOPMENT COMMISSION
DEPARTMENT OF COMMERCE
OF THE STATE OF MONTANA

In the matter of the proposed transfer of ARM 10.125.101, 10.125.102, 10.125.103, 10.125.104, 10.125.105, 10.125.106, and 10.125.107 and the adoption of New Rules I through VII pertaining to the sale of real and personal property by the Montana Heritage Preservation and Development Commission	))))))))))	NOTICE OF PUBLIC HEARING ON PROPOSED TRANSFER AND ADOPTION

TO: All Concerned Persons

1. On January 16, 2008, at 10:00 a.m, the Montana Heritage Preservation and Development Commission (commission) will hold a public hearing in the Madison County Courthouse, 2nd floor courtroom, 100 East Wallace Street, Virginia City, Montana, to consider the proposed transfer and adoption of the above-stated rules.

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 commission no later than 5:00 p.m., January 4, 2008, to advise the commission of the nature of the accommodation that you need. Please contact Montana Heritage Preservation and Development Commission, Attn: Karlee Smith, 101 Reeder's Alley, Helena, Montana 59601; telephone (406) 449-6522; TDD (406) 841-2702; fax (406) 843-5468; or e-mail karlees@mt.gov.

3. The department proposes to transfer the following rules:

OLD	NEW	
10.125.101	8.112.101	DEFINITIONS
10.125.102	8.112.102	ACQUISITION PROCEDURE
10.125.103	8.112.105	UNCONDITIONAL CONVEYANCE
10.125.104	8.112.106	HISTORIC AND CULTURAL CONSIDERATIONS
10.125.105	8.112.109	THE PROPERTY AS SELF-SUPPORTING
10.125.106	8.112.110	EDUCATIONAL RESOURCE
10.125.107	8.112.113	NON-HISTORIC PROPERTIES

REASON: As part of the periodic review of administrative rules, and in conjunction with Ch. 485, L. 2003 (SB 232 [Mahlum]) transferring the Montana Heritage Development and Preservation Committee from the Montana Historical Society to

the Department of Commerce, the committee is proposing a transfer of existing commission rules pertaining to acquisition of real and personal property from ARM Title 10 (Education) to ARM Title 8 (Department of Commerce).

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

NEW RULE I DEFINITIONS The following definitions shall be used in these rules, unless context clearly indicates otherwise:

(1) "Commission" means the Montana Heritage Preservation and Development Commission as created by 22-3-1001, et seq., MCA.

(2) "Covenant" means a restriction on the use of real property that runs with the land.

(3) "Executive Committee" means the committee appointed by the commission chair, made up of the current commission chair, a recent past chair, the Director of the Montana Department of Commerce or his/her designee, and the current chair of the Commission's Finance and Management Committee.

(4) "Fee title interest" means a fee simple estate or interest.

(5) "Personal property" means all property that is not real property.

(6) "Property" means real and/or personal property, unless otherwise specifically indicated.

(7) "Real property" or "real estate" means land, any thing incidental or appurtenant thereto, and any immovable improvements or fixtures attached or affixed to the land, including but not limited to fences, trees, buildings, and stationary mobile homes.

(8) "Sale" means the transfer of ownership of property acquired or managed by the commission, or any other conveyance, transfer, assignment, or devise from the applicable state agency of a fee title interest in property acquired or managed by the commission. Sale does not include property that is on loan to a person or entity.

AUTH: 22-3-1003, MCA
IMP: 22-3-1003, MCA

NEW RULE II SALE CRITERIA (1) The following criteria shall receive careful consideration by the commission in evaluating property for proposed sale:

(a) whether the property represents the state's culture and history;

(b) whether the property can become self-supporting;

(c) whether the property can contribute to the economic and social enrichment of the state;

(d) whether the property lends itself to programs to interpret Montana history;

(e) whether the sale will create significant social and economic impacts to affected local governments and the state;

(f) whether the sale is supported by the Director of the Montana Historical Society;

(g) whether the commission should include any preservation covenants in a proposed sale agreement for real property;

(h) whether the commission should incorporate any design review ordinances established by Virginia City into a proposed sale agreement for real property;

(i) a summary analysis of the costs and benefits of retaining or selling the property. Cost of retaining the property should include maintenance, upkeep, and other long-term or ongoing costs to the commission. Costs of selling the property should include advertising, appraisals, legal fees, and title searches;

(j) compliance with the Montana Antiquities Act (22-3-421, et seq., MCA) and any implementing or related administrative rules, including but not limited to ARM 10.121.901, et seq.; and

(k) other matters that the commission considers necessary or appropriate.

AUTH: 22-3-1003, MCA
IMP: 22-3-1003, MCA

NEW RULE III PUBLIC NOTICE PRIOR TO DECISION TO SELL PROPERTY (1) For those properties approved to proceed to the commission for consideration in accordance with these rules, an opportunity will be provided for the public to comment. A date, time, and location will be established for a public hearing in the geographic area of the proposed sale. A deadline will be established for the receipt of written comments.

(2) Notice of the hearing shall be made as follows:

(a) Publication in at least one newspaper of general circulation in the geographic area of the proposed sale. Notice shall be published twice, with the first publication no more than 21 days prior to the hearing, and the second publication no less than three days prior to the hearing, and at least six days separating each publication.

(b) Posted on the commission's web site. The published notice shall contain:

(i) date, time, and place of the hearing;

(ii) brief statement and description of the property considered for sale;

(iii) name, address, and telephone number of the person who may be contacted for further information on the hearing or the property; and

(iv) deadline for written comments and an address where comments may be sent.

(c) A copy of the report(s) required to be prepared under these rules will be posted on the commission's web site. Paper copies of the report shall be made available for review upon request.

(d) The public hearing will be chaired by the commission chair or his/her designee and at least one of the members of the Real Property or Personal Property Sales Committee, as applicable, established herein shall also attend. Paper copies of the report shall be made available at the hearing.

(e) The commission may, at its discretion, conduct additional types of public notice and opportunities for public comment.

AUTH: 22-3-1003, MCA
IMP: 22-3-1003, MCA

NEW RULE IV SALE PROCEDURES – REAL PROPERTY (1) Initial recommendations from the Real Property Sales Committee and review by Executive Committee:

(a) A Real Property Sales Committee shall be established by the commission to review real properties for possible sale, and to make initial recommendations on such sales to the Executive Committee. Members of the Real Property Sales Committee shall be appointed by the Commission Chair. At any time in the review process, the Real Property Sales Committee may request commission staff to assist in preparation of reports, or in other capacities.

(b) Such recommendations will take into consideration the criteria outlined in [NEW RULE II].

(c) The Real Property Sales Committee may make real property sale recommendations to the Executive Committee at any meeting properly noticed and with the discussion of sales included on the agenda. All recommendations will include a review of how the proposed sale meets the criteria in [NEW RULE II]. The Real Property Sales Committee shall prepare its recommendation to the Executive Committee in writing.

(d) On each real property sale under consideration, the Executive Committee shall decide whether to:

(i) proceed to the next level of review as detailed in (2);

(ii) request additional information regarding the criteria in [NEW RULE II];

(iii) forward a recommendation directly to the commission for its consideration; or

(iv) deny the recommendation.

(e) The Real Property Sales Committee shall report to the commission as needed on all real properties managed by the commission, identifying which, if any, properties are currently being reviewed by the Real Property Sales Committee or are scheduled to be reviewed.

(2) Detailed review of real properties approved by the Executive Committee to be further considered for sale:

(a) For real properties approved by the Executive Committee to proceed to the next level of review, the Real Property Sales Committee shall prepare a written report for each property that addresses the following:

(i) The report shall address the quality of the significance of the property in Montana history, including, but not limited to, the following:

(A) association with events that have made a significant contribution to Montana history and prehistory;

(B) association with the lives of a person or persons who were significant in Montana history;

(C) embodiment of distinctive characteristics of a type, period, or method of construction representing an event, way of life, groups of persons, or trends in Montana history;

(D) whether the property has yielded or is likely to yield information important to Montana history or prehistory;

(E) the property's authenticity and integrity of location, design, setting, materials, workmanship, age, and its aesthetic or historic sense of place or period of time; and

(F) whether the sale would have indirect adverse effects to the property proposed for sale, or to any remaining property acquired or managed by the commission.

(ii) The report shall assess whether the property can become self-supporting, including consideration of:

(A) the location of the property and its proximity to population centers, to other areas of historical and popular interest, and to standard tourist routes;

(B) the difficulty or ease in access to the property;

(C) the likelihood of individual, corporate, or other financial support;

(D) the estimated cost of restoration, rehabilitation, or maintenance of the property;

(E) the degree of popular and educational interest in the property; and

(F) the current and projected revenues and expenses associated with the property.

(iii) The report shall assess the economic and social benefits the property provides to the public in its current use, compared with potential economic and social benefits to the public possible with private ownership. The assessment shall compare public availability of educational/interpretive aspects of the property, and economic advantages/disadvantages of public versus private ownership.

(iv) The report shall identify whether the property is an educational resource for the study and interpretation of Montana history, assessed in the context of other existing or planned interpretive programs wherever possible, and including a discussion of any existing or unique interpretive factors associated with the property.

(v) The report shall identify local governments and state agencies with operations or facilities in the area of the proposed sale. The report shall identify how these government entities would be affected by the sale, how they were notified of the potential sale, and shall include a copy of any comments or responses received from these entities.

(vi) The report shall consider the need for any preservation covenants in a proposed sale agreement to preserve the historic qualities of the property after transfer to private ownership, who would enforce the covenants, and how any maintenance or other costs required thereunder would be paid.

(vii) The report should discuss whether and why any design review ordinances established by Virginia City should be incorporated into a proposed sale agreement for the property.

(viii) The report shall include a written letter of support by the Director of the Montana Historical Society, or an explanation of why such support has not been obtained.

(ix) The report shall include a record of compliance with the Montana Antiquities Act (22-3-421, et seq., MCA), including a letter signed by the State Historic Preservation Officer indicating whether he/she supports or does not support the proposed sale and a summary of the rationale for that decision.

(b) The Real Property Sales Committee shall present the report and their recommendations to the Executive Committee in writing at any meeting properly noticed and with the discussion of sales included on the agenda.

(c) The Executive Committee shall decide whether to:

(i) proceed to the public notice and hearing process specified in these rules;

(ii) request additional information regarding the criteria in [NEW RULE II]; or

(iii) deny the recommendation.

(3) Commission decision to proceed or not to proceed with a proposed sale:

(a) The commission shall make a decision to proceed or not proceed with a proposed sale at a properly noticed meeting, after an opportunity for public comment has been provided, based upon consideration of the criteria in [NEW RULE II] as set forth in the report(s) required herein, any comments from affected local government officials, recommendations from professional historians, and comments from the public at large.

(b) For approved proposals for the sale of real property, the commission shall recommend the approved proposal, together with any covenants or conditions attached thereto, to the Board of Land Commissioners, per 22-3-1003 and 77-2-301, et seq., MCA.

AUTH: 22-3-1003, MCA
IMP: 22-3-1003, MCA

NEW RULE V SALE PROCEDURES - PERSONAL PROPERTY

(1) Recommendations to sell personal property:

(a) The Personal Property Sales Committee shall review and recommend the sale of personal property. Members of the Personal Property Sales Committee shall include an equal number of members of the Montana Historical Society Board of Trustees and commission members, as specified in 22-3-1003, MCA. Such review must consider the criteria in [NEW RULE II].

(b) The Personal Property Sales Committee shall identify whether the property being considered for sale is from the former Bovey assets acquired by the 55th Legislature (the Bovey assets). All funds from the sale of personal property from the Bovey assets must be placed in a trust fund, and interest from the trust fund must be used to manage, protect, and directly care for the remaining personal property acquired and managed by the commission, as required by 22-3-1003, MCA.

(c) Prior to forwarding a recommendation to the Executive Committee to sell personal property item(s), the Personal Property Sales Committee shall consider the criteria in [NEW RULE II], and provide an estimated dollar value of the item(s) and/or an estimated cost of a third-party appraisal. The subcommittee shall prepare its recommendation to the Executive Committee in writing.

(d) At any time in the review process, the Personal Property Sales Committee may direct commission staff to assist in preparation of reports or in other capacities.

(e) Only those personal property item(s) for which a recommendation to sell is supported by a majority of the Personal Property Sales Committee members shall be forwarded to the Executive Committee or commission for consideration.

(f) On each personal property sale under consideration, the Executive Committee shall by vote decide to:

(i) proceed to the next level of detailed review as detailed in (2);

(ii) request additional information regarding the criteria found in [NEW RULE II];

(iii) forward a recommendation directly to the commission for its consideration; or

(iv) deny the recommendation.

(2) Detailed review of personal property approved by Executive Committee to be further considered for sale:

(a) For personal property item(s) approved by the Executive Committee to proceed to the next level of review, the Personal Property Sales Committee shall prepare a written report for each item that considers the criteria in [NEW RULE II] in accordance with the criteria set forth in (2) of [NEW RULE IV]. The report shall also include an estimated dollar value of the item(s) and/or an estimated cost of a third-party appraisal.

(b) The Personal Property Sales Committee shall submit the report and its recommendations to the Executive Committee in writing at a meeting properly noticed and with the discussion of sales included on the agenda.

(c) The commission shall decide to:

(i) proceed to the public notice and hearing process specified in these rules;

(ii) request additional information regarding the criteria stated in [NEW RULE II]; or

(iii) deny the recommendation.

(3) The commission shall make a decision to proceed or not proceed with a proposed sale at a properly noticed meeting, after an opportunity for public comment has been provided, based upon consideration of the criteria found in [NEW RULE II] as set forth in the report(s) required herein, any comments from affected local government officials, recommendations from professional historians, and comments from the public at large.

AUTH: 22-3-1003, MCA
IMP: 22-3-1003, MCA

NEW RULE VI SALE OF PERSONAL PROPERTY AFTER COMMISSION APPROVAL (1) The commission is not required to sell any personal property proposed for sale through the procedures described in these rules through the Property and Supply Bureau's Surplus Program, nor is it subject to the bureau's rules for disposal (22-3-1003(8), MCA).

(2) The commission may have the personal property item(s) appraised to determine the dollar value of such items in order to assist the commission in setting the sales price of any personal property item. The commission, in its discretion, may obtain more than one appraisal and may obtain a review appraisal.

(3) The commission shall direct staff to provide for a competitive process for the sale of personal property, including but not limited to auctions, sealed bids, open bids, via web sites established for such a purpose, or any other fair and equitable manner that the commission approves for an item as part of the commission's decision to sell that item.

(4) The commission shall provide public notice of the sale. The notice shall include any requirements of the sale. The commission will endeavor to encourage competition by advertising the sale in advance and in as many locations as practical.

(5) Personal property item(s) will be sold to the highest qualified bidder, but shall not be sold for less than the appraised value. Persons or entities with an established, recognized, and verifiable interest in personal property item(s), such as kin of the original owner or communities with historic connections to the property, may, at the discretion of the commission, be invited to match the highest responsible bid and be awarded the item.

AUTH: 22-3-1003, MCA
IMP: 22-3-1003, MCA

NEW RULE VII EXCLUSION OF NONHISTORIC PROPERTY (1) These rules do not apply to the sale of nonhistoric property acquired or managed by the commission. Property excluded from these rules, and subject to all normal state procurement and surplus requirements, includes real or personal property acquired or managed by the commission that clearly and unequivocally does not fall within the type of property described in 22-3-421, et seq. and 22-3-1001, MCA. Such property may include property used in the administration and management of other properties acquired or managed by the commission, including, but not limited to, modern vehicles used to carry out daily work activities; restaurant equipment; washers, dryers, computers, and other appliances; and, nonhistoric office space and equipment. If any such property sold is a Bovey asset, all funds from the sale of that property shall be placed in the Bovey asset trust fund as required by 22-3-1003, MCA.

AUTH: 22-3-1003, MCA
IMP: 22-3-1003, MCA

REASON: The commission is proposing the adoption of New Rules I through VII to establish procedures for the sale of real and personal property, in accordance with the legislative directive set forth in 22-3-1003(8), MCA. Among other things, the new rules provide criteria for determining whether real and personal property may qualify for sale. The new rules detail specific steps that will be followed in order to preserve and protect valuable state historic assets, while at the same time allowing for the transfer of property that would better support the goal and purpose of the commission and the state through raising funds to preserve and manage other property owned by the commission or to acquire additional heritage property. The ten criteria stipulated in 22-3-1003, MCA, are included in New Rule II as criteria to determine the historical value of property. New Rule II also specifically references the Montana Antiquities Act and associated administrative rules for the sale of property to ensure that archaeological and paleontological considerations are made prior to any sale of heritage property.

5. Concerned persons may submit 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: Montana Heritage Preservation and Development Commission, 101 Reeder's Alley, Helena, Montana 59601; telephone (406) 449-6522; fax (406) 449-7081; or e-mail mhc@mt.gov, and must be received no later than 5:00 p.m., January 25, 2008.

6. Kelly Casillas, Department of Commerce, has been designated to preside over and conduct this hearing.

7. The commission maintains a list of interested persons who wish to receive notices of proposed rulemaking actions. Persons who wish to have their name added to this list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all commission administrative rulemaking proceedings. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the Montana Heritage Preservation and Development Commission, 101 Reeder's Alley, Helena, Montana 59601; telephone (406) 449-6522; fax (406) 449-7081; or e-mail mhc@mt.gov, or may be made by completing a request form at any rules hearing held by the commission.

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, do not apply.

MONTANA HERITAGE PRESERVATION
AND DEVELOPMENT COMMISSION
DEPARTMENT OF COMMERCE

/s/ G. MARTIN TUTTLE
G. MARTIN TUTTLE
Rule Reviewer

/s/ ANTHONY J. PREITE
ANTHONY J. PREITE
Director
Department of Commerce

Certified to the Secretary of State December 10, 2007.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
AND THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 17.30.502, 17.30.619, 17.30.641, 17.30.646, 17.30.702, 17.30.1001, 17.30.1007, 17.36.345, 17.55.102, 17.56.507, and 17.56.608, pertaining to Department Circular DEQ-7	)	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT (WATER QUALITY) (SUBDIVISIONS) (CECRA) (UNDERGROUND STORAGE TANKS)

TO: All Concerned Persons

1. On January 30, 2008, at 9:00 a.m., the Board of Environmental Review and the Department of Environmental Quality will hold a public hearing in Room 111, Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The board and department will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the board no later than 5:00 p.m., January 22, 2008, to advise us of the nature of the accommodation that you need. Please contact the board secretary at P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2544; fax (406) 444-4386; or e-mail ber@mt.gov.

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

17.30.502 DEFINITIONS The following definitions, in addition to those in 75-5-103, MCA, and ARM Title 17, chapter 30, subchapters 6 and 7, apply throughout this subchapter:

(1) through (13) remain the same.

(14) The board adopts and incorporates by reference ~~d~~Department Circular DEQ-7, entitled "Montana Numeric Water Quality Standards" (February ~~2006~~ 2008 edition), which establishes water quality standards for toxic, carcinogenic, bioconcentrating, nutrient, radioactive, and harmful parameters. Copies of Department Circular DEQ-7 are available from the Department of Environmental Quality, P.O. Box 200901, Helena, MT 59620-0901.

AUTH: 75-5-301, MCA
IMP: 75-5-301, MCA

17.30.619 INCORPORATIONS BY REFERENCE (1) The board ~~hereby~~ adopts and incorporates by reference the following state and federal requirements

and procedures as part of Montana's surface water quality standards:

(a) ~~d~~Department Circular DEQ-7, entitled "Montana Numeric Water Quality Standards" (February ~~2006~~ 2008 edition), which establishes water quality standards for toxic, carcinogenic, bioconcentrating, nutrient, radioactive, and harmful parameters;

(b) through (d) remain the same.

~~(e) 40 CFR 136 (July 1, 1991), which establishes guidelines and procedures for the analysis of pollutants;~~

~~(f)~~ (e) 40 CFR Part 136 (July 1, ~~2004~~ 2007), which establishes guidelines and procedures for the analysis of pollutants; and

(g) remains the same, but is renumbered (f).

(2) remains the same.

AUTH: 75-5-201, 75-5-301, MCA
IMP: 75-5-301, MCA

17.30.641 SAMPLING METHODS (1) Water quality monitoring, including methods of sample collection, preservation, and analysis used to determine compliance with the standards must be in accordance with 40 CFR Part 136 (July 1, ~~2004~~ 2007) or other method allowed by the department.

AUTH: 75-5-201, 75-5-301, MCA
IMP: 75-5-301, MCA

17.30.646 BIOASSAYS (1) Bioassay tolerance concentrations must be determined using the latest available research results for the materials, by bioassay tests procedures for simulating actual stream conditions as set forth in 40 CFR Part 136 (July ~~2, 1991~~ 1, 2007). Any bioassay studies made must be made using a representative sensitive local species and life stages of economic or ecological importance, except that other species whose relative sensitivity is known may be used when there is difficulty in providing the more sensitive species in sufficient numbers or when such species are unsatisfactory for routine confined bioassays. All bioassay methods and species selections must be approved by the department.

AUTH: 75-5-201, 75-5-301, MCA
IMP: 75-5-301, MCA

17.30.702 DEFINITIONS The following definitions, in addition to those in 75-5-103, MCA, apply throughout this subchapter (Note: 75-5-103, MCA, includes definitions for "degradation," "existing uses," "high quality waters," "mixing zone," and "parameter."):

(1) through (25) remain the same.

(26) The board adopts and incorporates by reference:

(a) ~~d~~Department Circular DEQ-7, entitled "Montana Numeric Water Quality Standards" (February ~~2006~~ 2008 edition), which establishes water quality standards for toxic, carcinogenic, bioconcentrating, nutrient, radioactive, and harmful parameters;

(b) remains the same.

(c) 40 CFR Part 136~~, as they existed on July, 1992~~ (July 1, 2007), which contains guidelines establishing test procedures for the analysis of pollutants.

(d) remains the same.

AUTH: 75-5-301, 75-5-303, MCA
IMP: 75-5-303, MCA

17.30.1001 DEFINITIONS The following definitions, in addition to those in 75-5-103, MCA, apply throughout this subchapter:

(1) remains the same.

(2) "DEQ-7" means ~~d~~Department Circular DEQ-7, entitled "Montana Numeric Water Quality Standards" (February ~~2006~~ 2008 edition), which establishes water quality standards for toxic, carcinogenic, radioactive, bioconcentrating, nutrient, and harmful parameters.

(a) The board adopts and incorporates by reference ~~d~~Department Circular DEQ-7, entitled "Montana Numeric Water Quality Standards" (February ~~2006~~ 2008 edition), which establishes water quality standards for toxic, carcinogenic, bioconcentrating, nutrient, radioactive, and harmful parameters.

(3) through (15) remain the same.

AUTH: 75-5-201, 75-5-401, MCA
IMP: 75-5-301, 75-5-401, MCA

17.30.1007 SAMPLE COLLECTION, PRESERVATION, AND ANALYSIS METHODS (1) Methods of sample collection, preservation, and sample analysis used to determine compliance with the standards in this subchapter must be in accordance with 40 CFR Part 136 "Guidelines Establishing Test Procedures for the Analysis of Pollutants" (July ~~1997~~ 2007), or the following:

(a) through (4) remain the same.

AUTH: 75-5-301, MCA
IMP: 75-5-301, MCA

17.36.345 ADOPTION BY REFERENCE (1) For purposes of this chapter, the department adopts and incorporates by reference the following documents. All references to these documents in this chapter refer to the edition set out below:

(a) through (d) remain the same.

(e) Department Circular DEQ-7, "Montana Numeric Water Quality Standards~~,~~" (February ~~2006~~ 2008 edition);

(f) through (2) remain the same.

AUTH: 76-4-104, MCA
IMP: 76-4-104, MCA

17.55.102 DEFINITIONS In this subchapter the following terms have the meanings indicated below and are supplemental to the definitions in 75-10-701,

MCA:

(1) through (5)(c) remain the same.

(6) The department adopts and incorporates by reference:

(a) remains the same.

(b) ~~d~~Department Circular DEQ-7, "Montana Numeric Water Quality Standards~~,~~" (February ~~2006~~ 2008 edition).

AUTH: 75-10-702, ~~75-10-704,~~ MCA
IMP: 75-10-702, 75-10-704, MCA

17.56.507 ADOPTION BY REFERENCE (1) For purposes of this subchapter, the department adopts and incorporates by reference:

(a) Department Circular DEQ-7, "Montana Numeric Water Quality Standards" (February ~~2006~~ 2008);

(b) through (3) remain the same.

AUTH: 75-11-319, 75-11-505, MCA
IMP: 75-11-309, 75-11-505, MCA

17.56.608 ADOPTION BY REFERENCE (1) For purposes of this subchapter, the department adopts and incorporates by reference:

(a) Department Circular DEQ-7, "Montana Numeric Water Quality Standards" (February ~~2006~~ 2008);

(b) through (3) remain the same.

AUTH: 75-11-319, 75-11-505, MCA
IMP: 75-11-309, 75-11-505, MCA

REASON: The board is proposing the amendment of Montana's water quality rules in ARM 17.30.502, 17.30.619, 17.30.702, and 17.30.1001, to incorporate proposed revisions to Montana's numeric water quality standards contained in Department Circular DEQ-7 (February 2006 edition). The proposed revisions to the Circular fall into three categories: (1) adopt new surface and ground water standards for eight pesticides and associated metabolites recently detected in Montana's ground water; (2) adopt aquatic life standards for two chemicals that were promulgated by the U.S. Environmental Protection Agency (EPA) in February 2006; (3) update the reference in Department Circular DEQ-7 specifying the method of calculating toxic equivalency factors (TEF) used for dioxins and congeners; and (4) delete footnote 29 and specify in the columns next to arsenic that 10 µg/L is the numeric surface and ground water quality standard for that parameter.

In this rulemaking, the department is proposing to amend ARM 17.36.345 regarding subdivisions, ARM 17.55.102 implementing the Comprehensive Environmental Cleanup and Responsibility Act (CECRA), and ARM 17.56.507 and 17.56.608 implementing its underground storage tank program, in order to incorporate the board's revisions to Department Circular DEQ-7. These amendments are necessary to ensure that the department's programs for the regulation of water quality affected by remediation sites, underground storage tanks,

and subdivisions will use the most current version of Montana's numeric water quality standards adopted by the board.

The department is proposing to delete the reference to 75-10-704, MCA, as authority for the amendment to its CECRA rules, as that statute does not authorize the adoption of rules.

The revisions to Department Circular DEQ-7, and the reasons for them, are summarized below. Copies of DEQ-7 with the proposed revisions may be obtained by contacting Ann Harrie at Water Quality Planning Bureau, Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901, by phone at (406) 444-5361, or by e-mail at AHarrie@mt.gov, or may be obtained on-line at http://www.deq/mt.gov/wqinfo/Standards.

INTERIM STANDARDS FOR PESTICIDES

The board is proposing to adopt numeric water quality standards for eight pesticides and associated metabolites that were recently detected in ground water by the Montana Department of Agriculture. These pesticides and metabolites are agricultural chemicals that have no federally promulgated standards adopted by EPA for the protection of water quality. Pursuant to 80-15-201(3), MCA, the board is required to adopt an "interim numerical standard" for ground water when there is no federally promulgated or published standard for an agricultural chemical that has been detected in Montana's ground water. The board is also required to review the interim standard whenever EPA promulgates a standard for the agricultural chemical at issue. 80-15-201(3), MCA.

The department, in conjunction with EPA, has developed interim standards for the following pesticides and metabolites detected in Montana's ground water: Azoxystrobin, Imazamox, Imidacloprid, Pinoxaden and its metabolites NOA 407854 and NOA 447204, Triallate, Triticonazole, Acetochlor Ethane Sulfonic Acid (Acetochlor ESA), Acetochlor Oxynallic Acid (Acetochlor OA), Alachlor Ethane Sulfonic Acid (Alachlor ESA), Alachlor Oxynallic Acid (Alachlor OA), Metolachlor, Ethane Sulfonic Acid (Metolachlor ESA), Metolachlor Oxynallic Acid (Metolachlor OA), Aminomethylphosphonic Acid (AMPA, glyphosate metabolite), Atrazine metabolites (deethyl, deisopropyl, and deethyl deisopropyl), Hydroxy Atrazine, and Imazamethabenz methyl acid (metabolite of Imazamethabenz-methyl ester).

The board finds that modifying DEQ-7 to adopt interim standards for the above-listed pesticides and metabolites is necessary in order to fulfill its statutory obligation to establish ground water standards for agricultural chemicals that have been detected in Montana's ground water. The board also finds that it is necessary and reasonable to adopt interim standards for surface waters that address these same pesticides and metabolites. The board could choose to adopt only ground water standards and meet the requirements of state law, but rejects that alternative as inconsistent with the policy of the state to "protect and maintain" all state waters, both surface and ground water. By adopting standards for surface waters as well as ground waters, Montana's surface waters will receive the same protection as ground water whenever state law mandates a ground water standard for an agricultural chemical.

AQUATIC LIFE CRITERIA

The board is proposing to adopt two numeric surface water standards for the protection of aquatic life in response to EPA's promulgation of nationally recommended criteria for Nonylphenol and Diazinon in February 2006, pursuant to Section 304(a) of the federal Clean Water Act. Although the 304(a) criteria do not impose any legally enforceable requirements, states and tribes are encouraged to use the criteria as guidance in the adoption of water quality standards.

The board finds it is necessary to adopt the proposed aquatic life standards recommended by EPA for the following reasons:

(a) Diazinon is a pesticide that has had widespread use throughout the United States in urban areas, agricultural areas, and households. Although the use of the chemical has been banned in urban areas and households since 2004, Diazinon is moderately persistent in the environment and is often found in wastewater treatment plant discharges and in storm water runoff. Due to its widespread use and toxic effects, the board finds it is reasonable and necessary to adopt EPA's recommended criteria to ensure the protection of aquatic life.

(b) Nonylphenol is an organic chemical produced in large quantities in the United States. It is toxic to aquatic life, causing reproductive effects in aquatic organisms. Nonylphenol is resistant to natural degradation in water and is often found in wastewater treatment plant discharges as a breakdown product from surfactants and detergents. Due to its toxic effects on fish and its potential to be discharged from wastewater treatment plants, the board finds it is reasonable and necessary to adopt EPA's recommended criteria for Nonylphenol.

UPDATING METHODS TO CALCULATE TOXIC EQUIVALENCY FACTORS (TEF)

The board is proposing to amend DEQ-7 in order to update the methods currently used for calculating the TEF for dioxin and congeners. In the current edition, DEQ-7 refers to a document published by van den Berg, et al., in 1998. The board is proposing to amend the reference in DEQ-7 to incorporate the latest publication of van den Berg, et al., dated 2006, revising and updating the methods of calculating TEF. The board finds that this amendment is necessary in order to stay current with EPA's recommended guidance for calculating TEF.

ARSENIC

The board is proposing to delete footnote 29 and specify within the columns next to arsenic that the numeric water quality standard for both surface and ground water is 10 µg/L. As currently written, there is no numeric water quality standard displayed in the columns next to arsenic. Instead, the reader is referred to footnote 29. Footnote 29 explains that, until EPA's newly adopted numeric water quality standard for arsenic becomes effective on January 23, 2006, Montana's numeric standards for arsenic would remain at 18 µg/L for surface water and 20 µg/L for ground water. The footnote also explains that on January 23, 2006, Montana's numeric water quality standard for arsenic for both surface and ground water would be 10 µg/L. Since Montana's former standards for arsenic are no longer in effect,

there is no reason to retain the footnote. The board is therefore eliminating the footnote and changing DEQ-7 so that the "new" standard of 10 µg/L (effective on January 23, 2006) is displayed in the columns next to arsenic.

ARM 17.30.619, 17.30.641, 17.30.646, 17.30.702, 17.30.1007

The board is proposing the amendment of ARM 17.30.619, 17.30.641, 17.30.646, 17.30.702, and 17.30.1007 in order to incorporate the latest edition of the federal rules specifying EPA's approved methods of analyzing and sampling water under the federal Clean Water Act. This amendment is necessary to incorporate numerous modifications and updates to the sampling and analysis methods in 40 CFR Part 136 that became effective in March 2007. If the amendments are not made, the department will lack authority to use the revised sampling and testing procedures.

4. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to the board secretary at Board of Environmental Review, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana, 59620-0901; faxed to (406) 444-4386; or e-mailed to ber@mt.gov, no later than 5:00 p.m., January 30, 2008. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

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

6. The board and department maintain 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, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supplies; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; opencut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA; underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the board secretary at Board of Environmental Review, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901; faxed to (406) 444-4386; e-mailed to ber@mt.gov; or may be made by completing a request form at any rules hearing held by the board or department.

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

Reviewed by: BOARD OF ENVIRONMENTAL REVIEW

/s/ James M. Madden BY: */s/ Joseph W. Russell*
JAMES M. MADDEN JOSEPH W. RUSSELL, M.P.H.,
Rule Reviewer Chairman

DEPARTMENT OF ENVIRONMENTAL QUALITY

BY: */s/ Richard H. Opper*
RICHARD H. OPPER, Director

Certified to the Secretary of State December 10, 2007.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 17.30.610 pertaining to surface water quality	))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT (WATER QUALITY)

TO: All Concerned Persons

1. On January 28, 2008, at 12:00 noon, the Board of Environmental Review will hold a public hearing at Conrad City Hall, 411 1/2 S. Main Street, Conrad, Montana, to consider the proposed amendment of the above-stated rule.

2. The board will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the board no later than 5:00 p.m., January 16, 2008, to advise us of the nature of the accommodation that you need. Please contact the board secretary at P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2544; fax (406) 444-4386; or e-mail ber@mt.gov.

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

17.30.610 WATER-USE CLASSIFICATIONS--MISSOURI RIVER DRAINAGE EXCEPT YELLOWSTONE, BELLE FOURCHE, AND LITTLE MISSOURI RIVER DRAINAGES (1) The water-use classifications adopted for the Missouri River are as follows:

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

(d) Marias River drainage except the tributaries and segments listed in (1)(d)(i) through (vi) B-2

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

(iii) Dry Fork Marias River (mainstem) from ~~Interstate 15~~ Highway 91 crossing near Conrad to Marias River and all adjoining tributaries..... B-3

(iv) through (i)(iv) remain the same.

AUTH: 75-5-201, 75-5-301, MCA
IMP: 75-5-301, MCA

REASON: The board is proposing the amendment of ARM 17.30.610 in response to its statutory obligation to correct the classification of a water body when presented with facts indicating that it was originally misclassified. See 75-5-302, MCA. The amendment of ARM 17.30.610 is necessary because the board has information demonstrating that a segment of the Dry Fork of the Marias just upstream from the City of Conrad is currently misclassified as a B-2 water body.

Under the B-2 classification, a water body must be suitable for the "growth

and marginal propagation of salmonid fishes and associated aquatic life." See ARM 17.30.624. Under the current classification system, the entire Marias River drainage, except for specific tributaries and segments set forth in ARM 17.30.610(1)(d)(i) through (iv), are classified as B-2. One of the exceptions to the B-2 classification is the mainstem of the Dry Fork of the Marias River located between the Interstate 15 crossing near Conrad and the Marias River. This segment is currently designated as a B-3 stream. ARM 17.30.610(1)(d)(iii). Under the B-3 classification, the waters need only be suitable for the growth and support of non-salmonid (i.e., warm water) fishes. ARM 17.30.625.

The proposed amendment would extend the length of this B-3 segment of the Dry Fork of the Marias river approximately one mile upstream to the Highway 91 crossing. The department has collected temperature data and other information demonstrating that this additional one-mile segment does not support the "marginal propagation of salmonid fish" that is necessary under its current B-2 classification. The board is therefore proposing to change its classification to B-3.

Under 75-5-302, MCA, the board may not lower the classification of a water body unless it finds that the water body was originally misclassified. The department has provided evidence, consisting of photographs, temperature data, and fish data, demonstrating that this segment of the Dry Fork of the Marias River was misclassified at the time it received its B-2 designation.

4. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to the board secretary at Board of Environmental Review, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana, 59620-0901; faxed to (406) 444-4386; or e-mailed to ber@mt.gov, no later than 5:00 p.m., January 28, 2008. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

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

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

Box 200901, Helena, Montana 59620-0901; faxed to (406) 444-4386; e-mailed to ber@mt.gov; or may be made by completing a request form at any rules hearing held by the board or department.

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

Reviewed by: BOARD OF ENVIRONMENTAL REVIEW

/s/ James M. Madden BY: */s/ Joseph W. Russell*
JAMES M. MADDEN JOSEPH W. RUSSELL, M.P.H.,
Rule Reviewer Chairman

Certified to the Secretary of State December 10, 2007.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the adoption of New Rules I through III pertaining to definitions, certification of energy production, transportation, and research facilities for tax abatement and classification	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION

TO: All Concerned Persons

1. On January 15, 2008, at 1:30 p.m., a public hearing will be held in Room 111, Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed adoption 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., December 31, 2007, to advise us of the nature of the accommodation that you need. Please contact Elois Johnson, Paralegal, Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail ejohnson@mt.gov.

3. The proposed new rules provide as follows:

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

(1) "Department" means the Department of Environmental Quality provided for in Title 2, chapter 15, part 39, MCA.

AUTH: 15-24-3116, MCA
IMP: 15-24-3112, MCA

NEW RULE II CERTIFICATION OF ELIGIBILITY FOR TAX ABATEMENT OR CLASSIFICATION AS CLASS FOURTEEN OR FIFTEEN PROPERTY (1) A taxpayer who wishes to obtain a certificate of eligibility for abatement of property tax liability under 15-24-3116, MCA, for classification of property as class fourteen property under 15-6-157 and 15-24-3116, MCA, or for classification of property as class fifteen property under 15-6-158 and 15-24-3116, MCA, shall submit to the department a completed application for certification on a form available from the department.

(2) Within 30 days of receipt of an application pursuant to (1), the department shall determine whether the application is complete and notify the applicant in writing of its determination. The time for this determination may be extended upon written consent of the applicant. If the department determines that the application is incomplete, the department shall also describe the deficiencies. The applicant may then supplement the application or submit a new application.

(3) Within 60 days of a determination of completeness pursuant to (2), the department shall issue a certification or deny the application and notify the applicant of its decision in writing. The time for this determination may be extended upon written consent of the applicant. If the department denies the application, it shall include in the notice a statement of the reasons that the application was denied and a notification of the applicant's right to review of the denial pursuant to 15-24-3112, MCA. If the department grants the certification, it shall also notify the Department of Revenue in writing.

(4) A certification remains in effect until revoked pursuant to this subchapter.

AUTH: 15-24-3116, MCA
IMP: 15-6-157, 15-6-158, 15-6-3112, MCA

RULE III APPLICATION REQUIREMENTS AND DECISION CRITERIA: ALTERNATING CURRENT POWER LINES UNDER 15-6-157(1)(q), MCA (1) A person who wishes to obtain a certification of the qualified portion of an alternating current power line pursuant to 15-6-157(1)(q), MCA, shall file an application on a form provided by the department pursuant to [New Rule I]. The application must contain the following information:

(a) the name and address of the applicant;

(b) a description of the line for which certification is sought, including its associated equipment and structures, including interconnections;

(c) a listing of all wage rates paid for construction of the power line in Montana, including its associated equipment and structures, including interconnections;

(d) the date construction of the power line, as defined in 15-24-3102, MCA, was commenced in Montana;

(e) the total transfer capability of the power line established through the Western Electricity Coordinating Council path rating process;

(f) a list of the Montana electricity generating facilities that are class fourteen property under 15-6-157, MCA, for which a firm contract for transmission capacity for ten years or more, available throughout each year of the contract, has been obtained, including:

(i) the location of each generating facility;

(ii) the period for which each facility has secured firm contract for transmission capacity throughout each year;

(iii) documentation of the amount of firm transmission on the power line that has been secured for each generating facility throughout each year. If this amount is not the same throughout the year, the applicant shall describe the different amounts and the length of periods during which those amounts apply; and

(iv) name, address, and telephone number of contact person for each facility.

(2) The qualified portion of a power line for which the amount of firm contracted power from class fourteen generating facilities is constant throughout the year is that amount divided by the total transfer capability of the line established through the Western Electricity Coordination Council path rating process. The qualified portion for a line for which the amount of firm contracted power from class fourteen generating facilities varies throughout the year is the weighted average

determined according to the following formula: (amount for first period x number of days in period + amount for next period x number of days in period . . .)/365. For deliveries to load on the line using firm transmission contracts for a blend of power from multiple generating facilities, the amount that is deemed to come from class fourteen facilities is the percentage of a delivery equaling the percentage of the annual energy portfolio of the commodity provider that is generated from class fourteen facilities located in Montana.

(3) In making its certification determination, the department shall use the application and any other credible information available to the department.

(4) A person who has received a certification pursuant to this rule may at any time apply for a certification of a different qualified portion of a power line. An application for a new certification shall contain the information required for an initial certification required pursuant to (1).

(5) Ten years after a power line becomes operational, the taxpayer shall submit to the department an update of the information required in (1)(e) and (f). Based on this information and any other credible information available to the department, the department shall determine the current qualified portion of the power line. If the current qualified portion of the power line is less than the last certified qualified portion of the power line, the department shall revoke the certification.

AUTH: 15-24-3116, MCA
IMP: 15-6-157, 15-24-3116, MCA

REASON: Chapter 2, Laws of Montana, May Special Session, 2007, adopted the Jobs and Energy Development Incentives Act. That Act is codified as Title 15, chapter 24, part 31, MCA. It instituted property tax abatements and two new property tax classes, and it modified other property tax classes. These new provisions and modification were made to provide tax incentives for new investment in the conversion, manufacture, and transport of renewable energy, clean coal development, carbon dioxide sequestration equipment, clean advanced coal research and development equipment, and renewable energy research and development equipment.

As enacted in chapter 2, 15-24-3112, MCA, requires the Department of Environmental Quality to determine whether equipment and facilities qualify for tax abatement and classification through a certification process. Section 15-24-3116, MCA, directs the department to adopt rules to implement the certification process. New Rules I through III are necessary to comply with this legislative mandate.

New Rules I and II are necessary to provide the basic process, including time frames, for expeditious certification of facilities and equipment by the Department of Environmental Quality for tax abatements and classifications.

New Rule III provides informational requirements and decision criteria for certification of alternating current power lines that carry electricity from class fourteen generating facilities under 15-6-157(1)(q), MCA. The information required is necessary for the department to determine whether and what portion of the line meets the requirements for classification as class fourteen property. It also provides more detail than the statute on how the department will determine the portion of the

line than will be classified as class fourteen. The proposed rule requires a description of all labor rates paid during facility construction because, under 15-24-157(3)(a), MCA, for a facility to qualify as class fourteen property, all construction laborers must have been paid the standard prevailing rate of wages for heavy construction. The Western Electricity Coordination Council (WECC) path rating process is used for determining the capacity of the line. WECC has authority to set limits on the amount of power that can be transported over a line based on operational concerns. Use of the WECC rating therefore provides the most accurate method of determining the maximum amount of electricity that the line can transport. Section (2) also provides a formula for use when the amount of firm contracted power attributable to class fourteen generating facilities varies over the year. A weighted average is used to give the most accurate measurement of the amount of contracted power.

The transfer capability of a line can be contracted for by either generating facilities interconnecting with the line or by commodity providers serving customers on the line. A specific customer may have a contract with a specific generating facility, in which case the department could readily determine whether a class fourteen property was using the line. Alternatively, the commodity provider could be obtaining electricity from more than one generating facility and thus be providing electricity from a blend of resources. In order to ensure that certification is given for electricity from class fourteen generating facilities, (2) would set the percentage of all the electricity sold by the commodity provider that is from class fourteen property as equal to the percentage sold to any one customer. The department would then use this percentage in calculating how much of the electricity sold to customers on the line comes from class fourteen facilities.

Section (3) of New Rule III allows the department to use, in addition to information in the application, other credible information to determine whether and what portion of the line to certify. This section is necessary to ensure that the department is not completely dependent on the applicant for information. Ability to use other information will allow the department to verify information in the application.

Section (4) of New Rule III is proposed to allow the owner of a line to obtain a new certification if the amount of electricity on the line from class fourteen generating facilities changes. Allowing new certifications would best meet the purpose of chapter 2 (see 15-24-3101, MCA), which is to encourage clean power generation, by providing incentives for line owners to provide capacity that becomes available on the line to clean power generation.

Section (5) of New Rule III implements 15-6-157(5)(a), MCA, which requires the department to review a certification of power line after ten years and to revoke the certification if the property no longer meets the requirements for certification. While the meaning of this requirement is clear when applied to other power lines, which are certified based on a determination that the line as a whole meets certain requirements, it is not so clear when applied to certifications under 15-6-157(1)(q), MCA, which is a certification of a portion of the line. Section (5) would require the department, in conducting its ten-year review, to determine whether the current certification is not more than the portion of the line for which there are firm contracts for electricity from class fourteen generating facilities. This is necessary to provide

an incentive for line owners to maintain accurate certifications and, in so doing, it also encourages line owners to maintain capacity for class fourteen generating facilities.

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 Elois Johnson, Paralegal, Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mailed to ejohnson@mt.gov, no later than January 17, 2008. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

5. Paul Cartwright has been designated to preside over and conduct the hearing.

6. 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 must make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supplies; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; opencut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA; underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to Elois Johnson, Paralegal, Legal Unit, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901, faxed to the office at (406) 444-4386, e-mailed to ejohnson@mt.gov, or may be made by completing a request form at any rules hearing held by the department.

7. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled. The primary sponsor was notified on August 31, 2007, by regular mail.

Reviewed by:

DEPARTMENT OF ENVIRONMENTAL QUALITY

/s/ John F. North
JOHN F. NORTH
Rule Reviewer

/s/ Richard H. Opper
RICHARD H. OPPER, Director

Certified to the Secretary of State, December 10, 2007.

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

In the matter of the proposed amendment of ARM 24.174.401 fee schedule	) NOTICE OF PUBLIC HEARING) ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On January 14, 2008, at 3:00 p.m., a public hearing will be held in room B-07, 301 South Park Avenue, Helena, Montana to consider the proposed amendment of the above-stated rule.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Pharmacy (board) no later than 5:00 p.m., on January 9, 2008, to advise us of the nature of the accommodation that you need. Please contact Ronald J. Klein, Board of Pharmacy, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2371; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail dlibsdpha@mt.gov.

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

24.174.401 FEE SCHEDULE

(1) through (4) remain the same.	
(5) Certified pharmacy annual renewal fee	~~200~~ 250
(6) through (13) remain the same.	
(14) Wholesale drug distributor license	~~300~~ 400
(15) Annual wholesale drug distributor renewal	~~175~~ 400
(16) remains the same.	
(17) Out-of-state mail service pharmacy/telepharmacy renewal	~~200~~ 400
(18) through (21) remain the same.	

AUTH: 37-1-134, 37-7-201, 50-32-314, MCA
IMP: 37-1-134, 37-7-201, 37-7-302, 37-7-321, 37-7-604, 37-7-605, 37-7-703, 50-32-314, MCA

REASON: The board determined it is reasonable and necessary to amend this rule to keep board fees commensurate with associated costs as required by 37-1-134, MCA. Board expenditures totaled $479,631 in fiscal year (FY) 2005, $483,187 in FY 2006, and $643,720 in FY 2007. The board's appropriation for FY 2008 is $622,164 and for FY 2009 is $645,022. The board's executive director position was part time in FY 2005, the position was vacant for six months in FY 2006, and was vacant for over five months in FY 2007. The position is now full time, and this will result in an

increase in expenses. In addition, the board also employs one full time pharmacy inspector who travels throughout the state of Montana. Both of these positions are filled with registered pharmacists. The pay rate of pharmacists in Montana and throughout the nation has been steadily increasing, and it is necessary for the board to pay competitive salaries. The board also employs one full time program manager and one part time (20 hours per week) licensing specialist. In addition, the board's cash position has deteriorated in recent years from $344,843 at the end of FY 2000 to a projected $24,530 at the end of FY 2009. This leaves little cash available to pay for unforeseen expenses, such as litigation.

The board estimates that the fee changes will affect approximately 1089 persons and will result in an estimated $171,225 cumulative increase in annual revenue as follows:

Pharmacy renewal: approximately 317 licensees affected by the $50 increase for an estimated annual revenue increase of $15,850.

Pharmacy renewal late: approximately 18 licensees affected by the $50 increase for an estimated annual revenue increase of $900.

Wholesale distributor original: approximately 65 applicants affected by the $100 increase for an estimated annual revenue increase of $6500.

Wholesale distributor renewal: approximately 379 licensees affected by the $225 increase for an estimated annual revenue increase of $85,275.

Wholesale distributor renewal late: approximately 28 licensees affected by the $225 increase for an estimated annual revenue increase of $6300.

Mail service pharmacy renewal: approximately 256 licensees affected by the $200 increase for an estimated annual revenue increase of $51,200.

Mail service pharmacy renewal late: approximately 26 licensees affected by the $200 increase for an estimated annual revenue increase of $5200.

4. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Pharmacy, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305 or by e-mail to dlibsdpha@mt.gov, and must be received no later than 5:00 p.m., January 22, 2008.

5. An electronic copy of this Notice of Public Hearing is available through the department and board's site on the World Wide Web at pharmacy.mt.gov. The department strives to make the electronic copy of this Notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the department strives to keep its 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 technical difficulties in accessing or posting to the e-mail address do not excuse late submission of comments.

6. The Board of Pharmacy maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. Persons who wish to

have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies the person wishes to receive notices regarding all Board of Pharmacy administrative rulemaking proceedings or other administrative proceedings. The request must indicate whether e-mail or standard mail is preferred. Such written request may be sent or delivered to the Board of Pharmacy, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2305, e-mailed to dlibsdpha@mt.gov, or made by completing a request form at any rules hearing held by the agency.

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

8. Mike Fanning, attorney, has been designated to preside over and conduct this hearing.

BOARD OF PHARMACY
JAMES CLOUD, CPhT, PRESIDENT

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

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

Certified to the Secretary of State December 10, 2007.

BEFORE THE BOARD OF SPEECH-LANGUAGE PATHOLOGISTS
AND AUDIOLOGISTS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the proposed amendment of ARM 24.222.301 definitions, 24.222.502 and 24.222.506 licensure, 24.222.507 temporary practice permits, 24.222.701 and 24.222.702 supervision, 24.222.703 functions of aides or assistants, and 24.222.2102 continuing education	)))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On January 14, 2008, at 9:00 a.m., a public hearing will be held in room 439, 301 South Park Avenue, Helena, Montana to consider the proposed amendment of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Speech-Language Pathologists and Audiologists (board) no later than 5:00 p.m., on January 9, 2008, to advise us of the nature of the accommodation that you need. Please contact Helena Lee, Board of Speech-Language Pathologists and Audiologists, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2385; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail dlibsdslp@mt.gov.

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

24.222.301 DEFINITIONS (1) remains the same.

(2) "Certificate of clinical competence" means a current certificate issued by the American Speech-Language-Hearing Association (ASHA).

(3) through (5) remain the same.

(a) "aide ~~I~~ or assistant I" means a person who holds an undergraduate degree in communication sciences and disorders, or its equivalent, and is currently enrolled in an accredited graduate program for the purpose of completing licensure requirements;

(b) "aide ~~II~~ or assistant II" means a person who holds an undergraduate degree in communication sciences and disorders, or its equivalent, but is not currently enrolled in an accredited graduate program; and

(c) "aide ~~III~~ or assistant III" means a person who holds no undergraduate degree in communication sciences and disorders or its equivalent.

(6) "Supervision" means on-site observation and guidance by the supervising licensed speech-language pathologist or audiologist while a clinical activity is performed by the speech-language pathology or audiology aide or assistant. On-site supervision performed by the licensee may include but is not limited to the following:

(a) observation of a portion of the screening or treatment procedures performed by the aide or assistant;

(b) coaching the aide or assistant; and

(c) modeling for the aide or assistant.

AUTH: 37-1-131, 37-15-202, MCA
IMP: 37-15-102, 37-15-202, 37-15-301, 37-15-303, 37-15-313, MCA

REASON: The board determined it is reasonably necessary to amend this rule to define supervision as it pertains to the three levels of aides or assistants. Section 37-15-102, MCA, requires speech-language pathology and audiology aides and assistants to work directly under the supervision of a licensee. Following extensive review and discussion, the board is defining the term in this rule to clarify the intent of the board regarding licensee supervision of aides or assistants and to address questions and confusion among staff, licensees, and aides. The board is also amending (2) to clarify that certificates of clinical competence are issued by the American Speech-Language-Hearing Association (ASHA).

24.222.502 QUALIFICATIONS FOR LICENSURE (1) remains the same.

(2) An applicant will be deemed to have met the requirements of (1)(a) through (e) by submitting proof of a current certificate of clinical competence.

~~(2)~~ (3) In order to be licensed by the board as an audiologist an applicant shall:

(a) ~~For applications made prior to January 1, 2007, an applicant shall:~~

~~(i) have completed a minimum of 75 semester credit hours of post-baccalaureate study that culminates in a minimum of a master's degree in audiology. The graduate education in audiology must be initiated and completed in an accredited program by the licensure board;~~

~~(ii) demonstrate skills in oral and written communication, knowledge of ethical standards, research principles, and current professional and regulatory issues;~~

~~(iii) have practicum experiences that encompass the breadth of the current scope of practice with both adults and children resulting in a minimum of 400 clock hours of supervised practicum, of which at least 375 hours must be in direct client/patient contact and 25 hours of clinical observation;~~

~~(iv) have a 36-week audiology clinical experience that establishes a collaboration between the clinical fellow and a mentor; and~~

~~(v) pass an audiology examination, as determined by the board.~~

~~(b) For applications made on or after January 1, 2007, an applicant shall:~~

~~(i)~~ possess a Doctor of Audiology degree (Au.D.) or a Ph.D in audiology, from an accredited program approved by the board; and

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

(c) remains the same.

AUTH: 37-1-131, 37-15-202, MCA
IMP: 37-15-301, 37-15-303, MCA

REASON: The board is amending this rule and ARM 24.222.506 to allow submission of a certificate of clinical competence in lieu of an applicant's individual academic, practicum, and examination documentation. The American Speech-Language-Hearing Association (ASHA) issues this certificate to an individual only upon successful completion of an approved academic program and accompanying practicum and the passage of the national Praxis examination and thus in compliance with the board's qualifications for licensure as a speech-language pathologist.

It is also reasonably necessary to now delete the audiologist licensure provisions for applications received prior to January 1, 2007, as this date has passed.

24.222.506 LICENSURE OF OUT-OF-STATE APPLICANTS (1) remains the same.

(2) An applicant will be deemed to have met the requirements of (1)(b) and (c) by submitting proof of a current certificate of clinical competence.

~~(2) A license to practice speech-language pathology or audiology in the state of Montana may be issued at the discretion of the board provided the applicant completes and files with the board an application for licensure and the required application fee, and provides proof the applicant holds the certificate of clinical competence of the American Speech-Language-Hearing Association in the area for which the applicant is applying for a license.~~

(3) remains the same.

AUTH: 37-1-131, 37-15-202, MCA
IMP: 37-1-304, MCA

24.222.507 TEMPORARY PRACTICE PERMITS (1) A speech-language pathologist or audiologist who holds ~~ASHA certification~~ a certificate of clinical competence or equivalent, or is licensed in another state and who has made application to the board for a license in this state may be granted a temporary permit and perform activities and services of a speech-language pathology or audiology nature pending disposition of the application.

AUTH: 37-1-319, 37-15-202, MCA
IMP: 37-1-305, MCA

REASON: It is reasonably necessary to amend this rule to the correct terminology used in current practice and to comply with the term as defined in board rule.

24.222.701 SUPERVISOR RESPONSIBILITY (1) All persons working in the capacity of a speech-language or audiology aide or assistant must be working directly under the ~~direct~~ supervision of a fully licensed speech-language pathologist or audiologist. This supervisor assumes full legal and ethical responsibility for the

tasks performed by the aide or assistant and for any services or related interactions with a client.

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

(e) any other factors as determined by the supervising speech-language pathologist ~~and~~ or audiologist.

AUTH: 37-1-131, 37-15-202, MCA
IMP: 37-15-102, 37-15-313, MCA

REASON: The board is amending this rule to achieve consistency in the terminology used in 37-15-102, MCA, which requires that aides or assistants work directly under the supervision of a licensed speech-language pathologist or audiologist. The board is also amending (3)(e) to clarify that the supervisor is either a speech-language pathologist or audiologist as the board has never intended to require two licensed supervisors.

24.222.702 SCHEDULE OF SUPERVISION - CONTENTS (1) and (2) remain the same.

(a) aide ~~I~~ or assistant I shall be supervised on-site a minimum of ~~30~~ ten percent ~~while performing diagnostic and interpretive functions in the first year of nonallowable activities. The supervision requirement will be 5 percent~~ of total client contact time~~,~~. ~~of which 2 percent shall be direct contact after the first year, at~~ At the discretion of the supervising speech-language pathologist~~;~~ , the on-site supervision requirement may be reduced to two percent after the first year of supervision.

(i) If diagnostic evaluations are being performed, the aide or assistant I shall be supervised on-site a minimum of 30 percent of the total diagnostic process.

(b) aide ~~II~~ or assistant II shall be supervised on-site ~~10~~ ten percent of client contact time~~, of which 5 percent shall be direct contact~~; and

(c) aide ~~III~~ or assistant III shall be supervised on-site 20 percent of client contact time~~, of which 10 percent shall be direct contact~~.

(3) and (4) remain the same.

(5) Each supervisor must also submit a supervisor summary form, as prescribed by the board, which lists the following:

(a) each speech or audiology aide or assistant~~,~~;

(b) number of hours~~,~~ of supervision; and

(c) other information as required by the board.

(d) The board will review ~~the~~ all supervisor summary forms~~, which indicate a supervisor supervises~~ indicating the supervision of three or more speech or audiology aides or assistants~~, for compliance with the appropriate ratio of supervisor hours as stated in the rules~~.

(6) The supervisor must complete and submit to the board a midyear verification form by February 25 of each year, on the supervisor's renewal form, to indicate continuing compliance with the schedule of supervision previously filed under (1).

AUTH: 37-1-131, 37-15-202, MCA
IMP: 37-15-102, 37-15-313, MCA

REASON: The board is amending this rule to address and rectify ongoing confusion among staff, licensees, and aides and assistants regarding the supervision requirements for aides and assistants I, II, and III. The board concluded it is reasonably necessary to amend this rule throughout and the corresponding supervisor summary form in an attempt to clarify these requirements.

Section 37-15-102, MCA, requires speech-language pathology and audiology aides and assistants to work directly under the supervision of a licensee. Following extensive review and discussion, the board is amending this rule to clarify the on-site supervision, as defined at ARM 24.222.301, required for each level of aide or assistant. The board is also amending this rule to require that licensees supervise aides or assistants I a minimum of ten percent of total client contact time and at least 30 percent of any time the aide or assistant is involved in the process of diagnostic evaluation. The board concluded that a ten percent general supervision requirement for aides I adequately protects the public as long as 30 percent of the total diagnostic process is supervised.

24.222.703 FUNCTIONS OF AIDES OR ASSISTANTS (1) and (2) remain the same.

(a) aide ~~I~~ or assistant I may:

(i) perform tasks identified by the speech-language pathology supervisor ~~in the required task analyses~~ according to the therapy plan, which do not violate any provision of Title 37, chapter 15, MCA, or these rules;

(ii) through (vii) remain the same.

(b) aide ~~II~~ or assistant II may:

(i) perform tasks identified by the speech-language pathology supervisor ~~in the required task analyses~~ according to the therapy plan, which do not violate any provision of Title 37, chapter 15, MCA, or these rules;

(ii) through (vi) remain the same.

(c) aide ~~III~~ or assistant III may:

(i) perform tasks identified by the speech-language pathology supervisor ~~in the required task analyses~~ according to the therapy plan, which do not violate any provision of Title 37, chapter 15, MCA, or these rules;

(ii) and (3) remain the same.

(a) aide ~~I~~ or assistant I may not refer clients to outside professionals;

(b) aide ~~II~~ or assistant II may not:

(i) transmit clinical information to anyone other than the professional directly supervising ~~him/her~~ the aide or assistant;

(ii) remains the same.

(c) aide ~~III~~ or assistant III may not:

(i) and (ii) remain the same.

(iii) transmit clinical information except to the professional directly supervising ~~him/her~~ the aide or assistant;

(iv) through (vii) remain the same.

(4) Speech-language pathologist aides ~~I~~ or assistants I ~~who are currently enrolled in a speech-language pathology master's program~~ may perform

~~nonallowable functions of aides I~~ diagnostic evaluations, under supervision, only if all of the following conditions have been met:

(a) through (c) remain the same.

(d) annual ~~application~~ submission of a written request for waiver ~~of nonallowable functions of speech-language pathology aides I or assistants~~ to perform diagnostic evaluations to the board for approval prior to ~~commencement of performance as a speech-language pathologist aide I~~ performing any diagnostic evaluations.

(5) remains the same.

AUTH: 37-1-131, 37-15-202, MCA
IMP: 37-15-102, 37-15-313, MCA

REASON: The board determined it is reasonably necessary to amend this rule to replace the antiquated and outdated "required task analyses" with "according to the therapy plan," the phrase currently used in the field of speech-language pathology. The board is amending (4) to delete the vague and undefined term "nonallowable functions" and clarify the board's intent to permit speech-language pathologist aides or assistants I to perform diagnostic evaluations upon compliance with the preconditions listed. The board is striking the redundant requirement of an aide or assistant I to be enrolled in a master's program, as this is part of the definition of aide or assistant I in ARM 24.222.301. The rule is further amended to make references gender neutral.

24.222.2102 CONTINUING EDUCATION REQUIREMENTS (1) through (5) remain the same.

(6) Speech-language pathology aides ~~I~~ or assistants I shall complete 20 units of approved continuing education annually and submit verification of the continuing education to the board ~~at the time of registration~~ by affirmation of the licensed supervisor on the supervisor's renewal form by February 1 annually. Fourteen continuing education units may include on-the-job training as part of the supervision plan, and college coursework obtained through an accredited college or university.

(7) Speech-language pathology aides or assistants ~~levels~~ II and III shall submit verification of ten continuing education hours ~~at the time of registration~~ by affirmation of the licensed supervisor on the supervisor's renewal form by February 1 annually.

(8) Audiology aides and audiology industrial aides or assistants shall complete ten units of approved continuing education annually and submit verification of the continuing education to the board ~~at the time of registration~~ by affirmation of the licensed supervisor on the supervisor's renewal form by February 1 annually.

(9) and (10) remain the same.

(11) Acceptable activities shall include~~,~~ but are not limited to:

(a) through (14) remain the same.

AUTH: 37-1-131, 37-1-319, 37-15-202, MCA
IMP: 37-1-131, 37-1-306, 37-15-102, ~~37-15-309,~~ MCA

REASON: The board is amending this rule to require that licensed supervisors affirm on their annual renewal forms the completion of continuing education requirements by their supervised aides and assistants. The board determined that aides and assistants do not have adequate time to complete and report continuing education by their date of hire and registration with the board. Further, supervisors already attest to compliance with supervision requirements at renewal and adding the affirmation of the aides' continuing education would not constitute an excessive burden. The board is also amending this rule to comply with ARM punctuation requirements and is deleting reference to a repealed statute in the implementation cites.

4. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Speech-Language Pathologists and Audiologists, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to dlibsdslp@mt.gov, and must be received no later than 5:00 p.m., January 22, 2008.

5. An electronic copy of this Notice of Public Hearing is available through the department and board's site on the World Wide Web at www.slpaud.mt.gov. The department strives to make the electronic copy of this Notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the department strives to keep its 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 technical difficulties in accessing or posting to the e-mail address do not excuse late submission of comments.

6. The Board of Speech-Language Pathologists and Audiologists maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies the person wishes to receive notices regarding all Board of Speech-Language Pathologists and Audiologists administrative rulemaking proceedings or other administrative proceedings. The request must indicate whether e-mail or standard mail is preferred. Such written request may be sent or delivered to the Board of Speech-Language Pathologists and Audiologists, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2305, e-mailed to dlibsdslp@mt.gov, or made by completing a request form at any rules hearing held by the agency.

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

8. Darcee Moe, attorney, has been designated to preside over and conduct this hearing.

BOARD OF SPEECH-LANGUAGE
PATHOLOGISTS AND AUDIOLOGISTS
DARREL MICKEN, Au.D., CHAIRPERSON

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

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

Certified to the Secretary of State December 10, 2007

BEFORE THE BOARD OF VETERINARY MEDICINE
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the proposed amendment of ARM 24.225.401 fees, 24.225.415 infectious waste, 24.225.501, 24.225.503, 24.225.507, 24.225.511, and 24.225.550 pertaining to licensing, 24.225.704, 24.225.709, and 24.225.750 embryo transfer, 24.225.904, 24.225.920, 24.225.926, and 24.225.950 euthanasia technicians and agencies, 24.225.2401 complaints, 24.225.2405 screening panel, and adoption of NEW RULE I nonroutine applications	)))))))))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT AND ADOPTION

TO: All Concerned Persons

1. On January 10, 2008, at 9:00 a.m., a public hearing will be held in room B-07, 301 South Park Avenue, Helena, Montana to consider the proposed amendment and adoption of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Veterinary Medicine (board) no later than 5:00 p.m., on January 4, 2008, to advise us of the nature of the accommodation that you need. Please contact Cheryl Brandt, Board of Veterinary Medicine, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2394; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail dlibsdvet@mt.gov.

3. GENERAL STATEMENT OF REASONABLE NECESSITY: Through a periodic review of its rules, the board determined it is reasonably necessary to generally amend the rules to conform to department rules and standardize similar functions and processes within the department. Further amendments delineate between department and board functions in compliance with 37-1-141, MCA. Additional amendments ensure compliance with ARM punctuation requirements, update grammar and language choices, and substitute gender neutral for gender specific terms. Authority and implementation cites are amended to accurately reflect all statutes implemented through the rule, to provide the complete sources of the board's rulemaking authority, and to delete references to a repealed statute. Where additional specific bases for a proposed action exist, the board will identify those reasons immediately following that rule.

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

24.225.401 FEE SCHEDULE

(1) remains the same.

(a) ~~Annual renewal~~ Renewal of ~~certificate of registration~~ license	$ 65
~~(b) Restoration~~	~~50~~

(c) through (e) remain the same but are renumbered (b) through (d).

(2) and (2)(a) remain the same.

(b) ~~Annual renewal~~ Renewal of certification	65

(3) and (4) remain the same.

AUTH: 37-1-134, 37-18-202, 37-18-603, MCA
IMP: 37-1-134, 37-1-141, 37-1-304, 37-1-305, 37-18-302, 37-18-603, MCA

REASON: It is reasonable and necessary to amend this rule by deleting the restoration fee that was previously assessed by the board as a late penalty fee. Per 37-1-101, MCA, the department sets standardized fees applicable to all professional and occupational licensing boards, including late penalty fees. The deletion of the restoration fee results in no fiscal impact and will avoid a conflict with department fees at ARM 24.101.403. The board is also deleting an unnecessary reference to annual renewal which is already set forth in ARM 24.101.413.

24.225.415 MANAGEMENT OF INFECTIOUS WASTES (1) Each veterinarian licensed by the board shall store, transport off the premises, and dispose of infectious wastes, as defined in 75-10-1003, MCA, in accordance with the requirements set forth in 75-10-1005, MCA.

~~(2) Used sharps are properly packaged and labeled within the meaning of 75-10-1005(1)(a), MCA, when this is done as required by the Occupational Safety and Health Administration (OSHA) regulation contained in 29 CFR 1910.1030, adopted and published in the Federal Register, Volume 56 No. 235, on December 6, 1991, beginning at page 64175, which is hereby incorporated by reference. Copies of the federal regulation referenced above as well as the adoption notice supporting it are available for public inspection in the offices of the Board of Veterinary Medicine, 301 South Park Avenue, Helena, Montana 59620.~~

AUTH: 37-1-131, 37-18-202, 75-10-1006, MCA
IMP: 75-10-1006, MCA

REASON: The board determined it is reasonable and necessary to amend and simplify this rule by deleting unnecessary and redundant references to federal law that are already incorporated into the statutes referenced in (1).

24.225.501 TEMPORARY PERMITS (1) An applicant requesting a temporary permit must submit an application for a temporary permit to the board and must have on file with the board a completed licensing application, the proper fee,

and any information as the board may require pursuant to ARM 24.225.503 or 24.225.507.

~~(2) An applicant for licensure by examination may be issued a temporary permit if he/she is employed by, working under the supervision of, and in the same office with, a veterinarian licensed in Montana. A temporary permit holder shall not work at a satellite office at a remote location distant from the supervisor's main office.~~

~~(3)~~(2) An applicant for licensure ~~by endorsement~~ may be issued a temporary permit if ~~he/she~~ the applicant is working under the supervision of a veterinarian licensed in and practicing in Montana.

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

(4) A temporary permit is valid for six months. An extension may be granted by the board for a verifiable and rational reason.

AUTH: 37-1-319, 37-18-202, MCA
IMP: 37-1-305, MCA

REASON: It is reasonably necessary to amend this rule to eliminate the differences between temporary permit requirements for new graduates and those for seasoned practitioners. Noting that temporary permits are usually obtained to enable an applicant to practice pending completion of the jurisprudence exam, the board concluded that there exists no definitive difference between the competency of an applicant by exam or endorsement and there is no reason for different supervision requirements. The amendment clarifies that the supervising veterinarian must be licensed and also practice in Montana to be an appropriate supervising veterinarian.

The board is amending the rule to specify a finite time period for temporary permits. The board notes that issuance of veterinary college transcripts can take considerable time. The six month period will allow new graduates to practice until the board receives their transcripts and all licensing requirements are met, or until the next board meeting for other considerations.

24.225.503 EXAMINATION APPLICATION REQUIREMENTS

(1) Applicants for licensure by examination in the state of Montana shall submit a completed application with the proper fee and supporting documents to the board office ~~no later than 45 days prior to the jurisprudence examination date as set by the board~~. ~~Applicants~~ Every year, applicants for the North American Veterinary Licensing Examination (NAVLE) wishing to sit as a Montana candidate shall submit the Montana state licensure application to the board no later than ~~97 days prior to the first date of each NAVLE test window~~ August 1 for the fall NAVLE administration or January 3 for the spring NAVLE administration. Montana NAVLE candidates shall submit the NAVLE application and fee directly to the National Board of Veterinary Medical Examiners. Supporting documents for the Montana state licensure application must include:

(a) remains the same.

(i) senior veterinary students who have not yet graduated, when submitting the application, shall submit a letter from the dean of the school of veterinary medicine attended, stating that ~~he/she~~ the applicant is a senior student and the

expected date to receive the degree of doctor of veterinary medicine or its equivalent. No license shall be issued, however, until such time as the board office receives a certified copy of the transcript.

(b) photograph approximately 2" x 2" taken within one year of the date of application.;

(c) if applicable, official written verification of licensure from any state of licensure past or present; and

(d) the candidate's work history of all employment concurrent as well as consecutive starting at the date of application and working back to graduation.

(2) remains the same.

(a) pass the NAVLE at or above the designated passing standard established by the national examination entity as approved by the board within 62 months; or

(b) have passed the National Board Examination and the Clinical Competency Test within 62 months prior to the next scheduled jurisprudence examination date as set by the board with a converted score of 70 or greater and have their scores reported to the board office through the official score reporting agency.; and

(c) pass the board's jurisprudence exam with a score of 70 percent or greater. If the candidate fails the jurisprudence exam twice, the candidate must appear before the board prior to taking it a third time.

(3) remains the same.

(4) An application for examination shall expire one year 18 months from the date of the application. An applicant who, for any reason, fails or neglects to take the examination complete the licensing process within one year 18 months shall be required to file another application and submit another application for examination fee.

AUTH: 37-1-131, 37-18-202, MCA
IMP: 37-1-131, 37-18-202, 37-18-302, MCA

REASON: The board is amending this rule to remove submission requirements based upon the next scheduled jurisprudence exam since the jurisprudence exam is now available online and may be taken at any time. The board is amending (1) to align with changes in the national exam application deadlines.

It is necessary to amend the rule to achieve consistency between application requirements for licensure by examination and by endorsement in ARM 24.225.507. Following amendment, all applicants will be required to submit verification of licensure in other states, if any, and applicant work history.

The board is amending (2)(a) to specify that an applicant must have passed the NAVLE within 62 months. The time frame is the same for applicants having taken the National Board Examination and the Clinical Competency Test and was inadvertently omitted when the NAVLE was added as an available exam.

It is reasonably necessary to amend this rule and specify the passing score for the jurisprudence exam to align with requirements for endorsement applicants in ARM 24.225.507. The board is also specifying that applicants who twice fail the jurisprudence exam must appear before the board before a third attempt. The board

concluded that if an applicant is unable to pass the open book jurisprudence exam, the board should meet with the applicant in the interest of public safety.

The board is amending (4) and extending the period an application remains active to address instances where applicants may be unable to take the national exams or supply their transcripts within a one year time period.

24.225.507 LICENSURE ENDORSEMENT OF OUT-OF-STATE APPLICANTS (1) remains the same.

(a) The candidate has graduated from and holds a degree~~/diploma~~ from a school of veterinary medicine accredited or approved by the American Veterinary Medical Association Council on Education as evidenced by a certified copy of the transcript sent directly from the veterinary school. Graduates of foreign veterinary schools shall have completed the requirements of the American Veterinary Medical Association's Education Commission for Foreign Veterinary Graduates (ECFVG) or the Program for the Assessment of Veterinary Education Equivalence (PAVE).

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

(iii) ~~has passed~~ the National Board Examination with a converted score of 70 or greater and has been licensed on the basis of a competency (not jurisprudence) examination by a veterinary ~~examination~~ board under the laws of another state of the United States or a Canadian province.

(c) remains the same.

~~(d) The candidate's license to practice veterinary medicine has had no disciplinary sanction during the last five years of licensure and no license suspension or license revocation at any time.~~

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

~~(f)~~(e) The candidate has completed and filed with the board an application for licensure~~,~~ and the required application fee ~~no later than 45 days prior to the examination date~~.

~~(g)~~(f) The candidate has passed a jurisprudence examination prepared to measure the competence of the applicant regarding the statutes and rules governing the practice of veterinary medicine in Montana with a score of 70 percent or greater. If the candidate fails the jurisprudence examination ~~it may not be retaken for six months~~ twice, the candidate must appear before the board prior to taking it a third time.

(2) An application for endorsement shall expire 18 months from the date of receipt of the application.

AUTH: 37-1-131, 37-18-202, MCA
IMP: 37-1-304, MCA

REASON: It is reasonable and necessary to amend the terminology in (1)(a) to comply with 37-18-302, MCA, which requires proof of a degree. The board is amending (1)(b)(iii) to specify the National Board Examination passing score of 70 or greater to be consistent with requirements for exam applicants in ARM 24.225.503.

The board is deleting (1)(d) and will no longer require that endorsement applicants verify no license discipline in five years and no license suspension or revocation at any time. The board does not anticipate denying licensure based

solely on past discipline in another state and notes that minor infractions of rules, such as failure to timely acquire continuing education can result in disciplinary action. The board reviews all applications on a nonroutine, case-by-case basis and requires license verification from other jurisdictions that includes any discipline.

The board is also deleting any submission requirements based upon the next scheduled jurisprudence exam since the jurisprudence exam is now available online and may be taken at any time.

It is reasonably necessary to specify that applicants who twice fail the jurisprudence exam must appear before the board before a third attempt. The board concluded that if an applicant is unable to pass the open book jurisprudence exam, the board should meet with the applicant in the interest of public safety.

The board is amending (2) and extending the period an application remains active to address instances where applicants may be unable to take the national exams or supply their transcripts within a one year time period.

24.225.511 CONTINUING EDUCATION (1) remains the same.

(a) It is the responsibility of the veterinarian to maintain proof of ~~his/her~~ the veterinarian's continuing education attendance and to certify compliance on the renewal application in the even-numbered years only. During the renewal process in the odd-numbered years, no continuing education is to be certified.

(i) remains the same.

(A) name of licensee~~,~~;

(B) name of presenter~~,~~;

(C) title of presentation~~,~~;

(D) date of presentation~~,~~;

(E) number of hours~~,~~; and

(F) remains the same.

(b) A veterinarian may be granted a grace period of three months after the deadline set by ARM 24.101.413 in which to fulfill the continuing education requirements. This grace period shall be granted only upon written request to the board, payment of the renewal fee, and payment of the late penalty fee ~~and upon board approval~~. A license to practice veterinary medicine valid for the duration of the grace period will be issued to those persons granted a grace period ~~by the board~~.

(c) Continuing education credits obtained during a grace period ~~or restoration period~~ cannot be used for the next reporting period.

(2) Credit hours shall be earned by one hour credit for each hour of attendance at or participation in meetings and programs approved by the board. Board approved programs include~~,~~ but are not limited to~~,~~ those sponsored by the American Veterinary Medical Association, American Animal Hospital Association, western states veterinary conferences, veterinary college conferences, ~~and~~ state association meetings, Registry of Approved Continuing Education (RACE) approved programs, and any other affiliated association, society, etc. related to veterinary medicine that have specific topics for veterinarians. Programs shall be of a professional veterinary nature to qualify, with the number of practice management hours reported not to exceed 25 percent of the total required continuing education hours.

(3) Continuing education courses offered and completed on the Internet or via other similar electronic means may be accepted, if all criteria listed in (1) and (2) ~~above~~ are met, for a maximum of ten credits.

(4) remains the same.

(5) ~~Those persons exempt under the above provisions are:~~

~~(a) new~~ New licensees who are applying for their first ~~annual certificate of registration; and~~ license renewal are not required to report continuing education.

~~(b) persons on active duty by a branch of the armed services of the United States.~~

(6) If a licensee is unable to acquire sufficient continuing education credits, ~~he or she~~ the licensee may request a hardship exemption. All requests for exemptions will be evaluated by the board on an individual basis.

AUTH: 37-1-131, 37-1-319, 37-18-202, MCA
IMP: 37-1-131, 37-1-141, 37-1-306, MCA

REASON: The board determined it is reasonably necessary to amend this rule to clarify that staff, not board members, review and approve continuing education grace periods per ARM 24.101.413.

Section 37-18-307, MCA, was repealed in 2005 when the Montana Legislature enacted Chapter 467, Laws of 2005 (House Bill 182). The board is deleting both the term "restoration period" and the continuing education exemption for active duty military as both were formerly included in the repealed statute.

The board is also amending this rule to specify that Registry of Approved Continuing Education (RACE) courses, as approved by the American Association of Veterinary State Boards, are now board approved courses. It is reasonable to delete reference to annual renewals from (5) to avoid conflict between department and board rules since the frequency is set forth at ARM 24.101.413.

24.225.550 UNPROFESSIONAL CONDUCT (1) remains the same.

(a) violation of any state or federal statute or administrative rule regulating the practice of veterinary medicine, including any statute or rule defining or establishing standards of patient care or professional conduct or practice~~.~~;

(b) resorting to fraud, misrepresentation, or deception in the examination or treatment of an animal, or in billing or reporting to a person, company, institution, or agency~~.~~;

(c) incompetence, negligence, or use of any practice or procedure in the practice of the profession which creates an unreasonable risk of physical harm or serious financial loss to the client~~.~~;

(d) possession, use, addiction to, prescription for use, diversion, or distribution of controlled substances or legend drugs in any way other than for legitimate or therapeutic purposes, or violation of any drug law~~.~~;

(e) dispensing or prescribing a veterinary prescription drug without a valid veterinarian/client/patient relationship~~.~~;

(f) remains the same.

(g) practice beyond the scope of practice encompassed by the license except when reasonably undertaken in an emergency situation to protect life, health, or property~~.~~;

(h) offering, undertaking, or agreeing to cure or treat disease or affliction by a secret method, procedure, treatment or the treating, operating, or prescribing for any health condition by a method, means, or procedure which the licensee refuses to divulge upon demand from the board~~.~~;

(i) failing to adequately supervise auxiliary staff to the extent that the patient's physical health or safety is at risk~~.~~;

(j) practicing veterinary medicine after the practitioner's license ~~has~~ is expired, terminated, revoked, or suspended~~.~~;

(k) willful or repeated violations of rules established by any health agency or authority of the state or a political subdivision thereof~~.~~;

(l) cruel or inhumane treatment of animals~~.~~; or

(m) abandoning, neglecting, or otherwise physically abusing a patient once the veterinarian has undertaken treatment of the patient.

AUTH: 37-1-131, 37-1-319, 37-18-202, MCA
IMP: 37-1-131, 37-1-141, 37-1-316, 37-1-319, ~~37-18-311,~~ MCA

24.225.704 APPLICATION REQUIREMENTS AND QUALIFICATIONS FOR CERTIFICATION (1) Applications for certification as embryo transfer technician (ETT) shall be made on forms provided by the ~~board~~ department.

(2) and (3) remain the same.

(4) Applicants shall submit a completed application with the proper fee as set forth in ARM ~~24.225.301~~ 24.225.401 and supporting documents to the board office no later than August 1 to be eligible for the fall examination.

AUTH: 37-18-202, MCA
IMP: 37-18-104, MCA

REASON: The board determined it is reasonable and necessary to amend this rule to correctly reference the board's fee rule.

24.225.709 RENEWALS AND CONTINUING EDUCATION (1) through (4) remain the same.

(5) A certificate holder may be granted a grace period of three months after the renewal date set by ARM 24.101.413 in which to fulfill continuing education requirements. This grace period will be granted only upon written request to the board, payment of the renewal fee, and payment of the late penalty fee ~~board approval~~. A certificate valid for the duration of the grace period will be issued only to a person granted a grace period ~~by the board~~.

(6) It is the responsibility of the certificate holder to maintain proof of ~~his or her~~ the certificate holder's continuing education attendance.

(7) and (8) remain the same.

(9) Persons exempt from these provisions are licensed veterinarians~~,~~ and new certificate holders applying for their first ~~annual certificates,~~ renewal. ~~and persons on active duty in a branch of the armed services of the United States.~~

AUTH: 37-1-319, 37-18-202, MCA
IMP: 37-1-131, ~~37-1-138,~~ 37-1-141, 37-1-306, 37-18-104, MCA

REASON: It is reasonably necessary to amend this rule for accuracy in that staff, not board members, review and approve continuing education grace periods per ARM 24.101.413.

Section 37-18-307, MCA, was repealed in 2005 when the Montana Legislature enacted Chapter 467, Laws of 2005 (House Bill 182). The board is amending (9) to delete the continuing education exemption for active duty military persons as the provision was included in the repealed statute.

24.225.750 UNPROFESSIONAL CONDUCT (1) The board may, with respect to the practice of nonsurgical embryo transfer, either refuse to grant a certificate of registration or suspend or revoke a certificate of registration on the grounds and procedures set forth in ~~37-1-319~~ 37-1-312, MCA~~, and ARM 8.64.405~~.

(2) and (2)(a) remain the same.

(b) resorting to fraud, misrepresentation, or deception in the examination or treatment of an animal, or in billing or reporting to a person, company, institution, or agency;

(c) incompetence, negligence, or use of any practice or procedure in the practice of embryo transfer which creates an unreasonable risk of physical harm or serious financial loss to the client;

(d) suspension, revocation, or restriction of the individual's certificate to practice embryo transfer by competent authority in any state, federal, or foreign jurisdiction for reasons that would be grounds for disciplinary sanction in this jurisdiction, a certified copy of the order or agreement being conclusive evidence of the revocation, suspension, or restriction;

(e) remains the same.

(i) not furnishing any papers or documents in the possession of and under the control of the certificate holder~~,~~;

(ii) not furnishing in writing a full and complete explanation covering the matter contained in the complaint~~,~~; or

(iii) not responding to subpoenas issued by the board or the department, whether or not the recipient of the subpoena is the accused in the proceedings~~;~~.

(f) through (h) remain the same.

(i) performing embryo transfer while the embryo transfer technician's certificate ~~has~~ is expired, terminated, suspended, or revoked;~~.~~

(j) willful or repeated violations of rules established by any health agency or authority of the state or a political subdivision thereof; or

(k) remains the same.

AUTH: 37-1-319, 37-18-202, MCA
IMP: 37-1-141, 37-1-316, 37-18-104, MCA

REASON: It is reasonable and necessary to amend this rule to correct an erroneous statutory reference and to delete reference to a repealed rule.

24.225.904 APPLICATION REQUIREMENTS AND QUALIFICATIONS FOR CERTIFICATION AND ENDORSEMENT AS A CERTIFIED EUTHANASIA TECHNICIAN (1) Application for certification as a certified euthanasia technician (CET) must be made on forms prescribed by the ~~board~~ department.

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

(f) verification from any other state or province where the applicant is certified as a euthanasia technician, that the applicant has never had certification revoked, suspended, or denied;

(g) through (3) remain the same.

AUTH: 37-1-131, 37-18-202, 37-18-603, MCA
IMP: 37-18-603, MCA

24.225.920 APPLICATION FOR CERTIFIED EUTHANASIA AGENCIES

(1) A certified euthanasia agency (CEA) may purchase and possess controlled substances approved for the purpose of euthanasia. The application for initial certification as a CEA must be made on forms provided by the ~~board~~ department.

(2) remains the same.

AUTH: 37-1-131, 37-18-202, 37-18-603, MCA
IMP: 37-18-603, 37-18-604, MCA

24.225.926 TERMINATION OF CERTIFIED EUTHANASIA TECHNICIAN EMPLOYMENT AND ~~LAPSE~~ RETIREMENT OF CERTIFICATE (1) A CEA must notify the board in writing within ten days of the date of termination of a CET. The certificate of the CET must be l~~apsed~~ retired by the board upon notification that the technician is no longer employed by a CEA as required by law.

(2) remains the same.

(3) A CET can restore the certificate without payment of a fee once reemployed at a CEA, until the next consecutive renewal date.

AUTH: 37-1-131, 37-18-202, 37-18-603, MCA
IMP: 37-18-603, MCA

REASON: The board determined it is reasonably necessary to amend this rule regarding restoration of a CET certificate following short-term periods of unemployment within a year. The board concluded that allowing CETs to restore the certificate within the current renewal period without paying a fee is reasonable and ensures the public's continued protection.

24.225.950 UNPROFESSIONAL CONDUCT (1) For the purposes of implementing the provisions of 37-1-319, MCA, and in addition to 37-1-316, MCA, the board further defines unprofessional conduct as follows:

(a) and (b) remain the same.

(c) incompetence, negligence, cruelty, or use of any practice or procedure in the practice of animal euthanasia, which creates an unreasonable risk of physical harm to the animal, staff, or public;

(d) possession, use, addiction to, diversion, or distribution of controlled substances in any way other than for legitimate euthanasia purposes, or violation of any drug law;

(e) and (f) remain the same.

(g) practicing as a CEA or as a CET ~~without a current certificate~~ if a certificate is retired, expired, terminated, revoked, or suspended;

(h) remains the same.

(i) resorting to fraud, misrepresentation, or deception in the euthanasia of an animal;

(j) through (m) remain the same.

AUTH: 37-1-131, 37-1-319, 37-18-202, 37-18-603, MCA
IMP: 37-1-316, 37-1-319, 37-18-603, MCA

24.225.2401 COMPLAINT PROCEDURE (1) A person, government, or private entity may submit a written complaint to the board charging a licensee or license applicant with a violation of board statute or rules, and specifying the grounds for the complaint.

(2) Complaints must be in writing, and shall be filed on the proper complaint form prescribed by the ~~board~~ department.

(3) Upon receipt of the written complaint form, the ~~board office~~ department shall log in the complaint and assign it a complaint number. The complaint shall then be sent to the licensee complained about for a written response. Upon receipt of the licensee's written response, both complaint and response shall be considered by the screening panel of the board for appropriate action including dismissal, investigation, or a finding of reasonable cause of violation of a statute or rule. The ~~board office~~ department shall notify both complainant and licensee of the determination made by the screening panel.

(4) and (5) remain the same.

AUTH: 37-18-202, MCA
IMP: 37-1-308, 37-1-309, MCA

24.225.2405 SCREENING PANEL (1) The board screening panel shall consist of at least four board members, three of whom shall be the licensed veterinarian board members who have served on the board the longest, and one of whom shall be the public member of the board. The ~~chairman~~ president may reappoint ~~screening panel members,~~ or replace screening panel members as necessary at the ~~chairman's~~ president's discretion.

AUTH: 37-18-202, MCA
IMP: 37-1-307, MCA

REASON: It is reasonable and necessary to amend this rule to match statutory terminology at 37-18-201, MCA.

5. The proposed new rule provides as follows:

NEW RULE I NONROUTINE APPLICATIONS (1) All applications for licensure will be considered nonroutine in nature and will be reviewed and approved by the board prior to issuance of the license.

AUTH: 37-1-131, 37-18-202, MCA
IMP: 37-1-101, 37-1-131, 37-18-301, MCA

REASON: It is reasonably necessary to adopt New Rule I and define "nonroutine application" as provided in ARM 24.101.402(13). In noting that the circumstances of the practice of veterinary medicine are unique and distinct from those of medical doctors or other health care practitioners who are credentialed by health care facilities, the board concluded that all veterinary applications are nonroutine.

6. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Veterinary Medicine, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305 or by e-mail to dlibsdvet@mt.gov, and must be received no later than 5:00 p.m., January 18, 2008.

7. An electronic copy of this Notice of Public Hearing is available through the department and board's site on the World Wide Web at www.vet.mt.gov. The department strives to make the electronic copy of this Notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the department strives to keep its 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 technical difficulties in accessing or posting to the e-mail address do not excuse late submission of comments.

8. The Board of Veterinary Medicine maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies the person wishes to receive notices regarding all Board of Veterinary Medicine administrative rulemaking proceedings or other administrative proceedings. The request must indicate whether e-mail or standard mail is

preferred. Such written request may be sent or delivered to the Board of Veterinary Medicine, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2305, e-mailed to dlibsdvet@mt.gov, or made by completing a request form at any rules hearing held by the agency.

9. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsors were notified on June 28, 2007, by regular mail.

10. Kathy Lubke, Rules Unit Supervisor, has been designated to preside over and conduct this hearing.

BOARD OF VETERINARY MEDICINE
JEAN LINDLEY, DVM, PRESIDENT

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

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

Certified to the Secretary of State December 10, 2007

BEFORE THE DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION

In the matter of the proposed amendment of ARM 36.12.102, forms and ARM 36.12.103, form and special fees	))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

To: All Concerned Persons

1. On January 17, 2008, at 1:00 p.m., the Department of Natural Resources and Conservation will hold a public hearing in the Fred Buck Conference Room (bottom floor), at the Department of Natural Resources and Conservation, Water Resources Building, 1424 Ninth Avenue, 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 January 2, 2008, to advise us of the nature of the accommodation that you need. Please contact Kim Overcast, Montana Department of Natural Resources and Conservation, 1424 Ninth Avenue, Helena, MT 59620, (406) 444-6614, fax (406) 444-0533, e-mail kovercast@mt.gov.

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

36.12.102 FORMS (1) The following necessary forms for implementation of the act and these rules are available from the Department of Natural Resources and Conservation, P.O. Box 201601, Helena, Montana 59620-1601 and its Water Resources regional offices, or on the World Wide Web at http://dnrc.mt.gov/wrd/default.asp. The department may revise as necessary the following forms to improve the administration of these rules and the applicable water laws:

(a) Form No. 600, "Application for Beneficial Water Use Permit" (for groundwater developments in excess of 35 gpm or ten acre-feet per year and surface water appropriations); :

(i) Submission of this application must include a criteria addendum. See Form Nos. 600A or 600B.

(i) Form No. 600A, "Criteria Addendum, Application for Beneficial Water Use Permit," information must be submitted for appropriations of less than 4000 acre-feet and 5.5 cfs; or

(ii) Form No. 600B, "Criteria Addendum, Application for Beneficial Water Use Permit," information must be submitted for appropriations of 4000 acre-feet or more and 5.5 cfs or more.

(b) Form No. 600A "Criteria Addendum, Application for Beneficial Water Use Permit" (for appropriations of less than 4000 acre-feet and 5.5 cfs);

~~(c) Form No. 600B "Criteria Addendum, Application for Beneficial Water Use Permit" (for appropriations of 4000 acre-feet or more and 5.5 cfs or more)~~;

~~(d)~~ (b) Form No. 602, "Notice of Completion of Groundwater Development" (for groundwater developments with a maximum use of 35 gpm or less, not to exceed ~~10~~ ten acre-feet per year);

~~(e)~~ (c) Form No. 603, "Well Log Report";

~~(f)~~ (d) Form No. 605, "Application for Provisional Permit for Completed Stockwater Pit or Reservoir" (maximum capacity of the pit or reservoir must be less than 15 acre-feet);

~~(g)~~ (e) Form No. 606, "Application to Change a Water Right"~~;~~ :

(i) submission of this application must include information required by the following ~~a~~ criteria ~~addendum.~~ addenda, when applicable: ~~See Form Nos. 606A, 606B, 606ASW, or 606T;~~

~~(h) Form No. 606A "Supplement to Application to Change a Water Right" (for any change in point of diversion or place of storage and for changes in purpose of use or place of use of less than 4000 acre-feet and 5.5 cfs);~~

~~(i)~~ (A) Form No. 606B, "Supplement to Application to Change a Water Right" (for changes in purpose of use or place of use of 4000 or more acre-feet a year and 5.5 cfs or more);

~~(j)~~ (B) Form No. 606ASW, "Supplement to Application to Change a Water Right" (for salvage water); or

~~(k)~~ (C) Form No. 606T, "Temporary Change Supplement to Application to Change a Water Right"~~;~~ .

~~(l)~~ (f) Form No. 607, "Application for Extension of Time";

~~(m)~~ (g) Form No. 608, "Water Right Ownership Update"~~;~~ :

~~(n)~~ (i) Form No. 608A, "Addendum to Water Right Ownership Update Form for Apportioned Water Right"~~;~~ .

~~(o)~~ (h) Form No. 611, "Objection to Application";

~~(p) Form No. 612 "Notice and Statement of Opinion";~~

~~(q)~~ (i) Form No. 613, "Fee Schedule for Water Use in Montana";

~~(r)~~ (j) Form No. 615, "Water Conversion Table";

~~(s)~~ (k) Form No. 617, "Project Completion Notice for Permitted Water Development";

~~(t)~~ (l) Form No. 618, "Project Completion Notice for Change of a Water Right";

~~(u)~~ (m) Form No. 625, "Water Right Correction";

~~(v)~~ (n) Form No. 626, "Application to Renew a Temporary Water Right Change";

~~(w) Form No. 627 "Notice of Exempt Water Right" (exempt from the adjudication filing requirements);~~

~~(x)~~ (o) Form No. 630, "Controlled Groundwater Area Petition";

~~(y)~~ (p) Form No. 631, "Petition for Closure of a Highly Appropriated Basin";

~~(z)~~ (q) Form No. 634, "Replacement Well Notice" (for municipal wells that do not exceed 450 gpm or for all other wells that do not exceed 35 gpm and ten acre-fee per year); ~~and~~

~~(aa)~~ (r) Form No. 635, "Redundant Well Construction Notice" (for redundant wells in a public water supply system as defined by 75-6-102, MCA)~~.~~ ;

(s) Form No. 636, "Interim Permit Request";

(t) Form No. 637, "Reinstatement Request" (for reinstating a permit or change authorization); and

(u) Form No. 638, "Water Reservation Application for Instream Flow" (for instream flow water reservation applications allowed under the United States of America, Department of Agriculture, Forest Service-Montana Compact, Article VI, section B).

AUTH: 85-2-113, MCA
IMP: 85-2-113, MCA

REASONABLE NECESSITY: The amendments to the forms rule clarify that information addressing the form requirements must be submitted, not just the form itself. The proposed amendments also eliminate forms no longer used by the department and add new forms (636, 637, and 638) to be used for water right processing. Form numbers 636 and 637 are necessary in order for the department to ensure that the department obtains the necessary information from applicants or petitioners that is needed for water right processing. Form number 638 is needed to comply with the United States of America, Department of Agriculture, Forest Service-Montana Compact, 85-20-1401, MCA.

36.12.103 FORM AND SPECIAL FEES (1) A filing fee, if required, shall be paid at the time the permit, change, notice of completion, extension of time request, temporary change renewal, ownership update, ~~exempt water right,~~ or petition application (hereafter singularly or collectively referred to as application) is filed with the department. The department will not process any application without the proper filing fee. Failure to submit the proper filing fee within 30 days after notice shall result in a determination that the application is not correct and complete ~~in good faith, does not show a bona fide intent,~~ and it shall be terminated. ~~An application fee is a one-time filing and processing fee paid at the time of application.~~

(a) For an Application for Beneficial Water Use Permit, Form No. 600, filed pursuant to 85-2-330, 85-2-336, 85-2-341, 85-2-343, or 85-2-344, MCA, or in an administratively closed basin pursuant to 85-2-319, 85-2-321, or 85-2-322, MCA, or a controlled groundwater area pursuant to 85-2-506 and 85-2-507, MCA, or filed under a compact pursuant to Title 85, chapter 20, MCA, for all surface water, or a groundwater appropriation of greater than 35 gallons per minute, there shall be a fee of $800. ~~$400, except for a groundwater well application with an appropriation of 35 gpm or less, not to exceed ten acre-feet, filed pursuant to the United States National Park Service-Montana Compact, Article II, section B.2.ii(3)(b) or Article IV, section G.2.b.i.(1), or located within the boundaries of a temporary controlled groundwater area, the fee shall be $200.~~

(b) For an Application for Beneficial Water Use Permit, Form No. 600, filed pursuant to 85-2-330, 85-2-336, 85-2-341, 85-2-343, or 85-2-344, MCA, or in an administratively closed basin pursuant to 85-2-319, 85-2-321, or 85-2-322, MCA, or a controlled groundwater area pursuant to 85-2-506 and 85-2-507, MCA, or filed under a compact pursuant to Title 85, chapter 20, MCA, for a groundwater appropriation of 35 gallons per minute or less, there shall be a fee of $200.

(c) For an Application for Beneficial Water Use Permit, Form No. 600, not filed pursuant to 85-2-330, 85-2-336, 85-2-341, 85-2-343, or 85-2-344, MCA, nor in an administratively closed basin pursuant to 85-2-319, 85-2-321, or 85-2-322, MCA, nor a controlled groundwater area pursuant to 85-2-506 and 85-2-507, MCA, nor filed under a compact pursuant to Title 85, chapter 20, MCA, for all surface water, or a groundwater appropriation of greater than 35 gallons per minute there shall be a fee of $600.

~~(b)~~ (d) For an Interim Permit Request, Form No. 636, there shall be a fee of ~~$50~~ $150 in addition to (1)(a), (b), or (c).

~~(c)~~ (e) For a Notice of Completion of Groundwater Development (for groundwater developments with a maximum use of 35 gpm or less, not to exceed ten acre-feet per year), Form No. 602, there shall be a fee of ~~$50~~ $125.

~~(d)~~ (f) For an Application for Provisional Permit for Completed Stockwater Pit or Reservoir (maximum capacity of the pit or reservoir must be less than 15 acre-feet), Form No. 605, there shall be a fee of ~~$50~~ $125.

~~(e)~~ (g) For an Application to Change a Water Right, Form No. 606, there shall be a fee of ~~$400~~ $700, except there shall be a fee of $200 when:

(i) the change application, Form No. 606, concerns a replacement well, greater than 35 gpm or ten acre-feet, or a municipal well that does not exceed 450 gpm, or replacement reservoir located on ~~in~~ the same source; or

(ii) the change application, Form No. 606, concerns only moving or adding stock tanks to an existing system.

~~(iii) There shall be a fee of $100.~~

~~(f)~~ (h) For an Application for Extension of Time, Form No. 607, there shall be a fee of ~~$100~~ $200.

~~(g)~~ (i) For a Water Right Ownership Update, Form No. 608, there shall be a fee of $50, plus $10 for each water right transferred after the first water right, not to exceed a maximum of $300.

~~(h)~~ (j) For filing an Objection to Application, Form No. 611, there shall be a fee of $25.

~~(i)~~ (k) For an Application to Renew a Temporary Water Right Change, Form No. 626, there shall be a fee of ~~$100~~ $200.

~~(j) For a Notice of Exempt Water Right, Form No. 627, there shall be a fee of $50.~~

~~(k)~~ (l) For a Controlled Groundwater Area Petition, Form No. 630, there shall be a fee of ~~$500~~ $1500 ~~for filing this petition form~~, plus the petitioner shall also pay: ~~reasonable costs of giving notice including the newspaper and individual notice costs, printing and mailing costs, holding the hearing, conducting investigations or studies, and making records pursuant to 85-2-506 and 85-2-507, MCA, except the cost of salaries of the department personnel.~~

(i) photocopy and postage costs for copying and mailing the appointment of the hearing examiner, notice of hearing, and petition to all land owners and water right owners located within the proposed boundaries, and other persons as required by 85-2-506, MCA;

(ii) photocopy and postage costs for copying and mailing the hearing examiner's proposal for decision, final order, and other orders as needed;

(iii) newspaper publication of the notice of hearing and orders as required by statute and the hearing examiner;

(iv) actual rental costs for the hearing location and required sound equipment as determined by the hearing examiner; and

(v) other costs of holding the hearing, conducting investigations or studies, and making records pursuant to 85-2-506 and 85-2-507, MCA, except the cost of salaries of the department personnel.

~~(l)~~ (m) For a Petition for Closure of a Highly Appropriated Basin, Form No. 631, there shall be a fee of ~~$500~~ $1500 ~~for filing this petition form~~, plus the petitioner shall also pay: ~~reasonable costs of giving notice including the newspaper and individual notice costs, printing and mailing costs, holding the hearing, conducting investigations or studies, and making records pursuant to 85-2-319, MCA, except the cost of salaries of the department personnel.~~

(i) publication costs of the proposed rules in the Montana Administrative Register;

(ii) photocopy and postage costs for copying and mailing the Administrative Rule Proposal Notice and appointment of the hearing examiner to all land owners and water right owners located within the proposed boundaries and other persons as required by 85-2-319, MCA;

(iii) photocopy and postage costs for copying and mailing the Notice of Adoption and other documents as needed;

(iv) newspaper publication of the Notice of Rulemaking Hearing;

(v) actual rental costs for the hearing location and required sound equipment as determined by the hearing examiner; and

(vi) other costs of holding the hearing, conducting investigations or studies, and making records pursuant to 85-2-319, MCA, except the cost of salaries of the department personnel.

~~(m) For reinstating a permit or change authorization, there shall be a fee of $25.~~

(n) For a Replacement Well Notice, Form No. 634, there shall be a fee of ~~$50~~ $100.

(o) For a Redundant Well Construction Notice, Form No. 635, there shall be a fee of $50.

(p) For a Reinstatement Request, Form No. 637, there shall be a fee of $200.

(q) For a Water Reservation Application for Instream Flow, Form No. 638, there shall be a fee of $800, plus the applicant shall also pay:

(i) photocopy and postage costs for copying and mailing the appointment of the hearing examiner and notice of hearing;

(ii) photocopy and postage costs for copying and mailing the hearing examiner's proposal for decision, final order, and other orders as needed;

(iii) newspaper publication of the notice of hearing and orders as required by statute and the hearing examiner;

(iv) actual rental costs for the hearing location and required sound equipment as determined by the hearing examiner; and

(v) other costs of holding the hearing, conducting investigations or studies, and making records pursuant to 85-2-506 and 85-2-507, MCA, except the cost of salaries of the department personnel.

(2) and (3) remain the same.

AUTH: 85-2-113, MCA
IMP: 85-2-113, 85-2-312, MCA

REASONABLE NECESSITY: Pursuant to 85-2-113, MCA, the department may prescribe fees for public service provided under the Montana Water Use Act. The department evaluated water right application processing costs and revenues generated and determined that fee increases are necessary. The proposed fee increases are expected to raise revenues to $1,007,400 each year and will affect approximately 12,578 people. Some fee language has been changed to clearly denote the fees an applicant or petitioner are required to pay. Finally, the required fees for the new forms were identified.

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 Ninth Avenue, Helena, MT 59620; fax (406) 444-5918; or e-mail kovercast@mt.gov, and must be postmarked no later than January 17, 2008.

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 web site 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 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, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding conservation districts and resource development, forestry, oil and gas conservation, trust land management, water resources, or a combination thereof. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be sent 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. The bill sponsor notice requirements of 2-4-302, MCA, do not apply.

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 December 10, 2007.

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

In the matter of the Adoption of New Rules I through VIII pertaining to newborn hearing screening	)))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION

TO: All Interested Persons

1. On January 14, 2008, at 2:00 p.m., the Department of Public Health and Human Services will hold a public hearing in the Wilderness Room, 2401 Colonial Drive, Helena, Montana, to consider the proposed adoption of the above-stated rules.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process (including reasonable accommodations at the hearing site) or who need an alternative accessible format of this notice. If you need an accommodation, contact the department no later than 5:00 p.m. on January 7, 2008. Please contact Gwen Knight, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 202951, Helena MT 59620-2951; telephone (406)444-9503; fax (406)444-9744; e-mail dphhslegal@mt.gov.

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

RULE I DEFINITIONS (1) "Health care provider" means a person licensed in the state of Montana to provide health care services to pregnant women and/or newborn infants and who is the primary health care provider in attendance at the birth of a newborn infant born outside of a hospital or health care facility. The term includes direct-entry midwives.

(2) "Hospital or health care facility that provides obstetric services" means any hospital or health care facility licensed by or operating in the state of Montana that routinely provides or holds itself out as providing obstetric services, without regard for the number of births actually occurring in that hospital or health care facility on an annual basis.

(3) "Newborn" means any infant from birth through 28 days of age.

AUTH: 53-19-402, MCA
IMP: 53-19-402, 53-19-404, MCA

RULE II NEWBORN HEARING SCREENING EDUCATION (1) Each licensed hospital and health care facility shall provide education to the parents of any newborn born in the hospital or health care facility or transferred to the hospital or health care facility from the newborn's place of birth, unless the newborn has previously been provided a hearing screening test by a hospital or health care facility from which the newborn was transferred, on:

(a) hearing loss;

(b) the importance of early hearing screening; and

(c) the process for conducting newborn hearing screening.

(2) Each licensed health care provider in attendance at any birth outside of a hospital or health care facility shall provide education to the newborn's parents on:

(a) hearing loss;

(b) the importance of early hearing screening; and

(c) the process for conducting newborn hearing screening.

(3) Each hospital, health care facility, and health care provider required to provide newborn hearing screening education shall comply with education protocols developed by the department and shall use educational materials provided by the department. Protocols and educational materials may be obtained from the Department of Public Health and Human Services, Newborn Screening Program, Children's Special Health Services Section, Family and Community Health Bureau, P.O. Box 202951, Helena, Montana 59620-2951.

AUTH: 53-19-402, MCA
IMP: 53-19-404, MCA

RULE III NEWBORN HEARING SCREENING - REFERRALS FOR NEWBORNS BORN OUTSIDE OF HOSPITALS OR HEALTH CARE FACILITIES

(1) Each health care provider who is required to provide newborn hearing screening education shall also provide referral information to the parents of any newborn who was born outside of a hospital or health care facility. The referral information shall identify the hospitals, health care facilities, and other health care providers in the region that are able to provide hearing screenings for newborns.

AUTH: 53-19-402, MCA
IMP: 53-19-404, MCA

RULE IV NEWBORN HEARING SCREENING PROTOCOLS - HOSPITALS AND HEALTH CARE FACILITIES (1) Each licensed hospital or health care facility that provides obstetric services shall establish a newborn hearing screening program in order to ensure that a hearing screening is provided for each newborn born in the hospital or health care facility or transferred to the hospital or health care facility from the newborn's place of birth, unless the newborn was previously provided a hearing test by a hospital or health care facility from which the newborn was transferred.

(a) An initial hearing screening must be performed prior to the infant's discharge from the hospital or health care facility.

(b) If the results of the initial hearing screening were inconclusive or indicated a possible hearing loss, a second screening must be performed prior to the newborn's discharge from the hospital or health care facility, if possible. If a second hearing screening cannot be performed prior to the infant's discharge from the hospital, the hospital or health care facility must, prior to the discharge, work with the newborn's parents to schedule a second hearing screening for the newborn. The second screening shall be scheduled at the hospital or health care facility from which the newborn is being discharged. It shall be scheduled to occur within 30 days of

the newborn's birth.

(2) Each hospital or health care facility shall use equipment designed to perform hearing screenings that utilizes either otoacoustic emissions (OAE) or auditory brainstem response (ABR) technology. Hearing screening equipment shall be maintained, calibrated, and used in strict conformance with manufacturers' guidelines.

(3) Newborn hearing screening shall be performed by staff members who are properly trained to conduct and interpret the tests and shall be performed in strict conformity with the testing protocols set by the equipment manufacturer.

AUTH: 53-19-402, MCA
IMP: 53-19-402, 53-19-404, MCA

RULE V REPORTING NEWBORN HEARING SCREENING RESULTS - PARENTS - PRIMARY CARE PROVIDERS (1) The hospital or health care facility shall document all hearing screening results in the newborn's chart and shall provide the hearing screening results to the parents of the newborn on the newborn's Report Card form. If the newborn hearing screening indicates a possible hearing loss, the written notification of results to the newborn's parents must include a recommendation for an audiological assessment.

(2) The hospital or health care facility shall also provide the newborn's primary care provider with written notification of the results of the newborn hearing screening. If the newborn hearing screening indicates a possible hearing loss, the written notification of results sent to the newborn's primary care provider must include a recommendation for an audiological assessment.

AUTH: 53-19-402, MCA
IMP: 53-19-404, MCA

RULE VI REPORTING TO THE DEPARTMENT REGARDING NEWBORN HEARING SCREENING AND EDUCATION (1) Each hospital and health care facility required to provide newborn hearing screenings must make a report to the department each month using the department's designated reporting software regarding newborn hearing screenings.

(2) Each hospital and health care facility shall enter the following information by the 15th day of each month for each newborn born in or transferred to the hospital or health care facility during the preceding month:

(a) the newborn's full name, date of birth, gender, mother's maiden name, and the location of the newborn's birth;

(b) that the education protocol and educational materials developed by the department on newborn hearing screening were provided to the parents of the newborn;

(c) whether the facility did or did not provide a complete hearing screening to the newborn as required in [RULE IV];

(d) for any newborns not fully screened, a statement of any reason(s) the newborn has not been not fully screened;

(e) if the newborn was provided an initial screening prior to discharge, and

the results of that screening indicated possible hearing loss, the date scheduled for the follow-up hearing screening;

(f) all of the newborn's hearing screening results; and

(g) contact information for the newborn's primary care provider if the initial or follow-up hearing screening(s) indicated possible hearing loss.

(3) If a newborn was discharged from a hospital or health care facility after an initial screening that indicated a possible hearing loss, the hospital or health care facility shall file an updated screening report regarding the newborn's hearing screening status by the 15th day of the month immediately following the appointment date set for the second screening.

(4) By the 15th day of each month, each hospital and health care facility shall provide the department a signed facsimile copy of any completed parent refusal form for each baby born in the previous month who did not receive newborn hearing screening or who did not have complete hearing screening because the parent refused the initial or follow-up screening. The refusal form used by the hospital or health care facility must contain at minimum the content of the "Parental Attestation of Refusal of Newborn Hearing Screening" form distributed as a suggested template by the department.

AUTH: 53-19-402, MCA
IMP: 53-19-404, MCA

RULE VII HEALTH CARE PROVIDERS - REPORTING TO THE DEPARTMENT REGARDING EDUCATION AND REFERRAL INFORMATION

(1) Each licensed health care provider in attendance at any birth occurring outside a hospital or health care facility shall file a report with the department that documents:

(a) the newborn's full name, date of birth, gender, mother's maiden name, and the location of the newborn's birth;

(b) that the education protocol and educational materials developed by the department on newborn hearing screening were provided to the parents of the newborn;

(c) that referral information has been provided to the newborn's parents which identifies the hospitals, health care facilities, and other health care providers in the area that are able to provide hearing screenings for newborns.

(d) that the newborn's primary care provider, if other than the health care provider attending the birth, has been notified that newborn hearing screening has been provided to the newborn's parents.

(2) The report shall be made to the department by the 15th day of each month for the babies delivered in the previous month on a form available from the Department of Public Health and Human Services, Newborn Screening Program, Children's Special Health Services Section, Family and Community Health Bureau.

AUTH: 53-19-402, MCA
IMP: 53-19-404, MCA

RULE VIII AUDIOLOGISTS - REPORTING OF AUDIOLOGICAL

ASSESSMENTS TO DEPARTMENT - PARENTAL CONSENT FOR REFERRAL TO THE MONTANA SCHOOL FOR THE DEAF AND BLIND (1) Each licensed audiologist to whom an infant is referred for audiological assessment following a newborn hearing screening shall file a report with the department each month regarding the results of the infant's audiological assessment. The report shall be filed using the department's designated reporting software. The audiologist shall enter and report the following information by the 15th day of each month for each infant assessed during the previous month:

(a) the newborn's full name, date of birth, gender, mother's maiden name, and the location of the newborn's birth;

(b) the name and address of the hospital or health care facility in which the baby was born or transferred to or the name and address of the health care provider attending the birth;

(c) complete audiological assessment results for the newborn, including current hearing status.

(2) Each licensed audiologist to whom an infant is referred for audiological assessment following newborn hearing screening shall request written authorization from the infant's parents for the audiologist to provide the infant's identifying information and test results to the department for subsequent referral for intervention services to the Montana School for the Deaf and Blind.

(a) Authorization shall be obtained on authorization forms approved and provided by the department.

(b) The audiologist shall submit a copy of the signed authorization form to the department by facsimile or as a scanned electronic attachment within three days of the date it is signed.

AUTH: 53-19-402, MCA
IMP: 53-19-404, MCA

4. These rules make newborn hearing screening mandatory instead of permissive for all infants born in Montana in hospitals or health care facilities and for all infants born outside a hospital or health care facility who are attended to by a health care provider licensed to provide health care services to pregnant women and/or newborn infants outside of a hospital or health care facility. House Bill 117 passed in the 2007 Montana legislative session (2007 Laws of Montana Chapter 251) amended Title 53, chapter 19, part 4, Newborn Hearing Screening of the Montana Code Annotated (MCA). The changes require: (1) newborn hearing screening; (2) parental education regarding hearing loss, the importance of early intervention in cases in which a hearing loss is detected and the methods used to conduct newborn hearing screening; (3) referral for further testing and follow-up by three months of age in cases in which the initial screening identifies a possible hearing loss; and (4) that screening results and audiological assessments be reported to the department and, in cases in which a hearing deficiency has been identified, shared with the Montana School for the Deaf and Blind.

The objective of the Montana Legislature in passing House Bill 117 was to make sure that all infants born in Montana are afforded the best opportunity for early

identification of, and timely receipt of intervention for, hearing loss to prevent developmental delays and academic failures associated with late identification of hearing loss. An additional objective is to provide necessary public health surveillance information to effectively plan, establish, and evaluate a comprehensive system of appropriate services for infants and children who are deaf or hard of hearing. These new rules represent the minimum requirements reasonably necessary to give effect to the Legislature's intent and to provide the greatest opportunity for healthy lives for Montana's children.

RULE I DEFINITIONS

Terms are included in the Rule to clarify which health care professionals and health service entities are subject to the provisions of the law and its promulgated rules.

RULE I(1): The term "Health care provider" is used within these rules to specify the licensed health care professional who provides health care services to pregnant women and/or newborn infants and who is the primary health care provider in attendance at the birth of a newborn infant born outside of a hospital or health care facility. The definition specifies that direct-entry midwives are included in this term. The term does not include unlicensed attendants at births.

RULE I(2): The term "Hospital or health care facility that provides obstetric services" is used within these rules to include any hospital or health care facility licensed by or operating in Montana that routinely provides or holds itself out as providing obstetric services, no matter how many or how few births occur in that hospital or health care facility in a year. That is, a hospital or health care facility that provides obstetric services for only one birth per year is covered by the provisions of the rules.

RULE I(3): The term "Newborn" defines the infant who is the subject of the newborn hearing screening rules as being a child in the age range from birth through 28 days of age.

RULE II NEWBORN HEARING SCREENING EDUCATION

Parental education about the importance of newborn hearing screening to detect possible hearing loss is crucial to parental acceptance that newborn hearing screening is an appropriate and important standard of newborn care, that the hearing screening should be performed prior to hospital discharge and that follow-up screening should be completed as an outpatient if it is indicated and if it was not possible to complete it before discharge. The department shall provide an education protocol and educational materials to be used by hospitals, health care facilities, and health care providers as defined in Rule I to ensure that all parents are apprised of the same minimum level of information.

RULE II(1) addresses the requirement that each licensed hospital and health care facility provide education about hearing screening and hearing loss. The rule requires licensed hospitals and health care facilities to educate parents of newborns

on hearing loss, the importance of the newborn hearing screening and the benefits of early intervention in cases in which a hearing loss is detected and about how newborn hearing screening is conducted. That education must be provided to the parents of babies born in their hospital or facility and to the parents of any baby transferred into that hospital or facility, unless the baby transferred to the hospital or facility has already received newborn hearing screening prior to the transfer.

RULE II(2) requires any health care provider attending a birth outside a hospital or health care facility to provide education to the parents of that baby about hearing loss, the importance of newborn hearing screening, the benefits of early intervention in cases in which a hearing loss is detected, and about how the newborn hearing screening is conducted.

RULE II(3) establishes that the department shall provide a standard parental education protocol and educational materials for each hospital, health care facility, and health care provider defined in Rule I. The education protocol and educational materials can be accessed through the department's Newborn Screening Monitoring Program.

RULE III NEWBORN HEARING SCREENING – REFERRALS FOR NEWBORNS BORN OUTSIDE OF HOSPITALS OR HEALTH CARE FACILITIES

Not all health care providers may have hearing screening equipment in their practices. For this reason, health care providers must provide not only education about hearing loss, the importance of newborn hearing screening, and about how newborn hearing screenings are conducted, but must also provide referral information for parents of the babies whose births they attend outside of hospitals or health care facilities, so the parents may arrange for their newborn's hearing screening in their region. The referral information must identify the hospitals, health care facilities, and other health care providers in the region that are able to provide newborn hearing screenings in accordance with Rule IV. The department will assist the health care providers in providing this information.

RULE IV NEWBORN HEARING SCREENING PROTOCOLS – HOSPITALS AND HEALTH CARE FACILITIES

The department's newborn hearing screening program has adopted the national "1-3-6" screening, assessment, and intervention standard for provision of services. It is of crucial importance that newborn hearing screenings be completed by one month of age. If the screenings indicate that the baby may have a hearing loss, an audiological examination must be completed by no later than three months of age. If the audiological assessment indicates that the baby is deaf or hard of hearing, it is critical to the language and social development of the baby that intervention be initiated before the child reaches six months of age. The first step in this continuum of highly time-sensitive services relies on the hospitals and health care facilities to ensure that all babies born under their auspices are completely screened. This rule addresses the newborn hearing screening requirements that must be met by

hospitals and health care facilities defined in Rule I.

RULE IV(1) specifies that each hospital and health care facility establish a newborn hearing screening program to ensure that each newborn born in the hospital or health care facility receives hearing screening. This screening requirement applies to all babies transferred into the hospital or health care facility if newborn screening was not performed prior to the transfer.

Because it is often difficult to complete screenings once the baby has been discharged from the hospital or health care facility, national standards and Rule IV(1)(a) require that newborn hearing screening be performed prior to hospital discharge.

RULE IV(1)(b) requires that a second hearing screening be performed prior to discharge if the first screening was inconclusive or indicated a possible hearing loss. If the second screen cannot be performed prior to the infant's discharge, the hospital or health care facility must work with the parents prior to discharging the newborn from the hospital to set an appointment within 30 days of birth for the parents to bring the baby back for a second hearing.

Standard newborn hearing screening equipment must be in place across the state to ensure that all babies are screened in a comparable way. National standards for newborn screening methods are applied to Montana's statewide program. Rule IV(2) specifies that the screening must be conducted using either otoacoustic emissions (OAE) or auditory brainstem response (ABR) technology. Those are the only two technologies currently available to test a newborn's hearing, since neither requires a response from the test subject. Conventional ABR is an electrophysiological measure of the auditory system's response to sound. A soft click is presented to the ear via earphones or a probe and electrodes record the response as the sound travels from the ear through the auditory nervous system to the brain. Otoacoustic emmisions (OAE) measure the integrity of the outer hair cells in the cochlea (inner ear). A soft click is presented and a small microphone placed in the baby's ear canal measures the echo that is returned from the baby's ear. This echo is analyzed to determine how well the inner ear is working. Rule IV(2) requires that one of these two tests be used and that the specific hearing screening equipment used for the screening test must be maintained, calibrated, and used according to the manufacturer's guidelines and testing protocols.

Staff members in the newborn hearing screening program in the hospitals and health care facilities defined in Rule I must be available to accurately screen all babies born in the hospital or health care facility prior to hospital discharge as indicated in Rules IV(1)(a) and (1)(b). This means that accurate screening coverage shall be ensured seven days a week. Rule IV(3) requires that staff members be properly trained in the use of the screening equipment to ensure accuracy of screening results.

<u>RULE V REPORTING NEWBORN HEARING SCREENING RESULTS – PARENTS – PRIMARY CARE PROVIDERS</u>

The newborn hearing screening results obtained by the staff member of the hospital or health care facility must be included in the newborn's medical chart. Both the parents and the baby's primary care provider must be notified of the screening results.

RULE V(1) specifies that the hospital or health care facility must include the newborn hearing screening results in the baby's medical record as well as provide the parent with the written screening results. The department will supply a form for this purpose called the Baby Hearing Test. If the baby's newborn hearing screening results indicate a possible hearing loss, the written notification to the parent must include a recommendation for an audiological assessment.

RULE V(2) requires the hospital or health care facility to provide written notification of the baby's screening results to the baby's primary care provider, including a recommendation for audiological assessment if the newborn hearing screening indicates a possible hearing loss.

RULE VI REPORTING TO THE DEPARTMENT REGARDING NEWBORN HEARING SCREENING AND EDUCATION

Electronic reporting of identifiable, complete screening results is required to implement legislative intent expressed in 53-19-401(2), MCA, to provide the state with the necessary information to effectively plan, establish, and evaluate a comprehensive system of appropriate services for infants and children who are deaf or hard of hearing. The department provides access to a newborn hearing screening and audiological assessment tracking software to facilitate the monthly reporting required by law and specified by Rule VI(2) and (3). All the items required in Rule VI(2) can be recorded in the software in specific data fields or in notes to the screening record. To ensure that Montana is providing universal newborn hearing screening, the screening records will be matched with birth certificates to identify any gaps in screening coverage.

RULE VI(4): If the parent refuses either initial or follow-up newborn hearing screening, it is important to document that this refusal was made after the parent received a standard level of education about the importance of this screening, how the screening is performed, and what happens if the newborn does not pass the initial screening. The department has provided a suggested template for a refusal form for review and adaptation by hospital and health care facility legal counsel. This template entitled "Parental Attestation of Refusal of Newborn Hearing Screening" shall constitute the minimum level of content for any refusal form used by the hospital or health care facility. The hospital or health care facility must provide the department with a faxed copy of the completed refusal form by the fifteenth day of the month following the birth month.

RULE VII HEALTH CARE PROVIDERS – REPORTING TO THE DEPARTMENT REGARDING EDUCATION AND REFERRAL INFORMATION

Because of the short time period in which newborn hearing screening must be completed, monthly documentation of the provision of education and referral is needed from each health care provider defined in Rule I to be able to evaluate timeliness of screening opportunities. A form supplied by the department will facilitate the monthly reporting of the babies' demographic information for matching with Montana birth certificates. A facsimile copy of a completed and signed form indicating that the parent received education about hearing loss, the importance of newborn hearing screening, how it is performed, and where the parent may access the screening from hospitals, health care facilities and other health care providers in the region must be submitted to the department for each newborn attended by the health care provider. The reports shall be submitted to the department by the fifteenth day of each month for the babies born in the previous month.

RULE VIII AUDIOLOGISTS – REPORTING OF AUDIOLOGICAL ASSESSMENTS TO DEPARTMENT – PARENTAL CONSENT FOR REFERRAL TO THE MONTANA SCHOOL FOR THE DEAF AND BLIND

To ensure that Montana's babies are receiving necessary audiological assessments before they are three months of age, it is important that the state's audiologists report audiological assessment results to the department on a monthly basis. The department will provide access to the hearing screening and assessment software used statewide for each audiologist who performs audiologic assessments of babies who did not pass their newborn hearing screenings. This software will allow the audiologist to report all the data required in Rule VIII(1). Audiologists must provide all assessment results to the department for all babies they have assessed in the previous month by the fifteenth day of the next month.

The Montana School for the Deaf and Blind (MSDB) is statutorily responsible for tracking all interventions for deaf and blind children (20-8-102, MCA). The department's newborn hearing screening program is required by law to ensure electronic sharing of audiologic evaluation information of babies diagnosed as deaf or hard-of-hearing to MSDB (53-19-402(2)(f), MCA). The department and MSDB share software designed to track interventions for children with special health care needs. The department will enter the screening and audiologic assessment results of each baby with confirmation of deafness into this software for electronic referral to MSDB.

Rule VIII(2) requires licensed audiologists who conduct an audiological assessment following a newborn hearing screening to request written authorization from the infant's parents to provide the infant's identifying information and test results for subsequent referral for intervention services to the Montana School for the Deaf and Blind. This written authorization is required by the provisions of the Family Educational Rights and Privacy Act (FERPA), 20 USC 1232g et. seq., in instances in which the assessment may be conducted under the Child Find program. Such an authorization will be needed to allow sharing of this information among providers in the future for children who receive services from the Montana School for the Deaf

and Blind.

FINANCIAL IMPACT

The modifications, as proposed, are not expected to have financial impact on the department. A significant number of children born in Montana each year are provided health care services through the Medicaid program. However, newborn hearing screening cost is expected to be bundled within standard delivery and newborn treatment charges. In addition, all Montana hospitals providing obstetric services are already screening and reporting the results to the department for the majority of their annual birth cohort, accounting for 93% of all babies born in 2006. At this point in time, there are only two birthing facilities in Montana that have Medicaid reimbursement privileges. They also are expected to bundle the hearing screening costs into their Medicaid charges. In addition, the department's newborn hearing screening program will be assisting those two centers to acquire newborn hearing screening equipment.

5. Interested persons may submit comments orally or in writing at the hearing. Written comments may also be submitted to Gwen Knight, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 202951, Helena MT 59620-2951, no later than 5:00 p.m. on January 17, 2008. Comments may also be faxed to (406)444-9744 or e-mailed to dphhslegal@mt.gov. The department maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. To be included on such a list, please notify this same person or complete a request form at the hearing.

6. 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 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. The web site may be unavailable at times, due to system maintenance or technical problems.

7. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was notified by letter dated June 21, 2007, sent postage prepaid via USPS.

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

/s/ Kim Kradolfer
Rule Reviewer

/s/ Joan Miles
Director, Public Health and Human Services

Certified to the Secretary of State December 10, 2007.

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

In the matter of the amendment of ARM 37.104.601, 37.104.604, 37.104.606, 37.104.610, and 37.104.615 pertaining to automated external defibrillators	)))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Interested Persons

1. On January 14, 2008, at 1:30 p.m., the Department of Public Health and Human Services will hold a public hearing in the Wilderness Room, 2401 Colonial Drive, Helena, Montana, to consider the proposed amendments of the above-stated rules.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process (including reasonable accommodations at the hearing site) or who need an alternative accessible format of this notice. If you need an accommodation, contact the department no later than 5:00 p.m. on January 7, 2008. Please contact Gwen Knight, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 202951, Helena MT 59620-2951; telephone (406)444-9503; fax (406)444-9744; e-mail dphhslegal@mt.gov.

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

37.104.601 DEFINITIONS The following definitions apply to this chapter, in addition to the definitions contained in 50-6-501, MCA:

(1) "Automated external defibrillators (AED) training program" means a course of instruction approved by the department which provides the initial education in the use of the AED and which has requirements for continued assurance of the competency of individuals in using an AED.

(2) "CPR" means cardiopulmonary resuscitation.

(3) "Medical supervisor" means a physician, physician assistant, registered nurse, or nurse practitioner licensed in Montana who completes a training program provided by the department and who agrees to provide medical supervision to an approved AED program.

AUTH: 50-6-503, MCA
IMP: 50-6-501, MCA

37.104.604 WRITTEN PLAN (1) An entity wishing to use or allow the use of an AED shall develop, update as changes are made, and adhere to a written plan that:

(a) for a stationary location specifies the physical address where the AED will be located;

(b) for a mobile location specifies the geographic area in which the AED will be used and specifies how the AED will be transported to the scene of a cardiac arrest;

(c) includes the names of the individuals currently authorized to use the AED;

(d) describes how the AED use will be coordinated with each licensed emergency medical service providing coverage in the area where the AED is located, including how emergency medical services will be activated every time that an AED is attached to a patient;

(e) specifies the name, telephone number(s), and address of the Montana licensed ~~physician~~ medical supervisor who will be providing medical supervision to the AED program and how the ~~physician~~ medical supervisor, or the ~~physician's~~ medical supervisor's designee, will supervise the AED program;

(f) specifies the name, telephone number(s), and address of the ~~physician's~~ medical supervisor's designee, if any, who will assist the ~~physician~~ medical supervisor in supervising the AED program;

(g) specifies the maintenance procedures for the AED, including how it will be maintained, tested, and operated according to the manufacturer's guidelines;

(h) requires that written or electronic records of all maintenance and testing performed on the AED be kept;

(i) describes the records that will be maintained by the program; and

(j) describes how the required reports of AED use will be made to the ~~physician supervising~~ medical supervisor of the AED program, or their designee, and to the department.

AUTH: 50-6-503, MCA
IMP: 50-6-501, 50-6-503, MCA

37.104.606 REPORTS (1) Every time an AED is attached to a patient, its use must be reported to the ~~supervising physician~~ medical supervisor or the ~~physician's~~ medical supervisor's designee and the report must include the information required by the ~~supervising physician~~ medical supervisor.

(2) Every time an AED is attached to a patient, the ~~supervising physician~~ medical supervisor or ~~their~~ the medical supervisor's designee shall provide the following information to the department on a form provided by the department:

(a) the name of the entity responsible for the AED;

(b) the name, address, and telephone number of the ~~supervising physician~~ medical supervisor;

(c) the date of the call;

(d) the age of the patient;

(e) the gender of the patient;

(f) location of the cardiac arrest;

(g) estimated time of the cardiac arrest;

(h) whether or not CPR was initiated prior to the application of the AED;

(i) whether or not the cardiac arrest was witnessed;

(j) the time the first shock was delivered to the patient;

(k) the total number of shocks ~~and joules~~ delivered;

(l) whether or not there was a pulse after the shocks and whether or not the pulse was sustained; and

(m) whether or not the patient was transported, and if so, the name of the transporting agency and the location to which the patient was transported.

AUTH: 50-6-503, MCA
IMP: 50-6-502, 50-6-503, MCA

37.104.610 TRAINING (1) In order to be authorized by an AED program plan to use an AED, an individual must:

(a) ~~have current training in adult~~ complete a cardiopulmonary resuscitation and AED training program that meets the standards of the American ~~h~~Heart ~~a~~Association and must renew this training at intervals not to exceed ~~2~~ two years~~;~~.

~~(b) complete one of the approved AED training programs listed in (2) below and renew the training at intervals not to exceed 2 years.~~

~~(2) AED training programs developed by the following organizations are approved by the department:~~

~~(a) American heart association;~~

~~(b) American national red cross;~~

~~(c) national safety council;~~

~~(d) EMP international, inc.~~

AUTH: 50-6-503, MCA
IMP: 50-6-502, 50-6-503, MCA

37.104.615 MEDICAL PROTOCOL (1) A medical protocol for defibrillation use must be consistent with the ~~energy~~ requirements for defibrillation set out ~~on pages 2211 through 2212 of~~ in the "2005 American Heart Association Guidelines for Cardiopulmonary Resuscitation and Emergency Cardiac Care~~, Recommendations of the 1992 National Conference~~" published in ~~the Journal of the American Medical Association~~ "Circulation", a journal of the American Heart Association, ~~on October 28, 1992~~ November 29, 2005, Volume ~~268~~ 112, ~~Number 16~~ Issue 22 Supplement, and in~~, or with~~ the ~~1998~~ 2005 American Heart Association Guidelines for Cardiopulmonary Resuscitation and Emergency Cardiac Care.

(2) The department ~~hereby~~ adopts and incorporates by reference the ~~energy requirements~~ guidelines for defibrillation referred to in (1), which set standards for proper defibrillation. A copy of the documents referred to in (1) ~~above~~ may be obtained from the ~~Department of Public Health and Human Services, Health and Human Services Division, Emergency Medical Services and Injury Prevention Section, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951~~ American Heart Association at http://cir.ahajournals.org/content/vol112/22/22_suppl/.

AUTH: 50-6-503, MCA
IMP: 50-6-502, MCA

4. These changes to the existing rules are proposed to broaden the category

of health professionals licensed in Montana who are qualified to be trained and designated to supervise Automated External Defibrillator (AED) programs. Senate Bill 95 passed in the 2007 Montana legislative session (2007 Laws of Montana, Chapter 291) amended Title 50, chapter 6, part 5 of the Montana Code Annotated (MCA) in order to remove the requirement that a physician be the director of an AED program. The Legislature specifically provided that while medical oversight of an AED program is required, it need not be by a physician. The legislation also requires the department to set guidelines for the medical oversight of an AED program. The rules also update the training requirements that the department has set for persons who are trained to operate an AED.

ARM 37.104.601 Definitions

Senate Bill 95 changed the wording of "physician oversight" in 50-6-502 through 50-6-503, MCA to "medical oversight". These rules have been changed to reflect that. The term "Medical Supervisor" has been added to the definitions to identify the specific types of licensed healthcare professionals who are qualified to be trained and approved to provide medical oversight to AED programs.

ARM 37.104.604 Written Plan

The proposed changes to ARM 37.104.604 are to substitute "medical supervisor" for "physician" in the language in that rule that identifies the person who will be providing medical supervision to an AED program. This change is necessary to reflect the changes to the statutes. This rule is also changed to allow an AED program to maintain either written or electronic records of the maintenance and testing performed on the program's AED equipment.

ARM 37.104.606 Reports

There are two types of proposed changes to this rule. The first is changing references to the "supervising physician" to the "medical supervisor" to reflect the statutory changes. The second is to remove the requirement that AED programs report the number of joules of power delivered each time the AED was used. This change is based upon a change in technology since initial adoption of the rules. Previous American Heart Association (AHA) guidelines and the AEDs provided by vendors provided electrical shocks to a patient's heart at specific joules (e.g., 100, 200, and 300 joules). However, the advanced technology of many new AEDs provides shocks at various levels depending upon the technology being used, the patient's resistance to shock, and other factors. As such, the precise joules delivered to patients on many AEDs is unknown to the user. There is no regulatory reason to require reporting of that data. The requirement is therefore being removed.

ARM 104.610 Training

The proposed changes to this rule are made to allow an individual to be authorized

by an AED program to use an AED if the individual has satisfactorily completed a cardiopulmonary resuscitation (CPR) and AED program that meets the standards of the AHA. The existing rule had listed those organizations that provided training meeting those standards at the time the rule was originally adopted. However, there are numerous programs which provide cardiopulmonary resuscitation and defibrillation training and some of those programs change their names from time to time. Rather than attempting to maintain a current list of programs that provides training that meets the AHA standards, (1) of the rule as it is proposed to be amended specifies that any training that meets the standards of the AHA is acceptable.

ARM 37.104.615 Medical Protocol

The proposed changes to ARM 37.104.615 update the reference to the currently applicable set of guidelines for defibrillation adopted by and published by the American Heart Association. The guidelines which the department is adopting by reference are copyrighted and copies may be purchased through the journal cited in the rule or they are available at no cost through the web site link set out in the rule.

5. Interested persons may submit comments orally or in writing at the hearing. Written comments may also be submitted to Gwen Knight, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 202951, Helena MT 59620-2951, no later than 5:00 p.m. on January 17, 2008. Comments may also be faxed to (406)444-9744 or e-mailed to dphhslegal@mt.gov. The department maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. To be included on such a list, please notify this same person or complete a request form at the hearing.

6. 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 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. The web site may be unavailable at times, due to system maintenance or technical problems.

7. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was notified by letter dated June 26, 2007, sent postage prepaid via USPS.

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

/s/ Kim Kradolfer
Rule Reviewer

/s/ Joan Miles
Director, Public Health and Human Services

Certified to the Secretary of State December 10, 2007.

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

In the matter of the adoption of New Rules I through XVI pertaining to home and community services for seriously emotionally disturbed youth	))))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION

TO: All Interested Persons

1. On January 14, 2008, at 3:00 p.m., a public hearing will be held in the Wilderness Room, 2401 Colonial Drive, Helena, Montana to consider the proposed adoption of the above-stated rules.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process (including reasonable accommodations at the hearing site) or who need an alternative accessible format of this notice. If you need an accommodation, contact the department no later than 5:00 p.m. on January 7, 2008. Please contact Rhonda Lesofski, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena MT 59604-4210; telephone (406)444-4094; fax (406)-444-1970; e-mail dphhslegal@mt.gov.

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

RULE I HOME AND COMMUNITY SERVICES FOR YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE: FEDERAL AUTHORIZATION AND AUTHORITY OF STATE TO ADMINISTER PROGRAM (1) The U.S. Department of Health and Human Services (HHS) has provided a grant to the Montana Department of Public Health and Human Services (department), under Section 6063 of the Deficit Reduction Act of 2005, that allows Montana to submit to the Centers for Medicare and Medicaid Services (CMS) a proposal to establish a program of Medicaid funded home and community services for youth who have serious emotional disturbance. That proposal has been presented to and approved by CMS. The purpose of this program is to avoid institutionalizing youth with serious emotional disturbance in residential treatment facilities. Institutionalization is avoided through the provision of mental health services and other services that support and treat those youth while residing with their families and receiving mental health treatment in the community.

(2) In accordance with the state and federal statutes and rules generally governing the provision of Medicaid funded home and community services and any federal-state agreements specifically governing the provision of the Medicaid funded home and community services to be delivered through this program, and within the fiscal limitations of the funding appropriated and available for the program, the department may determine within its discretion the following features of the program:

(a) the types of services to be available;

(b) the amount, scope, and duration of the services;

(c) the categories of youth to be served;

(d) the total number of service opportunities that may be made available;

(e) the total number of service opportunities that may be made available by category of eligibility or by geographical area;

(f) individual eligibility; and

(g) geographic service areas.

(3) A youth's enrollment in the program and the provision of services to the youth through the program are at the discretion of the department. There is no legal entitlement for a youth to enroll in the program or to receive any or all the services available through the program.

(4) The department has received federal approval to waive statewide coverage in the provision of program services. Program services may only be delivered in the following service areas for which federal approval of coverage has been received:

(a) Yellowstone County, implementation date of October 1, 2007.

(5) In each of the service areas specified in this rule, no more than 20 service opportunities may be made available at any time.

(6) The total cost of expenditures annually for services delivered through the program plus the total cost of Medicaid state plan costs for program participants annually may not exceed the total annual projected Medicaid cost for the participants if they were receiving treatment in a residential psychiatric treatment facility.

AUTH: 53-2-201, 53-6-113, 53-6-402, MCA
IMP: 53-6-402, MCA

RULE II HOME AND COMMUNITY SERVICES FOR YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE: ELIGIBILITY FOR PROGRAM

(1) Eligibility of a youth for the program is determined by the department in accordance with the criteria in this rule.

(2) Placement opportunities in the program are limited. A youth who meets the criteria for eligibility in the program may not be allowed to enroll in the program. There is no entitlement to enrollment in the program. In accordance with this rule the department determines whether a youth who meets the eligibility criteria may be enrolled in the program.

(3) A youth is eligible to be considered for enrollment in the program if:

(a) the youth is age six through 16, up to the 17th birthday;

(b) the youth is Medicaid eligible;

(c) the youth requires the level of care, as determined through the certificate of need process, for a psychiatric residential treatment facility in accordance with ARM 37.88.1116;

(d) the youth will not be concurrent with enrollment in the program residing in a hospital or a psychiatric residential treatment facility;

(e) the youth has mental health and related supportive services needs that can be met through the program;

(f) the youth meets the clinical criteria of serious emotional disturbance as defined at ARM 37.86.3702;

(g) the youth's parent(s) or other responsible caregiver having physical custody is committed to supporting and facilitating the youth's participation in the program;

(h) the youth resides in a service area as specified in [RULE I];

(i) the youth is not otherwise receiving Medicaid funded case management services; and

(j) the youth is not receiving services through another Medicaid funded home and community program.

AUTH: 53-2-201, 53-6-113, 53-6-402, MCA
IMP: 53-6-402, MCA

RULE III HOME AND COMMUNITY SERVICES FOR YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE: SELECTION FOR PLACEMENT

(1) In accordance with this rule the department determines whether a youth who meets the eligibility criteria may be offered a service opportunity in the program.

(2) The department considers the following factors in selecting eligible youth to evaluate for placement into an available program service opportunity:

(a) the youth resides within the geographical coverage for the available service opportunity;

(b) the youth meets the eligibility criteria of this rule;

(c) the youth is actively seeking program and other mental health services;

(d) the youth is in need of the services available through the program;

(e) the youth is likely to benefit from the services available through the program; and

(f) the youth's individual projected total cost under the preliminary plan of care is within the limits specified in [RULE VII].

(3) The department may consider the following factors in selecting which eligible youth to offer an available service opportunity:

(a) the extent and nature of the youth's mental, medical, and psychological impairments;

(b) the youth's current institutionalization or immediate risk of institutionalization in a psychiatric residential treatment facility;

(c) the youth's need for supervision;

(d) the youth's need for formal paid services;

(e) the risk of the deterioration of the youth's well-being without services;

(f) the need to support the youth's primary caregiver;

(g) the status of health and safety issues that place youth at risk;

(h) the presence and status of current services being purchased otherwise for the youth;

(i) the presence and status of informal supports; and

(j) the availability of program services that suit the person's circumstances and treatment needed.

AUTH: 53-2-201, 53-6-113, 53-6-402, MCA
IMP: 53-6-402, MCA

RULE IV HOME AND COMMUNITY SERVICES FOR YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE: LOSS OF A SERVICE AND DISENROLLMENT (1) A service available through the program may be denied to a youth for the following reasons:

(a) the service is not appropriate for the youth;

(b) a service that is a necessary ancillary to the provision of the service is unavailable;

(c) access to the service, even with reasonable accommodation, is precluded by the youth's physical or mental health; or

(d) the financial costs and other impacts on the program due to the delivery of the service to the youth do not conform with the plan of care requirements in proposed [RULE VI].

(2) A youth enrolled in the program may be terminated from the program by the department for the following reasons:

(a) the services, as provided for in the plan of care, are no longer appropriate or effective in relation to the youth's needs;

(b) the failure of the youth or parent(s) or responsible caregiver having physical custody to participate in or support the services as provided for in the plan of care;

(c) the behaviors of the youth place the youth, the youth's caregivers, or others at serious risk of harm or substantially impede the delivery of services as provided for in the plan of care;

(d) the youth requires more supervision than the program can provide;

(e) the youth's needs, inclusive of physical and mental health, cannot be effectively or appropriately met by the program;

(f) a necessary service or ancillary service is no longer available;

(g) the deteriorating mental health of the youth is deteriorating or in some manner so as to preclude the youth's participation in the program;

(h) the total cost of the youth's plan of care is not within the limits specified at [RULE VII];

(i) the youth no longer requires, as specified in ARM 37.88.1116, the level of care of a psychiatric residential treatment facility;

(j) the youth no longer meets the clinical criteria of serious emotional disturbance as defined at ARM 37.86.3702;

(k) the youth no longer resides in a geographic service area specified in [RULE I];

(l) the youth has attained age 17; or

(m) the youth's parent(s) or the responsible caregiver having physical custody chooses to withdraw the youth from the program.

AUTH: 53-2-201, 53-6-113, 53-6-402, MCA
IMP: 53-6-402, MCA

RULE V HOME AND COMMUNITY SERVICES FOR YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE: THE PROVISION OF SERVICES

(1) The services available through the program are limited to those specified in this rule.

(2) The department may determine the particular services of the program to make available to an eligible youth based on, but not limited to, the following criteria:

(a) the youth's need for a service generally and specifically;

(b) the suitability of a service for the youth's circumstances and treatment;

(c) the availability of a specific service through the program and any ancillary service necessary to meet the youth's needs;

(d) the availability otherwise of alternative public and private resources and services to meet the youth's need for the service;

(e) the youth's risk of significant harm if not in receipt of the service;

(f) the likelihood of placement into a more restrictive setting if not in receipt of the service; and

(g) the financial costs for and other impacts on the program arising out of the delivery of the service to the youth.

(3) The following services, as defined in these rules, may be provided through the program:

(a) consultative clinical and therapeutic services;

(b) customized goods and services;

(c) education and support services;

(d) home-based therapist;

(e) nonmedical transportation; and

(f) respite care.

(4) Monies available through the program may not be expended on the following:

(a) services not specified in (3);

(b) room and board; and

(c) special education and related services as defined at 20 USC 1401(16) and (17).

(5) A program service is not reimbursed by the program for a youth if the provision of a payment for that type of service is otherwise available to the youth from another source inclusive of Medicaid state plan services.

AUTH: 53-2-201, 53-6-113, 53-6-402, MCA
IMP: 53-6-402, MCA

RULE VI HOME AND COMMUNITY-BASED SERVICES FOR YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE AND PLANS OF CARE: PLAN MANAGEMENT (1) Plan management includes planning for, arranging for, implementation of, and monitoring of the delivery of services available through the program to an enrolled youth.

(2) Plan management is the responsibility of the plan manager who is an employee of the department.

(3) Upon the youth's initial enrollment in the program, the plan of care is developed by the plan manager, in collaboration with the youth and the youth's parent(s) or responsible caregiver having physical custody, appropriate health care professionals, and others who treat or have knowledge of the youth's mental health and related needs.

(4) The plan of care must be reviewed and approved by the department.

Revisions, if necessary, are made at intervals of at least every three months beginning with the date of the initial plan of care.

(5) The services that a youth may receive through the program and the amount, scope, and duration of those services must be specifically authorized in writing through the plan of care for the youth.

(6) Each plan of care must record the following:

(a) diagnosis, symptoms, complaints, and complications indicating the youth's need for services;

(b) a description of the youth's functional level;

(c) a statement of treatment for objectives for the youth;

(d) a description of any orders for the youth, including:

(i) medication;

(ii) therapeutic interventions and other treatments;

(iii) restorative and rehabilitative services;

(iv) activities;

(v) therapies;

(vi) social services;

(vii) dietary limitations;

(viii) crisis plan; and

(ix) other special procedures recommended for the health and safety of the youth to meet the objectives of the plan of care;

(e) the specific program and other services to be provided to the youth, along with the frequency of the services, and the type of providers to provide them;

(f) the projected annualized total cost of the program services to be provided to the youth including the annualized costs of each service; and

(g) the names and signatures of all persons who have participated in developing the youth's plan of care, including the youth, if able to participate, and parent(s) or the responsible caregiver having physical custody. The signatures verify participation, agreement with the plan of care, and acknowledgement of the confidential nature of the information presented and discussed.

(7) Inclusion of the need for and the identification of nonprogram services in the youth's plan of care does not financially obligate the department to fund those services or to assure their delivery and quality.

(8) The department must provide a copy of the plan to the youth and the youth's family.

(9) The youth and parent(s) or responsible caregiver having physical custody must sign the document. If the youth is unable to participate in developing the plan, that must be documented.

AUTH: 53-2-201, 53-6-113, 53-6-402, MCA
IMP: 53-6-402, MCA

RULE VII HOME AND COMMUNITY SERVICES FOR YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE: COST OF PLAN OF CARE (1) In order to maintain the program cost within the cost neutrality limitation necessary for compliance with the federal legal authorization for the implementation of the program, the cost of plans of care for enrolled youth are collectively and individually

subject to limitation in accordance with federal and state authorities and this rule.

(2) The calculated cost to implement a plan of care for a youth may not exceed a sum calculated by dividing the total sum of monies available through legislative appropriation for funding during the current fiscal year by the number of service opportunities to be made available through the program during the fiscal year. The total annual sum of expenditures for program services and state plan services provided to a youth may not exceed a maximum amount set at 100% of the average individual cost calculated by the department to treat a resident of a psychiatric residential treatment facility in Montana.

(3) The cost of services to be provided under a youth's plan of care is determined prior to implementation of the proposed plan of care and may be revised as necessary after implementation.

(4) The cost determination for the services provided under a youth's plan of care may be revised at any time there is a significant revision in the plan of care or in the cost of the services being reimbursed through the program.

AUTH: 53-2-201, 53-6-113, 53-6-402, MCA
IMP: 53-6-402, MCA

RULE VIII HOME AND COMMUNITY SERVICES FOR YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE: PROVIDER REQUIREMENTS

(1) Services funded through the program may only be provided by or through a provider that:

(a) is enrolled with the department as a Montana Medicaid provider;

(b) meets all the requirements necessary for the receipt of Medicaid monies;

(c) has been determined by the department to be qualified to provide services to youth with serious emotional disturbance in accordance with the criteria set forth in these rules;

(d) is a legal entity; and

(e) meets all facility and other licensing requirements applicable to the services offered, the service settings provided, and the professionals employed.

(2) A youth's immediate family members may not provide services to the youth as a reimbursed provider or as an employee of a reimbursed provider. Immediate family members include a parent, step-parent, domestic partner, or full legal guardian.

AUTH: 53-2-201, 53-6-113, 53-6-402, MCA
IMP: 53-6-402, MCA

RULE IX HOME AND COMMUNITY SERVICES FOR YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE: REIMBURSEMENT (1) Services available through the program are reimbursed as provided in this rule.

(2) Program services are reimbursed at the lower of the following:

(a) the provider's usual and customary charge for the services; or

(b) the fees stated in the program's Chart of Service Reimbursement Rates and Procedures. The department adopts and incorporates by reference the fee schedule for home and community services for youth with serious emotional

disturbance in the department's Chart of Service Reimbursement Rates and Procedures for Youth with Serious Emotional Disturbance dated October 1, 2007 and published by the department. A copy of the chart may be obtained through the Department of Public Health and Human Services, Health Resources Division, Children's Mental Health Bureau, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

(3) Reimbursement is not made for a service that is otherwise available from another source.

(4) No copayment is imposed on services provided through the program.

AUTH: 53-2-201, 53-6-113, 53-6-402, MCA
IMP: 53-6-402, MCA

RULE X HOME AND COMMUNITY SERVICES FOR YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE: NOTICE AND FAIR HEARING

(1) The department provides written notice to an applicant for or youth enrolled in the program when an adverse determination concerning the youth's eligibility and placement or the delivery of program services to the youth is made by the department.

(2) The department provides a youth receiving services and the youth's parent(s) or responsible caregiver having physical custody with notice ten working days before the intended date for the adverse action.

(3) A youth aggrieved by any adverse determination may request a fair hearing to be conducted as provided for in ARM 37.5.105, 37.5.301, 37.5.304, 37.5.307, 37.5.313, 37.5.316, 37.5.318, 37.5.322, 37.5.325, 37.5.328, 37.5.331, 37.5.334, and 37.5.337.

AUTH: 53-2-201, 53-6-113, 53-6-402, MCA
IMP: 53-6-402, MCA

RULE XI HOME AND COMMUNITY SERVICES FOR YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE: CONSULTATIVE CLINICAL AND THERAPUEUTIC SERVICES, REQUIREMENTS (1) Consultative clinical and therapeutic services provide treating physicians and mid-level practitioners with access to the psychiatric expertise and consultation in the areas of diagnosis, treatment, behavior, and medication management.

(2) Consultative clinical and therapeutic services are provided by licensed psychiatrists.

(3) Consultation is provided to licensed physicians or mid-level practitioners who are treating youth enrolled in the program.

(4) Both the consulted psychiatrist and the requesting physician or mid-level practitioner may bill for the consultative clinical and therapeutic services.

AUTH: 53-2-201, 53-6-113, 53-6-402, MCA
IMP: 53-6-402, MCA

RULE XII HOME AND COMMUNITY SERVICES FOR YOUTH WITH

SERIOUS EMOTIONAL DISTURBANCE: CUSTOMIZED GOODS AND SERVICES, REQUIREMENTS (1) Customized goods and services allow for the purchase as a program service of services or goods not typically reimbursed by Medicaid. These customized goods and services are used by the youth to facilitate access to supports designed to improve and maintain the youth in the community.

(2) The plan of care must:

(a) document the youth's need for this service;

(b) document attempts to identify alternative funding and/or resources; and

(c) include all documentation/receipts.

(3) Customized goods and services must be prior authorized and are limited to $200 per youth per federal fiscal year.

(4) Customized goods and services cannot be used to provide any otherwise covered services or goods, monthly rent or mortgage, food, regular utility charges, household appliances, automobile repairs, or items that are for purely diversion/recreational purposes.

(5) Providers must have the fiduciary capacity to procure the goods and services.

AUTH: 53-2-201, 53-6-113, 53-6-402, MCA
IMP: 53-6-402, MCA

RULE XIII HOME AND COMMUNITY SERVICES FOR YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE: EDUCATION AND SUPPORT SERVICES, REQUIREMENTS (1) Education and support services are provided to family members, unpaid caregivers, and persons providing treatment or otherwise involved in the youth's life.

(2) Education and support services include instruction on the diagnostic characteristics and treatment regimens for the youth, including medication for the youth, and behavioral management.

(3) Education and support services are provided by appropriate community agencies with the capacity to offer periodic trainings specific to parent(s) or legal guardians of youth with serious emotional disturbance.

(4) All training curricula and community providers of such training must be approved by the department.

AUTH: 53-2-201, 53-6-113, 53-6-402, MCA
IMP: 53-6-402, MCA

RULE XIV HOME AND COMMUNITY SERVICES FOR YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE: HOME-BASED THERAPY SERVICES, REQUIREMENTS (1) Home-based therapists are social workers licensed in accordance with ARM 37.88.205, professional counselors licensed in accordance with ARM 37.88.305, and psychologists licensed in accordance with ARM 37.88.605 who provide face-to-face, individual, and family therapy for youth and parent(s) or legal guardians in the youth's residence at times convenient for the youth and family.

(2) As part of the provision of the therapy and for the purposes of the plan of care specified in (1), the home-based therapist must:

(a) communicate with the department regarding the status of the youth and treatment;

(b) develop and write an individual treatment plan with the youth and parent(s) or legal guardian specific to mental health therapy;

(c) provide crisis response during and after working hours;

(d) assist the youth with transition planning; and

(e) attend family and team meetings and other pertinent activities that support success in the community.

AUTH: 53-2-201, 53-6-113, 53-6-402, MCA
IMP: 53-6-402, MCA

RULE XV HOME AND COMMUNITY SERVICES FOR YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE: NONMEDICAL TRANSPORTATION SERVICES (1) Nonmedical transportation is the provision of transportation through common carrier or private vehicle for the youth's access to and from social or other nonmedical activities that are included in the waiver plan of care.

(2) Nonmedical transportation services are provided only after volunteer transportation services, or transportation services funded by other programs, have been exhausted.

(3) Nonmedical transportation providers must provide proof:

(a) that all drivers possess a valid Montana driver's license;

(b) that all vehicles are adequately insured for personal injury; and

(c) that all vehicles are in compliance with all applicable federal, state, and local laws and regulations.

(4) Nonmedical transportation services must be provided by the most appropriate cost effective mode.

AUTH: 53-2-201, 53-6-113, 53-6-402, MCA
IMP: 53-6-402, MCA

RULE XVI HOME AND COMMUNITY SERVICES FOR YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE: RESPITE CARE SERVICES (1) Respite care is the provision of supportive care to a youth so as to relieve those unpaid persons normally providing day to day care for the youth from that responsibility.

(2) Respite care services may be provided only on a short term basis, such as part of a day, weekends, or vacation periods.

(3) Respite care services may be provided in a youth's place of residence or through placement in another private residence or other related community setting, excluding psychiatric residential treatment facilities.

(4) The provider of respite care must ensure that its employees providing respite care services are:

(a) physically and mentally qualified to provide this service to the youth;

(b) aware of emergency assistance systems and crisis plans;

(c) knowledgeable of the physical and mental conditions of the youth;

(d) knowledgeable of common medications and related conditions of the youth; and

(e) capable to administer basic first aid.

AUTH: 53-2-201, 53-6-113, 53-6-402, MCA
IMP: 53-6-402, MCA

4. The Department of Public Health and Human Services administers for the state of Montana various health care services programs funded with Medicaid monies. The federal government has recently reviewed and approved a program of Medicaid funded home and community services that Montana designed to foster the treatment of seriously emotionally disturbed youth at home in community settings. The services in this approved program are not available generally through existing public programs.

In the Deficit Reduction Act of 2005, Congress authorized the Centers for Medicare and Medicaid Services (CMS) of the federal Department of Health and Human Services to provide grants to ten states to support the effort of each state to develop and propose to CMS a new type of Medicaid funded home and community waiver program to serve youth with severe emotional disturbance in their communities as opposed to placement into restrictive residential youth treatment facilities. Montana submitted a proposal to CMS to receive one of the ten state grants and was selected to receive a grant. As one of the successful grant applicants, Montana submitted a 1915(c) waiver application at the request of CMS for the development and implementation of home and community services to foster treatment of emotionally disturbed youth at home in their communities rather than in institutional treatment settings. CMS, acting under the authority of Section 6063 of the Deficit Reduction Act of 2005 (DRA), has authorized the establishment by Montana of a program of Medicaid funded home and community services for youth who have serious emotional disturbance.

With federal approval states may implement Medicaid funded home and community services programs to serve persons who but for the home and community services would be in institutional care settings. Each authorized program is to have a service population defined by particular disabilities and certain service needs and is to be limited in number. In addition, a state may limit the services on a geographical basis. These parameters are proposed by a state and approved by CMS.

In 1980, Montana initiated the first program in the country of home and community services funded with Medicaid monies. That program provided developmental disabilities treatment services in community settings as opposed to an institutional Intermediate Care Facility for the Mentally Retarded (ICF/MF). Montana also developed a home and community services program to serve persons who are elderly or who have physical disabilities. That program allows persons to avoid institutionalization in nursing facilities or hospitals. In more recent years that program has expanded to encompass services for persons with brain injuries. In December 2006, Montana received approval from CMS to implement a home and community services waiver program to adults with severe disabling mental illness; the second one in the nation.

The population to be served through the newly approved waiver encompasses seriously emotionally disturbed youth who meet the clinical criteria defined in ARM 37.86.3702(2) and who would otherwise reside in and receive Medicaid reimbursed care in a psychiatric residential treatment facility.

When fully implemented the program is to serve at any given time up to 100 service opportunities for youth with serious emotional disturbance. Because the program is to pilot a scheme of services, the state has obtained permission to not provide the program on a statewide basis but rather is to incrementally implement the program in a limited set of counties. The first county offering the home and community services for youth with serious emotional disturbance is Yellowstone County beginning October 1, 2007 with the capacity for 20 service opportunities to be available in the first year of the waiver. As other locales are selected the rules will be amended to add those new areas.

This community program of services for youth with serious emotional disturbance will significantly advance through a change in systems the state's efforts to more effectively and efficiently meet the needs of youth with serious emotional disturbance by providing a model for positive changes in the delivery of services.

The implementation of this set of proposed rules, with the resulting establishment of a service program focused on providing services to meet the needs of youth with serious emotional disturbance, is necessary to generally assure the well being of those youth who participate in the program by fostering the provision of services to assist them successfully living in a community setting, rather than a psychiatric residential treatment facility, while receiving treatment and support.

The department in reviewing possible alternatives to the implementation of this new community services program considered maintaining the status quo. The science and philosophy of treatment, the expectations of the consumers and the general public, and the service goals of the state necessitate the development of a community based treatment alternative. The status quo is unacceptable for those reasons. In addition, the federal funding for the development of additional services cannot be applied to further funding of the existing institutional services which are characteristic of the status quo. The department did not believe it prudent to forego the system change and the service expansion opportunities that the implementation of the program represented. Other alternatives could not be identified.

The Montana Legislature appropriated monies for the purpose of funding the implementation and maintenance of this program during the biennium. When the program is fully implemented during state fiscal year 2009, expenditures under the program are projected to be approximately $1.3 million dollars. The monies for the program are Medicaid and therefore the monies for the expenditures will be 30% state general fund and 70% federal Medicaid monies in origin.

In accordance with Presidential Executive Order 13175, November 6, 2000, the

tribal governments in Montana were afforded the opportunity for comment about the department's intent to submit application for the implementation of this home and community program.

RULE I HOME AND COMMUNITY SERVICES FOR YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE: FEDERAL AUTHORIZATION AND STATE ADMINISTRATION

Proposed Rule I acknowledges in rule the federal authorities governing the implementation of the new program of Home and Community Services for Youth with Serious Emotional Disturbance, states generally the parameters of the department's discretion in the development and administration of the program, and expressly denotes the number of service opportunities to be provided and the geographical location of those opportunities. The provision by a state of health care and health care related services funded with federally derived Medicaid monies necessitates conformance by the state with the federal statutes, regulations, the federal approval for the program, and the federal policies that govern expenditures of those monies. This proposed rule is necessary to denote that authority. The option of not specifying the federal authority governing the program was not considered appropriate since it governs the implementation of the program.

In addition, the proposed rule establishes the discretion of the department to manage the various aspects of the program in conformance with federal authority, the appropriated budget authority, and as otherwise determined appropriate by the department. This application of discretion to the program is necessary to assure continuing conformance with the governing federal authority so as to avoid withdrawal of federal approval for the program and to avoid federal recoupment for inappropriate expenditures of federal monies. Discretion is also necessary to assure that the program is managed within the programmatic and fiscal parameters and limitations that the Legislature may impose upon the department in the appropriation process. The necessity to conform to the governing state authority and fiscal dictates precludes consideration of other options.

The proposed rule denotes the geographical locations within which the program will make services available. The program is to be initially implemented the first year with 20 service opportunities in Yellowstone County rather than on a statewide basis due to the lack of sufficient resources for statewide implementation. The department will seek to amend these rules after decisions are made regarding implementation into other counties. Consequently, the alternative of initiating the program on a broader or statewide basis was not considered.

RULE II HOME AND COMMUNITY SERVICES FOR YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE: ELIGIBILITY FOR PROGRAM

The proposed rule states the eligibility criteria for acceptance into the program. Eligibility criteria is necessary to assure that services are provided to youth who are appropriate for and in need of the services of the program and that the eligibility

parameters of the plan entered into with CMS for the program are properly implemented and complied with.

The definition of a service population is essential to federal approval of the program as a Medicaid funded home and community program. The federal authorities limit the potential service populations to persons who can meet standard Medicaid eligibility and who are within a well defined service population predicated upon one or more types of disability. The state may not vary from criteria once accepted by the approving federal authorities. Some of the proposed eligibility criteria, in particular that related to potential institutionalization, are necessarily drawn from the governing federal authority that commands such criteria.

The measures to be implemented through this proposed rule could not be foregone since they are necessary aspects of implementation as required by the grant agreement with CMS and by federal law. Consequently, the option of not establishing eligibility could not be considered. Other options as to eligibility criteria were not considered since that too is federally mandated under the DRA and the resulting approval of the Montana Home and Community Services Program.

The department initiated the program for the purpose of addressing a significant need for health and health related services to maintain youth with serious emotional disturbance in community settings as opposed to more restrictive less integrated institutional placements in psychiatric residential treatment facility settings. Consequently, consideration was not given to varying the principal definitional parameters for the eligibility criteria. That criteria referenced from an existing set of criteria established in departmental rule is based on national criteria for establishing the presence of serious emotional disturbance.

RULE III HOME AND COMMUNITY SERVICES FOR YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE: SELECTION FOR PLACEMENT

The proposed rule states the criteria for a youth accepted into the program to be considered for a particular service opportunity that becomes available and the criteria by which the youth most suitable for an available service opportunity is selected for the program. These features are necessary to assure that available service opportunities are provided to those eligible youth who best can be served by those service opportunities.

Service opportunities under federal law for Medicaid funded home and community services are not available on an unlimited basis. By agreement with the federal officials a ceiling must be placed upon the service population for the program. The proposed rules are further necessary to assure that the number of service opportunities are rationed within the limits of the federal approval and state appropriations.

The measures to be implemented through this proposed rule could not be the foregone. They are necessary aspects of implementation as required by the grant

agreement with CMS and by federal law. Furthermore, they are necessary to assure that the limited resources of the program are rationed in a manner that benefits those consumers who can best be served by the particular service opportunities becoming available. Consequently, the option of not establishing selection criteria could not be considered. The selection criteria were drawn from criteria for other programs that have proven to be effective in arriving at appropriate selections.

RULE IV LOSS OF A SERVICE AND DISENROLLMENT

The proposed criteria to govern disenrollment from the program were generally drawn from the established home and community services program for persons who are elderly, physically disabled, or adults with severe disabling mental illness. The proposed criteria also incorporated the youth's parents' or responsible caregiver with physical custody choice to withdraw from the program or not participate in the youth's program. The establishment of this set of criteria is necessary to provide for the termination of services when delivery is no longer appropriate for treatment, programmatic, or fiscal reasons. A youth should not be retained in the program when the youth's best interests are not being served or the cost of services for the youth would violate the federal formulas for cost of services. The option of not including this set of criteria was not considered because of the necessity for mandatory conformance with the federal governing authorities. The option of selecting criteria drawn from that of a well established home and community program was chosen over other possible sources of criteria because this set of criteria from the other program has been developed based upon experience and has proven to be effective in resolving the issues as to the appropriateness of continuing services to a youth.

The provisions providing that a youth may have a service denied or terminated and specifying the criteria for denial or termination of a particular service are necessary to apprise youth and their families that receipt of particular services are subject to conditions and to provide notice of those qualifying conditions. Specification of the criteria is also necessary to provide conformance with the governing federal authority in particular the plan for the program as approved by CMS.

RULE V HOME AND COMMUNITY SERVICES FOR YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE: THE PROVISION OF SERVICES

The proposed rule specifies the array of services that is to be available through the program. These are the services that the department may provide to youth who meet the criteria for the program in proposed Rule II. Proposed Rule V provides the criteria for the department to determine the particular services, inclusive of program and nonprogram services, necessary to meet the youth's needs.

The proposed rule, specifying the array of services available through the program, is necessary for the purposes of conforming administration of the program with the specification of services in the governing federal authority in particular the plan for the program as approved by CMS. The specification of the array of services is also

necessary for youth, parents or legal guardians, advocates, and providers to be informed of the list of available program services.

The services selected to be offered as program services are those services that the department after consultation determined would be of positive consequence in meeting the goals of the program to provide certain health and health related needs that would maintain youth with serious emotional disturbance in community settings and that are appropriate services to be delivered under the service criteria of the governing federal authorities. This set of services provides the desirable array of services by which to meet the outstanding needs of the intended service population. Consequently, viable alternative sets of services were not identified to be considered in the alternative.

The services to be made available were selected because those services would foster the stability of the youth in the community either through treatment or would support the continued presence of the youth in the community for treatment purposes.

The option of not outlining the services and the criteria for denying or terminating a program service was rejected, as it would leave the public without any guidance as to the array of services included in the program as well as the basis for denying a program service and the department would lack express rule authority by which to appropriately regulate the use of particular services by youth in accordance with governing authorities and the identified needs of the youth.

RULE VI HOME AND COMMUNITY SERVICES FOR YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE: PLANS OF CARE AND PLAN MANAGEMENT

The proposed rule would require the development of a plan of care for each youth served through the program. The particular types of services that may be provided to a youth, choices of providers, and unique aspects of delivery for a youth, are set forth in the plan of care. The proposed rule establishes the process for development of a plan of care, provides that the department is responsible for the plan of care, and denotes the intervals for which plans of care are initially developed and subsequently reviewed.

The proposed rule is necessary to establish a planning process to direct the provision of services to youth participating in the program. The delivery of services to a youth will be ineffective unless the development and delivery of services is done in a manner that matches those services to the youth's needs and assures that they are effectively delivered and monitored. The plan of care serves that purpose. The plan of care requirement assures that there is consistent implementation within the state of the program's services.

The federal authorities governing the program require individual plans of care for each participating youth. The youth's treatment and supportive needs are to be identified in the plan along with the measures by which implementation of services is

to occur. In the absence of the plan of care, the program could not effectively deliver services.

The proposed plan of care measures are currently applied to home and community programs and serves well in bringing an integrated interdisciplinary approach to planning while accommodating the consumer's participation in the process. Since the plan of care conforms with the well-established and proven standard case management measures used in the management of social and health care services, including the department's other similar programs, the department did not consider any alternative measures for the management of services.

RULE VII HOME AND COMMUNITY SERVICES FOR YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE: COST OF PLANS OF CARE

The proposed rule would place limitations upon the program expenditures for services provided to each youth under the youth's plan of care. The total annual cost of program services and state plan services for each youth may not exceed a maximum individual limit set by the department. The department would derive the maximum limit based on the number of service opportunities available in the fiscal year and the amount of monies available to the program as authorized in appropriation by the Legislature. This limit could not exceed the federal individual expenditure limitation of 100% of the average cost of psychiatric residential treatment facility level of care.

These fiscal limitations are necessary to assure that the state may fiscally manage the program within the legislative appropriation available for the program and within the restrictions imposed by the governing federal authorities and in turn to apprise youth, providers, and others of those fiscal limitations.

The option of not proposing the rule was not considered since financial restrictions upon the expenditures for the program are state and federal law legal obligations. In addition, the public, youth, families, and program providers would not be aware of the financial limitation imposed upon the department in the administration of the program. Other forms of restrictive financial limitation were not considered since the applicable fiscal limitations are imposed by the federal governing authorities and the state Legislature.

RULE VIII HOME AND COMMUNITY SERVICES FOR YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE: PROVIDER REQUIREMENTS

The proposed rule would establish the general provider requirements for the program. A provider would need to: be enrolled as a Medicaid provider, comply with Medicaid fiscal and quality assurance standards, be a legal business entity, obtain and maintain appropriate insurance coverage, and conform with facility and professional licensing standards. The proposed rule also precludes immediate family members from serving as a provider.

The proposed rule is necessary to assure the programmatic and fiscal compliance of the service providers that are engaged in the delivery of services and to conform provider relationships with the governing federal authorities. The preclusion of family members and legal guardians from providing care directly to the youth either as a provider or as an employee of a provider is necessary to avoid compensating family members for their familial responsibilities.

Since federal and state law requirements necessitate the imposition of programmatic and fiscal compliance measures, the option of not imposing such compliance by the provider was rejected. In addition, even if the department had the discretion to forego these measures, not imposing these measures would leave the public vulnerable to unqualified providers and the state vulnerable to the misappropriation of program funding. The measures represent federal and other legal requirements and therefore consideration of other measures did not occur.

The specific measures incorporated into the proposed rule are drawn from the department's Existing Home and Community Services Program for the Elderly and Persons with Physical Disabilities. Those measures have been selected because they have proven to be effective at and acceptable for achieving administrative compliance with the various federal and state requirements.

RULE IX HOME AND COMMUNITY SERVICES FOR YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE: REIMBURSEMENT

The proposed rule would establish how the services available in the program are reimbursed. That proposed rule groups lists of services by each type of reimbursement methodology and describes the reimbursement methodologies. The proposed rule also states that: reimbursement is not available for services that may be reimbursed through another program, there is no copayment cost sharing requirement for program services, and there is no reimbursement for the provision of program services to other members of a recipient's household or family.

This rule is necessary to assure that services provided through the program are appropriately and economically purchased and that there is a common scheme of reimbursement that assures the fairness of reimbursement as among providers and consumers.

The option of not stating the reimbursement practices of the department was rejected, as clarity of reimbursement is essential for provider relations and the fiscal management of the program. These measures help establish and maintain a viable pool of providers.

This set of methodologies is being selected over other possible methodologies because it is a well established set of methodologies that is being applied to existing services that closely parallel those of this program. Implementation of this set of methodologies for the department and the providers will be facilitated by the use of the same set. For newly established services that are not currently being

reimbursed in other programs, the proposed rule would incorporate by reference a fee schedule manual. The fees in that manual have been derived by the department through reference to costs and fees associated with those particular types of services and with consideration also given to setting the fees for cost effectiveness.

Other approaches to reimbursement for these services were not considered since there are significant advantages, administratively and in provider relations, to replicating the reimbursement methodologies used for the reimbursement of services delivered through the existing Medicaid state plan funded adult mental health program.

RULE X HOME AND COMMUNITY SERVICES FOR YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE: NOTICE AND FAIR HEARING

The proposed rule would establish the due process that would be available to youth who wish to contest an adverse programmatic decision through reference to existing rules for fair hearings and adverse actions that would be appropriately applicable to this program. This proposed rule is necessary to assure conformity with due process requirements established in laws applicable to the program.

The department did not consider foregoing the adoption of this rule because of the necessity under federal law of providing due process fair hearings for youth who may be aggrieved by departmental actions concerning their eligibility and benefits. Under federal authority, the due process to be accorded must be in the form of a fair hearing. Consequently, the department did not consider any alternative due process forums or procedures. The proposed rule incorporates the rules adopted by the department to govern administrative appeals pertaining to issues in the provision of Medicaid funded services.

RULES XI THROUGH XVI PERTAINING TO PARTICULAR SERVICES

Proposed Rules XI through XVI specify the requirements for the various specific services that may be obtained and paid for through the Home and Community Services Program for Youth with Serious Emotional Disturbance. Those services, as specified in proposed Rule V, include consultative clinical and therapeutic services, customized goods and services, educational and support services, home-based therapist, nonemergency transportation, and respite care. These services have been selected as described in the discussion of proposed Rule V.

The various requirements pertaining to the proposed services have been drawn in part from the requirements applicable to those services currently as provided in the context of the program of home and community services for persons who are elderly, who have physical disabilities, or who are adults with severe disabling mental illness. As noted in the discussion of proposed Rule V, this set of services is well established in the context of that other program. Consequently, uniformity of requirements among the programs is appropriate for purposes of administrative convenience and provider performance and compliance. Other sets of requirements

were not considered appropriate given the desirability of uniformity.

These services, as proposed, allow for Medicaid coverage that is not available through the existing standard set of mental health services funded with Medicaid monies. These services are designed to assist a youth in need of mental health care to have a reasonably stable life style at home in the community while providing further mental health treatment to the youth.

5. Interested persons may submit comments orally or in writing at the hearing. Written comments may also be submitted to Rhonda Lesofski, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena MT 59604-4210, no later than 5:00 p.m. on January 17, 2008. Comments may also be faxed to (406)444-1970 or e-mailed to dphhslegal@mt.gov. The department maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. To be included on such a list, please notify this same person or complete a request form at the hearing.

6. 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 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. The web site may be unavailable at times, due to system maintenance or technical problems.

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

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

/s/ Cary B. Lund
Rule Reviewer

/s/ Joan Miles
Director, Public Health and Human Services

Certified to the Secretary of State December 10, 2007.

BEFORE THE TEACHERS' RETIREMENT BOARD
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 2.44.301A, 2.44.305, 2.44.401, 2.44.515, 2.44.522, and 2.44.523, and repeal of ARM 2.44.513 pertaining to Definitions, Optional Retirement Program, Calculating Service Credits, Corrections of Errors, Family Law Orders, Withholding of Insurance Premium from Retirement Benefit	))))))))))	NOTICE OF AMENDMENT AND REPEAL

TO: All Concerned Persons

1. On August 23, 2007, the Teachers' Retirement Board published MAR Notice No. 2-44-380 pertaining to the proposed amendment and repeal of the above-stated rules at page 1132 of the 2007 Montana Administrative Register, Issue Number 16.

2. The department has amended and repealed the above-stated rules as proposed.

3. No comments or testimony were received.

/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 December 10, 2007.

BEFORE THE TEACHERS' RETIREMENT BOARD
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 2.44.308, 2.44.412, 2.44.413, 2.44.414, 2.44.517A, 2.44.518, and 2.44.527, and repeal of ARM 2.44.505 and 2.44.511 pertaining to Independent Contractors, Calculating Service Credits, Termination Pay, Earned Compensation, Benefit Adjustments	))))))))))	NOTICE OF AMENDMENT AND REPEAL

TO: All Concerned Persons

1. On October 25, 2007, the Teachers' Retirement Board published MAR Notice No. 2-44-393 pertaining to the proposed amendment and repeal of the above-stated rules at page 1558 of the 2007 Montana Administrative Register, Issue Number 20.

2. The department has amended ARM 2.44.308, 2.44.413, 2.44.414, 2.44.517A, 2.44.518, and 2.44.527 and repealed ARM 2.44.505 and 2.44.511 as proposed.

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

2.44.412 VETERANS CALLED TO ACTIVE DUTY (1) Members of the TRS called to active duty for a period not to exceed five years and reemployed in accordance with the provisions of the Uniformed Services Employment and Reemployment Rights Act of 1994~~, as amended,~~ shall be considered continuously employed during their military leave when determining vested interest and eligibility for retirement benefits.

(2) Reemployed veterans may elect to purchase creditable service for their military leave to be used in the calculation of retirement benefits. The cost to purchase this service shall be equal to the employee contributions that would have been made had they not been called to active duty. Interest accruing on the balance due to purchase active duty service will not be levied during the five years following the date of reemployment. If payment is not completed within five years following reemployment, interest will be assessed as provided under ARM 2.44.405.

(3) To qualify for service under this rule, the member called to uniformed service must remain an inactive member of the retirement system during the period of service in the uniformed services by leaving his or her accumulated contributions on deposit.

(4) A member who is making additional contributions under a service purchase contract at the time he or she is called to service in the uniformed services

may suspend payments under the contract if they return to employment as required by the Act.

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

COMMENT #1: Comments were received from David Niss, on behalf of the State Administration and Veterans' Affairs Interim Committee, regarding language not proposed for amendment in ARM 2.44.412(1) that included all future versions of USERRA within the scope of the reference to that act.

RESPONSE #1: To adopt future versions of material incorporated by reference is not allowed, therefore, TRS amends the rule as shown above. ARM 2.44.412 has been adopted with amendments to strike phrase "as amended."

/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 December 10, 2007.

BEFORE THE STATE COMPENSATION INSURANCE FUND
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 2.55.320 pertaining to classifications of employments	)))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On October 25, 2007 the Montana State Fund published MAR Notice No. 2-55-37 pertaining to the proposed amendment of the above-stated rule at page 1566 of the 2007 Montana Administrative Register, Issue Number 20.

2. The Montana State Fund has amended the above-stated rule as proposed.

3. No comments or testimony were received.

/s/ Nancy Butler
Nancy Butler, General Counsel
Rule Reviewer

/s/ Joe Dwyer
Joe Dwyer
Chairman of the Board

/s/ Dal Smilie
Dal Smilie, Chief Legal Counsel
Rule Reviewer

Certified to the Secretary of State December 10, 2007

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 17.56.502, 17.56.507, 17.56.604, 17.56.607, and 17.56.608, and the adoption of New Rule I pertaining to reporting and numbering petroleum releases	))))))	NOTICE OF AMENDMENT AND ADOPTION (UNDERGROUND STORAGE TANKS)

TO: All Concerned Persons

1. On November 8, 2007, the Department of Environmental Quality published MAR Notice No. 17-264 regarding a notice of public hearing on the proposed amendment and adoption of the above-stated rules at page 1743, 2007 Montana Administrative Register, issue number 21.

2. The department has amended ARM 17.56.502, 17.56.507, 17.56.604, 17.56.607, and 17.56.608, and adopted New Rule I (17.56.508) exactly as proposed.

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

COMMENT NO. 1: The department received a comment that the term "substantial evidence," as it is used in proposed New Rule I, requires further definition or explanation. The commentor further expressed concern that the term "substantial evidence" may be subjective, and requested further explanation from the department as to how the term will be applied by the department in the context of implementing New Rule I.

RESPONSE: In proposed New Rule I (Numbering Petroleum Releases) the term "substantial evidence" is used in (2) which sets forth the circumstances under which a separate release will be confirmed and assigned a release number, and in (5) which sets forth the circumstances under which the department may rescind a release number. Under (2), the department shall confirm a separate release and assign another release identification number to petroleum contamination from a petroleum storage tank at a facility that has a previously confirmed and numbered release: (a) when a separate release from a petroleum storage tank is discovered at a facility and, based on substantial evidence, the department finds the release began after the department categorized all earlier confirmed releases at the facility as resolved in accordance with ARM 17.56.607(4); (b) when, based on substantial evidence, the department finds that there is a separate release of petroleum from a petroleum storage tank at a facility that began after any previously confirmed and numbered release was discovered; or (c) when additional contamination from a petroleum storage tank is discovered and, based on substantial evidence, the department finds that the contamination originated from a petroleum storage tank or tanks at a different facility than the facility where the previously confirmed and

numbered release occurred. Under (5) the department may rescind a release number if the department determines that the release should not have been confirmed. Rescission of a release number must be based on substantial evidence upon which the department may conclude that the release did not occur, that the contamination did not exceed standards cited in ARM 17.56.506, or that the contamination does not meet the criteria set forth in (2) and should have been attributed to an earlier confirmed release that has been assigned a release number.

In the context of New Rule I, the department intends that conclusions under (2) or (5) be supported by relevant evidence that is sufficient to support the department's findings of fact and application of the rule. Section 2-4-704, MCA, sets forth standards of judicial review of contested cases under the Montana Administrative Procedure Act. A court may reverse an agency decision where the decision is clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record. See 2-4-704(2)(a)(v), MCA. The Montana Supreme Court has considered the meaning of "substantial evidence" and held that substantial evidence is more than a mere scintilla, but may be somewhat less than a preponderance of evidence to support an agency's findings of fact. Matter of the Wage Claim of Marilyn Ramsay v. Yellowstone Neurosurgical Associates, P.C., 329 Mont 489, 495, 125 P.3d 1091, 1095 (Dec. 13, 2005). The department will adhere to the Montana Supreme Court's definition of "substantial evidence."

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, December 10, 2007.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 23.16.2107 concerning application time limit for utilizing an approved automated accounting and reporting system as part of a vending agreement	)))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On October 25, 2007, the Department of Justice published MAR Notice No. 23-16-190 regarding the public hearing on the proposed amendment of the above-stated rule at page 1572, 2007 Montana Administrative Register, Issue Number 20.

2. On November 21, 2007, the Department of Justice published MAR Notice No. 23-16-191 regarding the extension of comment period on the above-stated rule at page 1859, 2007 Montana Administrative Register, Issue Number 22.

3. The Department of Justice has amended ARM 23.16.2107 exactly as proposed in MAR Notice No. 23-16-190.

4. The extension of comment period ended December 6, 2007. No comments were received.

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

/s/ Jon Ellingson
JON ELLINGSON
Rule Reviewer

Certified to the Secretary of State December 10, 2007.

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

In the matter of the adoption of New Rules I through IV and the amendment of ARM 37.8.102, 37.8.103, 37.8.104, 37.8.109, 37.8.116, 37.8.126, 37.8.127, 37.8.128, 37.8.129, 37.8.301, 37.8.801, 37.8.804, and 37.8.816 and the repeal of 37.8.106 pertaining to vital statistics	))))))))))	NOTICE OF ADOPTION, AMENDMENT, AND REPEAL

TO: All Interested Persons

1. On November 8, 2007, the Department of Public Health and Human Services published MAR Notice No. 37-421 pertaining to the public hearing on the proposed adoption, amendment, and repeal of the above-stated rules, at page 1768 of the 2007 Montana Administrative Register, issue number 21.

2. The department has amended ARM 37.8.102, 37.8.103, 37.8.104, 37.8.109, 37.8.127, 37.8.128, 37.8.129, 37.8.301, 37.8.801, 37.8.804, and 37.8.816, and repealed ARM 37.8.106 as proposed.

3. The department has adopted new Rule I [37.8.307] as proposed.

4. The department is not amending ARM 37.8.116 as proposed.

5. The department has adopted and 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.

RULE II [37.8.107] AMENDMENT OF VITAL RECORD

(1) and (2) remain as proposed.

(3) Except in those cases specified in (4) and (5), a vital record may only be amended by an order from a ~~Montana district~~ court with appropriate jurisdiction, the original data provider, or those persons authorized by 50-15-121(1), MCA.

(4) The demographic information of a death record may be amended by the next of kin, the informant listed on the death certificate, the funeral director, or the person in charge of the final disposition of the body. If any information provided by the informant is disputed after the record has been filed, changes to the demographic data must be made pursuant to an order from a ~~Montana district~~ court with appropriate jurisdiction.

(5) Applications to amend the medical certification of cause of death shall only be made by the physician who provided the medical certification, or a coroner or state medical examiner if the coroner or medical examiner assumed responsibility for the case. If the cause of death certification is disputed, changes to the cause of

death certification must be made pursuant to an order from a ~~Montana district~~ court with appropriate jurisdiction.

(6) and (7) remain as proposed.

(8) Any subsequent change to information previously altered through this process requires an order from a ~~Montana district~~ court with appropriate jurisdiction.

AUTH: 50-15-102, 50-15-103, 50-15-204, 50-15-223, MCA
IMP: 50-15-102, 50-15-103, 50-15-204, 50-15-223, 50-15-403, MCA

RULE III [37.8.108] AMENDMENT PROCESS AND DOCUMENT REQUIREMENTS

(1) through (3) remain as proposed.

(4) In cases other than those cited in ~~[RULE IV]~~ ARM 37.8.311, the department may amend any portion of a vital record if a requestor submits a correction affidavit.

(a) The correction affidavit must include the following information:

(i) the name of the registrant or registrants appearing on the record;

(ii) the date and place of birth, birth resulting in a stillbirth, death, or fetal death;

(iii) the specific items on the record that are to be changed, including the information as presently shown and the proposed corrected information;

(iv) the relationship of the affiant to the registrant;

(v) certification by the affiant that all affected parties concur with the changes; and

(vi) supporting documentation provided by the affiant as irrefutable proof that the amendment(s) are correct.

(b) If not all parties agree to the changes, an order from a ~~Montana district~~ court with appropriate jurisdiction is required.

(5) through (7) remain as proposed.

AUTH: 50-15-102, 50-15-103, 50-15-204, 50-15-208, 50-15-223, MCA
IMP: 50-15-102, 50-15-103, 50-15-204, 50-15-208, 50-15-223, MCA

RULE IV [37.8.311] ADOPTIONS, NAME CHANGES, AND SEX CHANGES

(1) through (3) remain as proposed.

(4) Except in the cases specified in ~~[RULE III]~~ ARM 37.8.108, the amendment of a registrant's given name or surname on a birth certificate may be made only if the department receives a certified copy of an order from a ~~Montana district~~ court with appropriate jurisdiction. The court order that directs the name change must include the registrant's name as it appears on the certificate, the registrant's date of birth, the county of birth, if available, and information sufficient to locate and identify the record to be altered. If the court order directs the issuance of a new certificate, the record will not show amendments, and the new certificate will not indicate on its face that it was altered. The procedure to add a first and/or middle name to a birth record that is more than one year old, as in the case when a child is not named at birth, is regulated under ~~[RULE III]~~ ARM 37.8.108.

(5) The sex of a registrant as cited on a certificate may be amended only if

the department receives a certified copy of an order from a ~~Montana district~~ court with appropriate jurisdiction indicating that the sex of an individual born in Montana has been changed by surgical procedure. The order must contain sufficient information for the department to locate the record. If the registrant's name is also to be changed, the court order must indicate the full name of the registrant as it appears on the original birth certificate and the full name to which it is to be altered. If the order from the court directs the issuance of a new certificate that does not show amendments, the new certificate will not indicate on its face that it was altered. If the sex of an individual was listed incorrectly on the original certificate, refer to ~~[RULE III]~~ ARM 37.8.108.

AUTH: 50-15-102, 50-15-103, 50-15-204, 50-15-223, MCA
IMP: 50-15-102, 50-15-103, 50-15-204, 50-15-223, MCA

37.8.126 ACCESS TO RECORDS

(1) through (5) remain as proposed.

(6) A certified copy of certificate of birth that resulted in a stillbirth may only be issued to the following:

(a) either parent if listed on the certificate; or

(b) those persons listed in 50-15-121(1), MCA, upon receipt of an order from a ~~Montana district~~ court with appropriate jurisdiction.

(7) and (8) remain as proposed.

AUTH: 50-15-103, 50-15-121, 50-15-122, MCA
IMP: 50-15-103, 50-15-121, 50-15-122, MCA

6. The department has thoroughly considered all commentary received. The comments received and the department's response follows:

The department received numerous comments, all of which opposed the proposed fee increase in ARM 37.8.116. After considering the comments, the department has determined more work needs to be done to address potential conflicts in law governing the county and state functions.

Consequently, the department is striking the proposed changes to ARM 37.8.116. The department will work with interested parties to:

- clarify and define the applicability of fees and to set the fees for all vital record issuing agencies in the state as required in 50-15-111, MCA;
- specify how the fees will be distributed between the county and the state; and
- equalize the fees paid by a user, whether the service is provided in a county or the state Office of Vital Statistics.

The department made changes to new Rules II [37.8.107], III [37.8.108], IV [37.8.311], and ARM 37.8.126, to allow court orders from jurisdictions outside of Montana. Montana law in 50-15-223, MCA, allows the department to accept

legitimate out-of-state court orders for amending, changing, and replacing birth certificates after adoptions or determinations of paternity. Also under 50-15-122, MCA, the department may accept appropriate court orders from other states for access to Montana's vital records.

/s/ Michelle Maltese
Rule Reviewer

/s/ Joan Miles
Director, Public Health and Human Services

Certified to the Secretary of State December 10, 2007.

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

In the matter of the amendment of ARM 37.82.101 pertaining to Medicaid eligibility	)))	NOTICE OF AMENDMENT

TO: All Interested Persons

1. On October 25, 2007, the Department of Public Health and Human Services published MAR Notice No. 37-418 pertaining to the public hearing on the proposed amendment of the above-stated rule, at page 1619 of the 2007 Montana Administrative Register, issue number 20.

2. The department has amended ARM 37.82.101 as proposed.

3. No comments or testimony were received.

4. The department intends the amendment to be applied effective January 1, 2008.

/s/ Barbara Hoffmann
Rule Reviewer

/s/ Joan Miles
Director, Public Health and
Human Services

Certified to the Secretary of State December 10, 2007.

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

In the matter of the amendment of ARM 37.82.435 pertaining to Medicaid real property liens	)))	NOTICE OF AMENDMENT

TO: All Interested Persons

1. On October 25, 2007, the Department of Public Health and Human Services published MAR Notice No. 37-416 pertaining to the public hearing on the proposed amendment of the above-stated rule, at page 1608 of the 2007 Montana Administrative Register, issue number 20.

2. The department has amended ARM 37.82.435 as proposed.

3. After receiving public comment, the department has amended the following rule that was not in the proposal notice (see comment and response #1). Matter to be added is underlined. Matter to be deleted is interlined.

37.5.307 OPPORTUNITY FOR HEARING (1) A claimant who is aggrieved by an adverse action of the department shall be afforded the opportunity for a hearing as provided in this chapter.

(a) and (b) remain as proposed.

(c) A request for a hearing by a claimant must be received by the department within 90 days from the date of mailing of notice of the adverse action, except as otherwise provided in these rules.

(i) A hearing request from a claimant must be received in writing within 30 days of the date of mailing of notice of the adverse action regarding:

(A) a department determination of ability to pay for the cost of care in an institution under 53-1-405, MCA;

(B) a nursing facility's transfer or discharge of a nursing facility resident; ~~or~~

(C) a substantiated report of child abuse, neglect, or exploitation; or

(D) a proposal by the department to file a lien under 53-6-171, MCA;

(ii) through (4) remain as proposed.

AUTH: 2-4-201, 41-3-208, 41-3-1142, 52-2-111, 52-2-112, 52-2-403, 52-2-704, 52-3-304, 52-3-804, 53-2-201, 53-2-606, 53-2-803, 53-3-102, 53-4-111, 53-4-212, 53-4-403, 53-4-503, 53-5-304, 53-6-111, 53-6-113, 53-6-402, 53-7-102, 53-20-305, MCA

IMP: 2-4-201, 41-3-202, 41-3-205, 41-3-1103, 52-2-603, 52-2-704, 52-2-726, 53-2-201, 53-2-306, 53-2-401, 53-2-606, 53-2-801, 53-4-112, 53-4-212, 53-4-404, 53-4-503, 53-4-513, 53-5-304, 53-6-111, 53-6-113, 53-6-402, 53-20-305, MCA

4. The department has thoroughly considered all commentary received. The comments received and the department's response to each follow:

COMMENT #1: In its notice of public hearing on proposed amendment, the department did not propose an amendment to ARM 37.5.307. That rule states the general rule that a hearing request must be received by the Office of Fair Hearings within 90 days, except as otherwise provided in the rules. It also lists three types of adverse action for which a hearing request must be received within 30 days. I fear that persons aggrieved by a proposal to file a Medicaid lien will look only at ARM 37.5.307 and will assume they have 90 days to request a hearing. This will result in confusion and misunderstandings and may result in unjust liens being filed against real property. I recommend that ARM 37.5.307 be amended to specifically list hearings on proposed Medicaid liens as cases requiring receipt of a hearing request within 30 days.

RESPONSE: The department agrees and has amended ARM 37.5.307 accordingly.

/s/ John Koch
Rule Reviewer

/s/ Joan Miles
Director, Public Health and Human Services

Certified to the Secretary of State December 10, 2007.

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

In the matter of the amendment of ARM 37.86.1801, 37.86.1802, 37.86.1806, and 37.86.1807 pertaining to durable medical equipment and medical supplies	)))))	NOTICE OF AMENDMENT

TO: All Interested Persons

1. On October 25, 2007, the Department of Public Health and Human Services published MAR Notice No. 37-419 pertaining to the public hearing on the proposed amendment of the above-stated rules, at page 1633 of the 2007 Montana Administrative Register, issue number 20.

2. The department has amended ARM 37.86.1801, 37.86.1802, 37.86.1806, and 37.86.1807 as proposed.

3. No comments or testimony were received.

4. The department intends the amendments to be applied effective January 1, 2008.

/s/ John Koch
Rule Reviewer

/s/ Joan Miles
Director, Public Health and Human Services

Certified to the Secretary of State December 10, 2007.

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

In the matter of the amendment of ARM 38.2.5001, 38.2.5002, 38.2.5004, 38.2.5007, 38.2.5008, 38.2.5014, 38.2.5015, 38.2.5017, 38.2.5021, 38.2.5022, 38.2.5023, 38.2.5024, 38.2.5028, 38.2.5030, and the repeal of ARM 38.2.5016, 38.2.5020, 38.2.5027 pertaining to Protective Orders and Protection of Confidential Information	)	NOTICE OF AMENDMENT AND REPEAL

TO: All Concerned Persons

1. On June 21, 2007, the Department of Public Service Regulation, Public Service Commission (commission) published MAR Notice No. 38-2-197 regarding the public hearing on the proposed amendment and repeal of the above-stated rules at page 833 of the 2007 Montana Administrative Register, Issue No. 12.

2. The commission has amended ARM 38.2.5001, 38.2.5002, 38.2.5008, 38.2.5014, 38.2.5015, 38.2.5017, 38.2.5021, 38.2.5023, 38.2.5028, and repealed 38.2.5016, 38.2.5020, and 38.2.5027 exactly as proposed.

3. The commission has not adopted the proposed amendments to ARM 38.2.5004 and 38.2.5030.

4. The commission has amended ARM 38.2.5007, 38.2.5022, and 38.2.5024 with the following changes (stricken matter interlined, new matter underlined):

38.2.5007 PROTECTIVE ORDER--REQUESTS, TIMING OF REQUESTS, AND PROCEDURE (1) through (5) remain as proposed.

(6) Prior to issuing a protective order the commission will ~~After~~ review~~ing~~ the demonstrations made pursuant to ~~(3),~~ (4)~~,~~ and (5), and may ~~if necessary,~~ question~~ing~~ a provider on those demonstrations. ~~, the commission for cause will either decline to issue a protective order, or will issue a provisional protective order to the provider.~~

(7) A request for protective order must not include the claimed confidential information. Generally, claimed confidential information must not be filed at the commission before the issuance of a requested protective order. If it is necessary for the commission to access claimed confidential information prior to the issuance of a protective order, such access will be by special commission order. ~~Following receipt of a provisional protective order the provider must immediately file the claimed confidential information with the commission. The commission will review the information in camera, and for cause will either decline to issue a protective~~

~~order for all or part of the information, or will issue a protective order for all or part of the information. If the commission declines to issue a protective order for all or part of the information, the claimed confidential information for which a protective order was not issued will be returned to the provider. A provisional protective order will remain in force for the duration of the commission proceeding in which it is issued, for the purpose of commission review of all claimed confidential information, that is within the scope of the provisional protective order, submitted periodically during the course of the proceeding.~~

(8) and (9) remain as proposed.

38.2.5022 PROTECTIVE ORDER--STANDARD TERMS AND CONDITIONS --ACCESS AND MAINTENANCE OF CONFIDENTIAL INFORMATION--COMMISSION ~~AND CONSUMER COUNSEL~~ (1) Except as otherwise provided by the commission in a protective order, commissioners~~,~~ and commission staff, ~~and requesting parties~~ may have access to all confidential information made available pursuant to protective order, and shall be bound by the terms of the protective order.

(2) remains as proposed.

38.2.5024 PROTECTIVE ORDER--STANDARD TERMS AND CONDITIONS --ACCESS AND MAINTENANCE OF CONFIDENTIAL INFORMATION--EMPLOYEE EXPERTS OF PARTIES (1) through (1)(c) remain as proposed.

(d) If the requesting party receives an objection within the time required, the requesting party and provider must attempt to resolve the objection. If the parties are unable to resolve the objection, ~~either~~ the requesting party may apply to the commission~~, not later than ten business days from service of the objection on the requesting party,~~ for a ruling. ~~If neither party applies for a ruling, the provider's objection is deemed granted and the designated employee expert may not be given access to the information.~~ Access to the information shall not be given to the designated employee expert pending ruling by the commission.

(e) through (2) remain as proposed.

(3) ~~All written communication between or among parties that occurs pursuant to this rule must be served on the commission.~~ All written communication referred to in this rule must be served on the commission.

(4) ~~Written communication as used in this rule does not include electronic communication.~~ Service of written communication means physical delivery or deposit in the mail.

5. Qwest Corporation, Montana-Dakota Utilities Company, Mountain Water Company and NorthWestern Energy submitted joint written comments. The following is a summary of the comments on proposed rules which the commission has adopted, and commission responses.

Comments on ARM 38.2.5007: Joint commenters contend the amendment to ARM 38.2.5007(3)(b) is unnecessary and unreasonable because it fails to recognize the difference "between confidential information produced in response to a data request, and confidential information submitted to the commission for its deliberations." They indicate they have no objection to providing a nonconfidential

summary of confidential information introduced into evidence by a party to a proceeding, but do object to providing such a summary when the confidential information is provided in response to a data request. They also surmise that if "onerous" requirements to give nonconfidential summaries of confidential information provided in data responses are imposed, parties will resist providing information on discovery that they otherwise would provide without objection. Thus, this rule as proposed may embroil the commission in discovery disputes that may otherwise be avoided.

Responses: For the purposes of the amendment to ARM 38.2.5007(3)(b) there is no relevant distinction between confidential information provided in response to a data request (and which, presumably, never becomes part of the evidentiary record), and information filed on provider initiative, which becomes part of the evidentiary record and subject to commission deliberations. The amendment to this subsection is linked to the repeal of ARM 38.2.5016. The commission's rationale is that the requirement to provide nonconfidential summaries at ARM 38.2.5016 has not always been complied with nor enforced; and, given that nonconfidential summaries have to be provided when a provider requests a protective order, the commission reasoned that it makes sense to combine the requirement at ARM 38.2.5016 with the requirement at ARM 38.2.5007(3)(b). ARM 38.2.5007(3)(b), as amended, will serve two purposes, it will continue to require the necessary nonconfidential information in the pleadings to support a request for protective order, and it will simultaneously serve the purpose of providing a nonconfidential description of protected information that will be available to the public. This last was the intended purpose of ARM 38.2.5016 when it was adopted in 2004. Adopting the amended language at ARM 38.2.5007(3)(b), and repealing ARM 38.2.5016, should be less burdensome to providers, while continuing to meet the purpose of the commission when it adopted ARM 38.2.5016. The comments on the amendments to ARM 38.2.5007 contain objections to the proposed amendments to ARM 38.2.5007(6) and (7). The commission does not adopt the proposed amendments to these sections at this time.

Comments on ARM 38.2.5008: Joint commenters contend that ARM 38.2.5008(5) is unreasonable because it "would require jurisdictional utilities to permanently monitor closed dockets long after the issues in the docket, or the information provided in the docket was of interest to the public."

Responses: Joint commenters misread the proposed rule. The proposed rule requires notification to the commission when providers become aware that there is no longer a basis for protection. (For example, in the most obvious case, on becoming aware that the information is public.) "On becoming aware" is not the same as "permanently monitor." This proposed rule reflects an obligation on the part of the commission that it not protect information that is not entitled to protection, and it imposes very little burden on providers of confidential information.

Comments on ARM 38.2.5015: Joint commenters oppose ARM 38.2.5015(2) because, "it is too easy to disseminate [protected] information [in electronic format]

in violation of the protective order under which it is being provided." They continue that it is too easy to disseminate protected information in electronic format by mistake or accident.

Responses: This proposed section allows providers to request for good cause the provision of protected information through a medium other than yellow paper. It does not require the provision through another medium. Providers who are concerned about the accidental dissemination of information provided by electronic means may provide the information on yellow paper.

Comments on ARM 38.2.5017 and 38.2.5023: The proposed amendments to these rules are linked, and the joint commenters address them together. Joint commenters oppose amending the protective order rules to allow any entity, other than the provider, to give the information to others. They write: "All access to protected information must be provided by the party whose confidential information is protected. That is a necessary and critical component of the property rights attendant to a trade secret, as the party whose property rights are at stake has the right to protect its property interests in accordance with the commission issued protective order."

Responses: The amendment authorizes legal counsel who have a right to the information to pass the information to other legal counsel who also have a right to the information. This avoids a cumbersome and sometimes time consuming process of involving the provider in the transfer of the information - usually in the context of a tight procedural schedule - and it does not compromise the rights of providers to protect property interests "in accordance with the commission issued protective order." This amendment does not affect the rights of providers under commission protective order rules.

Comments on ARM 38.2.5021: Joint commenters support this proposed rule amendment except for the reference to ARM 38.2.5007(3)(b). Joint commenters oppose the proposed amendments at ARM 38.2.5007(3)(b).

Responses: The commission has responded to the joint commenters objections to ARM 38.2.5007(3)(b), and has decided to adopt that subsection as proposed. The reference to ARM 38.2.5007(3)(b), therefore, remains in this rule.

Comments on ARM 38.2.5022: Joint commenters object to the term "requesting parties" that was added to section (1) of this proposed rule. They say it can be taken out of context and interpreted as meaning "not only legal counsel for the requesting party, but the requesting party."

Responses: The commission cannot prevent an erroneous interpretation. "Requesting party" is specifically defined as a person - ARM 38.2.5001(5) - and it is specific persons who may gain access to confidential information, not entities who are parties to a proceeding. (It is possible, of course, for a person and a party to be the same.) Regardless, "requesting parties" is not necessary in section (1) and will

be deleted. The requirement that a provider must provide confidential information to a requesting party is contained at ARM 38.2.5017. Reference to "consumer counsel" in the title of the rule is also not necessary and will be deleted.

Comments on ARM 38.2.5024: Joint commenters object to the deletion of the last sentence at ARM 38.2.5024(1)(d). They comment, "It makes no sense to give the proposed employee expert access to a trade secret when access is being challenged." They also comment that ARM 38.2.5024(3) and (4) are "unduly broad," and should be limited to objections and statements of no objection as discussed in the rule. They write, "Parties have a right to communicate with each other without filing their communications with the Commission . . . ."

Responses: The last sentence of ARM 38.2.5024(1)(d) is correctly deleted as redundant. Under the rule an employee expert may not gain access to protected information unless legal counsel first proposes access (ARM 38.2.5024(1)), and, second, receives a statement of no objection (ARM 38.2.5024(1)(c)). Removing the last sentence of ARM 38.2.5024(1)(d) will not result in a proposed employee expert gaining access during the challenge process. However, to avoid any misunderstanding and to give extra assurance to providers, the commission will retain this sentence. With respect to ARM 38.2.5024(3) and (4), the commission agrees that the proposed rule should be changed, and has done so as indicated at paragraph 3, above. Also, at the second sentence of ARM 38.2.5024(1)(d), the commission has struck the word "either" and substituted "the requesting party." The commission cannot conceive of a situation where the provider would apply for a ruling in this context.

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

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

Certified to the Secretary of State December 10, 2007.

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

In the matter of the amendment of ARM 38.5.1902 pertaining to cogeneration and small power production	))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On July 26, 2007, the Department of Public Service Regulation published MAR Notice No. 38-2-198 regarding notice of public hearing on the amendment of the above-stated rule at page 1020 of the 2007 Montana Administrative Register, issue number 14.

2. A public hearing was held on August 28, 2007. Five people testified at the hearing. Four written comments, including three from people who testified, were received by the August 28, 2007 deadline.

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

COMMENT #1: NorthWestern Energy (NWE) filed comments supporting the adoption of Alternative A but with a QF size limit of 5 MW rather than 10 MW.

RESPONSE: The department appreciates NWE's support for Alternative A. The department is not persuaded that the asserted advantages of a 5 MW limit exist. For the reasons set forth in responses to comments #2 through #4, the department rejects NWE's request to set the size limit at 5 MW. The department also notes that this rule applies to all investor-owned utilities in Montana, not just NWE.

COMMENT #2: NWE asserted that a 5 MW size limit would help ensure robust responsiveness to NWE's future Requests for Proposals (RFPs) in part because it faces a market place with a single dominant supplier.

RESPONSE: The department is not persuaded that setting a size limit at 5 MW rather than 10 MW will have any appreciable effect on the robustness and results of future RFPs. NWE did not offer any evidence as to the number of potential QFs that would be between the 5 MW and 10 MW size and that would not participate in future RFPs. The department acknowledges that NWE is faced with the presence of a single large supplier that dominates the Montana market. The department is not convinced that the participation of potential QFs between 5 MW and 10 MW will either alleviate or worsen this situation.

COMMENT #3: NWE stated that a 5 MW size limit would encourage the development of "community renewable energy projects."

RESPONSE: The department acknowledges that the size limit for community renewable projects is 5 MW and that NWE must acquire approximately 42 MWs of electricity from community renewable projects by 2010. However, under either a 5 MW or a 10 MW size limit, community renewable energy projects that otherwise qualify as QFs will be eligible for the standard offer long-term contract provided for in ARM 38.5.1902. Support of community renewable energy projects requires an increase from the current 3 MW size limit but is not harmed by an increase beyond the 5 MW size limit.

COMMENT #4: NWE stated that a 5 MW limit would lessen the possibility of QFs compromising the ability of NWE to manage its production portfolio in a least cost manner and may make it increasingly difficult and costly to comply with system reliability requirements.

RESPONSE: The department appreciates that NWE, as a balancing area authority without generation, faces unique and difficult challenges in operating its system in a reliable manner. This situation may change. NWE has informed the department that it is investigating the feasibility of acquiring generation. Further, the department addressed NWE's concerns in Orders 6501(f) and 6501(g) by establishing a 50 MW installed capacity limit for new QFs and by requiring that contracts between NWE and wind QFs must include specific wind integration provisions. The department is not persuaded that size of individual QFs rather than their total capacity is a significant determinant of reliability issues.

COMMENT #5: John Hines and Frank Bennett of NWE offered oral comments at the hearing that summarized and explained NWE's written comments.

RESPONSE: The responses to comments #1 through #4 respond to Mr. Hines and Mr. Bennett's oral comments.

COMMENT #6: United Materials of Great Falls (United) and Exergy Development Group (Exergy) filed comments supporting the adoption of either Alternative A or Alternative B, both of which would raise the maximum capacity to 10 MW for small QF contracts at standard long-term tariffed rates. They stated that developers of small QF projects need a simple, straightforward mechanism for contracting and do not have the resources needed to participate effectively in competitive solicitations. They also stated that concerns about the effect of a utility being required to buy large amounts of QF power are mitigated by the capacity limit established in order 6501(f), the relatively low price contained in NWE's contract with PPL Montana, the fact that a wind QF's production of average annual energy will be only 30% to 40% of its capacity factor, and the requirement that QF contracts address wind integration.

RESPONSE: The department appreciates United and Exergy's support for amending ARM 38.5.1902 and agrees that small QFs up to 10 MW need a simplified mechanism for obtaining long-term contracts to sell electricity.

COMMENT #7: Whitehall Wind, LLC, Green Hunter, LLC, and Two Dot Wind, LLC (collectively developers) filed comments stating that Alternative A is the most desirable of the proposed alternatives it is far from ideal. The developers stated that they did not support Alternative B. The developers stated that they believed Alternative C to be the worst option.

RESPONSE: The department appreciates the developers qualified preference for Alternative A that it adopted. The department rejected Alternatives B and C.

COMMENT #8: The developers recommended that the Alternative A size limit for standard offer contracts be 20 MW. They note that FERC, in Order 688, found that a reasonable and administratively workable definition of small is 20 MW and that there is a presumptive need for access to markets by small QFs. The developers assert that the department should provide nondiscriminatory access to markets for QFs up to 20 MW by having standard offer contracts available to them.

RESPONSE: FERC reached its finding in a rulemaking docket dealing with circumstances justifying the termination of a utility's obligation to purchase electricity from QFs. A FERC rule, 18 CFR 292.304(c)(1), requires the department to make standard offer contracts available to QFs with a design capacity of 100 kW or less. FERC did not modify this rule when it issued Order 688. Developers attempt to equate the issue of nondiscriminatory access with the issue of standard offer contracts. The department finds that these are separate issues and that FERC's findings with respect to nondiscriminatory access provide little, if any, guidance regarding standard offer contracts. The department rejects the developers' request to set the size limit at 20 MW.

COMMENT #9: The developers commented that rules should acknowledge that the Least Cost Planning Advisory Committee no longer exists and has not existed for some time.

RESPONSE: The department finds that neither ARM 38.2.1902(5) nor the rules referenced therein, ARM 38.5.2001 through 38.5.2012, mention a Least Cost Planning Advisory Committee. The department concludes that developers are requesting some action beyond the scope of this rulemaking and rejects the request.

COMMENT #10: The developers offer an Alternative D that would change the size limit to 20 MW and eliminate the current requirement that a QF larger than the size limit go through a competitive solicitation. Developers assert the requirement is inconsistent with 69-3-603, MCA, and acts as a barrier to QF entry that results in QFs receiving less than the utility's full avoided cost.

RESPONSE: The legality of the competitive solicitation requirement is a central issue in a pending court action between one of the developers and the commission, *Whitehall Wind, LLC v. Public Service Commission*, No. DV 03-10080 (Fifth Judicial District, Jefferson County). Further, the suggested revisions cannot be implemented in this rulemaking. The suggested revisions are beyond the scope of the rule notice and would require another rulemaking. The department acknowledges that the size limit for community renewable projects is 5 MW and that NWE must acquire approximately 42 MWs of electricity from community renewable projects by 2010.

COMMENT #11: Michael Uda, representing the developers, offered oral comments at the hearing that summarized and explained the developers' written comments.

RESPONSE: The responses to comments #7 through #10 respond to Mr. Uda's oral comments.

COMMENT #12: The Montana Consumer Counsel (MCC) filed comments opposing adoption of any of the three alternatives. MCC stated that PURPA "requires the utility to buy projects, good or bad, that come in the door." MCC asserted that granting isolated installations of less than 10 MW access to a standard offer contract can only result in higher costs to the utility and ratepayers. MCC stated that all three alternatives carry costs and risks for ratepayers and the utility with little or no corresponding benefit other than to the promoters of projects who can take advantage of them. MCC also stated that Alternatives B and C contain greater potential risk and damage for ratepayers than Alternative A.

RESPONSE: MCC appears to take issue with the mandates in PURPA and Title 69, chapter 3, part 6, MCA. The department must implement and enforce those mandates. The department may not adopt rules that frustrate the policy choices made by Congress in enacting PURPA and the Legislature in enacting Title 69, chapter 3, part 6, MCA. QFs providing service under standard offer contracts will result in higher costs to ratepayers and the utility only if the standard offer rates exceed the utility's avoided cost and the provisions in Orders 6501(f) and 6501(g) regarding wind integration are ignored. There is no evidence that the standard offer rates exceed the utility's avoided cost. The department concludes that Alternative A does not contain substantial costs or risks for ratepayers and the utility.

COMMENT #13: Larry Nordell offered oral comments at the hearing that summarized and explained the MCC's written comments.

RESPONSE: The responses to comment #12 respond to Mr. Nordell's oral comments.

COMMENT #14: Mike Costanti of Matney-Franz Engineering commented that ratepayers are affected by QFs, that he believed it preferable that QFs be locally owned, that NWE is required to purchase electricity from community renewable

energy projects (Creps), that the size limit for Creps is 5 MW, and that he opposed all alternatives but supported NWE's proposal to increase the size limit for standard offer contracts to 5 MW.

RESPONSE: Law does not permit the department to adopt rules for QFs that discriminate against out-of-state ownership. As stated in response to comment #3, an increase in the standard offer size limit beyond 5 MW does not harm community renewable energy projects.

4. The department has amended ARM 38.5.1902 exactly as proposed in Alternative A.

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

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

Certified to the Secretary of State December 10, 2007.

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

In the matter of the amendment of ARM 38.5.2202 and 38.5.2302, pertaining to pipeline safety	))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On October 25, 2007, the Department of Public Service Regulation, Public Service Commission (PSC or commission), published MAR Notice No. 38-2-199, regarding a public hearing on the proposed amendment of the above-stated rules at page 1642 of the 2007 Montana Administrative Register, issue number 20.

2. The PSC has amended ARM 38.5.2202 and 38.5.2302 exactly as proposed.

3. No comments or testimony were received.

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

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

Certified to the Secretary of State, December 10, 2007.

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

In the matter of the adoption of New Rule I and the amendment of ARM 38.5.8301 pertaining to renewable energy standards for public utilities and electricity suppliers	)))))	NOTICE OF ADOPTION AND AMENDMENT

TO: All Concerned Persons

1. On November 8, 2007, the Department of Public Service Regulation published MAR Notice No. 38-2-200 regarding notice of public hearing on the adoption and amendment of the above-stated rules at page 1798 of the 2007 Montana Administrative Register, issue number 21.

2. A public hearing was held on November 29, 2007. One person testified at the hearing. Four written comments were received by the December 6, 2007 deadline.

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

COMMENT #1: Chuck Magraw, representing Renewable Northwest Project and Natural Resources Defense Council, commented that the rules are clear and well written.

RESPONSE: The department thanks Mr. Magraw for his comment.

COMMENT #2: Chuck Magraw commented that applying the renewable energy standard to all retail sales made by competitive electricity suppliers is reasonable and proper. He stated that this is not an interpretation of the statute but its plain meaning. Mr. Magraw commented that the Legislature had ample opportunity to state that the renewable energy standard applied only to retail sales to small customers, but it did not do so.

COMMENT #3: The Large Customer Group (LGC) filed comments stating that it believes the requirement to apply the renewable energy standard to all retail sales of a competitive electricity supplier is a misreading of the legislation and of legislative intent. The LGC requests the department adopt a rule applying the renewable energy standard only to that portion of a competitive electricity supplier's retail sales made to small customers. The LGC asserts that by changing the definition of competitive electricity supplier, the Legislature intended to exclude sales to large customers from the renewable energy standard. The LGC states that it is

undisputed that the legislative history of HB 681 favors its interpretation of the statute.

COMMENT #4: PPL EnergyPlus, LLC (PPL) filed comments stating that the Legislature intended to confine the scope of the renewable energy standards to retail sales to small customers. PPL quoted extensively from testimony offered to legislative committees and committee meetings to support its position.

COMMENT #5: The Montana Environmental Information Center (MEIC) filed comments stating it supported adoption of the rules as proposed and that it agreed with the hearing comments of Chuck Magraw. MEIC stated the HB 681 requires entities that sell power directly to end-use customers to comply with the renewable energy standard.

RESPONSE: The department is sympathetic to the concerns of the LGC and PPL. However, the department may neither add nor subtract from the statutory language. If statutory language is unambiguous, then legislative intent must be determined from the language. In such a situation, the department may not consider legislative history. No commenter suggests that the statutory language is ambiguous and the department concludes that it is not. The plain language of the statute requires each competitive electricity supplier to procure a percentage of its retail sales in Montana from eligible renewable resources. There are three types of retail electricity suppliers: those who sell to large customers, those who sell to small customers, and those who sell to both large and small customers. Those who sell to small customers and those who sell to both large and small customers are competitive electricity suppliers. Proposed Rule I conforms to the plain language of the statute. If the plain language of the statute does not affect the Legislature's intent, it is the Legislature, not the department, that must fix it.

COMMENT #6: Chuck Magraw commented that the term "competitive electricity supplier" is used for the first time in Rule I(4) and that he thought the term should be defined or that the statutory definition should be referenced.

RESPONSE: "Competitive electricity supplier" is defined in 69-3-2003(4), MCA. Rules may not unnecessarily repeat statutory language. 2-4-305(2), MCA. Rule I clearly indicates that it implements 69-3-2003, MCA. The department concludes that it would be unnecessarily redundant to define the term or to provide an additional reference to the statute.

COMMENT #7: Chuck Magraw commented that the last sentence of Rule I(4) could be improved with additional punctuation and insertion of "the" to modify release.

RESPONSE: The department acknowledges and appreciates Mr. Magraw's comment. The department concludes that the meaning of the sentence is clear and that no alteration is necessary.

COMMENT #8: Chuck Magraw noted the absence of any reference M-RETS in Rule I(7) and wondered if renewable energy credits tracked by M-RETS could be used by competitive electricity suppliers to meet the renewable energy standard.

RESPONSE: M-RETS tracks renewable energy credits created in a portion of the Eastern Interconnection, including Montana Dakota Utilities' service territory in Montana. WREGIS tracks renewable energy credits created in the Western Interconnection, including NorthWestern Energy's service territory in Montana. Competitive electricity suppliers are permitted to sell to retail customers only in NorthWestern Energy's service area. The department concludes that competitive electric suppliers' use of renewable energy credits should be restricted to those created in the same interconnection and tracked by WREGIS.

COMMENT # 9: Chuck Magraw noted that in Rule I(4) an electricity supplier is permitted to assign a unique number to retail customers to protect their identities and that in ARM 38.5.8301(9)(b) a public utility is required to assign a unique number to each retail customer. He wondered if this difference represented a disconnect.

RESPONSE: The retail customers referred to in each section are customers of electricity suppliers. An electricity supplier's release of identifying information will be governed by the agreement between the electricity supplier and the retail customer. The public utility is required to provide the information required by ARM 38.5.8301(9)(b) to allow the public service commission to confirm and check the information provided by electricity suppliers. The retail customers in question will not be electricity supply customers of the public utility. The public utility will not be a party to the contracts between electricity suppliers and the retail customers. The department concludes that electricity suppliers should have the options to protect or disclose the identities of their customers but that the public utility should be required to protect the identities of the electricity suppliers' retail customers.

COMMENT #10: James Stromberg of Hinson Power Co. commented that the draft rule is too broad. He stated that 69-3-2006(6), MCA, imposes a reporting requirement on public utilities and competitive electricity suppliers and that electricity suppliers that are not competitive electricity suppliers are not required by law to report to the PSC. Mr. Stromberg suggested that the proposed rule be revised to clearly specify that it is applicable only to competitive electricity suppliers.

RESPONSE: The department agrees that the renewable energy standard applies only to public utilities and competitive electricity suppliers. The department disagrees that 69-3-2006(6), MCA, imposes any reporting requirement. There is no 69-3-2006(6), MCA. Section 69-3-2006, MCA, grants the Public Service Commission authority to adopt rules to generally implement and enforce the provisions of Title 69, chapter 3, part 20, MCA. To enforce the statute, the department must be able to identify competitive electricity suppliers. The reporting requirements placed on all electricity suppliers by Rule I(3) are a reasonable and

necessary means for the department to collect the data needed to enforce the statute.

COMMENT #11: PPL commented that the definition of retail customer in Rule I(1)(d) is too restrictive. PPL stated that a commercial customer may have a single integrated operation located on noncontiguous properties and implied that such should be treated as an individual load.

RESPONSE: The department agrees that the proposed definition of retail customer may be too restrictive in some unusual situations. The department is not persuaded that reference to a single transmission agreement is the appropriate method to address those unusual situations. The department has amended the proposed definition of retail customer to provide a method for the customer or its electricity supplier to petition the Public Service Commission for a determination that it qualifies as a single retail customer.

COMMENT #12: PPL commented that Rule I(3) lacked clarification as to the due date for the first period and suggested that an average monthly demand shortfall in 2007 would appear to subject an energy supplier to the renewable energy standard in 2008.

RESPONSE: As explained in response to comment #10, the purpose of reports required by Rule I(3) is to allow the department to identify competitive electricity suppliers and to implement and enforce the statute. Rule I(9) requires a competitive electricity supplier to submit a renewable energy procurement plan with the annual report required of all electricity suppliers by Rule I(3). An electricity supplier that is a competitive electricity supplier in 2007 is not required to comply with the renewable energy standard in 2008 unless it is a competitive electricity supplier in 2008. The department concludes that the recommended amendment is not necessary.

4. The department has adopted New Rule I, ARM 38.5.8302 with the following changes, stricken matter interlined, new matter underlined:

NEW RULE I (38.5.8302) RENEWABLE ENERGY STANDARD – ELECTRICITY SUPPLIERS (1) through (2)(c) remain as proposed.

(d) "retail customer" means:

(i) any customer that purchases electricity supply for residential, commercial, or industrial end-use purposes, does not resell electricity to others, and is separately identified in a public utility's billing system as a person or entity to which bills are sent for service to:

~~(i)~~(A) metered and/or unmetered facilities located on contiguous property;

~~(ii)~~(B) public street and/or highway lights; and

~~(iii)~~(C) any combination of (2)(d)(i)(A) and (d)~~(ii)~~(i)(B)~~.~~; or

(ii) any customer determined by the Public Service Commission to be a retail customer on petition for such determination by either the electricity supplier or the customer.

(3) through (9) remain as proposed.

5. The department has amended ARM 38.5.8301 exactly as proposed.

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

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

Certified to the Secretary of State, December 10, 2007.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption of New Rules I (42.17.601); II (42.17.602); III (42.17.603); IV (42.17.604); and V (42.17.605) and amendment of ARM 42.17.101 relating to Mineral Royalty Backup Withholding	))))))	NOTICE OF ADOPTION AND AMENDMENT

TO: All Concerned Persons

1. On October 25, 2007, the department published MAR Notice No. 42-2-778 regarding the proposed adoption and amendment of the above-stated rules at page 1647 of the 2007 Montana Administrative Register, issue no. 20.

2. A public hearing was held on November 15, 2007, to consider the proposed adoption and amendment. Oral testimony received at the hearing and written comments received after the hearing is summarized as follows along with the response of the department:

COMMENT NO. 1: Gayle Abercrombie, representing the Montana Petroleum Association, stated the association appreciated the department's work on these rules and the opportunity provided by the department to comment during the rule development process. The only concern they had regarding the rules as published has been addressed by the department with the proposed amendment to New Rule I(3).

RESPONSE NO. 1: The department appreciates the assistance provided by the Montana Petroleum Association and others during the development of these rules.

COMMENT NO. 2: Jane Egan, Executive Director, Montana Society of Certified Public Accountants and Dwaine Iverson, CPA, both submitted written comments concerning the requirement in New Rule II to attach the federal form K-1 in order to claim credit for the tax withheld will mean that none of these returns can be e-filed. This will defeat the purpose of encouraging e-filing of returns.

Mr. Iverson stated that there will be no method available for preparers to send this information and for the department to "capture" the information. He further stated the same problem will occur with the requirement to attach the Form 1099-MISC to the return.

RESPONSE NO. 2: The department appreciates Mr. Iverson and Ms. Egan's comments on this issue. The department agrees with the comments and the rule has been amended to state that the department will not require the filing of a K-1 or Form 1099-MISC with the royalty owner's tax return. The department is moving rapidly to the electronic filing of all tax returns and does not want to develop

practices that create obstacles which prevent taxpayers from such filing. Therefore, the department is only requiring that taxpayers maintain a copy of the federal form K-1 or Form 1099-MISC.

COMMENT NO. 3: Mr. Iverson suggested the department exempt partnerships, trusts, estates, and S-corps, if all the proper paper work has been filed by all the partners agreeing to be taxed by Montana. If there were compliance in filing tax returns reporting this information, then the burden on trying to track the withheld tax would be eased. The system is already in place for all out of state taxpayers that have not signed an agreement to have withholding for state income taxes. He stated that the department needs to make sure that it is not placing unfair burdens on the taxpayers that are complying to try to catch the small percentage that are not.

RESPONSE NO. 3: The department understands the concerns of Mr. Iverson, however the language of the law as enacted only provides for specific withholding exemptions for certain entities. The law did not grant partnerships, trusts, estates, and S corporations the exemption.

COMMENT NO. 4: Ms. Egan questioned how withholding will be handled with pass-through entities. For example, if a limited liability company (LLC) has royalty income of $25,000, the withholding on this would be $1,500. Assuming that there are 5 members, the 1099 would go to the LLC showing the royalty and withholding. How will that withholding information be provided to the members of the LLC?

RESPONSE NO. 4: As illustrated in the original language in New Rule II the department was intending to request a copy of the K-1 to identify the taxpayers that have interest in the limited liability company and therefore subject to Mineral Royalty Withholding Act.

However, in comments to New Rule II the department recognized the issue associated with electronic filings and attaching the federal form K-1 and Form 1099-MISC. Therefore, the department is only requesting a copy of the K-1 or 1099-MISC be retained by the taxpayer in the instance the department requests verification of the amount withheld.

The limited liability company will need to, along with the distribution of the income, provide the members with the appropriate withholding information. The department believes this will be a combination of a K-1 and a 1099-MISC.

3. The department amends the rules as follows:

NEW RULE I (42.17.601) ADVANCE PAYMENTS AND FURTHER DISTRIBUTIONS (1) and (2) remain as proposed.

(3) If a mineral is taken in-kind by a royalty owner, the ~~remittor~~ take-in-kind owner must forward 6% of the net value of the mineral that was taken in-kind to the department ~~on behalf of that royalty owner~~ unless they are exempt from withholding due to 15-30-264 or 15-31-102, MCA. ~~The value of the mineral is calculated by~~

~~multiplying the volume of the mineral that was taken in-kind with a market or going rate for the mineral. For instance, if a royalty owner takes in-kind 100 barrels of oil, the remittor will multiply the 100 barrels of oil to the sales price of the other barrels of oil sold from the lease to establish the net value of the mineral taken in-kind.~~

(4) remains as proposed.

AUTH: 15-30-272, MCA
IMP: 15-30-266, MCA

NEW RULE II (42.17.602) CLAIMING THE CREDIT FOR TAX WITHHELD

(1) Claiming credit for the tax withheld shall be accomplished as follows:

(a) Credit may be claimed for the tax withheld on a Montana Individual Income Tax Return or a Montana Corporation License Tax Return~~, with a copy of Form 1099-MISC attached to substantiate the amount claimed~~.

(b) Taxpayers who are shareholders in a corporation taxed under Subchapter S of the Internal Revenue Code ~~and are Montana residents, members of a Montana limited liability company, or members of a partnership~~ doing business in this state must ~~attach~~ maintain a copy of federal form K-1 ~~to their Montana individual income tax return~~. They may claim credit for the amount shown as their percentage share of the tax withheld from Montana net royalty payments by the corporation, limited liability company, or partnership.

(c) An estate or trust is entitled to credit for the tax withheld in proportion to its share of federal distributable net income. The remaining credit must be passed through to the beneficiaries in proportion to their respective shares of federal distributable net income of the estate or trust. To claim the credit, the beneficiaries must ~~attach~~ maintain a copy of federal form K-1 ~~to their Montana Individual Income Tax Return for Fiduciaries and Trusts (FID-3)~~ and claim credit for the amount shown by the fiduciary as their percentage share of the tax withheld from Montana mineral production payments.

(d) Any person filing on a fiscal year ending other than December 31 must claim a credit for the withholding tax shown on the personal income tax return required to be filed during the year following the December closing period of the Montana Mineral Royalty Withholding Tax Reconciliation Return (Form RW-3).

AUTH: 15-30-272, MCA
IMP: 15-30-264, MCA

NEW RULE III (42.17.603) APPLICABLE THRESHOLDS – CHANGE OF OWNERSHIP – PUBLICLY TRADED PARTNERSHIPS – NONPROFIT ORGANIZATIONS – EXEMPT ROYALTY OWNERS (1) through (10) remain as proposed.

(11) Section 15-30-264, MCA, allows for an organization that is exempt from taxation under 15-31-102, MCA, to be exempt from the withholding requirements of 15-30-261, MCA, provided the exempt organization, who is a royalty owner, submits a report to both the remittor and the department. The report, which can be in the form of a letter, must contain the exempt organization's letterhead and requests exemption from 15-30-261, MCA. The request must be received by the remittor and

the department prior to November 1 of the year prior to the calendar year in which the exempt organization requests exemption. Upon receipt of the report, the department shall notify the exempt organization and the remittor of either acceptance or denial of the request within thirty days. The election does not need to be repeated annually unless requested by the department.

(12) and (13) remain as proposed.

AUTH: 15-30-272, MCA
IMP: 15-30-264, MCA

NEW RULE V (42.17.605) FILING REQUIREMENTS (1) and (2) remain as proposed.

(3) If a remittor does not withhold on a royalty interest owner who in the previous year met the exemption requirement in 15-30-264, MCA, but exceeded that requirement in the current year, the department will not penalize the remittor for the lack of withholding in that current year.

AUTH: 15-30-272, MCA
IMP: 15-30-266, 15-30-268, 15-30-269, MCA

4. Therefore, the department adopts New Rule I (42.17.601); II (42.17.602); III (42.17.603); and V (42.17.605) with the amendments listed above and adopts New Rule IV (42.17.604) and amends ARM 42.17.101 as proposed.

5. An electronic copy of this Adoption Notice is available through the department's site on the World Wide Web at www.mt.gov/revenue, under "for your reference"; "DOR administrative rules"; and "upcoming events and proposed rule changes." The department strives to make the electronic copy of this Adoption Notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the department strives to keep its 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.

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

/s/ Dan R. Bucks
DAN R. BUCKS
Director of Revenue

Certified to Secretary of State December 10, 2007

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 42.18.128 and 42.19.501 relating to property taxes - appraisal plan definitions and disabled veterans	))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On October 25, 2007, the department published MAR Notice No. 42-2-777 regarding the proposed amendment of the above-stated rules at page 1645 of the 2007 Montana Administrative Register, issue no. 20.

2. A public hearing was held on November 15, 2007, to consider the proposed amendment. No one appeared at the hearing to testify and no written comments were received.

3. The department amends ARM 42.18.128 and 42.19.501 as proposed.

4. An electronic copy of this Adoption Notice is available through the department's site on the World Wide Web at www.mt.gov/revenue, under "for your reference"; "DOR administrative rules"; and "upcoming events and proposed rule changes." The department strives to make the electronic copy of this Adoption Notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the department strives to keep its 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.

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

/s/ Dan R. Bucks
DAN R. BUCKS
Director of Revenue

Certified to Secretary of State December 10, 2007

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption of Rule I (42.20.804) relating to property tax refund hardship request	)))	NOTICE OF ADOPTION

TO: All Concerned Persons

1. On November 8, 2007, the department published MAR Notice No. 42-2-780 regarding the proposed adoption of the above-stated rule at page 1804 of the 2007 Montana Administrative Register, issue no. 21.

2. A public hearing was held on November 28, 2007, to consider the proposed adoption. No one appeared at the hearing to testify and no written comments were received.

3. The department adopts New Rule I (42.20.804) as proposed.

4. An electronic copy of this Adoption Notice is available through the department's site on the World Wide Web at www.mt.gov/revenue, under "for your reference"; "DOR administrative rules"; and "upcoming events and proposed rule changes." The department strives to make the electronic copy of this Adoption Notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the department strives to keep its 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.

/s/ Cleo Anderson	/s/ Dan R. Bucks
CLEO ANDERSON	DAN R. BUCKS
Rule Reviewer	Director of Revenue

Certified to Secretary of State December 10, 2007

VOLUME NO. 52 OPINION NO. 4

CORRECTIONAL FACILITIES - Authority of a multijurisdictional detention center to house inmates committed to an out-of-state correctional facility;
CORRECTIONS, DEPARTMENT OF - Authority of the department to determine whether convicted offenders from out of state may be housed at a multijurisdictional detention center;
FELONS - Authority of a multijurisdictional detention center to contract for the confinement of out-of-state felons;
LOCAL GOVERNMENT - Authority of a multijurisdictional detention center to house inmates committed to an out-of-state correctional facility;
PRISONERS - Authority of a multijurisdictional detention center to house inmates committed to an out-of-state correctional facility;
ADMINISTRATIVE RULES OF MONTANA (2007) - Rules 20.27.101 to 20.27.261; 20.28.155;
MONTANA CODE ANNOTATED - Title 53, chapter 30, parts 3, 5; Title 49, chapter 19, parts 3, 4; Title 46, chapter 19, part 3; Title 7, chapter 32, part 22; Title 7, chapter 11, part 1; sections 1-2-102, 7-32-2201, (1), (2)(b), (4), -2202(1), -2203, (1), (2), (3), (4), (5), -2206, -2234, -2241(2), (6), -2242, (1), -2243, (1), (2), (3), 46-18-201(3)(c), 46-19-402, 53-1-203, 53-30-101, -106, (2), -504, (10), -507, -603, (3), -604 to -607;
MONTANA CODE ANNOTATED (2003) - Section 53-30-603(3);
MONTANA CODE ANNOTATED (1999) - Section 53-30-503(6), -504(10);
MONTANA CODE ANNOTATED (1997) - Title 53, chapter 30, part 6; sections 53-30-504, (8), -603(2);
MONTANA CODE ANNOTATED (1995) - Title 53, chapter 30, part 5; sections 53-30-502, -503(6);
MONTANA CODE ANNOTATED (1993) - Title 53, chapter 30, part 4;
MONTANA CODE ANNOTATED (1991) - Title 53, chapter 20, part 3; section 53-30-101(2);
MONTANA CODE ANNOTATED (1989) - Title 7, chapter 11, part 1; sections 7-32-2203, (5), -2242, (1), (2), (3), -2243, (1), (2);
MONTANA CODE ANNOTATED (1987) - Section 7-32-2201;
MONTANA CODE ANNOTATED (1979) - Section 7-32-2203, -2206;
MONTANA LAWS OF 1989 - Chapter 561, section 15;
OPINIONS OF THE ATTORNEY GENERAL - 51 Op. Att'y Gen. No. 15 (2006).

HELD: A multijurisdictional detention center may contract for the confinement of out-of-state and federal inmates only for the purposes authorized by Mont. Code Ann. § 7-32-2203, which do not include confinement of adult felony and misdemeanor offenders who are committed by an out-of-state jurisdiction or the federal government. That authority has been reserved to the Department of Corrections, under narrow circumstances only, which evidences a legislative intent not to allow routine interstate exchange of inmates in and out of Montana.

December 3, 2007

Ms. Rebecca A. Convery
Hardin City Attorney
406 North Cheyenne Avenue
Hardin, MT 59034

Dear Ms. Convery:

You have requested my opinion on the following two questions:

1. Does the Montana Department of Corrections have jurisdiction to determine whether convicted offenders from out-of-state law enforcement and correctional agencies may be housed at a multijurisdictional detention center created pursuant to Mont. Code Ann. § 7-32-2201?

2. May a multijurisdictional detention center located in Montana contract for the confinement of adult felony and misdemeanor offenders who are lawfully convicted by an out-of-state jurisdiction or the federal government to confinement in a detention center located in either jurisdiction?

According to the information provided, the City of Hardin, by and through its lawfully established port authority, Two Rivers Authority, and the City of Lodge Grass, have entered into an interlocal agreement to operate a multijurisdictional detention center in Hardin. Such an agreement is authorized by Mont. Code Ann. § 7-32-2201(1). Pursuant to subsection (2)(b) of that statute, the parties have contracted with a private party to operate the detention center.

The detention center is known as the Two Rivers Detention Center (the "facility"). Construction is now complete, and the facility is ready for occupancy. The parties intend that the facility be used by the Montana Department of Corrections (the "department"), federal agencies such as the United States Border Patrol, the U.S. Marshals Service, the Bureau of Immigration and Customs Enforcement, the City of Hardin, the City of Lodge Grass, Big Horn County, and other political subdivisions of the state, as well as government units from out of state that wish to confine inmates or detainees in the facility. Your questions are presumably motivated by the intention to contract with other states, as well as the federal government, for the confinement of adult felony or misdemeanor offenders committed by another state jurisdiction or the federal government.[1] The department has opined that the facility has no authority to do so.

[1] Use of the facility to confine misdemeanor offenders sentenced to imprisonment therein is authorized in Mont. Code Ann. § 7-32-2203(4). Also, use of the facility to confine adult offenders sentenced to the state prison is also specifically authorized in Mont. Code Ann. § 7-32-2203(5). The pertinent question is whether the facility may be used to confine adult offenders who are sentenced to out-of-state correctional facilities, including federal prisons.

The answer to your questions requires consideration of the statutes governing detention centers, as well as the statutes governing other correctional facilities in Title 53, chapter 30. Detention centers are addressed in Title 7 (local government), chapter 32 (law enforcement). All other correctional facilities and programs are addressed in Title 53 (social services and institutions), chapter 30 (corrections). These include community corrections programs and facilities, boot camp, regional correctional facilities, and private correctional facilities.

I. Correctional Facilities and Programs in Title 53, Chapter 30

The state prison in Deer Lodge is the historically recognized correctional facility for adult felony offenders in Montana. Mont. Code Ann. § 53-30-101. Over the years, the Legislature has authorized additional facilities and programs as needed. For example, a state prison for adult female offenders was added in 1991. Mont. Code Ann. § 53-30-101(2) (1991). Also in 1991, the Legislature authorized the adult community corrections program in Montana Code Annotated Title 53, chapter 30, part 3. The boot camp incarceration program was added the following session. Title 53, chapter 30, part 4 (1993).

In 1995, the Legislature enacted the Regional Correctional Facility Act, presumably in response to the need for additional prison space. Mont. Code Ann. tit. 53, ch. 30, pt. 5 (1995). The purpose of the Act is to "provide a method by which the state and local governments can make the most efficient use of their powers and resources by enabling them to cooperate to fulfill their respective responsibilities of providing services and facilities for the incarceration and rehabilitation of criminal offenders at regional correctional facilities." Mont. Code Ann. § 53-30-502 (1995).

A "regional correctional facility" is defined as "a correctional facility, except the Montana state prison, the women's correctional system, or the Swan River boot camp, designed, constructed, or operated under this part by a local governmental entity or the department, or both, for the housing of convicted felons." In 1999, this definition was amended to read that a "[r]egional correctional facility means a facility for the housing of persons charged with or convicted of a criminal offense that is a joint detention center and correctional facility and that is designed, constructed, or operated under this part by a local government entity, a corporation, the department, or any combination of a local government entity, a corporation, and the department." Mont. Code Ann. § 53-30-503(6) (1999). Currently there are two regional correctional facilities in Montana, one in Great Falls and one in Glendive. In accordance with Mont. Code Ann. § 53-30-504, the department may utilize the "state correctional portion" of these facilities to house inmates sentenced to the department or its correctional facilities. The department is given rulemaking authority over regional correctional facilities, including siting of the facilities. Mont. Code Ann. § 53-30-507. In addition, the department must adopt rules governing the construction, operation, and physical condition of the state correctional portion of the facility, and must ensure that such facilities that are privately owned comply with federal and American Correctional Association (ACA) health care standards. Id.; Mont. Admin. R. 20.17.101 to 20.27.261 (2007).

When originally enacted, the Regional Correctional Facility Act did not mention out-of-state or federal inmates. In 1997, the Legislature amended section 53-30-504 (granting the department authority to contract for detention center services) to include a new subsection (8), which does mention out-of-state inmates: "A person convicted in another state may not be confined in the state portion of a regional correctional facility in this state unless the confinement is under and governed by Title 46, chapter 19, part 3 or 4 [the Interstate Compact Provisions]." This provision was subsequently amended to read:

> A regional correctional facility may house persons who are charged or convicted in this state, another state, or federal court in the detention center portion of a regional correctional facility. A person charged or convicted in another state or charged or convicted in federal court in another state may not be confined in a state correctional facility portion of a regional correctional facility in this state unless the confinement is under and governed by Title 46, chapter, 19, part 3 or 4, and the department authorizes the placement of the person in the state correctional portion of the regional correctional facility.

Mont. Code Ann. § 53-30-504(10) (1999). Thus, persons convicted in other jurisdictions may be confined in a regional correctional facility, but only under those circumstances described in Mont. Code Ann. § 53-30-504.

Also in 1997, the Legislature authorized the construction of private correctional facilities. Mont. Code Ann. tit. 53, ch. 30, pt. 6 (1997). Such facilities are designed, constructed, and licensed under strict standards set by the department. Mont. Code Ann. § 53-30-604 to -607; Mont. Admin. R. 20.28.155 (2007). When private correctional facilities were first authorized, the Legislature allowed their use for housing out-of-state inmates brought into Montana pursuant to an Interstate Compact agreement. Mont. Code Ann. § 53-30-603(2) (1997). Two years later, however, the Legislature amended Mont. Code Ann. § 53-30-603 to strictly forbid out-of-state or federal inmates in private correctional facilities. This continued until 2003, when the Legislature once again authorized the use of private correctional facilities to house out-of-state and federal inmates upon approval by the department of a written agreement between the originating jurisdiction and the private correctional facility. Mont. Code Ann. § 53-30-603(3) (2003). In all cases, however, the Legislature mandated that out-of-state and federal inmates be physically separated from Montana inmates. There is one private correctional facility in Montana: Crossroads Correctional Center in Shelby, Montana.

The department retains ultimate control over the interstate movement of inmates in all facilities described in Title 53, chapter 30. For example, the department has the authority to declare when the inmate population of a correctional institution or system has been exceeded, and to contract with other state, local, and federal authorities for the confinement of Montana inmates in that instance, or when the department has no institution that is adequate for certain inmates. Mont. Code Ann. § 53-30-106. The department is the only entity statutorily authorized to engage in

the interstate exchange of felony offenders under the Interstate Corrections Compact, Title 46, chapter 19. Mont. Code Ann. § 46-19-402. Similarly, the State of Montana is a party to the Western Interstate Corrections Compact described in Title 49, chapter 19, part 3, which allows for the movement of inmates in the western states. No other government entity or correctional facility or program described in Title 53, chapter 30, is authorized to contract to bring prisoners into this state for any purpose. Currently there are some 30 out-of-state inmates in Montana, and a comparable number of Montana felons are housed out of state under interstate compacts.

The department maintains a complex system of classification to determine the proper placement of inmates in the correctional facilities mentioned above. While the facility may make individual placement determinations within its confines (subject to any rules of segregation imposed by law, as in Mont. Code Ann. § 53-30-504(10)), the department is ultimately responsible for making placement decisions concerning Montana's inmates, taking into account the safety, security, treatment, and rehabilitation needs of the inmates, as well as facility characteristics. See Mont. Code Ann. § 53-1-203; § 46-18-201(3)(c).

II. Title 7, chapter 32, part 22: Detention Centers

As noted, a detention center is the only correctional facility in Montana that is not specifically addressed in Title 53, chapter 30. This is likely because detention centers were historically referred to as "county jails," which explains their provisions in the local government section of the Montana code. See Mont. Code Ann. § 7-32-2201 (1987). The change in terminology occurred in 1989, when the Legislature replaced the term "county jail" with "detention center." 1989 Mont. Laws, ch. 561, § 15. The 1989 amendments did not affect the general operation of these facilities, and they remain under the management and authority of the local governing body and/or the detention center administrator. See Mont. Code Ann. § 7-32-2234 (placing the immediate management and control of the facility within the authority of the administrator, who is hired by the county); accord, Mont. Code Ann. § 7-32-2201(4) (granting the board of county commissioners jurisdiction and power to cause a detention center to be erected, furnished, maintained, and operated).

A "detention center" is defined as a facility established and maintained by an appropriate entity for the purpose of confining arrested persons or persons sentenced to the detention center. Mont. Code Ann. § 7-32-2241(2). Similarly, a "multijurisdictional detention center" is defined as a facility established and maintained by two or more local governments for the confinement of persons arrested or sentenced to confinement or a local detention center contracting to confine persons arrested or sentenced in other local governments. Mont. Code Ann. § 7-32-2241(6). The latter situation would occur, for example, when a contiguous county has no detention center, in which case the Legislature has authorized the use of a detention center in a contiguous county for the confinement of inmates. Mont. Code Ann. § 7-32-2202(1).

County jails and detention centers were historically used on a short-term basis to detain or confine (1) persons committed in order to secure their attendance as witnesses at trial; (2) persons charged with a crime and committed for trial; (3) persons committed for contempt or upon civil process; or (4) persons sentenced to imprisonment therein upon conviction of a crime (misdemeanor offenders). Mont. Code Ann. § 7-32-2203 (1979). In 1989, the Legislature amended section 7-32-2203 to expand use of a detention center "for the confinement of persons sentenced to the state prison, as agreed upon by the state and the administrator in charge of the detention center." Mont. Code Ann. § 7-32-2203(5) (1989). This was the first time the Legislature authorized use of a detention center for longer term confinement of felons. While Mont. Code Ann. § 7-32-2206 (1979) authorized the confinement of federal prisoners and assigned costs to the federal agency, that statute does not purport to supersede Mont. Code Ann. § 7-32-2203, limiting the use of the facility for short-term purposes.

In any event, the Legislature repealed Mont. Code Ann. § 7-32-2206 in 1989 and enacted Mont. Code Ann. § 7-32-2242 to address the payment of costs by users of the facility. Subsection (1) of Mont. Code Ann. § 7-32-2242 provides that when the detention center is utilized by other local state or federal agencies "for the confinement of arrested persons and the punishment of offenders," payment of the cost for those services is set forth in Mont. Code Ann. § 7-32-2242. Subsection (2) places the primary responsibility for costs on "the arresting agency." There is no mention of costs for the confinement of out-of-state felons. The only reference to persons from out-of-state appears in subsection (3), which addresses "fugitives from justice from an out-of-state jurisdiction." In that circumstance, the expense of holding the person in a detention center "pending extradition" must be paid by the out-of-state jurisdiction.

Also in 1989, the Legislature enacted Mont. Code Ann. § 7-32-2243, which requires that all contracts for detention services between state or local government units, the state of Montana, or the federal government are to be made pursuant to the Interlocal Cooperation Act, Title 7, chapter 11, part 1. Mont. Code Ann. § 7-32-2243(1). Subsection (2) of that statute authorizes a government unit responsible for the detention center (in this case, the Two Rivers Authority), to contract with a government unit of another state for the confinement of lawfully committed inmates in a detention center located in either jurisdiction. While subsection (2) appears to allow the housing of lawfully committed felons from other jurisdictions, I note that out-of-state felons are not among those persons listed in § 7-32-2203 who may be confined in a detention center.

Currently, the list of persons who may be confined in the detention center is found in Mont. Code Ann. § 7-32-2203:

> **Who may be confined in a detention center.** Detention centers are used as follows:
>
> (1) for the detention of persons committed in order to secure their attendance as witnesses in criminal trials;

(2) for the detention of persons charged with crime and committed for trial;

(3) for the confinement of persons committed for contempt or upon civil process or by other authority of law;

(4) for the confinement of persons sentenced to imprisonment therein upon conviction of a crime;

(5) for the confinement of persons sentenced to the state prison, as agreed upon by the state and the administrator in charge of the detention center.

Notably absent from this list is the use of a detention center to confine persons committed to imprisonment in another jurisdiction for the purpose of serving their sentences imposed in that other jurisdiction. While subsections (1), (2), and (3) could apply to persons from out of state, the commitment would be only for the purposes described therein (e.g., securing the person's attendance as a witness in a criminal trial; detaining persons charged with a crime and committed for trial; or confining persons committed for contempt). This is consistent with the cost provisions in Mont. Code Ann. § 7-32-2242, which place the responsibility for payment on the "arresting agency."

Subsection (4) of Mont. Code Ann. § 7-32-2203 clearly addresses those persons directly committed to the facility, i.e., misdemeanor offenders, and would not include out-of-state convicted felons. Subsection (5) authorizes the confinement of persons sentenced to the state prison, meaning the Montana state prison as that term is defined in Mont. Code Ann. § 53-30-101, supra. It does not authorize use of the facility for adult offenders sentenced to confinement in other states.

III. Discussion

In response to your first question, these statutes make clear that the department has no "jurisdiction" over the establishment, operation, or maintenance of a facility such as the Two Rivers Detention Center. The department's only connection to the facility is by way of Mont. Code Ann. § 53-30-106(2), which allows the department to contract with the commissioners of counties that have suitable detention centers, and Mont. Code Ann. § 7-32-2203(5), which authorizes use of the facility "for the confinement of persons sentenced to the state prison, as agreed upon by the state and the administrator in charge of the detention center."

That said, however, I believe that the answer to your ultimate question--whether the facility may house out-of-state or federal adult felony offenders--does not depend on the department's jurisdiction, but rather, on the intent of the Legislature relative to Montana's overall correctional scheme, as evidenced in the history of the relevant statutes.

Prior to 1989, the only correctional facility available for the long-term confinement of adult felony offenders was the state prison in Deer Lodge. There was no interstate movement of inmates unless prison population was exceeded, or an interstate

compact was negotiated. As prison population expanded, the Legislature authorized additional facilities for convicted felons within the state, including regional and private correctional facilities. As the above statutes demonstrate, the commingling of Montana and out-of-state or federal prisoners in these facilities is strictly regulated, with ultimate oversight by the department.

While the state prison housed felons, the county jails housed misdemeanor offenders and other persons on a short-term basis as set forth in Mont. Code Ann. § 7-32-2203. The statutes also allowed use of a county jail facility for federal prisoners, with costs to be borne by the federal government, but presumably only for the purposes outlined in Mont. Code Ann. § 7-32-2203. There is no indication that the Legislature intended county jails for anything but short-term confinement of offenders or other persons described in Mont. Code Ann. § 7-32-2203.

In 1989, the Legislature adopted Senate Bill 452, which expanded the traditional uses of a county jail (renamed a detention center) to include the confinement of persons sentenced to the state prison. Mont. Code Ann. § 7-32-2203(5). This was the first time the Legislature authorized the long-term confinement of convicted felons in a facility other than the state prison, presumably because the need was there. There was no mention in the hearings on Senate Bill 452 of expanding use of a county jail to include long-term confinement of out-of-state or federally convicted felons. Clearly the Legislature was concerned with providing space for Montana's inmates, not bringing in a new population of out-of-state offenders.

While the Legislature added two provisions in 1989 that mention use of detention centers by other government entities, including local, state, and federal law enforcement and correctional agencies, the clear intent of Mont. Code Ann. § 7-32-2242 is to address the payment of costs for persons housed from other jurisdictions. Similarly, the clear intent of § 7-32-2243(1) is to require that contracts between these entities comply with the Interlocal Cooperation Act. There is no indication that the Legislature was significantly expanding the traditional use of county jail/detention centers to include long-term confinement of out-of-state or federal felons when it assigned costs or contract obligations. Although subsection (2) of Mont. Code Ann. § 7-32-2243 authorizes a detention center "to contract with a government unit of another state for the confinement of lawfully committed inmates," the meaning of this subsection is ambiguous given the restricted uses of the facility in Mont. Code Ann. § 7-32-2203. Generally, the plain and unambiguous language of a statute controls. Stop Over Spending Montana v. State, 2006 MT 178, ¶ 62, 333 Mont. 42, 139 P.3d 788. While the plain language of § 7-32-2243(2) grants contracting authority, the extent of that authority is unclear, particularly in light of § 7-32-2203. Given this ambiguity, it is appropriate to consider legislative intent and other means of statutory construction. Id.

The rules of statutory construction dictate that specific statutory provisions control over more general statutes, and that the Legislature is presumed not to pass meaningless legislation. See Montanans for Equal Application of Initiative Laws v. State ex rel. Johnson, 2007 MT 75, ¶ 74, 336 Mont. 450, 154 P.3d 1202; Oster v.

Valley County, 2006 MT 180, ¶ 17, 336 Mont. 76, 140 P.3d 1079. In this case, Mont. Code Ann. § 7-32-2203 is the more specific statute, since it deals particularly with the question of what inmates may be housed in a detention center, compared to the more general discussion in § 7-32-2243(2) of contracts. The specifications in § 7-32-2243 would be rendered meaningless if local governments were free to add new categories of allowable prisoners at will.

In the construction of a statute, the intent of the Legislature must be pursued, if at all possible. 51 Op. Att'y Gen. No. 15 (2006), citing Mont. Code Ann. § 1-2-102. Therefore, while the language of Mont. Code Ann. § 7-32-2243 allows a government unit responsible for a detention center to "contract with a government unit of another state for the confinement of lawfully committed inmates in a detention center located in either jurisdiction," that statute must be read in conjunction with Mont. Code Ann. § 7-32-2203, and also with the overall intent of the Legislature regarding Montana's correctional system. Section 7-32-2203 of the Montana Code Annotated specifies who may be confined in a detention center, and does not authorize the long-term confinement of out-of-state or federal inmates for purposes of serving a felony sentence imposed in another jurisdiction. The rules of statutory construction require that statute relating to the same subject matter be harmonized, as there is a presumption that the Legislature would not have passed legislation that has no meaning or purpose. Oster v. Valley County, supra, 2006 MT 180, ¶ 17.

In summary, there is nothing granting independent authority to a detention center to contract freely with out-of-state or federal authorities for long-term confinement of inmates convicted in other jurisdictions. The Legislature clearly intended to limit the authority of any correctional facility or governmental entity, other than the state through the Department of Corrections, to contract for the placement of Montana inmates out-of-state, or to receive offenders from other jurisdictions. This is evidenced by the interstate corrections compact provisions, the restrictions on placement of out-of-state inmates in regional and private correctional facilities, and the department's exclusive role in determining when inmate capacity is exceeded and how best to deal with that problem.

The fact that detention centers are governed by provisions in Title 7, pertaining to local government, as opposed to Title 53, does not grant the facility absolute autonomy over decisions relating to inmate population. Rather, that fact simply reflects the historical use of these facilities as county jails. The statutorily authorized uses in Mont. Code Ann. § 7-32-2203 are consistent with those of a "county jail," and nothing therein allows the facility to house out-of-state inmates. When the Legislature added subsection (5) in 1989 to allow Montana convicted felons into these facilities for the first time, there was no discussion of expanding traditional uses to include out-of-state and federally convicted felons. Such a change would completely transform the nature of the facility from a county jail to a regional correctional facility, without any of the restrictions imposed on those facilities. Had the Legislature intended such a result, it presumably would have addressed the issue of out-of-state inmate populations mixing with Montana inmates, as it did with regional correctional facilities. Moreover, if the facility enjoyed the level of autonomy

you describe, it could feasibly fill to capacity with out-of-state offenders and no longer be available to the department for placement of Montana offenders pursuant to Mont. Code Ann. § 53-30-106.

In short, convicted felons enter Montana to serve sentences imposed in other jurisdictions in only two ways: (1) when the department has approved the exchange under the Interstate Corrections Compact or the Western States Interstate Compact, or (2) by written agreement between a private correctional facility and the originating jurisdiction, and approved by the department. Inmates leave Montana only when the capacity of Montana's correctional facilities have been exceeded, or when the services are inadequate for an inmate's particular needs (i.e., when the inmate needs medical attention that Montana cannot provide), and the department contracts with other jurisdictions to provide those services. The Legislature has not authorized any facility or other unit of government to engage in the interstate transport of convicted felons, for the reasons discussed above.

Thus, the only federal or out-of-state inmates allowed by Mont. Code Ann. § 7-32-2203 would be those whose confinement is authorized by subsections (1) to (3) (persons committed in order to secure their attendance as witnesses in criminal trial; persons charged with crime and committed for trial; and persons committed for contempt or upon civil process or by other authority of law). The duration of these confinements would presumably be short-term, which is consistent with the nature and function of a county jail or local detention facility, and would not breach the Legislature's overall intent, or the statutory restrictions on the long-term confinement of out-of-state inmates in Montana.

THEREFORE, IT IS MY OPINION:

> A multijurisdictional detention center may contract for the confinement of out-of-state and federal inmates only for the purposes authorized by Mont. Code Ann. § 7-32-2203, which do not include confinement of adult felony and misdemeanor offenders who are committed by an out-of-state jurisdiction or the federal government. That authority has been reserved to the Department of Corrections, under narrow circumstances only, which evidences a legislative intent not to allow routine interstate exchange of inmates in and out of Montana.

Very truly yours,

/s/ Mike McGrath
MIKE MCGRATH
Attorney General

mm/jma/jym

NOTICE OF FUNCTION OF ADMINISTRATIVE RULE REVIEW COMMITTEE

Interim Committees and the Environmental Quality Council

Administrative rule review is a function of interim committees and the Environmental Quality Council (EQC). These interim committees and the EQC have administrative rule review, program evaluation, and monitoring functions for the following executive branch agencies and the entities attached to agencies for administrative purposes.

Economic Affairs Interim Committee:

- Department of Agriculture;
- Department of Commerce;
- Department of Labor and Industry;
- Department of Livestock;
- Office of the State Auditor and Insurance Commissioner; and
- Office of Economic Development.

Education and Local Government Interim Committee:

- State Board of Education;
- Board of Public Education;
- Board of Regents of Higher Education; and
- Office of Public Instruction.

Children, Families, Health, and Human Services Interim Committee:

- Department of Public Health and Human Services.

Law and Justice Interim Committee:

- Department of Corrections; and
- Department of Justice.

Energy and Telecommunications Interim Committee:

- Department of Public Service Regulation.

Revenue and Transportation Interim Committee:

- Department of Revenue; and
- Department of Transportation.

State Administration and Veterans' Affairs Interim Committee:

- Department of Administration;
- Department of Military Affairs; and
- Office of the Secretary of State.

Environmental Quality Council:

- Department of Environmental Quality;
- Department of Fish, Wildlife, and Parks; and
- Department of Natural Resources and Conservation.

These interim committees and the EQC have the authority to make recommendations to an agency regarding the adoption, amendment, or repeal of a rule or to request that the agency prepare a statement of the estimated economic impact of a proposal. They also may poll the members of the Legislature to determine if a proposed rule is consistent with the intent of the Legislature or, during a legislative session, introduce a bill repealing a rule, or directing an agency to adopt or amend a rule, or a Joint Resolution recommending that an agency adopt, amend, or repeal a rule.

The interim committees and the EQC welcome comments and invite members of the public to appear before them or to send written statements in order to bring to their attention any difficulties with the existing or proposed rules. The mailing address is 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.
   Update the rule by checking the accumulative table and the table of contents in the last Montana Administrative Register issued.

Statute

2. Go to cross reference table at end of each number and title which lists MCA section numbers and department corresponding ARM rule numbers.

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through September 30, 2007. This table includes those rules adopted during the period September 1, 2007, through December 31, 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 September 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.

To aid the user, the Accumulative Table includes rulemaking actions of such entities as boards and commissions listed separately under their appropriate title number.

GENERAL PROVISIONS, Title 1

1.2.419	Scheduled Dates for the 2008 Montana Administrative Register, p. 1310, 1682

ADMINISTRATION, Department of, Title 2

I	Examination Fees for Business and Industrial Development Corporations, p. 1500, 1932
2.4.202	and other rule - Minimum Refunds - State's Volume Cap Allocation, p. 1351
2.4.401	and other rule - Single Audit Act, p. 552, 964
2.5.120	and other rules - Procurement of Supplies and Services - Surplus Property, p. 1116, 1657
2.6.101	Insurance Requirements, p. 1130
2.59.104	Semiannual Assessment of Banks, p. 1493, 1926
2.59.301	and other rules - Regulation of Consumer Loan Licensees - Notification to the Department - Examinations, Suspension, and Revocation of Licenses - Protection of Confidential Borrower Information - Application Procedure Required to Engage in Consumer Lending, Default, and Accrual of Interest or Amortization of Net Fees or Costs, p. 1353
2.59.401	Credit Union Supervisory and Examination Fees, p. 1496, 1928

2.59.1401 and other rules - Regulation of Title Lenders - Notification to the Department - Rescinded Loans - Examinations, Suspension, and Revocation of Licenses - Protection of Confidential Borrower Information - Department's Cost of Administrative Action - Policy to Implement Limitations on Terms of Credit to Servicemembers and Dependents - Examination Fees - Required Record Keeping - Accrual of Interest - Unlicensed Activity - Title Loan Designation, p. 1377

2.59.1501 and other rules - Regulation of Deferred Deposit Lenders - Affidavit of Borrower - Rescinded Loans - Examinations, Suspension, and Revocation of Licenses - Protection of Confidential Borrower Information - Department's Cost of Administrative Action - Policy to Implement Limitations on Terms of Credit to Servicemembers and Dependents - Examination Fees, p. 1387

2.59.1701 and other rules - Licensing and Regulation of Mortgage Brokers and Loan Originators - Continuing Education - Prelicensing Examination - Fees, Nontraditional Mortgage Products - Designated Managers - Yield Spread Premium - Examinations - Failure to Correct Deficiencies - Protection of Confidential Borrower Information - Grounds for Denial of Applications - Requirements for Renewal Applications - Department's Cost of Administrative Action, p. 1360

(Public Employees' Retirement Board)

2.43.441 Purchase of Service Credit Through Trustee-to-Trustee Fund Transfers, p. 1841

2.43.1002 and other rule - Investment Policy Statement for the Defined Contribution Retirement Plan - Investment Policy Statement for the 457 Deferred Compensation Plan, p. 320, 677

(Teachers' Retirement Board)

2.44.301A and other rules - Definitions - Optional Retirement Program - Calculating Service Credits - Corrections of Errors, Family Law Orders - Withholding of Insurance Premium from Retirement Benefit, p. 1132

2.44.308 and other rules - Independent Contractors - Calculating Service Credits - Termination Pay - Earned Compensation - Benefit Adjustments, p. 1558

(State Compensation Insurance Fund)

2.55.320 Classifications of Employments, p. 1566

(State Lottery Commission)

2.63.1201 and other rule - State Lottery's Procedures Pertaining to Prizes and Sales Incentives, p. 1569, 2009

2.63.1201 and other rule - State Lottery's Procedures Pertaining to Prizes and Sales Incentives, p. 1139

AGRICULTURE, Department of, Title 4

4.12.1410 and other rules - Virus-indexing Program, p. 1247, 1811
4.17.102 and other rules - Organic Certification Program, p. 990

STATE AUDITOR, Title 6

I-VI Permitting the Recognition of Preferred Mortality Tables for Use in Determining Minimum Reserve Liabilities, p. 1844
I-IX Military Sales Practices, p. 902, 1180
I-XII Funeral Insurance Rules, p. 1718

COMMERCE, Department of, Title 8

I Administration of the 2008-2009 Federal Community Development Block Grant (CDBG) Program, p. 1850
I Submission and Review of Applications to the Treasure State Endowment Program (TSEP), p. 1853
8.99.401 and other rules - Microbusinesses, p. 1730
8.99.803 Grant Review Committee - Submission and Review of Applications for Workforce Training Grants, p. 740, 1314
8.99.901 and other rules - Award of Grants and Loans Under the Big Sky Economic Development Program, p. 1981

(Board of Housing)
I-III Board of Housing - Low Income Housing Tax Credit Program, p. 1061, 1543
8.111.501 and other rules - Housing Loans, p. 1855

EDUCATION, Title 10

(Superintendent of Public Instruction)
10.16.3007 and other rules - Access to Instructional Materials - Procedural Safeguards - Special Education Data Collection and Reporting - Resolution Process - Expedited Due Process Hearing Resolution Process - Response to Scientific, Research Based Intervention in Learning Disability Identification - Severe Discrepancy in Learning Disability Identification - Documentation Requirements in Learning Disability Identification - Extended School Year Services - Special Education, p. 220, 678

(Board of Public Education)
10.55.602 and other rules - Accreditation Standards, p. 169, 692

(Montana State Library)
10.102.8101 and other rule - Depository Procedures for State Documents, p. 1065, 1396, 1661

FISH, WILDLIFE, AND PARKS, Department of, Title 12

I Purchase of Duplicate Licenses, p. 912, 1024
12.3.403 Replacement Licenses, p. 995, 1323
12.6.1601 and other rules - Game Bird Farms - Possession of Captive-Reared Game Birds - Field Trial Permits, p. 743, 1025

(Fish, Wildlife, and Parks Commission)
I Notice of Adoption of a Temporary Emergency Rule - Closing a Portion of Rock Creek in Granite and Missoula Counties, p. 1320
I Notice of Adoption of a Temporary Emergency Rule - Closing Placid Lake and Seeley Lake, Missoula County, MT, p. 1183, 1315, 1318
I Notice of Adoption of a Temporary Emergency Rule - Closing Lake Inez, Missoula County, MT, p. 1185, 1319
I Notice of Adoption of a Temporary Emergency Rule - Closing the Missouri River From American Bar Gulch to Beartooth Landing, Lewis and Clark County, MT, p. 1094, 1182
12.3.185 Adding Three New Species to the Annual Lottery of Hunting Licenses, p. 565, 965
12.6.401 Time Zones, p. 1142, 1662
12.6.2203 and other rules - Exotic Species, p. 560, 632, 1187
12.9.1105 Hunting Season Extensions, p. 750, 1442
12.11.3205 No Wake Zone at White Sandy Recreation Area on Hauser Lake, p. 326, 776

ENVIRONMENTAL QUALITY, Department of, Title 17

17.56.101 and other rules - Underground Storage Tanks - Management of Underground Storage Tanks - Incorporation by Reference - Assessment of Administrative Penalties, p. 915, 1189, 1667
17.56.502 and other rules - Underground Storage Tanks - Reporting and Numbering Petroleum Releases, p. 1743
17.74.401 and other rules - Asbestos - Asbestos Control Program Fees, p. 942, 1933

(Board of Environmental Review)
17.8.102 and other rules - Air Quality - Incorporation by Reference of Current Federal Regulations and Other Materials into Air Quality Rules, p. 800, 1663
17.8.501 and other rules - Air Quality - Definitions - Air Quality Operation Fees - Open Burning Fees, p. 795, 1664
17.30.617 and other rule - Water Quality - Outstanding Resource Water Designation for the Gallatin River, p. 2294, 328, 1398
17.38.101 and other rule - Public Water and Sewage Systems - Plans for Public Water Supply or Wastewater System - Fees, p. 1067, 1666

TRANSPORTATION, Department of, Title 18

18.4.110 and other rules - Acceptance and Use of Electronic Records and Electronic Signatures, p. 998, 1445

CORRECTIONS, Department of, Title 20

I-VI Security and Confidentiality of Youth Records, p. 1144
20.7.1101 and other rule - Conditions on Probation or Parole, p. 1984

JUSTICE, Department of, Title 23

(Gambling Control Division)
23.16.102 and other rules - Effective Date of Forms - Removal of Form 1 from the Rules - Application Time Limit for Utilizing an Approved Automated Accounting and Reporting System as Part of a Vending Agreement, p. 1572, 1859, 2010
23.16.209 and other rules - Possession and Display of Antique Slot Machines - Approved Accounting and Reporting System Availability Date - General Specifications of Approved Automated Accounting and Reporting Systems, p. 1149, 1544
23.16.209 and other rules - Display of Antique Illegal Gambling Devices - Dealer License Application Process - Temporary Dealer Licenses - Possession of Dealer License - Card Game Tournament Rules - Card Dealer Restrictions - House Player Restrictions - Rake Restrictions - Casino Night Requirements, p. 567, 848, 966

LABOR AND INDUSTRY, Department of, Title 24

Boards under the Business Standards Division are listed in alphabetical order following the department rules.

I Insurer Reporting Requirements, p. 337, 697
I-III Medical Benefits Payable by the Uninsured Employers Fund, p. 1077, 1446
24.7.201 and other rules - Board of Labor Appeals - Procedural Rules, p. 813, 1325
24.11.445 and other rules - Unemployment Insurance Matters, p. 1258, 1669
24.17.127 Prevailing Wage Rates for Public Works Projects - Building Construction Services - Heavy and Highway Construction Services - Nonconstruction Services, p. 404, 851, 968
24.29.207 and other rules - Workers' Compensation Medical Fee Schedule for Nonfacilities - Workers' Compensation Medical Treatment and Utilization Guidelines for Occupational Therapists, Physical Therapists, and Chiropractors - Other Matters Related to Workers' Compensation Claims, p. 1265, 1670

24.29.1416 and other rule - Allowable Charges for Prescription Drugs Under a Workers' Compensation Claim, p. 753, 1192
24.29.1529 Allowable Charges for Prescription Drugs Under a Workers' Compensation Claim, p. 1581, 2011
24.29.1529 Allowable Charges for Prescription Drugs Under a Workers' Compensation Claim, p. 1152, 1676
24.29.4315 Insurer Reporting Requirements, p. 633, 1028
24.30.102 Occupational Safety Matters in Public Sector Employment, p. 823, 1097

(Board of Barbers and Cosmetologists)
24.121.301 and other rules - Definitions - Premises and General Requirements - Applications for Licensure - School-Facility and Operation - Teacher-Training Curriculum - Salons/Booth Rental - Sanitary Standards - Unprofessional Conduct - Anonymous Complaints - Disinfecting Agents - Blood Spills, p. 1502
24.121.407 and other rule - Premises and General Requirements - Restrooms, p. 4, 859

(Board of Clinical Laboratory Science Practitioners)
24.129.401 and other rules - Fees - Supervision - Standards for Licensure - Unprofessional Conduct - Inspections - Notification, p. 1584

(Board of Dentistry)
24.138.403 and other rules - Mandatory Certification - Initial Licensure of Dentists by Examination - Initial Licensure of Hygienists by Examination - Dentist Licensure by Credentials - Dental Hygienist Licensure by Credentials - Dentist Licensure by Credentials for Specialists - Dental Hygiene Local Anesthetic Agent Certification -Denturist Application Requirements - Application to Convert an Inactive Status License to an Active Status License - Renewals - Reactivation of an Expired License - Licensure of Retired or Nonpracticing Dentist or Dental Hygienist for Volunteer Service - Reactivation of a Lapsed License, p. 1004, 1812

(Board of Medical Examiners)
24.156.1306 Professional Conduct - Standards of Professional Practice, p. 1751
24.156.2701 and other rules - Definitions - Unprofessional Conduct - EMT License Application - Equivalent Education - License Renewal - Fees - EMT Training Program/Course Application and Approval - Examinations - EMT Levels of Licensure - EMT Course Requirements - EMT Clinical Requirements - Revision of Curriculum and Statewide Protocols - Scope of Practice, p. 1081, 1813

(Board of Occupational Therapy Practice)
24.165.404 and other rules - Applications - Supervision - Instruction - Training - Modalities - Unprofessional Conduct, p. 757, 1450

(Board of Pharmacy)

24.174.301 and other rules - Definitions - Internship - Fee Schedules - Examination - Transfer - Vaccines - Collaborative Practice - Preceptor Requirements - General Licensure - Ownership - Ambulatory Facilities - Wholesale Licensing - Pharmacy Closure - Change in Location - Change in Ownership - Medical Gas - Foreign Interns - Technicians - Centralized Prescription and Drug Orders - Central Filling by Hub Pharmacies, p. 636, 1936

(Board of Plumbers)

24.180.401 Fee Schedule, p. 498, 970, 1029

(Board of Professional Engineers and Professional Land Surveyors)

24.101.413 and other rules - Renewal Dates - Fees - Applications - Application Disposal -Examination Procedures - Grant and Issue Licenses - Inactive Status - Teaching Engineering Subjects - Certificate of Authorization, p. 762, 1327

(Board of Psychologists)

24.189.401 and other rule - Fees - Minimum Standards, p. 771, 1337

(Board of Radiologic Technologists)

24.204.401 and other rules - Fees - Permit Fees - Applications - Examinations, p. 1754

(Board of Realty Regulation)

24.101.413 and other rules - Renewal Dates and Requirements - Definitions - General Provisions - Brokers and Salespersons - Property Management - Inactive Status - Continuing Education - Application of Rules - Investigations Committee - Application for Examination - Nonresident License - Application for Examination, p. 407, 1329

24.210.401 and other rules - Fees - Unprofessional Conduct - Continuing Education - Timeshare Course - Timeshare Exam - Timeshare Renewal - Fee Schedule, p. 947, 1815

(Board of Respiratory Care Practitioners)

24.101.413 and other rules - Renewal Dates and Requirements - Fee Schedule - Application for Licensure - Renewals - Inactive Status - Continuing Education Requirements - Traditional Education by Nonsponsored Organizations - Waiver of Continuing Education Requirement - Temporary Permit, p. 574, 1447

(Board of Sanitarians)

24.216.402 and other rules - Fee Schedule - Minimum Standards for Licensure - Examination, p. 953, 1817

LIVESTOCK, Department of, Title 32

32.2.403 Diagnostic Laboratory Fees, p. 1285, 1678
32.18.101 Hot Iron Brands, p. 1294, 1679

(Board of Horse Racing)
32.28.709 and other rules - Horse Racing, p. 1861

MILITARY AFFAIRS, Department of, Title 34

I-VIII Montana Military Family Relief Fund, p. 1870
I-XV Montana Military Family Relief Fund, p. 1157
34.7.101 and other rules - Reimbursement for Life Insurance Premiums Paid by Montana Reserve Component Service Members Serving Outside Montana in a Contingency Operation, p. 1864
34.7.102 and other rules - Eligibility - Limitations on Reimbursement - Application for Reimbursement - Termination Date; Further Appropriation Required Pertaining to Military Life Insurance Reimbursement - Termination Date - United States Assumes Payment of Premiums or Increases Death Gratuity Pertaining to Military Life Insurance Reimbursement, p. 1154

NATURAL RESOURCES AND CONSERVATION, Department of, Title 36

36.12.101 and other rules - Definitions - Filing Fee Refunds - Objection to Application, p. 1527
36.12.101 and other rule - Definitions - Basin Closure Area Exceptions and Compliance, p. 1164
36.12.101 and other rule - Definitions - Reservoir Standards, p. 456, 774, 1098

PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

I-IX Awarding Grants to Carry Out the Purposes of the Montana Community Health Center Support Act, p. 1990
37.8.102 and other rules - Vital Statistics, p. 1768
37.12.401 Laboratory Testing Fees, p. 581, 973
37.30.404 and other rule - Vocational Rehabilitation Program Financial Need Standards and Payment for Services, p. 458, 860
37.30.730 Vocational Rehabilitation Program Provider Fees, p. 1588, 2012
37.40.307 and other rules - Medicaid Nursing Facility Reimbursement, p. 826, 1100
37.57.301 and other rules - Newborn Screening Tests and Eye Treatment, p. 1790
37.70.305 and other rules - Low Income Energy Assistance Program (LIEAP) - Low Income Weatherization Assistance Program (LIWAP), p. 584, 974

37.70.401 and other rules - Low Income Energy Assistance Program (LIEAP) - Low Income Weatherization Assistance Program (LIWAP), p. 1532, 1948
37.78.102 and other rules - Temporary Assistance for Needy Families (TANF), p. 1296, 1818
37.78.102 and other rules - Temporary Assistance for Needy Families (TANF), p. 597, 976
37.79.102 and other rules - Children's Health Insurance Program (CHIP), p. 1591
37.80.101 and other rules - Child Care Assistance Program, p. 1758
37.82.101 Medicaid Eligibility, p. 1619
37.82.435 Medicaid Real Property Liens, p. 1608
37.85.207 and other rules - Inpatient Hospital, Outpatient Hospital, and Rural Health Clinic (RHC) Services, p. 957, 1680
37.85.212 Resource Based Relative Value Scale (RBRVS), p. 462, 1339
37.86.702 and other rules - Audiology Services - Dental - Outpatient Drug Services - Home Infusion Therapy - Durable Medical Equipment and Medical Supplies - Optometric Services - EPSDT - Transportation - Ambulance Services, p. 1400, 1824
37.86.1101 and other rule - Medicaid Reimbursement for Dispensing Fees and Outpatient Compound Prescriptions, p. 1611
37.86.1801 and other rules - Durable Medical Equipment - Medical Supplies, p. 1633
37.86.3607 Case Management Services for Persons With Developmental Disabilities, Reimbursement, p. 1015, 1681
37.86.3701 and other rules - Case Management Services for Youth With Serious Emotional Disturbance, p. 660, 1197
37.86.5201 and other rules - Disease Management Program, p. 656, 978

PUBLIC SERVICE REGULATION, Department of, Title 38

38.2.5001 and other rules - Protective Orders - Protection of Confidential Information, p. 833
38.5.1902 Cogeneration and Small Power Production, p. 1020
38.5.2202 and other rule - Pipeline Safety, p. 1642
38.5.8301 and other rule - Renewable Energy Standards for Public Utilities and Electricity Suppliers, p. 1798

REVENUE, Department of, Title 42

I Property Tax Refund Hardship Request, p. 1804
I & II Tax Year 2007 Property Tax Credit, p. 1807
I & II Taxpayer Qualifications for the 2006 Property Tax Refund, p. 845, 1101
I-III Property Tax Incentives for New Investment, Development Research, and Technology Related to Renewable Energy, p. 1878
I-IV Biodiesel and Biolubricant Tax Credit, p. 1892
42.2.304 and other rules - General Department Rules, p. 2000

42.4.118 and other rules - Alternative Energy Tax Credits, p. 1913
42.4.502 Capital Gain Credit, p. 1896
42.4.1603 and other rule - New and Expanded Industry Credits, p. 1889
42.4.2701 and other rule - Qualified Endowment, p. 1885
42.4.3102 and other rule - Contractor's Gross Receipts Taxes, p. 1883
42.4.3301 and other rules - Movie, Television, and Related Media Tax Credits, p. 1919
42.15.108 and other rules - Individual Income Taxes, p. 1905
42.17.101 and other rules - Mineral Royalty Backup Withholding, p. 1647
42.17.105 and other rules - Estimated Tax Payments, p. 1900
42.18.128 and other rule - Property Taxes - Appraisal Plan Definitions and Disabled Veterans, p. 1645
42.21.113 and other rules - Personal, Industrial, and Centrally Assessed Property Taxes, p. 1412, 1826
42.31.501 Telecommunications License and Telecommunications Excise Tax, p. 1655

SECRETARY OF STATE, Office of, Title 44

1.2.419 Scheduled Dates for the 2008 Montana Administrative Register, p. 1310, 1682
44.2.101 and other rules - Commissioning of Notaries Public, p. 1923
44.14.301 and other rules - Records and Information Management Fees, p. 1175, 1685

(Commissioner of Political Practices)
44.10.331 Limitations on Receipts from Political Committees to Legislative Candidates, p. 1172, 1684

BOARD AND COUNCIL APPOINTEES FROM NOVEMBER 2007

Appointee	Appointed by	Succeeds	Appointment/End Date
9-1-1 Advisory Council (Administration)			
Ms. Joanna Hamilton Hamilton Qualifications (if required): Ravalli County 9-1-1	Director	not listed	11/15/2007 0/0/0
American Indian Monument and Tribal Flag Circle Advisory Council (Historical Society)			
Ms. Jennifer Perez Cole Helena Qualifications (if required): Coordinator of Indian Affairs	Governor	Robinson	11/1/2007 0/0/0
Board of Banking (Administration)			
Ms. Evelyn Casterline Vida Qualifications (if required): public representative	Governor	reappointed	11/6/2007 7/1/2010
Mr. Mark Huber Helena Qualifications (if required): national bank officer of a medium size bank	Governor	reappointed	11/6/2007 7/1/2010
Board of Horse Racing (Livestock)			
Mr. Ray "Topper" Tracy Stevensville Qualifications (if required): industry representative	Governor	Tooke	11/14/2007 1/20/2010
Capital Finance Advisory Council (Administration)			
Mr. Stephen M. Barrett Bozeman Qualifications (if required): Board of Regents representative	Governor	Semmons	11/22/2007 11/22/2009

BOARD AND COUNCIL APPOINTEES FROM NOVEMBER 2007

Appointee	Appointed by	Succeeds	Appointment/End Date
Capital Finance Advisory Council (Administration) cont.			
Ms. Teresa Cohea	Governor	Fagg	11/22/2007
Helena			11/22/2009
Qualifications (if required): Board of Investments representative			
Mr. J.P. Crowley	Governor	reappointed	11/22/2007
Helena			11/22/2009
Qualifications (if required): Board of Housing representative			
Rep. David Ewer	Governor	reappointed	11/22/2007
Helena			11/22/2009
Qualifications (if required): Budget Director			
Secretary Brad Johnson	Governor	reappointed	11/22/2007
Helena			11/22/2009
Qualifications (if required): Secretary of State			
Mr. Bill Kearns	Governor	reappointed	11/22/2007
Townsend			11/22/2009
Qualifications (if required): Facility Finance Authority representative			
Director Janet Kelly	Governor	reappointed	11/22/2007
Helena			11/22/2009
Qualifications (if required): Department of Administration Director			
Sen. Rick Laible	Governor	reappointed	11/22/2007
Victor			11/22/2009
Qualifications (if required): Legislator			

BOARD AND COUNCIL APPOINTEES FROM NOVEMBER 2007

Appointee	Appointed by	Succeeds	Appointment/End Date
Capital Finance Advisory Council (Administration) cont.			
Director Jim Lynch	Governor	reappointed	11/22/2007
Helena			11/22/2009
Qualifications (if required): Department of Transportation Director			
Attorney General Mike McGrath	Governor	reappointed	11/22/2007
Helena			11/22/2009
Qualifications (if required): Attorney General			
Director Richard Opper	Governor	reappointed	11/22/2007
Helena			11/22/2009
Qualifications (if required): Department of Environmental Quality Director			
Director Tony Preite	Governor	reappointed	11/22/2007
Helena			11/22/2009
Qualifications (if required): Department of Commerce Director			
Director Mary Sexton	Governor	reappointed	11/22/2007
Helena			11/22/2009
Qualifications (if required): Department of Natural Resources Director			
Rep. Franke Wilmer	Governor	Furey	11/22/2007
Bozeman			11/22/2009
Qualifications (if required): Legislator			

BOARD AND COUNCIL APPOINTEES FROM NOVEMBER 2007

Appointee	Appointed by	Succeeds	Appointment/End Date
Clinical Laboratory Science Practitioners (Labor and Industry)			
Ms. Barbara Henderson	Governor	McNutt	11/16/2007
Miles City			4/16/2011
Qualifications (if required): clinical laboratory science practitioner			
Ms. Rosemary Shively	Governor	reappointed	11/16/2007
Helena			4/16/2011
Qualifications (if required): clinical laboratory science practitioner			
Ms. Charliene Staffanson	Governor	reappointed	11/16/2007
Deer Lodge			4/16/2011
Qualifications (if required): public representative			
Community Service Commission (Labor and Industry)			
Dr. Johnel Barcus	Governor	reappointed	11/16/2007
Browning			7/1/2010
Qualifications (if required): representative of the private sector			
Mr. Doug Braun	Governor	Burke	11/16/2007
Billings			7/1/2010
Qualifications (if required): representative of organized labor			
Ms. Jackie Girard	Governor	Allen	11/16/2007
Helena			7/1/2010
Qualifications (if required): representative of the National Service Corporation			

BOARD AND COUNCIL APPOINTEES FROM NOVEMBER 2007

Appointee	Appointed by	Succeeds	Appointment/End Date
Community Service Commission (Labor and Industry) cont.			
Mr. Cedric Jacobson	Governor	reappointed	11/16/2007
Missoula			7/1/2010
Qualifications (if required): youth representative			
Director Keith Kelly	Governor	reappointed	11/16/2007
Helena			7/1/2010
Qualifications (if required): representative of the Montana Department of Labor and Industry			
Ms. Kimberly Miske	Governor	McGinley	11/16/2007
Wibaux			7/1/2010
Qualifications (if required): representative of local government			
Land Information Advisory Council (Administration)			
Commissioner Connie Eissinger	Governor	Kimmet	11/30/2007
Brockway			6/30/2009
Qualifications (if required): local government representative			
Livestock Loss Reduction and Mitigation Board (Livestock)			
Ms. Elaine Allestad	Governor	not listed	11/1/2007
Big Timber			1/1/2011
Qualifications (if required): livestock industry representative			
Ms. Janelle Holden	Governor	not listed	11/1/2007
Livingston			1/1/2009
Qualifications (if required): wildlife conservation representative			

BOARD AND COUNCIL APPOINTEES FROM NOVEMBER 2007

Appointee	Appointed by	Succeeds	Appointment/End Date
Livestock Loss Reduction and Mitigation Board (Livestock) cont.			
Mr. Hilliard McDonald Judith Gap Qualifications (if required): livestock marketing representative	Governor	not listed	11/1/2007 1/1/2011
Mr. Darryl Olson Billings Qualifications (if required): wildlife conservation representative	Governor	not listed	11/1/2007 1/1/2009
Mr. Brad Radtke Drummond Qualifications (if required): livestock industry representative	Governor	not listed	11/1/2007 1/1/2009
Mr. Larry Trexler Hamilton Qualifications (if required): breeding association member	Governor	not listed	11/1/2007 1/1/2011
Ms. Whitney Wankel Bozeman Qualifications (if required): livestock industry representative	Governor	not listed	11/1/2007 1/1/2009
Montana Cherry Commodity Advisory Committee (Agriculture)			
Ms. Lise Rousseau Polson Qualifications (if required): none specified	Director	Wilson	11/27/2007 5/3/2010

BOARD AND COUNCIL APPOINTEES FROM NOVEMBER 2007

Appointee	Appointed by	Succeeds	Appointment/End Date
Montana Grass Conservation Commission (Natural Resources and Conservation)			
Mr. Sonny Obrecht	Governor	Ozark	11/14/2007
Turner			1/1/2010
Qualifications (if required): grazing district preference holder			
Montana Pulse Crop Advisory Committee (Agriculture)			
Mr. Grant Zerbe	Director	Greytak	11/26/2007
Frazer			2/13/2010
Qualifications (if required): none specified			
Public Employees Retirement Board (Administration)			
Mr. Ray Peck	Governor	Nedrow	11/6/2007
Helena			4/1/2011
Qualifications (if required): public representative			
State-Tribal Economic Development Commission (Commerce)			
Mr. Richard Sangrey	Governor	Windy Boy	11/6/2007
Box Elder			6/30/2008
Qualifications (if required): representative of the Chippewa Cree Tribe of the Rocky Boy's Reservation			
Transportation Commission (Transportation)			
Ms. Barbara Skelton	Governor	Kennedy	11/29/2007
Billings			1/1/2009
Qualifications (if required): resident of District 5			

VACANCIES ON BOARDS AND COUNCILS -- JANUARY 1, 2008 through MARCH 31, 2008

Board/current position holder	Appointed by	Term end
Alternative Livestock Advisory Council (Governor)		
Mr. Don E. Woerner, Laurel Qualifications (if required): veterinarian	Governor	1/1/2008
Mr. Stan Frasier, Helena Qualifications (if required): sportsperson	Governor	1/1/2008
Mr. James Bouma, Choteau Qualifications (if required): alternative livestock industry representative	Governor	1/1/2008
Board of Dentistry (Labor and Industry)		
Dr. George Olsen, Missoula Qualifications (if required): dentist	Governor	3/29/2008
Board of Horse Racing (Livestock)		
Mr. Robert G. Brastrup, Townsend Qualifications (if required): resident of District 4	Governor	1/20/2008
Board of Public Education (Education)		
Mr. John Fuller, Whitefish Qualifications (if required): Republican representing District 1	Governor	2/2/2008
Board of Regents (Education)		
Mr. Clayton Christian, Missoula Qualifications (if required): resident of District 1	Governor	2/1/2008

VACANCIES ON BOARDS AND COUNCILS -- JANUARY 1, 2008 through MARCH 31, 2008

Board/current position holder	Appointed by	Term end
Montana Arts Council (Education)		
Ms. Ann Cogswell, Great Falls Qualifications (if required): public member	Governor	2/1/2008
Mr. Rick Halmes, Billings Qualifications (if required): public member	Governor	2/1/2008
Ms. Jackie Parsons, Browning Qualifications (if required): public member	Governor	2/1/2008
Ms. Betti C. Hill, Helena Qualifications (if required): public member	Governor	2/1/2008
Ms. Kathleen Schlepp, Miles City Qualifications (if required): resident of Montana	Governor	2/1/2008
Montana Council on Developmental Disabilities (Commerce)		
Rep. Carol Lambert, Broadus Qualifications (if required): legislator	Governor	1/1/2008
Dr. R. Timm Vogelsberg, Missoula Qualifications (if required): advocacy program representative	Governor	1/1/2008
Director Joan Miles, Helena Qualifications (if required): agency representative	Governor	1/1/2008
Ms. Sarah Casey, Helena Qualifications (if required): agency representative	Governor	1/1/2008

VACANCIES ON BOARDS AND COUNCILS -- JANUARY 1, 2008 through MARCH 31, 2008

Board/current position holder	Appointed by	Term end
Montana Council on Developmental Disabilities (Commerce) cont.		
Sen. Carol Williams, Missoula Qualifications (if required): legislator	Governor	1/1/2008
Ms. Diana Tavary, Helena Qualifications (if required): advocacy program representative	Governor	1/1/2008
Mr. Jeff Sturm, Helena Qualifications (if required): agency representative	Governor	1/1/2008
Mr. Roger Holt, Billings Qualifications (if required): advocacy program representative	Governor	1/1/2008
Montana Pulse Crop Advisory Committee (Agriculture)		
Ms. Shauna Farver, Scobey Qualifications (if required): Producer	Director	2/14/2008
Montana's Advisory Council on Civil Rights Honoring Martin Luther King, Jr. (Office of Community Service)		
Sen. Dorothy Eck, Bozeman Qualifications (if required): Public Representative	Governor	1/13/2008
Ms. June Hermanson, Billings Qualifications (if required): Public Representative	Governor	1/13/2008
Sen. Christine Kaufmann, Helena Qualifications (if required): Public Representative	Governor	1/13/2008

VACANCIES ON BOARDS AND COUNCILS -- JANUARY 1, 2008 through MARCH 31, 2008

Board/current position holder	Appointed by	Term end
Montana's Advisory Council on Civil Rights Honoring Martin Luther King, Jr. (Office of Community Service) cont.		
Ms. Jessie James-Hawley, Harlem Qualifications (if required): Public Representative	Governor	1/13/2008
Ms. Marilyn Kramer, Billings Qualifications (if required): Public Representative	Governor	1/13/2008
Mr. Murray Pierce, Turah Qualifications (if required): Public Representative	Governor	1/13/2008
Ms. Katie Stevens, Great Falls Qualifications (if required): Public Representative	Governor	1/13/2008
Peace Officers Standards and Training Advisory Council (Justice)		
Sheriff Tony Harbaugh, Miles City Qualifications (if required): law enforcement representative	Governor	2/9/2008
Mr. Christopher Miller, Deer Lodge Qualifications (if required): County Attorney	Governor	2/9/2008
Captain Dennis McCave, Billings Qualifications (if required): representative of a Criminal Justice Agency	Governor	2/9/2008
Mr. John Strandell, Helena Qualifications (if required): representative of Law Enforcement	Governor	2/9/2008

VACANCIES ON BOARDS AND COUNCILS -- JANUARY 1, 2008 through MARCH 31, 2008

Board/current position holder	Appointed by	Term end
Peace Officers Standards and Training Advisory Council (Justice) cont.		
Mr. Raymond Murray, Missoula Qualifications (if required): Public Member	Governor	2/9/2008
Ms. Winnie Ore, Helena Qualifications (if required): representative of a Criminal Justice Agency	Governor	2/9/2008
Commissioner Mike Anderson, Havre Qualifications (if required): Board of Crime Control representative	Governor	2/9/2008
Mr. Mike Mehn, Helena Qualifications (if required): representative of Law Enforcement	Governor	2/9/2008
Sergeant Mike Reddick, Helena Qualifications (if required): representative of Law Enforcement	Governor	2/9/2008
Officer Levi Talkington, Lewistown Qualifications (if required): representative of Law Enforcement	Governor	2/9/2008
Mr. Hannah Tillman, Crow Agency Qualifications (if required): tribal law enforcement representative	Governor	2/9/2008
Small Business Health Insurance Pool Board (Auditor)		
Mr. Bob Marsenich, Polson Qualifications (if required): consumer representing small business	Governor	1/1/2008

VACANCIES ON BOARDS AND COUNCILS -- JANUARY 1, 2008 through MARCH 31, 2008

Board/current position holder	Appointed by	Term end
Upper Clark Fork River Basin Remediation and Restoration Advisory Council (Justice)		
Mr. Larry Curran, Butte	Governor	1/19/2008
Qualifications (if required): resident of Upper Clark Fork River Basin		
Mr. John Hollenback, Gold Creek	Governor	1/19/2008
Qualifications (if required): resident of Upper Clark Fork River Basin		
Ms. Sally Johnson, Missoula	Governor	1/19/2008
Qualifications (if required): resident of Upper Clark Fork River Basin		
Ms. Barbara Evans, Missoula	Governor	1/19/2008
Qualifications (if required): resident of Upper Clark Fork River Basin		
Ms. Kathy Hadley, Deer Lodge	Governor	1/19/2008
Qualifications (if required): resident of Upper Clark Fork River Basin		
Director Jeff Hagener, Helena	Governor	1/19/2008
Qualifications (if required): Director of the Department of Fish, Wildlife, and Parks		
Director Mary Sexton, Helena	Governor	1/19/2008
Qualifications (if required): Director of the Department of Natural Resources and Conservation		
Mr. James Dinsmore, Hall	Governor	1/19/2008
Qualifications (if required): resident of Upper Clark Fork River Basin		
Director Richard Opper, Helena	Governor	1/19/2008
Qualifications (if required): Director of the Department of Environmental Quality		

VACANCIES ON BOARDS AND COUNCILS -- JANUARY 1, 2008 through MARCH 31, 2008

Board/current position holder	Appointed by	Term end
Upper Clark Fork River Basin Remediation and Restoration Advisory Council (Justice) cont.		
Mr. Dennis Daneke, Missoula Qualifications (if required): resident of Upper Clark Fork River Basin	Governor	1/19/2008
Mr. Paul Babb, Butte Qualifications (if required): resident of Upper Clark Fork River Basin	Governor	1/19/2008
Mr. Milo Manning, Anaconda Qualifications (if required): resident of Upper Clark Fork River Basin	Governor	1/19/2008
Ms. Robbie Taylor, Butte Qualifications (if required): resident of Upper Clark Fork River Basin	Governor	1/19/2008
Mr. James Yeoman, Anaconda Qualifications (if required): resident of Upper Clark Fork River Basin	Governor	1/19/2008
Ms. Rebecca Guay, Anaconda Qualifications (if required): resident of Upper Clark Fork River Basin	Governor	1/19/2008