

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 6

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 The Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

STATE AUDITOR, Department of, Title 6

6-172 Notice of Public Hearing on Proposed Adoption - Debt Collections. 509-512

6-175 Notice of Proposed Amendment - Updating References to the NCCI Basic Manual for New Classifications for Various Industries. No Public Hearing Contemplated. 513-515

FISH, WILDLIFE AND PARKS, Department of, Title 12

(Fish, Wildlife and Parks Commission)

12-341 Notice of Public Hearings on Proposed Adoption - Angling Restrictions and Fishing Closures. 516-519

12-342 Notice of Proposed Adoption - Delegating Commission Authority to the Department to Close Public Waters in the Event of a Fire Emergency. No Public Hearing Contemplated. 520-522

TRANSPORTATION, Department of, Title 18

18-118 (Transportation Commission) Notice of Public Hearings on Proposed Amendment - Electronic Billboards. 523-526

LABOR AND INDUSTRY, Department of, Title 24

24-138-65 (Board of Dentistry) Notice of Public Hearing on Proposed Amendment - Licensure. 527-531

24-159-72 (Board of Nursing) Notice of Extension of Comment Period on Proposed Amendment - Definitions - Standards Related to the Practical Nurse - Prohibited IV Therapies. 532-533

PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

37-434 Notice of Public Hearing on Proposed Adoption, Amendment, and Repeal - Temporary Assistance for Needy Families (TANF). 534-547

REVENUE, Department of, Title 42

42-2-793 Notice of Public Hearing on Proposed Adoption - Local Government Tax Increment Financing Districts (TIFD). 548-557

RULE SECTION

ADMINISTRATION, Department of, Title 2

AMD Implementing HB 27: Defining Eligibility and Distribution
REP of HB 27 Surcharge Funds for Wireless 911 Emergency
NEW Systems. 558-561

AGRICULTURE, Department of, Title 4

AMD Insured Crops. 562

AMD Noxious Weed List Categories.
NEW 563

NEW (Departments of Agriculture and Livestock) Montana
Certified Natural Beef Cattle Marketing Program. 564-565

LABOR AND INDUSTRY, Department of, Title 24

AMD (Board of Dentistry) Functions for Dental Hygienists -
Specialty Advertising - Hygiene Diagnosis and Treatment
Planning. 566

NATURAL RESOURCES AND CONSERVATION, Department of, Title 36

AMD Definitions - Filing Fee Refunds - Objection to Application.
NEW 567-574

PUBLIC SERVICE REGULATION, Department of, Title 38

AMD REP	Public Utilities - Electricity Suppliers - Natural Gas Suppliers.	575-578
------------	---	---------

SPECIAL NOTICE AND TABLE SECTION

	Function of Administrative Rule Review Committee.	579-580
	How to Use ARM and MAR.	581
	Accumulative Table.	582-592
	Boards and Councils Appointees.	593-596
	Vacancies on Boards and Councils.	597-602

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

In the matter of the adoption of NEW) NOTICE OF PUBLIC HEARING ON
RULES I through IV pertaining to) PROPOSED ADOPTION
Debt Collections)

TO: All Concerned Persons

1. On April 17, 2008, at 10:00 a.m., the State Auditor and Commissioner of Insurance will hold a public hearing in the 2nd floor conference room of the State Auditor's Office, 840 Helena Ave., Helena, Montana, to consider the proposed adoption of the above-stated rules.

2. The State Auditor and Commissioner of Insurance will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., April 10, 2008, to advise us of the nature of the accommodation that you need. Please contact Darla Sautter, State Auditor's Office, 840 Helena Avenue, Helena, Montana, 59601; telephone (406) 444-2726; TDD (406) 444-3246; fax (406) 444-3497; or e-mail dsautter@mt.gov.

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

NEW RULE I PURPOSE AND SCOPE (1) This subchapter implements for the department and the Department of Revenue the mechanisms provided in Title 17, chapter 4, MCA, for recovery and offset of monetary sums owing to the state of Montana, including, but not limited to, sums related to the provision of services through the programs administered by the department and fines and other fees imposed by the department.

(2) The provisions of this subchapter are not the department's exclusive means of debt collection, but are in addition to any other means of offset, recovery, or other debt collection procedures authorized by law.

AUTH: 30-10-107, 33-1-313, MCA
IMP: 17-3-110, MCA

NEW RULE II DEFINITIONS For the purpose of this subchapter, the following definitions shall apply:

(1) "Debt" means a monetary sum owed to the state of Montana.

(2) "Department" means the State Auditor's Office.

(3) "Offset" means a deduction from monies due to a person or entity from the state for the purpose of recovering in total or in part a debt owed by the person or entity to the state. An offset is undertaken by the Department of Revenue or other agency designated by law under the authority of 17-4-105, MCA. Offset may include, but is not limited to, an offset of a person's or an entity's state tax refund.

(4) "Recovery" means any measure undertaken by the Department of Revenue, or other agency designated by law, under the authority of 17-4-101, MCA, et seq., in accordance with that agency's rules and policies as a means of recovering a debt owed by a person or entity to the state of Montana. Recovery may include, but is not limited to, assignment to a collection agency and litigation.

AUTH: 30-10-107, 33-1-313, MCA
IMP: 17-4-110, MCA

NEW RULE III REFERRAL FOR RECOVERY AND OFFSET (1) The department under the authority of 17-4-104, MCA, may refer to the Department of Revenue, or other agency designated by law, for recovery and offset of any debt owed to the department.

(2) The department must determine that a debt is uncollectible by the department before the debt may be referred to the Department of Revenue or other agency designated by law.

AUTH: 30-10-107, 33-1-313, MCA
IMP: 17-4-110, MCA

NEW RULE IV UNCOLLECTIBLE DEBT (1) A debt is uncollectible by the department if the department has determined that:

- (a) the debt is owing to the department;
- (b) the debtor has either not pursued available administrative remedies within the department, or has failed to prevail in the available administrative procedures or remedies within the department, or in any appeal from that administrative procedure or remedy to the state or federal courts;
- (c) the debtor has failed to pay the debt after the department has made reasonable efforts to collect the debt; and
- (d) the department has no administrative means such as recoupment from current payments by which to recover the debt.

(2) The department has made all reasonable efforts to collect a debt when the debt remains owed in whole or in part after:

- (a) the department has utilized appropriate notices directed at the debtor's last known address to inform the debtor of the debt owed and the debtor cannot be contacted; or
- (b) the department has provided the debtor with an opportunity to enter into a repayment agreement based on a schedule for debt repayment that the department determines is appropriate, and the debtor has failed to cooperate, or the debtor is failing to repay the debt.

(3) A debtor is failing to repay a debt when the debtor has failed to make a monthly or other payment for which the department has mailed notice of delinquency, including a demand for cure of the delinquency within ten days from the date of mailing.

AUTH: 30-10-107, 33-1-313, MCA
IMP: 17-4-110, MCA

4. REASONABLE NECESSITY STATEMENT: The proposed rules are intended and designed to enable the State Auditor's Office to implement and carry out a process compliant with 17-4-110, MCA, which allows the collection and enforcement of assessments of fees, fines, and other monies owed to the State Auditor's Office.

Delegation of collection efforts, in the manner described in further detail in these proposed rules, from the State Auditor to the Department of Revenue is necessary because the Montana Legislature is providing and allocating sufficient resources to the Department of Revenue as the centralized agency for the collection of debt owed to the state of Montana and its political subdivisions, branches of government, and other entities entrusted with sovereign functions on its behalf to ensure a uniform and effective procedure for the collection of such monies.

Delegation of the collection efforts is further necessary because the State Auditor's Office does not always have appropriate resources to conduct collection proceedings. Delegation to the Department of Revenue in compliance with the statutory requirements of 17-4-110, MCA, ensures that monies owed to the State Auditor, and thus to the state of Montana, are in fact collected and placed in the state's general fund or other appropriate account for the benefit of the people of Montana. Pursuant to 30-10-107, MCA, this rule is in the best interests of the public.

The proposed rules provide for a reasonable assessment of uncollectibility, as required by 17-4-110, MCA, as well as appropriate safeguards for the debtor before delegation may be perfected.

5. Concerned persons may submit their data, views, or arguments concerning the proposed action either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Helge Naber, Staff Attorney, State Auditor's Office, 840 Helena Ave., Helena, Montana, 59601; telephone (406) 444-2040; fax (406) 444-3497; or e-mail hnaber@mt.gov, and must be received no later than 5:00 p.m., April 24, 2008.

6. Helge Naber, Staff Attorney, has been designated to preside over and conduct this hearing.

7. The department maintains a list of concerned persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Such written request may be mailed or delivered to Darla Sautter, State Auditor's Office, 840 Helena Ave., Helena, Montana, 59601; telephone (406) 444-2726; fax (406) 444-3497; or e-mail dsautter@mt.gov or may be made by completing a request form at any rules hearing held by the department.

8. An electronic copy of this Proposal Notice is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of State strives to make the electronic copy of the Notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all

concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

9. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled. The bill sponsor was notified by letter dated January 18, 2008, sent postage prepaid by the USPS.

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

/s/ Janice S. VanRiper
Janice S. VanRiper
Deputy Insurance Commissioner
State Auditor/Commissioner of Insurance

Certified to the Secretary of State March 17, 2008.

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

In the matter of the proposed	)	NOTICE OF PROPOSED
amendment of ARM 6.6.8301	)	AMENDMENT
concerning updating references to the)	
NCCI Basic Manual for new	)	NO PUBLIC HEARING
classifications for various industries	)	CONTEMPLATED

TO: All Concerned Persons

1. On April 28, 2008, the department proposes to amend the above-stated rule.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Montana Classification Review Committee not later than 5:00 p.m., April 21, 2008, to advise us of the nature of the accommodation that you need. Please contact Tim Hughes, National Council on Compensation Insurance, Inc., 10920 W. Glennon Dr., Lakewood, Colorado 80226; telephone (303) 969-9456; fax (303) 969-9423; or e-mail tim_hughes@ncci.com.

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

6.6.8301 ESTABLISHMENT OF CLASSIFICATION FOR COMPENSATION PLAN NO. 2 (1) The committee ~~hereby~~ adopts and incorporates by reference the NCCI Basic Manual for Workers Compensation and Employers Liability Insurance, 2001, ed., as supplemented through ~~June 18, 2004,~~ October 26, 2006, which establishes classifications with respect to employers electing to be bound by compensation plan No. 2 as provided in Title 39, chapter 71, part 22, MCA. A copy of the Basic Manual for Workers Compensation and Employers Liability Insurance is available for public inspection at the Office of the Commissioner of Insurance, 840 Helena Ave., Helena, MT 59601. Copies of the Basic Manual for Workers Compensation and Employers Liability Insurance may be obtained by writing to the Montana Classification Review Committee in care of the National Council on Compensation Insurance, Inc., 10920 W. Glennon Dr., Lakewood, Colorado 80226. Persons obtaining a copy of the Basic Manual for Workers Compensation and Employers Liability Insurance must pay the committee's cost of providing such copies.

(2) remains the same.

AUTH: 33-16-1012, MCA
IMP: 2-4-103, 33-16-1012, MCA

4. STATEMENT OF REASONABLE NECESSITY: It is necessary to amend ARM 6.6.8301 to update references to the NCCI Basic Manual for Workers Compensation and Employers Liability. Changes to the NCCI Basic Manual for Workers Compensation and Employers Liability affect classifications that apply to various industries. The proposed changes are as follows:

A. Establish a new state special treatment for Code 6204 WELL DRILLING--WATER DRIVERS.

Pump installation is to be separately classified from water well drilling provide that (1) verifiable payroll records are maintained for each operation, and (2) drilling equipment is not used to install the pump.

B. Revise the Montana Construction Premium Credit Program. The proposed changes will:

Revise the exiting Montana Construction Premium Credit Program (CPCP) rules to create a more uniform approach.

Eliminate the table of credits from NCCI's **Basic Manual for Workers' Compensation and Employers Liability Insurance** and replace it with credits based on a formula approach among states with similar programs.

Implement the Contracting Classification Premium Adjustment Program Workers Compensation Premium Credit Application, NC5000. This is a national application form that will be used to apply for the Montana CPCP credit.

5. Amendment "A" is intended to become effective July 1, 2008, and Amendment "B" is intended to become effective July 1, 2009. Changes to ARM 6.6.8301 are effective the day after publication of the Notice of Amendment.

6. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Tim Hughes, National Council on Compensation Insurance, Inc., 10920 W. Glennon Dr., Lakewood, Colorado 80226, or by e-mail to tim_hughes@ncci.com no later than April 28, 2008.

7. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Tim Hughes at the above address no later than April 28, 2008.

8. If the committee receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an

association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 150 persons based on the 15 businesses who have indicated interest in the rules of this committee and who the committee has determined could be directly affected by these rules.

9. All parties interested in receiving notification of any change in rules pertaining to this subject should contact the Rule Reviewer in writing at 840 Helena Ave., Helena, Montana, 59601.

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

/s/ Janice S. VanRiper
Janice S. VanRiper
Deputy State Auditor

/s/ Christina L. Goe
Christina L. Goe
Rule Reviewer
State Auditor's Office

Certified to Secretary of State March 17, 2008.

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

In the matter of the adoption of New Rules I through VI regarding angling restrictions and fishing closures) NOTICE OF PUBLIC HEARINGS ON PROPOSED ADOPTION)

TO: All Concerned Persons

1. On May 7, 2008 at 6:00 p.m. the Fish, Wildlife and Parks Commission (commission) will hold a public hearing at the Fish, Wildlife and Parks Region 3 offices located at 1400 South 19th Avenue, Bozeman, Montana to consider the adoption of the above-stated rules.

On May 8, 2008 at 6:00 p.m. the commission will hold a public hearing at the Fish, Wildlife and Parks Region 2 offices located at 3201 Spurgin Road, Missoula, Montana to consider the adoption of the above-stated rules.

2. The commission will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, please contact the commission no later than May 1, 2008, to advise us of the nature of the accommodation that you need. Please contact Jessica Snyder, Fish, Wildlife and Parks, P.O. Box 200701, Helena, MT 59620-0701; telephone (406) 444-4594; fax (406) 444-7456; e-mail jesnyder@mt.gov.

3. The proposed new rules provide as follows:

NEW RULE I ANGLING RESTRICTIONS AND FISHING CLOSURE

DEFINITIONS (1) "Drought Management Plan" means a unique individual watershed or stream reach plan to address site-specific stream flow and fishery issues in the event of drought that has been reviewed and accepted by the department as a preferred drought management alternative. The plans are usually created by watershed groups composed of local agriculture, conservation, business, and angler interests.

(2) "95% exceedence level" is the daily average stream flow that is equaled or exceeded in 95% of the past years of record on that date. Flows that are of 95% exceedence or higher represent an extreme low flow condition.

AUTH: 87-1-301, MCA
IMP: 87-1-301, MCA

NEW RULE II COMMISSION APPROVAL FOR ANGLING RESTRICTIONS OR FISHING CLOSURES (1) When the department determines, pursuant to [NEW RULE IV], that a fishery has the potential to be detrimentally impacted by environmental conditions, the commission authorizes the department to implement angling restrictions or fishing closures with the approval of the commissioner in

whose district the angling restriction or fishing closure is proposed. If the commissioner is not available, the department may request approval from the commission chair or, in absence of the commission chair, any other commissioner.

(2) The department shall report to the commission, during its next regularly scheduled meeting, the implementation or lifting of any angling restriction or fishing closure implemented pursuant to this rule.

(3) Voluntary closures will not be implemented under this rule.

AUTH: 87-1-301, MCA

IMP: 87-1-301, MCA

NEW RULE III TYPES OF ANGLING RESTRICTION AND FISHING CLOSURES (1) The department may implement either an angling restriction or a fishing closure pursuant to [NEW RULE II].

(2) An angling restriction prohibits fishing during that period of the day when water temperatures are the highest, usually between the hours of 2:00 p.m. and midnight. The hours may be extended to cover more of the day if the criteria in [NEW RULE IV] can be established but do not necessitate a fishing closure.

(3) A fishing closure prohibits all fishing on designated waters at all times.

AUTH: 87-1-301, MCA

IMP: 87-1-301, MCA

NEW RULE IV ANGLING RESTRICTION AND FISHING CLOSURE CRITERIA (1) The department shall use the following criteria to determine whether to implement angling restrictions:

(a) angling pressure as determined by the department has the potential to contribute to excessive fish mortality; and

(b) one or more of the following environmental conditions has been determined by the department to exist:

(i) daily maximum water temperatures reach or exceed 73 degrees Fahrenheit at any time during the day for three consecutive days;

(ii) stream or river flows fall to or below the 95% daily exceedence level based upon hydrologic records for that water body;

(iii) in bull trout streams designated by the department, a daily maximum water temperature equal to or exceeding 60 degrees Fahrenheit at any time during the day for three consecutive days; or

(iv) water conditions meet the criteria for angling restrictions as stated in a Drought Management Plan.

(2) A fishing closure may be implemented when:

(a) conditions of (1) develop;

(b) dissolved oxygen is equal to or less than 4 ppm when measured in the early morning before sunrise;

(c) water conditions meet the criteria for fishing closures as stated in a Drought Management Plan; or

(d) other biological or environmental conditions exist that the department determines have the potential to adversely affect the fishery.

AUTH: 87-1-301, MCA
IMP: 87-1-301, MCA

NEW RULE V REOPENING WATERS (1) Once an angling restriction or fishing closure is implemented, it will remain in effect until September 15 or until reopening criteria described in (2) or (3) have been met.

(2) The department may reopen streams when the department determines in its discretion that:

(a) water temperature does not exceed 70 degrees Fahrenheit for three consecutive days; and

(b) eight to fourteen day climate forecast indicates improved and cooler climatic conditions.

(3) Streams designated by the department to have bull trout shall remain closed until the following conditions occur:

(a) daily maximum water temperature equals or does not exceed 60 degrees Fahrenheit for three consecutive days;

(b) eight to fourteen day climate forecast indicates improved and cooler climatic conditions; and

(c) when flow regimes provide adequate security habitat.

AUTH: 87-1-301, MCA
IMP: 87-1-301, MCA

NEW RULE VI NOTIFICATION OF ANGLING RESTRICTIONS OR FISHING CLOSURES (1) Prior to the effective date of the angling restriction or fishing closure the department shall:

(a) post notice of the angling restriction or fishing closure on the agency web site;

(b) post notice of the angling restriction or fishing closure at fishing access sites within the affected area; and

(c) send press releases regarding the angling restriction or fishing closure to newspapers and media outlets having general distribution in the affected watershed or water body.

AUTH: 87-1-301, MCA
IMP: 87-1-301, MCA

4. The proposed rules are necessary to streamline the process for closing threatened fisheries when environmental conditions occur that warrant an angling restriction or fishing closure. The proposed rules will ensure that fisheries can be restricted or closed immediately when they are threatened without a risk that a delayed process will further the threat of detrimental impacts. Low stream flow or climatic conditions may require temporary restrictions or closures from fishing to protect fish populations and sustain future angling opportunities. Currently, each time fisheries biologists find that a stream needs to be closed because of drought conditions, a quorum of commissioners must meet to adopt a new restriction.

The commission has created the proposed rules so that the department and commission can more quickly respond to environmental conditions that could pose a threat to fisheries through additional fishing restrictions or, if necessary, closing waters to fishing. The proposed rules provide the department with the commission's guidelines for determining when water(s) should be closed to angling or when more restrictive angling regulations should be implemented.

5. Concerned persons may submit their data, views, or arguments concerning the proposed adoption either orally or in writing at the hearings. Written data, views, or arguments may also be submitted to Mike McLane, P.O. Box 200701, Helena, MT 59620-0701, telephone (406) 444-1563, fax (406) 444-4952, or e-mail them to fwpfsh@mt.gov. Any comments must be received no later than May 16, 2008.

6. Rebecca Jakes Dockter or another hearings officer appointed by the department has been designated to preside over and conduct these hearings.

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

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

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

/s/ Rebecca Jakes Dockter
Rebecca Jakes Dockter
Rule Reviewer
Department of Fish, Wildlife
and Parks

Certified to the Secretary of State March 17, 2008

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

In the matter of the adoption of New	)	NOTICE OF PROPOSED ADOPTION
Rules I through III delegating)	
commission authority to the department	)	NO PUBLIC HEARING
to close public waters in the event of a	)	CONTEMPLATED
fire emergency)	

TO: All Concerned Persons

1. On June 12, 2008, the Fish, Wildlife and Parks Commission (commission) proposes to adopt the above-stated rules.

2. The commission will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, please contact the commission no later than June 2, 2008, to advise us of the nature of the accommodation that you need. Please contact Jessica Snyder, Fish, Wildlife and Parks, P.O. Box 200701, Helena, MT 59620-0701; telephone (406) 444-4594; fax (406) 444-7456; e-mail jesnyder@mt.gov.

3. The proposed new rules provide as follows:

NEW RULE I DEPARTMENT'S AUTHORITY TO CLOSE PUBLIC WATERS DUE TO FIRE EMERGENCY (1) The commission authorizes the department to adopt temporary emergency rules to close public waters to public use as provided in [NEW RULE II].

(2) Public use of the water means boating, floating, swimming, fishing, and any other public occupation of the waters.

(3) The commission authorizes the department to reopen public waters closed by temporary emergency rule as provided in [NEW RULE II].

AUTH: 87-1-301, MCA
IMP: 2-4-303, 87-1-301, MCA

NEW RULE II FIRE CLOSURE CRITERIA (1) The department may, pursuant to [NEW RULE I], adopt temporary emergency rules under the following criteria.

(a) The department receives written request for closure of public waters from the interagency fire management team or similar authority that provides the description of where to implement the fire closure.

(b) The department determines that firefighting efforts on or near the water creates imminent peril to the public health, safety, or welfare.

(2) The department may reopen the waters by repealing a temporary emergency rule when it determines that firefighting efforts on or near the water have

subsidied to the extent that imminent peril to the public health, safety, and welfare no longer exists.

AUTH: 87-1-301, MCA
IMP: 2-4-303, 87-1-301, MCA

NEW RULE III NOTIFICATION OF FIRE CLOSURE AREAS (1) Prior to or simultaneously with the effective date of the fire closure the department shall:

- (a) notify the commission;
- (b) post notice of the fire closure on the agency web site;
- (c) post notice of the fire closure within and near the affected area; and
- (d) send press releases regarding the fire closure to newspapers and media outlets having general distribution in the affected watershed or water body.

AUTH: 87-1-301, MCA
IMP: 2-4-303, 87-1-301, MCA

4. The proposed rules are necessary to promote public safety and prevent delay of firefighting efforts. Since 2003, firefighting agencies have requested that the commission adopt seven different emergency rules closing public waters due to firefighting efforts for forest fires. The rule adoptions were necessary so that firefighting aircraft could dip or load water in public waters without the risk of injury or death to people using the waters. Closing the public waters also decreased the risk to flight crews who would have been subjected to additional danger if they had needed to maneuver their aircraft to avoid recreators.

In order to close a public water using the existing process, a presiding department official must contact a quorum of commissioners so that the commission can adopt the emergency closure. The commission's concern is that, during an emergency, the department may not be able to contact a quorum of commissioners. Adoption of an emergency rule would be delayed until enough commissioners could be contacted. If this circumstance occurred, firefighting efforts could be delayed, or the public could be endangered. Since it is unlikely that the commission would refuse to adopt a temporary emergency rule when the public health, safety, and welfare is jeopardized due to firefighting efforts, the commission believes it is logical and necessary to delegate the commission authority to the Director of the Department of Fish, Wildlife and Parks to adopt emergency rules closing public waters when aircraft load water to fight fires. By delegating this authority, the commission is assured that the public safety will be provided for and firefighting efforts will be expedited when a fire emergency occurs.

5. Concerned persons may submit their data, views, or arguments concerning the proposed adoption in writing to Jessica Snyder, Legal Unit, P.O. Box 200701, Helena, MT 59620-0701, telephone (406) 444-4594, fax (406) 444-7456, or e-mail them to jesnyder@mt.gov. Any comments must be received no later than April 24, 2008.

6. If persons who are directly affected by the proposed adoption wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments they have to Jessica Snyder at the above address. A written request for a hearing must be received no later than April 24, 2008.

7. If the commission receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be greater than 25 people based on the fact that every Montana citizen has access to public waters that could be closed in a fire emergency.

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

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

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

/s/ Rebecca Jakes Dockter
Rebecca Jakes Dockter
Rule Reviewer
Department of Fish, Wildlife
and Parks

Certified to the Secretary of State March 17, 2008

BEFORE THE TRANSPORTATION COMMISSION
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARINGS ON
ARM 18.6.202 and 18.6.232) PROPOSED AMENDMENT
pertaining to electronic billboards)

TO: All Concerned Persons

1. On April 21, 22, and 28, 2008, at 6:30 p.m., the Transportation Commission will hold public hearings in Kalispell, Missoula, and Billings, Montana, to consider the proposed amendment of the above-stated rules. Hearings will be held on April 21, 2008, at 6:30 p.m., at the Hilton Garden Inn, 1847 U.S. Hwy 93 S., Kalispell, Montana; on April 22, 2008, at 6:30 p.m., at Ruby's Inn & Convention Center, 4825 North Reserve St., Missoula, Montana; and on April 28, 2008, at 6:30 p.m., at the Billings Hotel, 1223 Mullowney Lane, Billings, Montana.

2. The Transportation Commission will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or who need an alternative accessible format of this notice. If you require an accommodation, contact the Transportation Commission no later than 5:00 p.m. on April 14, 2008, to advise us of the nature of the accommodation that you need. Please contact Renee Wuertley, Department of Transportation, P.O. Box 201001, Helena, Montana 59620; telephone (406) 444-9455; fax (406) 444-7206; TDD/Montana Relay Service 1 (800) 335-7592; or e-mail rwuertley@mt.gov.

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

18.6.202 DEFINITIONS (1) remains the same.

(2) "Commercial ~~electronic~~ variable message signs (CVMS)" means signs other than electronic billboards which contain, include, or are illuminated by any flashing, intermittent, or moving light or lights, producing the illusion of movement by means of ~~electronic~~, electrical, or electro-mechanical input and/or the characteristics of one or more of the following classifications:

(a) flashing signs are animated signs or animated portions of signs whose illumination is characterized by a repetitive cycle in which the period of illumination is either the same as, more than, or less than the period of no illumination;

(b) patterned illusionary movement signs are animated signs or animated portions of signs whose illumination is characterized by simulated movement through alternate or sequential activation of various illuminated elements for the purpose of producing repetitive light patterns designed to appear in some form of constant motion;

(c) environmentally activated signs are animated signs or devices motivated by wind, thermal changes, or other natural environmental input, including spinners, pinwheels, pennant strings, reflective disks, rotating slats, glow cubes, and/or other

devices or displays that respond to naturally occurring external motivation to include light-sensitive devices;

(d) mechanically activated signs are animated signs characterized by repetitive motion and/or rotation activated by a mechanical system powered by electric motors or other mechanically induced means.

(3) and (4) remain the same.

(5) "Electronic billboard (EBB)" means electronic signs on which messages may be changed on-site or remotely through hard wire or wireless communications and which have the capability to present any amount of text or symbolic imagery. The term includes, but is not limited to, "digital" signs, and "light emitting diode (LED)" signs. The term does not include commercial variable message signs.

(5) through (13) remain the same but are renumbered (6) through (14).

AUTH: 75-15-121, MCA

IMP: 75-15-111, 75-15-112, 75-15-113, 75-15-121, MCA

18.6.232 COMMERCIAL ELECTRONIC VARIABLE MESSAGE SIGNS

PROHIBITED SIGNS (1) The following types of Off off-premise commercial electronic variable message signs, regardless of the message, are prohibited in controlled areas- :

(a) commercial variable message signs (CVMS); and

(b) electronic billboards (EBB).

AUTH: 75-15-121, MCA

IMP: 75-15-111, 75-15-113, MCA

REASON: The proposed amendment of these rules is necessary to address the matter of regulation of electronic billboards (EBB) in the state of Montana. Current administrative rule language on commercial variable message signs--i.e., signs which flash or move or use intermittent lights--includes only the older types of mechanical or electrical signs and prohibits their use. This prohibition is necessary as it is written into the State-Federal Agreement signed by the U.S. Secretary of Transportation and the State of Montana in the 1970s.

However, technology has advanced with the wide-spread availability of electronic billboards (EBB), on which the message can be changed remotely through a computer, either hard wire or wireless. The new electronic billboards, which are also known as "LED" signs, do not change messages via "flashing" or "intermittent" lights. Instead, the EBBs contain a static commercial advertising electronic face, which remains for a set duration such as eight seconds, after which the entire electronic face changes to a new static message with no flashing involved.

Therefore, in a memorandum issued September 2007, the Federal Highways Administration (FHWA) stated electronic billboards may conform to the federal Highway Beautification Act of 1965 and its amendments, which Montana is obligated to enforce. The memo stated the law prohibits only flashing, intermittent, or moving

lights on billboards, which the FHWA interpreted as different from the electronic billboards, in which images are fixed for several seconds.

FHWA therefore requires Montana to interpret its Federal-State Agreement, and address the matter of EBBs in Montana. MDT has determined that its current administrative rule language, which only addresses older commercial variable message sign technology, may be outdated, as it does not address newer technology such as EBBs.

The proposed amendments to ARM 18.6.202 would first distinguish between the newer EBBs and the older commercial variable message signs by eliminating the word "electronic" from (2) of the rule to avoid confusion. The proposed amendments would then create a new definition at (5) for "electronic billboards" which sets forth the characteristics of this new type of sign.

The proposed amendment to ARM 18.6.232 would continue to prohibit older types of variable message signs, on which messages are changed through flashing or intermittent-type lights. These older-type signs are expressly prohibited in a State-Federal Agreement for controlled areas.

The proposed amendment to ARM 18.6.232 would also prohibit newer-type off-premise commercial electronic billboards in the state by listing this newer technology category separately to make it clear that both types of signs are prohibited. Such prohibition is allowed under the State-Federal Agreement. The proposed EBB prohibition would be consistent with the state's existing prohibition of older technology commercial variable message signs.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Renee Wuertley, Department of Transportation, P.O. Box 201001, Helena, Montana 59620; telephone (406) 444-9455; fax (406) 444-7206; or e-mail rwuertley@mt.gov, and must be received no later than 5:00 p.m., May 5, 2008.

5. The department will designate a hearings officer to preside over and conduct these hearings.

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 shall make a written request that includes the name and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Such written request may be mailed or delivered to the contact person in 4 above or may be made by completing a request form at any rules hearing held by the department.

7. 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.

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

/s/ Carol Grell Morris
Carol Grell Morris
Alternate Rule Reviewer

/s/ Nancy Espy
Nancy Espy
Chair
Transportation Commission

Certified to the Secretary of State March 17, 2008.

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

In the matter of the proposed amendment) NOTICE OF PUBLIC HEARING
of ARM 24.138.502, 24.138.503,) ON PROPOSED AMENDMENT
24.138.505, 24.138.506, 24.138.507,)
24.138.509, 24.138.511, and 24.138.530)
pertaining to licensure)

TO: All Concerned Persons

1. On April 21, 2008, at 9:00 a.m., a public hearing will be held in room 471, 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 Dentistry (board) no later than 5:00 p.m., on April 16, 2008, to advise us of the nature of the accommodation that you need. Please contact Traci Collett, Board of Dentistry, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2390; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail dlibsdden@mt.gov.

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

24.138.502 INITIAL LICENSURE OF DENTISTS BY EXAMINATION

(1) through (1)(e) remain the same.

(f) a copy of a self-query of the National Practitioners Data Bank and the Healthcare Integrity Data Bank;

(g) through (4) remain the same.

AUTH: 37-1-131, 37-4-205, MCA

IMP: 37-1-131, 37-4-301, MCA

REASON: The board determined it is reasonably necessary to amend ARM 24.138.502, 24.138.503, 24.138.505, 24.138.506, 24.138.507, and 24.138.511 to include submission of the applicant's self-query of the Healthcare Integrity Data Bank. Upon self-query of the National Practitioner Data Bank, the inquirer also receives information from the Healthcare Integrity Data Bank at no additional charge. The board is amending the rules throughout for consistency and to clarify that all licensure applicants must submit both data bank queries.

24.138.503 INITIAL LICENSURE OF DENTAL HYGIENISTS BY EXAMINATION (1) through (1)(e) remain the same.

(f) a copy of a self-query of the National Practitioner Data Bank and the Healthcare Integrity Data Bank;

(g) through (4) remain the same.

AUTH: 37-1-131, 37-4-205, MCA

IMP: 37-1-131, 37-4-401, 37-4-402, MCA

24.138.505 DENTIST LICENSURE BY CREDENTIALS (1) through (1)(h) remain the same.

(i) submits a copy of a self-query of the National Practitioner Data Bank and the Healthcare Integrity Data Bank;

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

(2) remains the same.

AUTH: 37-1-131, 37-4-205, MCA

IMP: 37-1-131, 37-1-304, MCA

24.138.506 DENTAL HYGIENIST LICENSURE BY CREDENTIALS

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

(d) ~~evidence of current licensure in another state or territory of the United States and license verification from the licensing board(s) of the state(s) under whose jurisdiction the applicant is licensed or has been licensed~~ license verifications from all jurisdictions where the applicant is licensed or has held a license. If employed by the federal government, the applicant shall submit a letter of explanation for any discipline with the employing federal agency;

(e) through (g) remain the same.

(h) a copy of a self-query of the National Practitioner Data Bank and the Healthcare Integrity Data Bank; and

(i) through (4) remain the same.

AUTH: 37-1-131, 37-4-205, MCA

IMP: 37-1-131, 37-1-304, MCA

REASON: The board determined it is reasonably necessary to amend this rule to expand the acceptable license verifications for applicants by credentials. During board review of a Canadian applicant, the board concluded that there is no reason to prohibit dental hygienists licensed in Canada or other acceptable jurisdictions from applying for Montana licensure. The board previously amended the other credentialing rules in this manner but had inadvertently omitted amending this rule.

24.138.507 DENTIST LICENSURE BY CREDENTIALS FOR SPECIALISTS

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

(j) submits a current CPR, ACLS, or PALS card; ~~and~~

(k) submits a copy of a self-query of the National Practitioner Data Bank and the Healthcare Integrity Data Bank; and

- (k) remains the same but is renumbered (l).
- (2) remains the same.

AUTH: 37-1-131, 37-4-205, MCA
IMP: 37-1-131, 37-1-304, MCA

24.138.509 DENTAL HYGIENE LIMITED ACCESS PERMIT (1) through (1)(c) remain the same.

(d) provides the name and address of the public health facility or facilities where the applicant intends to provide services under a LAP;

(d) and (e) remain the same but are renumbered (e) and (f).

(2) Application material remains valid for six months from receipt in the board office. If the application is not completed within six months a new application and fees must be submitted.

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

(b) Great Falls Rescue Mission;

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

AUTH: 37-1-131, 37-4-205, 37-4-405, MCA
IMP: 37-4-405, MCA

REASON: It is reasonable and necessary to amend this rule and specify that a LAP applicant must give the location(s) where the applicant intends to provide LAP dental hygiene services. The board is amending this rule to align with the statutory requirement at 37-4-405, MCA, that licensed dental hygienists may provide dental hygiene preventative services under a LAP only in a public health facility.

The board is adding (2) to this rule to specify that LAP application materials remain valid for six months. The board previously determined that materials become outdated and need to be resubmitted after six months and is amending this rule to achieve consistency among the board's initial licensure rules.

Following a licensee's request to provide dental hygiene services under a LAP in an alternative setting, the board is amending this rule to specifically delineate the Great Falls Rescue Mission as an additional public health facility or program at which services can be provided under a LAP.

24.138.511 DENTURIST APPLICATION REQUIREMENTS (1) through (2)(l) remain the same.

(m) a copy of a self-query of the National Practitioner Data Bank and the Healthcare Integrity Data Bank;

(n) through (5) remain the same.

AUTH: 37-1-131, 37-29-201, MCA
IMP: 37-1-131, 37-29-303, 37-29-306, MCA

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

(f) provides the name and address of the location(s) where the applicant intends to provide services under a volunteer license to indigent or uninsured patients in underserved or critical need areas;

(f) and (g) remain the same but are renumbered (g) and (h).

(2) remains the same.

(3) Application material remains valid for six months from receipt in the board office. If the application is not completed within six months a new application and fees must be submitted.

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

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

IMP: 37-1-131, 37-1-141, 37-4-340, MCA

REASON: It is reasonable and necessary to amend this rule and specify that an applicant must give the location(s) where the applicant intends to provide volunteer dental or dental hygiene services. The board is amending this rule to align with the statutory requirement at 37-4-340, MCA, that dentists and dental hygienists may provide services under a volunteer license only to indigent or uninsured patients in underserved or critical need areas.

The board is adding (3) to this rule to specify that volunteer application materials remain valid for six months. The board previously determined that materials become outdated and need to be resubmitted after six months and is amending this rule to achieve consistency among the board's initial licensure rules.

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 Dentistry, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to dlibsdden@mt.gov, and must be received no later than 5:00 p.m., April 29, 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.dentistry.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 Dentistry 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 Dentistry 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 Dentistry, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2305, e-mailed to dlibsdden@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 DENTISTRY
DR. PAUL SIMMS, DDS

/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 March 17, 2008

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

In the matter of the proposed amendment) NOTICE OF EXTENSION OF
of ARM 24.159.301 definitions,) COMMENT PERIOD ON
24.159.1003 through 24.159.1006 and) PROPOSED AMENDMENT
24.159.1010 standards related to the)
practical nurse, and 24.159.1011)
prohibited IV therapies)

TO: All Concerned Persons

1. On February 14, 2008, the Board of Nursing (board) published MAR Notice No. 24-159-70 regarding the proposed amendment of the above-stated rules, at page 279 of the 2008 Montana Administrative Register, issue no. 3.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Nursing (board) no later than 5:00 p.m., on April 4, 2008, to advise us of the nature of the accommodation that you need. Please contact Mary Ann Zeisler, Board of Nursing, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2332; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail dlibsdnur@mt.gov.

3. It appears that not all individuals on the board's interested party list who receive notice via electronic mail received the copy of the notice. Therefore, in order to ensure that all interested parties are given the opportunity to participate in this rulemaking process, the board hereby extends the public comment period with respect to MAR Notice No. 24-159-70 to April 11, 2008. The text of the rules remains as originally proposed. Persons who have already submitted comments with respect to MAR Notice No. 24-159-70 do not need to resubmit comments as the board will respond when the board takes final action on the proposed amendments.

4. Concerned persons may present their data, views, or arguments to the Board of Nursing, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to dlibsdnur@mt.gov, and must be received no later than 5:00 p.m., April 11, 2008. Persons who desire a copy of the original proposed text may contact the board.

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.nurse.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 Nursing 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 Nursing 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 Nursing, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2305, e-mailed to dlibsdnur@mt.gov, or made by completing a request form at any rules hearing held by the agency.

BOARD OF NURSING
SUSAN RAPH, R.N., 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 March 17, 2008

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

In the matter of the adoption of New	)	NOTICE OF PUBLIC HEARING
Rule I, the amendment of ARM	)	ON PROPOSED ADOPTION,
37.78.102, 37.78.103, 37.78.215,	)	AMENDMENT, AND REPEAL
37.78.216, 37.78.402, 37.78.406,)	
37.78.420, and 37.78.806, and the)	
repeal of ARM 37.78.425 pertaining to)	
Temporary Assistance for Needy)	
Families (TANF))	

TO: All Interested Persons

1. On April 16, 2008, at 9:30 a.m., the Department of Public Health and Human Services will hold a public hearing in the Sapphire Room, 2401 Colonial Drive, Helena, Montana, to consider the proposed adoption, amendment, and repeal 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 April 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 rule as proposed to be adopted provides as follows:

RULE I TANF CASH ASSISTANCE POST-EMPLOYMENT PROGRAM

(1) Households who are losing eligibility for TANF cash assistance due to the receipt of new or increased earned income may be eligible for no more than three months of assistance under the TANF Cash Assistance Post-Employment Program if:

(a) the household is losing TANF cash assistance eligibility due to new or increased earnings from employment of an individual who is currently receiving TANF cash assistance and the new or increased earned income was:

(i) reported within ten calendar days of the participant's knowledge of the change;

(ii) verified within ten calendar days from the request for verification;

(b) the household has not received at least one month of TANF cash assistance post-employment benefits in the prior 12 months;

(c) the household received TANF cash assistance in the month of closure;

(d) the household is not currently receiving TANF cash assistance extended benefits; and

(e) the household meets all financial and nonfinancial eligibility for the TANF Cash Assistance Program including negotiating a Family Investment Agreement/Employability Plan (FIA/EP) as outlined in ARM 37.78.806 and 37.78.216.

(2) Earned income of the assistance unit is disregarded under the TANF Cash Assistance Post-Employment Program as outlined in ARM 37.78.406.

(3) All other income of the assistance unit is treated as outlined in ARM 37.78.402, 37.78.406, and 37.78.416.

(4) The Post-Employment Program is a time limited program. Households that are eligible for this program may receive up to three months of benefits. Payment standards for the Post-Employment Program are outlined in ARM 37.78.420. For each month of assistance provided under the Post-Employment Program, the time clock of the individuals receiving assistance will increment as outlined in ARM 37.78.201. However, households may not exceed their 60-month time clock by receipt of a Post-Employment benefit.

(5) Households receiving benefits under the Post-Employment Program are considered TANF recipients and are therefore eligible to receive TANF child care assistance in order to participate in the allowable work activities as negotiated in their FIA/EP.

(6) Households receiving benefits under the Post-Employment Program are considered TANF recipients and are eligible to receive TANF supportive service payments as outlined in ARM 37.78.832.

AUTH: 53-4-212, MCA

IMP: 53-4-211, MCA

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

37.78.102 TANF: FEDERAL REGULATIONS ADOPTED BY REFERENCE

(1) remains the same.

(2) The "Montana TANF Cash Assistance Manual" dated ~~January 1, 2008~~ July 1, 2008 is adopted and incorporated by this reference. A copy of the Montana TANF Cash Assistance Manual is available for public viewing at each local Office of Public Assistance, and at the Department of Public Health and Human Services, Human and Community Services Division, 111 N. Jackson St., 5th Floor, P.O. Box 202925, Helena, MT 59620-2925. Manual updates are also available on the department's web site at www.dphhs.mt.gov.

AUTH: 53-4-212, MCA

IMP: 53-4-211, 53-4-601, MCA

37.78.103 TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (TANF): DEFINITIONS The following definitions apply to this chapter:

(1) through (40) remain the same.

(41) "Post-Employment Program" means the TANF Cash Assistance Program that is available to households which are losing eligibility for TANF cash

assistance based on new or increased earned income of an individual currently receiving TANF cash assistance, but which will continue to receive a limited TANF cash assistance benefit through the "Post-Employment Program" for a period not to exceed three months.

(41) through (63) remain the same but are renumbered (42) through (64).

AUTH: 53-4-212, MCA

IMP: 53-4-211, 53-4-601, MCA

37.78.215 TANF: TANF CASH ASSISTANCE; CHILD SUPPORT ENFORCEMENT COOPERATION REQUIREMENTS (1) through (2) remain the same.

(3) The requirement of cooperation in establishing paternity and obtaining child support may be waived if good cause is shown. For purposes of this rule, good cause exists if one of the following circumstances exists, and as a result of that circumstance cooperation would be detrimental to the child:

(a) through (d) remain the same.

(e) the parental rights to the child have been terminated by a court of competent jurisdiction; ~~or~~

(f) the absent parent is listed on the Montana Department of Justice Sexual or Violent Offender Registry; or

~~(f)~~ (g) any other situation which makes cooperation with child support requirements detrimental to the child.

(4) through (9) remain the same.

AUTH: 53-4-212, MCA

IMP: 53-4-211, 53-4-601, MCA

37.78.216 TANF: TANF CASH ASSISTANCE FIA/WORC EMPLOYABILITY PLAN (FIA/EP) (1) The FIA/WoRC Employability Plan (FIA/EP) is a negotiated document listing eligibility requirements, allowable work activities as defined in ARM 37.78.103 and 37.78.807, and mutual obligations of the state and the participant regarding the course of action leading to the individual's employment and the number of hours and the time limits within which such activities and obligations shall be performed.

(a) The following individuals are required to negotiate and comply with a FIA/EP as a condition of eligibility in the TANF Cash Assistance Program or TANF Cash Assistance Post-Employment Program:

(i) through (d) remain the same.

(e) Failure to perform the activities required in the FIA/EP and/or to provide verification and/or documentation of participation in the activities on a timely basis will result in sanctions in accordance with ARM 37.78.506, unless the individual is receiving TANF cash assistance through the Post-Employment Program, in which case failure will result in case closure.

(2) Because entering into a FIA/EP is a condition of eligibility for TANF Cash Assistance and the TANF Cash Assistance Post-Employment Program, failure or refusal without good cause to enter into a FIA/EP initially or to renegotiate and/or

sign a new FIA/EP when requested will result in the denial of or termination of assistance for the entire assistance unit.

AUTH: 53-4-212, MCA

IMP: 53-4-211, 53-4-601, 53-4-606, MCA

37.78.402 TANF: TREATMENT OF INCOME (1) through (6) remain the same.

(7) If an individual would be required by ARM 37.78.208 to be included in the assistance unit except that the individual is not eligible because they are not a U.S. citizen or qualified alien, or they are a parole probation violator, fleeing felon, a person who has committed an intentional program violation ~~or a convicted drug felon as stated in ARM 37.78.206(3)(f) through (h) and 37.78.505~~, an individual who is sanctioned for noncompliance in allowable work activities as defined in ARM 37.78.103 and 37.78.807 or sanctioned for failure to accept and maintain employment without good cause, or an individual who has intentionally misrepresented their place of residence in order to obtain assistance simultaneously from two or more states, the income of that individual will be counted in determining the assistance unit's eligibility and grant amount even though the individual's needs are not included in the grant.

(8) through (10)(b) remain the same.

AUTH: 53-4-212, MCA

IMP: 53-4-211, 53-4-601, MCA

37.78.406 TANF: TANF CASH ASSISTANCE; INCOME DISREGARDS AND INCOME DEEMING (1) remains the same.

(2) When testing countable monthly income and determining the amount of the assistance payment, the following amounts are subtracted in the order listed from the earned income of each wage earner in the assistance unit after exclusions provided in ARM 37.78.415 and 37.78.416:

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

(d) One hundred percent of the countable earned income of each wage earner when the household is eligible for the TANF Cash Assistance Post-Employment Program.

(3) through (6) remain the same.

AUTH: 53-4-212, MCA

IMP: 53-4-211, 53-4-601, MCA

37.78.420 TANF: ASSISTANCE STANDARDS; TABLES; METHODS OF COMPUTING AMOUNT OF MONTHLY BENEFIT PAYMENT (1) Income standards as set forth in this rule are used to determine whether need exists with respect to income for any person who applies for or receives TANF cash assistance or TANF cash assistance Post-Employment Program benefits and to determine the benefit amount the assistance unit will receive if eligible. Four sets of assistance standards are used which are as follows:

(a) through (c) remain the same.

(d) The payment standard is used to determine the amount of the monthly cash payment in the TANF cash assistance program and is based on the size of the assistance unit, unless the household is receiving benefits through the TANF Cash Assistance Post-Employment Program. Payment standards in the Post-Employment Program are a set amount as defined in (4)(e). This amount is not based on household size. ~~This~~ The household's net countable income is subtracted from the payment standard to determine the amount of the payment for the TANF case assistance unit. This amount is prorated for the month of application if eligibility is for less than a full month.

(2) and (3) remain the same.

(4) The GMI standards, NMI standards, and benefits standards are as follows:

(a) Gross monthly income standards are compared with the assistance unit's gross monthly income as defined in ARM ~~37.78.103~~ 37.78.406.

GROSS MONTHLY INCOME STANDARDS (GMI)

Number of Persons in Household	Gross Monthly Income (GMI)
1	\$ 522
2	703
3	884
4	1,066
5	1,249
6	1,430
7	1,611
8	1,793
9	1,974
10	2,155
11	2,337
12	2,518
13	2,699
14	2,880
15	3,062

16	3,245
17	3,426
18	3,608
19	3,789
20	3,970

(b) remains the same.

(c) Benefit standards are compared with the assistance unit's countable income as defined in ARM ~~37.78.103~~ 37.78.406.

BENEFITS STANDARDS

1	\$ 221
2	298
3	375
4	452
5	530
6	607
7	684
8	761
9	838
10	915
11	991
12	1,068
13	1,145
14	1,222
15	1,299
16	1,377
17	1,454
18	1,531
19	1,608

20

1,685

(d) The payment standards for the TANF Cash Assistance Program are compared to the assistance unit's net countable income as defined in ARM ~~37.78.403~~ 37.78.406.

PAYMENT STANDARDS

(33% of the FY 2007 Federal Poverty Level)

1	\$ 281
2	376
3	472
4	568
5	664
6	759
7	855
8	951
9	1,046
10	1,142
11	1,238
12	1,333
13	1,429
14	1,525
15	1,621
16	1,716
17	1,812
18	1,908
19	2,003
20	2,099

(e) The payment standards for the TANF Cash Assistance Post-Employment Program are compared to the assistance unit's net countable income as defined in ARM 37.78.406 and are set at the following:

POST-EMPLOYMENT
PAYMENT STANDARDS

<u>1st Month</u>	<u>\$ 375</u>
<u>2nd Month</u>	<u>275</u>
<u>3rd Month</u>	<u>175</u>

(5) The adult's gross monthly earned income as defined in ARM 37.78.103 and ARM 37.78.406 is compared to the applicable GMI limit. If the assistance unit's GMI exceeds the GMI limit, the assistance unit is ineligible for assistance. Monthly income is compared to the full limit even if the eligibility is being determined for only part of the month. When comparing income to the income limits, income anticipated to be received in the benefit month is used.

AUTH: 53-4-212, MCA
IMP: 53-4-211, 53-4-241, 53-4-601, MCA

37.78.806 TANF CASH ASSISTANCE EMPLOYMENT AND TRAINING: PARTICIPATION (1) All participants in the TANF Cash Assistance Program or the TANF Cash Assistance Post-Employment Program who are required to negotiate and comply with their FIA/WoRC Employability Plan (FIA/EP) as outlined in ARM 37.78.216 are required to participate in allowable work activities as defined in ARM 37.78.103 and 37.78.807 and as provided in these rules. The above-named individuals must participate in allowable work activities as indicated in the FIA/EP if they are referred to the WoRC Program for case management, or as indicated in their tribal NEW plan if they are referred to the tribal NEW program for case management.

(2) remains the same.

~~(3) A WoRC participant who loses eligibility for the TANF Cash Assistance Program due to employment may, if the participant's case manager approves, receive case management services for up to 180 days after the last day of the last month of eligibility for TANF cash assistance.~~

AUTH: 53-4-212, MCA
IMP: 53-2-201, 53-4-211, 53-4-601, 53-4-613, MCA

5. ARM 37.78.425, TANF: NONFINANCIAL ASSISTANCE PAYMENT, as proposed to be repealed is on page 37-16979 of the Administrative Rules of Montana.

AUTH: 53-4-212, MCA
IMP: 53-2-211, 53-4-601, 53-4-603, MCA

6. The Department of Public Health and Human Services is proposing to

adopt New Rule I, amend ARM 37.78.102, 37.78.103, 37.78.215, 37.78.216, 37.78.402, 37.78.406, 37.78.420, and 37.78.806, and repeal 37.78.425 pertaining to Temporary Assistance for Needy Families (TANF).

Rule I TANF CASH ASSISTANCE POST-EMPLOYMENT PROGRAM

The department is proposing the addition of a Post-Employment Program that would benefit households which would otherwise lose eligibility for TANF cash assistance due to new or increased earned income of an individual currently receiving TANF cash assistance. Households would be eligible to receive an assistance payment in a set amount for a period up to, but not exceeding, three months. The payment amounts would be set at \$375 the first month; \$275 the second month; and \$175 the third month.

Individuals in this program would be required to negotiate a Family Investment Agreement/Employability Plan (FIA/EP) with the WoRC Program that would include their employment hours as allowable work activities. This negotiated plan would allow them to avail themselves of the job retention resources available through the WoRC Program, including a required once a month case management meeting. It is hoped that by offering job retention services and resources, a higher number of individuals will retain their employment and not return to TANF cash assistance following the Post-Employment Program.

Individuals in this program are considered TANF recipients and therefore would be eligible for TANF child care services for the employment hours that were negotiated in the FIA/EP. They would also be eligible to receive TANF supportive services to assist with continued participation and employment.

For each month of assistance provided under the Post-Employment Program, the time clock of the individuals receiving assistance will continue to accrue. However, households may not exceed their 60-month time clock by receipt of a Post-Employment benefit.

The department will benefit from retaining these individuals as TANF recipients by being able to count their employment hours in the work participation rate calculation.

The implementation of the TANF Post-Employment Program will have a positive impact on TANF cash assistance participants as it will allow them to avail themselves of job retention services and resources leading to continued self-sufficiency through employment.

This change will apply to an average of approximately 3,175 TANF cases currently receiving cash assistance. It is estimated that approximately 1,518 of the above mentioned households will meet eligibility criteria for this program. At the estimated cost per household of \$825, the additional cost to the state is estimated to be \$1,252,350.

ARM 37.78.102

ARM 37.78.102 currently adopts and incorporates by reference the TANF policy manual effective January 1, 2008. The department proposes to make some revisions to this manual that will take effect on July 1, 2008. The proposed amendments to ARM 37.78.102 are necessary in order to incorporate into the Administrative Rules of Montana the revised versions of the policy manuals and publication of this notice is intended to permit all interested parties to comment on the department's policies and to offer suggested changes. It is estimated that changes to the TANF manual could affect approximately 7,998 TANF recipients. Manuals and draft manual material are available for review in each local Office of Public Assistance and on the department's web site at www.dphhs.mt.gov.

ARM 37.78.103

This rule has been updated to include a definition of the TANF Cash Assistance Post-Employment Program. Further details of this program are outlined in the rationale for New Rule I above.

The implementation of the TANF Post-Employment Program will have a positive impact on TANF cash assistance participants as it will allow them to avail themselves of job retention services and resources leading to continued self-sufficiency through employment.

This change will apply to an average of approximately 3,175 TANF cases currently receiving cash assistance. It is estimated that approximately 1,518 of the above mentioned households will meet eligibility criteria for this program. At the estimated cost per household of \$825, the additional cost to the state is estimated to be \$1,252,350.

ARM 37.78.215

This rule has been updated to reflect a decision of the department to include in the list of circumstances constituting good cause for waiving the requirement to cooperate in establishing paternity or obtaining child support, the additional circumstance of the absent parent being listed on the Montana Department of Justice Sexual or Violent Offender Registry.

This change will have a positive impact on TANF cash assistance participants.

This change will apply to an average of approximately 3,175 TANF cases. There will be no additional cost to the state.

ARM 37.78.216

This rule has been updated to add the requirement that individuals who are receiving TANF cash assistance through the Post-Employment Program (as outlined in New

Rule I) to negotiate and agree to comply with a Family Investment Agreement/Employability Plan (FIA/EP) as a condition of eligibility for the program, and providing that failure to negotiate a FIA/EP or to comply with the activities negotiated in the FIA/EP will result in case denial or closure rather than sanction.

The implementation of the TANF Post-Employment Program will have a positive impact on TANF cash assistance participants as it will allow them to avail themselves of job retention services and resources leading to continued self-sufficiency through employment.

This change will apply to an average of approximately 3,175 TANF cases currently receiving cash assistance. It is estimated that approximately 1,518 of the above mentioned households will meet eligibility criteria for this program. At the estimated cost per household of \$825, the additional cost to the state is estimated to be \$1,252,350.

ARM 37.78.402

This rule is being updated to reflect accurately the current policy that allows for income of an individual who is disqualified from receiving TANF cash assistance due to sanction or due to intentionally misrepresenting their place of residence in order to gain assistance from two or more states simultaneously, to be counted as income to the assistance unit, even though the individual is not included in the grant amount. This is simply an update to the ARM to clarify current policy. We have also struck the language in this ARM that refers to the counting of the income of individuals who are convicted drug felons as outlined in ARM 37.78.206(3)(f) through (h) and 37.78.505 as such cases would be closed, and therefore there would be no need to count income of such individuals.

ARM 37.78.406

This rule has been updated to add a reference to ARM 37.78.415 in addition to ARM 37.78.416 which outline income exclusions. ARM 37.78.415 was inadvertently missing from this ARM.

This ARM has also been updated to add information regarding the disregarding of countable earned income of individuals who meet eligibility for the TANF cash assistance Post-Employment Program as outlined in New Rule I. By disregarding the countable earned income, households will be able to avail themselves of the benefits in the Post-Employment Program, including job retention skills, TANF child care, and TANF supportive service payments.

No controversy is anticipated over this update.

The implementation of the TANF Post-Employment Program will have a positive impact on TANF cash assistance participants as it will allow them to avail themselves of job retention services and resources leading to continued self-

sufficiency through employment.

This change will apply to an average of approximately 3,175 TANF cases currently receiving cash assistance. It is estimated that approximately 1,518 of the above mentioned households will meet eligibility criteria for this program. At the estimated cost per household of \$825, the additional cost to the state is estimated to be \$1,252,350.

ARM 37.78.420

This ARM has been updated to establish the income guidelines for the TANF cash assistance Post-Employment Program. Under this program, the countable earned income of the TANF cash assistance recipients will be disregarded entirely. The unearned income of the household will remain as countable income and will be compared to the Gross Monthly Income (GMI) test, the Benefit Standard and the Payment Standard for the program.

The Payment Standard for the Post-Employment Program is a set amount of \$375 for the first month; \$275 the second month; and \$175 the third month, regardless of household size.

This ARM is also updated to reference ARM 37.78.406 instead of ARM 37.78.103 for the correct definitions of the income standards.

The implementation of the TANF Post-Employment Program will have a positive impact on TANF cash assistance participants as it will allow them to avail themselves of job retention services and resources leading to continued self-sufficiency through employment.

This change will apply to an average of approximately 3,175 TANF cases currently receiving cash assistance. It is estimated that approximately 1,518 of the above mentioned households will meet eligibility criteria for this program. At the estimated cost per household of \$825, the additional cost to the state is estimated to be \$1,252,350.

ARM 37.78.425

This ARM is being removed as the funding for the work support payments is no longer available due to the implementation of the TANF cash assistance Post-Employment Program. At this time there are no nonfinancial assistance payments available.

ARM 37.78.806

This ARM has been updated necessarily to reflect the requirement that all participants in the TANF cash assistance Post-Employment Program who are required to negotiate and comply with the Family Investment

Agreement/Employability Plan (FIA/EP) are also required to participate in allowable work activities as outlined in ARM 37.78.103 and 37.78.807.

This ARM is also being updated to remove the section that indicates individuals who lose eligibility for TANF cash assistance due to employment may, with approval, receive case management services for up to 180 days. This is no longer necessary in light of the establishment of the TANF cash assistance Post-Employment Program.

Following is a brief overview of the TANF manual sections with substantive changes related to the above ARM changes.

TANF 001 - Monthly Income Standards

TANF 001 is being updated to reflect the Payment Standards for the TANF cash assistance Post-Employment Program. Payment standards are set at \$375 the first month; \$275 the second month; and \$175 the third month, regardless of household size.

TANF 306-2 - Child Support Good Cause Claim

TANF 306-2 is being updated to allow good cause and waive the requirement to cooperate in establishing paternity or obtaining child support if the absent parent is listed on the Montana Department of Justice Sexual or Violent Offender Registry.

TANF 602-1 - Income Disregards

TANF 602-1 is being updated to reflect the disregarding of the countable earned income of individuals who are eligible for the Post-Employment Program.

TANF 603-1 - Income Tests and Grant Calculations

TANF 603-1 is being updated to reflect the budgeting process for the TANF cash assistance Post-Employment Program.

TANF 704-2 - Work Support Payments

TANF 704-2 is being removed from the manual as the Work Support Payments will be discontinued effective July 1, 2008 due to the implementation of the Post-Employment Program.

7. 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 April 24, 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.

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 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.

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

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

/s/ Francis X. Clinch
Rule Reviewer

/s/ John Chappuis for
Director, Public Health and
Human Services

Certified to the Secretary of State March 17, 2008.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the proposed adoption of) NOTICE OF PUBLIC
New Rules I through XII relating to local) HEARING ON PROPOSED
government tax increment financing districts) ADOPTION
(TIFD))

TO: All Concerned Persons

1. On April 23, 2008, at 10:00 a.m., a public hearing will be held in the Director's Office (Fourth Floor) Conference Room of the Sam W. Mitchell Building, Helena, Montana, to consider the adoption of the above-stated rules.

Individuals planning to attend the hearing shall enter the building through the east doors of the Sam W. Mitchell Building, 125 North Roberts, Helena, Montana.

2. The Department of Revenue 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 of Revenue no later than 5:00 p.m., April 10, 2008, to advise us of the nature of the accommodation that you need. Please contact Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-5828; fax (406) 444-3696; or e-mail canderson@mt.gov.

3. These rules are reasonable and necessary to provide for economic development through the use of tax increment finance districts. The rules encourage the use of such districts by providing clear information on how local governments can use these districts to achieve their economic development objectives.

The information provided in these rules is especially valuable to local governments that serve less populated areas. Historically these local governments have not used tax increment financing to the same degree as other jurisdictions. In some instances this is because these local governments do not always have the technical staff available to assist them in understanding and complying with what are complex laws. These rules constitute a helpful guide or handbook to allow all local governments the ability to properly utilize tax increment financing as an effective economic development tool.

These rules facilitate the use of TIFDs by pulling the requirements of law into one comprehensive list. The rules set timelines that integrate the TIFD statutes with the requirements for certification of values in the property tax statutes. They help ensure that the department calculates the value of districts properly for the correct number of years by asking local governments to notify the Department of Revenue of issuance of bonds, the retirement of bonds, or material changes in bond issues.

These rules clarify that local governments have the authority to amend the boundaries of districts and clarify the procedures that the department will use to calculate the base year and incremental taxable values of districts when boundaries

are changed.

These rules have been developed and drafted to conform with the finding of rulemaking authority described in the memo issued by the Montana Legislative Services Division to the Revenue and Transportation Interim Committee on February 7, 2008. The rules relate to the property tax operation of tax increment financing. They do not relate to the creation or administration of the local government districts that utilize tax increment financing.

4. The proposed new rules do not replace or modify any section currently found in the Administrative Rules of Montana. The proposed new rules provide as follows:

NEW RULE I DEFINITIONS The following definitions apply to this subchapter:

(1) "Secondary value-adding industry" means an industrial process that engages in the mechanical or chemical transformation of materials or substances into new products in the manner defined as manufacturing in the North American Industry Classification System Manual prepared by the United States Office of Management and Budget, and that engages in the:

(a) processing of raw materials, such as minerals, ore, oil, gas, coal, agricultural products, and forestry products; or

(b) processing of semi-finished products that are used by the industry as a raw material in further manufacturing.

(2) "Tax increment financing district (TIFD)" means the area within the external boundaries of an urban renewal area, industrial district, technology district, or aerospace transportation and technology district that:

(a) has been legally created pursuant to the provisions of Title 7, chapter 15, parts 42 and 43, MCA; and

(b) contains a provision for the use of tax increment financing.

(3) "Value-added" means an increase in the worth of the raw or semi-finished product that results from a mechanical or chemical transformation and may not be attributable to a mere increase in existing production.

AUTH: 15-1-201, MCA

IMP: 7-15-4283, MCA

REASONABLE NECESSITY: The department is proposing to adopt New Rule I to define terms used in the subchapter as they relate to economic development through the use of tax increment finance districts. In order to avoid differences of opinion regarding terms that are common to TIFDs, definitions are needed to clarify certain terms.

NEW RULE II NOTIFICATION OF THE CREATION OR AMENDMENT OF A TAX INCREMENT FINANCING DISTRICT - TIMING (1) A local government may establish a TIFD pursuant to the provisions of Title 7, chapter 15, parts 42 and 43, MCA.

(2) Pursuant to 15-10-202, MCA, the department is required to certify the

taxable value of all property located within each taxing body.

(3) In order to provide the department adequate time to certify the taxable value of property located within a newly created TIFD, the department must receive notification of the creation of the TIFD and any supporting documentation required by these rules no later than February 1 of the calendar year following the creation of the TIFD.

(4) The notification required by rule must be mailed to the Department of Revenue, Legal Services Office, at P.O. Box 7701, Helena, MT 59604-7701, with a copy to the Property Assessment Division at P.O. Box 8018, Helena, MT 59604-8018.

AUTH: 15-1-201, MCA

IMP: 7-15-4282, 7-15-4284, 15-10-202, 15-10-420, MCA

REASONABLE NECESSITY: The department is proposing to adopt New Rule II to affirm the authority for local government to establish TIFDs in accordance with law. It also integrates the TIFD statutes with the requirements for certification of values in the property tax statutes. This rule also clarifies the notification requirements to the department.

NEW RULE III. NEW URBAN RENEWAL TAX INCREMENT FINANCING DISTRICTS – INFORMATION REQUIRED TO ENABLE THE DEPARTMENT TO CERTIFY BASE TAXABLE VALUE

(1) The department will certify the base taxable value of a newly created urban renewal TIFD if the department determines that the following information exists and has been provided to the department:

- (a) a copy of the statement of blight required under 7-15-4202, MCA, including any documentation upon which the statement of blight is based;
- (b) a copy of the resolution of necessity required by 7-15-4210, MCA, adopting the statement of blight. The resolution must have an effective date prior to the date on which the TIFD is created;
- (c) a map representing the TIFD's boundary including a legal description of the TIFD;
- (d) a copy of the local government's growth policy;
- (e) a copy of the local government's urban renewal plan pursuant to 7-15-4212 and 7-15-4284, MCA, containing the tax increment provision;
- (f) a copy of the local government's planning board's finding that the urban renewal plan conforms with the local government's growth policy;
- (g) a copy of the notice of public hearing required under 7-15-4215, MCA;
- (h) a certified copy of the ordinance approving the urban renewal plan containing the tax increment provision under 7-15-4216, MCA;
- (i) a certified copy of the ordinance creating the urban renewal district including the tax increment provision;
- (j) the name of the TIFD; and
- (k) a list of the geocodes for all real property, the assessor codes for all personal property, and a description of all centrally assessed property located within the TIFD at the time of its creation.

(2) The local government that has created the TIFD will provide the

information described in (1) to the department when it notifies the department that the TIFD has been created.

AUTH: 15-1-201, MCA

IMP: 7-15-4202, 7-15-4210, 7-15-4212, 7-15-4215, 7-15-4216, 7-15-4282, 7-15-4284, MCA

REASONABLE NECESSITY: The department is proposing to adopt New Rule III to facilitate the use of TIFDs by removing confusion regarding what's required for the department to certify the base taxable value of a newly created urban renewal TIFD.

NEW RULE IV INDUSTRIAL TAX INCREMENT FINANCING DISTRICTS – INFORMATION REQUIRED TO ENABLE THE DEPARTMENT TO CERTIFY BASE TAXABLE VALUE

(1) The department will certify the base taxable value of a newly created industrial TIFD if the department determines that the following information exists and has been provided to the department:

- (a) a copy of the local government's finding that the property within the TIFD consists of a continuous area with an accurately described boundary;
- (b) a copy of the ordinance zoning the area within the TIFD for light or heavy industrial use;
- (c) evidence that the zoning within the TIFD is in accordance with the local government's growth policy;
- (d) a copy of the local government's finding that the property within the TIFD is not included within an existing urban renewal district;
- (e) a copy of the local government's finding that the area within the TIFD is deficient in infrastructure improvement for industrial development, including any documentation upon which the finding of deficiency is based;
- (f) a copy of the local government's growth policy;
- (g) a copy of the notice of public hearing required under 7-15-4299, MCA;
- (h) a certified copy of the ordinance approving the industrial district and the tax increment financing provision pursuant to 7-15-4284, MCA;
- (i) a map representing the TIFD's boundary including a legal description of the TIFD;
- (j) the name of the TIFD; and
- (k) a list of the geocodes for all real property, the assessor codes for all personal property, and a description of all centrally assessed property located within the TIFD at the time of its creation.

(2) The local government that has created the TIFD will provide the information described in (1) to the department when it notifies the department that the TIFD has been created.

AUTH: 15-1-201, MCA

IMP: 7-15-4282, 7-15-4284, 7-15-4299, MCA

REASONABLE NECESSITY: The department is proposing to adopt New Rule IV to facilitate the use of TIFDs by removing confusion regarding what's required for the department to certify the base taxable value of a newly created industrial TIFD.

NEW RULE V NEW TECHNOLOGY TAX INCREMENT FINANCING DISTRICTS – INFORMATION REQUIRED TO ENABLE THE DEPARTMENT TO CERTIFY BASE TAXABLE VALUE

(1) The department will certify the base taxable value of a newly created technology TIFD if the department determines that the following information exists and has been provided to the department:

- (a) a copy of the comprehensive development plan required by 7-15-4295, MCA, that was adopted by the local government prior to the creation of the TIFD;
- (b) a copy of the local government's finding, made prior to the creation of the TIFD, that the area is deficient in infrastructure improvements necessary for technology development;
- (c) a map representing the TIFD's boundary including a legal description of the TIFD;
- (d) a copy of the notice of public hearing required under 7-15-4295, MCA;
- (e) a copy of the ordinance zoning the area within the TIFD for use in accordance with the local government's growth policy;
- (f) a copy of the local government's growth policy;
- (g) a certified copy of the ordinance approving the technology district and the tax increment provision under 7-15-4216, MCA, and including:
 - (i) a statement that the purpose of the TIFD complies with the requirements of 7-15-4295, MCA;
 - (ii) a statement that the tenants will comply with the requirements of 7-15-4295, MCA;
 - (iii) a statement that the district has not been designed to serve the needs of a single tenant or group of nonindependent tenants; and
 - (iv) a statement that the TIFD does not include any property included in an urban renewal district or an industrial district;
- (h) the name of the TIFD; and
- (i) a list of the geocodes for all real property, the assessor codes for all personal property, and a description of all centrally assessed property located within the TIFD at the time of its creation.

(2) The local government that has created the TIFD will provide the information described in (1) to the department when it notifies the department that the TIFD has been created.

AUTH: 15-1-201, MCA

IMP: 7-15-4216, 7-15-4282, 7-15-4284, 7-15-4295, MCA

REASONABLE NECESSITY: The department is proposing to adopt New Rule V to facilitate the use of TIFDs by removing confusion regarding what's required for the department to certify the base taxable value of a newly created new technology TIFD.

NEW RULE VI NEW AEROSPACE TRANSPORTATION AND TECHNOLOGY TAX INCREMENT FINANCING DISTRICTS – INFORMATION REQUIRED TO ENABLE THE DEPARTMENT TO CERTIFY BASE TAXABLE VALUE

(1) The department will certify the base taxable value of a newly created

aerospace technology and transportation TIFD if the department determines that the following information exists and has been provided to the department:

- (a) a map representing the TIFD's boundary including a legal description of the TIFD;
- (b) a copy of the ordinance zoning the area within the TIFD for use in accordance with the local government's growth policy;
- (c) a copy of the local government's growth policy;
- (d) a copy of the notice of public hearing required under 7-15-4296, MCA;
- (e) a certified copy of the ordinance approving the technology district and the tax increment provision under 7-15-4216, MCA, and including:
 - (i) a statement that the TIFD does not include any property included in an urban renewal district or an industrial district; and
 - (ii) a statement that the purpose of the TIFD complies with the requirements of 7-15-4296, MCA;
- (f) the name of the TIFD; and
- (g) a list of the geocodes for all real property, the assessor codes for all personal property, and a description of all centrally assessed property located within the TIFD at the time of its creation.

(2) The local government that has created the TIFD will provide the information described in (1) to the department when it notifies the department that the TIFD has been created.

AUTH: 15-1-201, MCA

IMP: 7-15-4216, 7-15-4282, 7-15-4284, 7-15-4296, MCA

REASONABLE NECESSITY: The department is proposing to adopt New Rule VI to facilitate the use of TIFDs by removing confusion regarding what's required for the department to certify the base taxable value of a newly created new aerospace transportation and technology TIFD.

NEW RULE VII DETERMINATION OF BASE YEAR TAXABLE VALUE OF A NEWLY CREATED TIFD (1) The base year taxable value for the tax increment financing district (TIFD) will be determined as follows:

(a) If the notice or supporting documentation, or both, required by [NEW RULE III] through [NEW RULE VI] is received by the department on or before February 1 of the calendar year following the creation of a valid TIFD, the department will determine the base year taxable value of the district as of January 1 of the year in which the valid TIFD was created.

(b) If the notice or supporting documentation, or both, required by [NEW RULE III] through [NEW RULE VI] is received after February 1 of the calendar year following the creation of a valid TIFD, the department will calculate the base year taxable value of the district as of January 1 of the year in which the documentation was received. In these instances, the base year will be reported to the affected taxing jurisdictions by the first Monday in August of the calendar year following receipt of the notification.

(c) The base year taxable value of a TIFD may only be calculated as provided for in (1)(a) and (b).

AUTH: 15-1-201, MCA

IMP: 7-15-4284, 7-15-4285, 15-10-420, MCA

REASONABLE NECESSITY: The department is proposing to adopt New Rule VII to set timelines that integrate the determination of base taxable values in the TIFD statutes with the requirements for the certification of values in the property tax statutes. Without these timelines the department will be unable to meet the needs of local governments as they create TIFDs and issue bonds. Local government officials have indicated that examples of how the timelines will affect the determination of base taxable values, actual taxable values, and incremental taxable values would be helpful. The rule provides those examples.

NEW RULE VIII DETERMINATION AND REPORT OF BASE YEAR, ACTUAL, AND INCREMENTAL TAXABLE VALUES – TIMING (1) The base year taxable value of a newly created TIFD shall be determined pursuant to [NEW RULE VII].

(2) The actual taxable value of all property within a TIFD shall be determined as of January 1 each year.

(3) The incremental taxable value for all property within a TIFD shall be determined by deducting the base taxable value from the actual taxable value each year.

(4) The base year, actual, and incremental taxable values shall be reported to all affected taxing bodies by the first Monday of August each year when the department certifies values pursuant to 15-10-202, MCA.

AUTH: 15-1-201, MCA

IMP: 7-15-4284, 7-15-4285, 15-10-202, 15-10-420, MCA

REASONABLE NECESSITY: The department is proposing to adopt New Rule VIII because rules are reasonable and necessary to provide for economic development through the use of tax increment finance districts. This rule sets timelines that integrate the determination of base taxable values in the TIFD statutes with the requirements for the certification of values in the property tax statutes. Without these timelines the department will be unable to meet the needs of local governments as they create TIFDs and issue bonds. The rule also specifies how incremental taxable values will be determined.

NEW RULE IX NOTIFICATION OF AMENDMENT OF BOUNDARIES OR CHANGES WITHIN AN EXISTING TAX INCREMENT FINANCE DISTRICT – NEWLY TAXABLE PROPERTY (1) A local government that has amended the boundaries of or made changes within a valid TIFD pursuant to the provisions of Title 7, chapter 15, parts 42 and 43, MCA, shall report the amendment to the department in the manner described in [NEW RULE II].

(2) Property that is removed from a TIFD as a result of an amendment or change shall be considered newly taxable property pursuant to 15-10-420, MCA.

AUTH: 15-1-201, MCA

IMP: 7-15-4282, 7-15-4284, 15-10-420, MCA

REASONABLE NECESSITY: The department is proposing to adopt New Rule IX because it has not been clear whether local governments have statutory authority to amend the boundaries of existing TIFDs or make changes to valid TIFDs. The rule clarifies that local governments have the authority to amend the boundaries of or make changes to valid TIF districts, indicates how those amendments and changes are to be reported, and specifies that property removed from the TIFD as a result of an amendment or change will be newly taxable property.

NEW RULE X INFORMATION REQUIRED BY THE DEPARTMENT TO CERTIFY BASE YEAR TAXABLE VALUES OF AN AMENDED OR CHANGED TAX INCREMENT FINANCE DISTRICT (1) The department will certify the base year taxable values of an amended or changed TIFD if the department determines, as it relates to property that is added to a TIFD, that the following information exists:

(a) if the amended district is an urban renewal TIFD, the evidence required by [NEW RULE III];

(b) if the amended district is an industrial TIFD, the evidence required by [NEW RULE IV];

(c) if the amended district is a technology TIFD, the evidence required by [NEW RULE V]; and

(d) if the amended district is an aerospace technology and transportation TIFD, the evidence required by [NEW RULE VI].

AUTH: 15-1-201, MCA

IMP: 7-15-4282, 7-15-4284, 7-15-4285, 15-10-420, MCA

REASONABLE NECESSITY: The department is proposing to adopt New Rule X to facilitate the use of TIFDs by removing confusion regarding what's required for the department to certify the base taxable value of a TIFD that has been amended or changed by a local government.

NEW RULE XI DETERMINATION OF BASE YEAR TAXABLE VALUES OF AN AMENDED TIFD – REPORTING OF BASE YEAR, ACTUAL, AND INCREMENTAL TAXABLE VALUES (1) In cases where a TIFD boundary amendment adds new property to an existing TIFD:

(a) the base year taxable value of the properties located within the original existing TIFD will not change; and

(b) the base year taxable value of the property being added to the TIFD by the boundary amendment will be calculated pursuant to [NEW RULE VII].

(2) In cases where a TIFD boundary amendment removes property from an existing TIFD:

(a) the base year taxable value of the original TIFD will not change; and

(b) the total actual taxable value of the TIFD will be reduced by the value of the property that has been amended out of the TIFD. The value of the property being amended out of the TIFD will be the actual taxable value determined by the

department for ad valorem tax purposes as of January 1 of the year in which the department is notified of the amendment. An amendment that removes property from a TIFD will cause a reduction in the incremental taxable value of the TIFD.

(3) The department shall report the base year, actual, and incremental taxable values of an amended or changed TIFD to all affected taxing bodies pursuant to [NEW RULE VIII].

AUTH: 15-1-201, MCA

IMP: 7-15-4282, 7-15-4284, 7-15-4285, 15-10-420, MCA

REASONABLE NECESSITY: The department is proposing to adopt New Rule XI to specify how base taxable value, actual taxable value, and incremental values will be calculated when property is either added to or removed from a valid TIFD by local governments.

NEW RULE XII REPORTING OF ISSUANCE OF BONDS OR RETIREMENT OF BONDS

(1) To allow the department to determine the value of the newly taxable property as required under 15-10-420, MCA, a local governing body that authorizes urban renewal bonds, industrial infrastructure development bonds, aerospace transportation and technology infrastructure development bonds, technology infrastructure development bonds, or refunding bonds shall, no later than February 1 of each year, provide the department with a copy of each resolution or ordinance required under 7-15-4301, MCA.

(2) A local governing body that retires any bonds secured by tax increment, shall, no later than February 1 of each year, notify the department of the retirement.

(3) The documentation required by this rule shall be mailed to the Department of Revenue Legal Services Office at P.O. Box 7701, Helena, MT 59604-7701, with a copy to the Property Assessment Division at P.O. Box 8018, Helena, MT 59604-8018.

AUTH: 15-1-201, MCA

IMP: 7-15-4282, 7-15-4284, 7-15-4286, 7-15-4290, 7-15-4301, 15-10-420, MCA

REASONABLE NECESSITY: The department is proposing to adopt New Rule XII to require that local governments notify the Department of Revenue of issuance of bonds, the retirement of bonds, or material changes in bond issues so that the department can certify the value of districts for the correct number of years.

5. Concerned persons may submit their data, views, or arguments concerning the proposed action, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-5828; fax (406) 444-3696; or e-mail canderson@mt.gov and must be received no later than April 29, 2008.

6. Cleo Anderson, Department of Revenue, Director's Office, has been

designated to preside over and conduct the hearing.

7. An electronic copy of this Notice of Public Hearing 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 Notice of Public Hearing conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

8. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and e-mail or mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding particular subject matter or matters. 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 person in 5 above or faxed to the office at (406) 444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

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

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

/s/ Dan R. Bucks
DAN R. BUCKS
Director of Revenue

Certified to Secretary of State March 17, 2008

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF AMENDMENT, REPEAL,
ARM 2.13.202, repeal of 2.13.201,	)	AND ADOPTION
2.13.203, 2.13.205, 2.13.206, and)	
adoption of New Rule I pertaining to)	
implementing HB 27: Defining)	
eligibility and distribution of HB 27)	
surcharge funds for wireless 911)	
emergency systems)	

TO: All Concerned Persons

1. On February 14, 2008, the Department of Administration published MAR Notice No. 2-13-395 pertaining to the public hearing on the proposed amendment, repeal, and adoption of the above-stated rules at page 210 of the 2008 Montana Administrative Register, Issue Number 3.

2. The department has repealed ARM 2.13.201, 2.13.203, 2.13.205, and 2.13.206 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:

2.13.202 DEFINITIONS As used in this chapter, the following definitions apply:

(1) "Automatic location identification (ALI)" means the automatic display at a public safety answering point of the location of the 911-accessible device, including supplemental information required by the Federal Communications Commission. ~~caller's telephone number, address/location of the telephone, and supplementary emergency services information of the location from which a call originates.~~

(2) through (4) remain as proposed.

(5) "Cost recovery" means recovering the allowable costs associated with carrier network element upgrades necessary for location-based emergency services.

~~(6) "Location-based emergency services" means emergency communications applications that include information associated with a subscriber's location.~~

~~(7)~~(6) "Selective routing" is a telephone system feature that enables all 911 calls originating from within a defined geographical region to be answered at a predesignated 911 jurisdiction. means the routing of a 911 call to the proper public safety answering point based upon the location of the caller.

AUTH: 10-4-102, 10-4-114, MCA

IMP: 10-4-101, MCA

4. The department had adopted NEW RULE I (2.13.207) as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

2.13.207 WIRELESS ENHANCED 911 DISTRIBUTION FOR WIRELESS PROVIDERS (1) If there are not enough funds to fully reimburse a wireless carrier for a particular quarter, the unpaid balance will be paid:

(a) after the ~~county's~~ 911 jurisdiction's quarterly allocation of funds for wireless cost recovery has occurred; and

(b) to the maximum of that carrier's quarterly calculated percentage for that ~~county~~ jurisdiction.

AUTH: 10-4-102, 10-4-114, MCA

IMP: 10-4-301, 10-4-313, MCA

5. The department has thoroughly considered the comments received. A summary of the comments received and the department's responses are as follows:

COMMENT #1: Montana Independent Telecommunications Systems (MITS) has commented that in ARM 2.13.202, the definition of "Automatic location identification (ALI)" would result in the placing of unknown legal obligations on the telecommunications providers, in that it might require providers to provide potentially undefined emergency services information about their callers. Also, MITS fears that this definition might obligate carriers beyond what is required by the Federal Communications Commission for E911 compliance. MITS has suggested replacing "supplementary emergency services information of the location from which a call originates" with "required by the Federal Communications Commission."

RESPONSE #1: The department understands and concurs with the MITS comment, and has changed this definition to reflect this suggestion.

COMMENT #2: The Montana Telecommunications Association (MTA) has commented that in ARM 2.13.202, it is unnecessary to include "telephone number" in the definition of "Automatic location identification (ALI)", as it is previously defined in ARM 2.13.202(2). MTA has also commented that within this definition "911-accessible device" might be a more appropriate term than "caller's."

RESPONSE #2: The department understands and concurs with the MTA comments, and has changed this definition to reflect these suggestions.

COMMENT #3: MITS has commented that the definition of "Billing address" in ARM 2.13.202 does not properly exclude nonfacilities-based Montana wireless providers from receiving cost recovery funds, and that it should define a threshold eligibility for receiving 911 cost recovery funds.

MITS suggests the following alternative definition to "Billing address":

"Billing address" means the place of primary use for a subscriber of a wireless telecommunications provider having telecommunications facilities, to originate and to terminate wireless communications, physically located within a Montana local 911 jurisdiction.

RESPONSE #3: The department understands the concerns expressed in this comment, but declines to modify this definition because nonfacilities-based wireless providers in Montana are not eligible to receive cost recovery. This is clearly indicated in 10-4-101(28), MCA, "Wireless provider" means an entity, as defined in 35-1-113, that is authorized by the Federal Communications Commission to provide facilities-based commercial mobile radio service within this state." Also, as described in 10-4-313(1)(c), MCA, "The department shall review all invoices for appropriateness of costs claimed by the wireless provider." This office has an inventory of facilities-based wireless providers in Montana, and will distribute surcharge funds to facilities-based wireless providers only. The definition of "Billing address", as suggested by MITS, seems to go beyond the scope of a definition, in that it includes unnecessary provisions for excluding nonfacilities-based wireless providers.

COMMENT #4: Montana Telecommunications Association (MTA) has suggested that the department include the word "allowable" before "costs" in the definition of "Cost recovery" in ARM 2.13.202 as this would better clarify that available funds are limited to allowable network upgrade expenses only.

RESPONSE #4: The department understands and concurs with the MTA comment, and has changed this definition as MTA has suggested.

COMMENT #5: MITS has commented that in ARM 2.13.202, the proposed definition of "Location-based emergency services" potentially imposes obligations upon wireless providers that fall well beyond any FCC requirement for E911 call delivery, and that it is overly broad and ambiguous.

RESPONSE #5: The department understands the concerns that MITS has expressed over this definition. And after further review of this definition, to eliminate potential misunderstanding or ambiguity, the department has determined that it is unnecessary to define this term at this time, and has removed this new definition from the rule.

COMMENT #6: MITS has commented that the proposed definition of "Selective routing" in ARM 2.13.202 is not consistent with any industry-standard definition of the term, and that the proposed definition might create a lot of confusion and ambiguity.

RESPONSE #6: The department understands the comments and concerns expressed by MITS and has changed this definition to match the National Emergency Number Association's definition of selective routing.

COMMENT #7: MTA has commented that within NEW RULE I WIRELESS ENHANCED 911 DISTRIBUTION FOR WIRELESS PROVIDERS (1)(a), the phrase "quarterly allocation for wireless" is incomplete, and MTA has suggested the following revision:

(a) After the county's quarterly allocation for wireless has occurred of funds for wireless enhanced allowable cost recovery has been distributed;

RESPONSE #7: The department understands the MTA comment. The department concurs that "quarterly allocation for wireless" is incomplete, and has changed the rule to better define "wireless". The purpose of NEW RULE I(1)(a) is to indicate the order of quarterly allocation, not distribution. The last part of the MTA definition suggests that the unpaid balances will be paid after "cost recovery has been distributed," thus implying two distinct quarterly distributions. The department does not concur with this portion of the MTA suggested definition.

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

By: /s/ Denise Pizzini
Denise Pizzinni, Rule Reviewer
Department of Administration

Certified to the Secretary of State March 17, 2008.

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM) NOTICE OF AMENDMENT
4.4.303 relating to insured crops)

TO: All Concerned Persons

1. On February 14, 2008, the Montana Department of Agriculture published MAR Notice No. 4-14-177 relating to the public hearing on the proposed amendment of the above-stated rule at page 215 of the 2008 Montana Administrative Register, Issue Number 3.

2. The agency has amended ARM 4.4.303 exactly as proposed.

3. No comments or testimony were received.

DEPARTMENT OF AGRICULTURE

/s/ Ron de Yong
Ron de Yong, Director

/s/ Cort Jensen
Cort Jensen, Rule Reviewer

Certified to the Secretary of State, March 17, 2008.

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM) NOTICE OF AMENDMENT AND
4.5.201, 4.5.202, 4.5.203, and 4.5.204) ADOPTION
and the adoption of New Rule I relating)
to noxious weed list categories)

TO: All Concerned Persons

1. On February 14, 2008, the Montana Department of Agriculture published MAR Notice No. 4-14-178 relating to the public hearing on the proposed amendment and adoption of the above-stated rules at page 217 of the 2008 Montana Administrative Register, Issue Number 3.

2. The agency has amended ARM 4.5.201, 4.5.202, 4.5.203, and 4.5.204, and adopted New Rule I, 4.5.205 exactly as proposed.

3. No comments or testimony were received.

DEPARTMENT OF AGRICULTURE

/s/ Ron de Yong
Ron de Yong, Director

/s/ Cort Jensen
Cort Jensen, Rule Reviewer

Certified to the Secretary of State, March 17, 2008.

BEFORE THE DEPARTMENT OF AGRICULTURE
AND THE DEPARTMENT OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the adoption of ARM) NOTICE OF ADOPTION
New Rule I through VII relating to)
Montana certified natural beef cattle)
marketing program)

TO: All Concerned Persons

1. On January 17, 2008, the Montana Department of Agriculture and the Montana Department of Livestock published MAR Notice No. 4-14-179 relating to the public hearing on the proposed adoption of the above-stated rules at page 1 of the 2008 Montana Administrative Register, Issue Number 1.

2. The departments have adopted ARM New Rule I, 4.18.101, New Rule II, 4.18.102, New Rule III, 4.18.103, New Rule IV, 4.18.104, New Rule V, 4.18.105, New Rule VI, 4.18.106, and New Rule VII, 4.18.112 exactly as proposed.

3. The departments have thoroughly considered the comments received. A summary of the comments received and the departments' responses follow:

COMMENT #1 Ernie Chacon asked if a definition for "chemicals" could be included.

RESPONSE #1 The departments believe that the dictionary definition of chemical was appropriate and no specialized definition was needed.

COMMENT #2 Keep Antibiotics Working (KAW) requests that the Montana Certified Natural Beef requirements include a requirement that cattle not be given medically important antibiotics for nontherapeutic purposes. KAW included definitions for "nontherapeutic use" and "medically important antibiotics".

RESPONSE #2 The law sets the requirement for the Montana Certified Natural Beef program, not the rules. The law requires that the beef be raised without subtherapeutic antibiotics which is similar if less exact then the KAW language and definitions. The departments cannot use the rule to change the law. We believe the definition of "subtherapeutic" provided in the rules meets the goals if not the exact wording requested by KAW.

COMMENT #3 KAW advises that a stricter standard (including a ban on all antibiotics) may be desirable from a marketing stand point.

RESPONSE #3 A stricter standard would require a change in the law and could not be done by rule (see response #2).

COMMENT #4 Both Ernie Chacon and KAW were supportive of the program

RESPONSE #4 The departments support the program as well.

DEPARTMENT OF AGRICULTURE

/s/ Ron de Yong
Ron de Yong, Director

/s/ Cort Jensen
Cort Jensen, Rule Reviewer

Certified to the Secretary of State, March 17, 2008.

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

In the matter of the amendment) NOTICE OF AMENDMENT
of ARM 24.138.407 functions for dental)
hygienists, 24.138.3102 specialty)
advertising, and the adoption of NEW)
RULE I hygiene diagnosis and treatment)
planning)

TO: All Concerned Persons

1. On January 17, 2008, the Board of Dentistry (board) published MAR Notice No. 24-138-64 regarding the proposed amendment and adoption of the above-stated rules, at page 14 of the 2008 Montana Administrative Register, issue no. 1.
2. On February 7, 2008, a public hearing was held on the proposed amendment and adoption of the above-stated rules in Helena. Numerous comments were received by the February 15, 2008, deadline.
3. The board has thoroughly considered the comments and testimony received. No comments or testimony were received regarding ARM 24.138.3102.
4. The board has amended ARM 24.138.3102 exactly as proposed.
5. The board is not amending ARM 24.138.407 nor adopting NEW RULE I at this time. The board received numerous comments both supporting and opposing the proposed amendment and adoption. Following review and consideration of all comments received and due to concerns raised by the comments and by the board itself, the board has decided to not amend ARM 24.138.407 nor adopt NEW RULE I as proposed at this time.

BOARD OF DENTISTRY
DR. PAUL SIMMS, DDS

/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 March 17, 2008

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

In the matter of the amendment of ARM)
36.12.101, definitions and ARM)
36.12.107, filing fee refunds and the)
adoption of New Rule I (36.12.117),)
objection to application)

NOTICE OF AMENDMENT
AND ADOPTION

To: All Concerned Persons

1. On October 4, 2007, the Department of Natural Resources and Conservation published MAR Notice No. 36-22-123 regarding a notice of public hearing on the proposed amendment and adoption of the above-stated rules at page 1527 of the 2007 Montana Administrative Register, Issue No. 19.

2. The department has amended ARM 36.12.101 as proposed. The department has amended ARM 36.12.107 and adopted New Rule I (36.12.117) as proposed but with the following changes from the original proposal, matter to be stricken interlined, new matter underlined:

36.12.107 FILING FEE REFUNDS

(1) through (6) remain as proposed.

~~(7) A refund of the Objection to Application filing fee will not be authorized if an objector~~ a person objecting to a proposed application under 85-2-308, MCA, does not correct the deficiencies identified in the Objection Deficiency Notice by the deadline specified in the notice.

(8) remains as proposed.

NEW RULE I (36.12.117) OBJECTION TO APPLICATION

(1) and (2) remain as proposed.

~~(3) Persons owning separate water rights must each file an~~ an ~~their own~~ Objection to Application form. For example, if person A owns a water right and B owns a different water right and both want to file an objection to the same application, owner A and owner B must each file a separate objections Objection to Application form.

(4) remains as proposed.

~~(5) Only a whose signature appears on a valid Objection to Application will be allowed to participate in an administrative hearing. An entity filing objections must be represented by legal counsel in any administrative hearing before the department. One co-owner cannot represent another co-owner (see unauthorized practice of law 37-61-201, MCA).~~

(5) Each objector who wants to participate in the department's contested case hearing must sign the Objection to Application form.

~~(7)~~ (6) An Objection to Application is timely if the postmark date on the form is on or before the objection deadline stated in the public notice of the application. A fax of the Objection to Application form will be accepted, provided the original

Objection to Application form is postmarked or hand-delivered timely. Electronic mail (e-mail) submissions of the Objection to Application will not be accepted.

~~(6) All corporations, limited liability companies, trusts, partnerships, associations, and groups of individuals (unless each person appears pro se) must be represented by an attorney licensed to practice in the state of Montana in order to participate in a formal proceeding before the department, including but not limited to a contested case proceeding. This list is not exhaustive (see 37-61-201, MCA). Failure to retain required legal representation will result in dismissal of the Objection to Application.~~

~~(8) (7)~~ An Objection to Application filed with the department before an application has been published will not be accepted and will be returned.

~~(9) (8)~~ Upon receipt of an Objection to Application or response to an Objection Deficiency Notice, the department will place the envelope postmark date on the form. If the postmark date is not legible, the department will assign the date as two days prior to the department's receipt of the objection form. An objector is solely responsible for ensuring timeliness, a legible postmark, and filing of the objections.

~~(10) Fax or electronic mail (e-mail) submissions of the Objection to Application will not be accepted.~~

~~(11) (9)~~ An Objection to Application is correct and complete if it includes the following legible information:

(a) filing fee;
(b) objector's name and mailing address;
(c) name of the water right applicant;
(d) water right application number;
(e) if an objector is claiming the objector's water right will be adversely affected if the application were granted, the objector must provide the department-assigned water right number. If the water right was exempt from the statewide water right filing requirements and is not on record with the department, the objector must provide the following information:

(i) date of first use;
~~(ii) name of the appropriator;~~
~~(iii) (ii) source;~~
(iii) means of diversion;
(iv) type of use (stock or domestic);
(v) the flow rate and volume of water used;
(vi) the point of diversion; and
(f) facts indicating that the application does not meet one or more of the applicable criteria set forth in 85-2-302, 85-2-311, 85-2-316, 85-2-402, 85-2-407, or 85-2-408, MCA. The facts provided must specifically describe why or how one or more of the criteria are not met;

(g) facts explaining how the objector person has standing to object. To have standing, an objector a person must have property, water rights, or other interests that would be adversely affected were the application to be granted. The objection must describe how the objector's person's property, water rights, or interests will be adversely affected if the water right application were granted; and

(h) ~~notarized~~ signature of the objector or the objector's legal representative. If a representative of the objector other than objector's attorney signs the Objection to Application affidavit, the representative shall state the relationship of the representative to the objector and provide documentation demonstrating the authenticity of that relationship, ~~such as a copy of a power of attorney.~~

~~(42)~~ (10) An objection that is deemed correct and complete and valid pursuant to 85-2-308(3) and (6), MCA, may proceed to an administrative hearing. The administrative hearing will be limited to the criteria objected to in the objection. An objector may participate in the administrative hearing only on the criteria to which the objector specifically objected and which is determined valid by the department.

~~(43)~~ (11) The department will mail notice to the objector of the Objection to Application of any deficiencies in the objection. ~~The information requested in the Objection Deficiency Notice must be postmarked or hand delivered to the department within 15 days from the date on the Objection Deficiency Notice.~~ The objector must address the information requested in the Objection Deficiency Notice and must have the response postmarked or hand delivered to the department within 15 calendar days from the date on the Objection Deficiency Notice. A fax submission of the deficiency letter response will be accepted provided the original response is postmarked timely. Electronic mail (e-mail) submissions of a response will not be accepted.

~~(44)~~ (12) If the objector does not correct the deficiencies as determined by the department by the deadline, the objection will be terminated without further notice.

~~(45)~~ (13) The department will document a valid objection by completing an objection validity form.

~~(46)~~ (14) The department will determine on which criteria the objector has filed a valid objection.

~~(47)~~ (15) An objection may be withdrawn at any time in writing. A party withdrawing an objection will not be considered a party by the department to any hearing that may be held by the department.

~~(48)~~ (16) An applicant is not required to meet a water quality criterion when a valid water quality objection is not raised or is withdrawn.

~~(49)~~ (17) Private agreements between applicants and objectors which provide for the withdrawal of objections and include conditions that must be met by an applicant or objector may not be recognized by the department or included in a granted application. The department will only place a condition on a granted application if the department determines the condition is necessary to meet the application criteria.

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

COMMENT 1

DNRC received several comments regarding proposed New Rule I(3) (36.12.117) which provides that persons owning separate water rights must each file their own Objection to Application form. One commenter raised concerns on how this would

affect judicial economy, and that it would be harmful to groups that are organized for the purpose of representing ditch and canal companies in the objection process.

RESPONSE 1

DNRC believes that adopting the rule in its current form is necessary to implement 85-2-308, MCA, which provides that a person has standing to file an objection if the objector's property, water rights, or interests would be adversely affected by the proposed appropriation. Additionally, 85-2-311(1)(b), MCA, states that the water rights of a prior appropriator under an existing water right, a certificate, a permit, or a state water reservation will not be adversely affected.

COMMENT 2

DNRC received several comments regarding proposed New Rule I(5) (36.12.117) pertaining to the requirement that entities filing objections must be represented by an attorney in administrative hearings before the department. One commenter stated that implementing this requirement would discourage or prevent certain entities, such as family-owned farms and ranches, from raising legitimate objections.

RESPONSE 2

This part of the rule is being deleted from this rulemaking. The unauthorized practice of law pertains to representation by an attorney during contested case hearings, which rules are found in ARM 36.12.201, et seq. Also, refer to Response 3 below.

COMMENT 3

DNRC received several comments regarding proposed New Rule I(6) (36.12.117) pertaining to the requirement that certain entities and groups must be represented by an attorney in formal proceedings before DNRC. One commenter stated that the term "groups of individuals" is not defined in this rule and believes it should be. The commenter also stated that "groups of individuals" should not be required to retain an attorney in formal proceedings before DNRC. Another commenter stated that New Rule I(6) (36.12.117) exceeds the authority in 37-61-201, MCA, because many formal proceedings are not presided over by an individual appointed by the court, and voiced concerns that "formal proceedings" was not defined.

RESPONSE 3

This part of the rule is being deleted from this rulemaking. As stated in Response 2, the unauthorized practice of law pertains to representation during contested case hearings; therefore, DNRC has determined that it is not necessary to adopt a rule pertaining to legal representation in this rulemaking. However, deletion of the rule does not mean that the department will permit the unauthorized practice of law.

COMMENT 4

DNRC received several comments regarding its proposed New Rule I(10) (36.12.117) pertaining to the disallowance of fax or e-mail submissions of Objections to Applications. One commenter suggested that it should be allowable for an Objection to Application to be hand-delivered on or before the date objections are

due. Another commenter suggested that fax or e-mail should be allowed for submitting the Objection to Application, so long as the original is received within three mailing days of the receipt of the fax or electronic mail copy.

RESPONSE 4

DNRC has reconsidered this rule proposal, and has agreed to modify the proposed rule to allow for acceptance of a fax filing of an Objection to Application with DNRC, and so that hand-delivery of a timely Objection to Application is also acceptable. DNRC agrees that the original Objection to Application should follow in the mail; therefore, DNRC will modify the rule to reflect that an original Objection to Application form must be postmarked timely, if an objector decides to file the Objection to Application form by fax. E-mail submissions will not be allowed.

COMMENT 5

DNRC received several comments regarding proposed New Rule I(11)(f) (36.12.117), pertaining to "facts" in the Objection to Application to support an objector's position. One commenter stated that the rule does not provide any added interpretation other than what is already in the statute. This commenter suggested that the new rule should require "probable and believable information sufficient to establish that the proposed use does not meet one or more of the applicable criteria..." and that for each specific criterion objected to, the "information must be sufficient to support a reasonable factual or legal basis as to why the criterion cannot be met by the proposed application." Another commenter suggested that the sentence that provides "[t]he facts provided must specifically describe why or how one or more of the criteria are not met;" should be deleted in order to allow objectors the time to retain experts and utilize the discovery process to be able to provide "specific descriptions" of such facts. The commenter suggested that there is no requirement in 85-2-308, MCA, that requires such specificity.

RESPONSE 5

DNRC believes that adopting the rule in its current form is necessary to clarify what facts objectors are basing their objections on in a permit or change hearing under 85-2-309, MCA. Section 85-2-308, MCA, requires the objector to provide facts indicating that one or more of the criteria are not met. This proposed rule provides further guidance as to what the statute means by use of the word "facts," by requiring an objector to more specifically describe how or why one or more of the criteria are not met. DNRC is aware that an objector may not know all the specific facts that support the objections raised at the time the Objection to Application is filed. However, DNRC believes an objector should have knowledge of some specific facts as to how or why the objector believes one or more of the criteria have not been met, and this is what is required under the statute.

COMMENT 6

DNRC received several comments regarding proposed New Rule I(11)(g) (36.12.117), pertaining to "facts" in an Objection to Application to support when an objector has standing to object to an application. One commenter felt that "facts" should be replaced with "information" to provide a broader interpretation of facts that

must be provided at the objection stage. The commenter was also uncertain to what extent an objector must describe how the objector's water rights will be adversely affected (i.e., will the objector be required to present hydrologic or other technical evidence at the time the Objection to Application is filed). Another commenter suggested the rule be revised to be more interpretative of the statute. The commenter suggested that the new rule should require "probable and believable information sufficient to establish that the objector has standing..." and that the information must identify the property and how the objector will be injured; identify the water right, etc., of a prior appropriator and how it cannot be reasonably exercised; or identify membership interests and the information required to meet both of the above.

RESPONSE 6

DNRC believes that adopting the rule in its current form is necessary to implement 85-2-308, MCA, requiring an objector to have standing to file an objection to an application. The proposed rule requires the objector to provide more specific facts showing how or why the objector's property, water rights, or interests will be adversely affected. This will allow DNRC to better evaluate whether an objector has legal standing to file an Objection to Application with DNRC.

COMMENT 7

DNRC received several comments regarding proposed New Rule I(12) (36.12.117), which provides that the hearing will be limited to the criteria objected to in the objection, and that the objector may participate in the contested case based upon the criteria to which the objector specifically filed an objection. One commenter raised concerns with placing limitations on an objector's right to participate, and suggested that at a minimum, this not occur until after the parties are given an opportunity to conduct discovery. This is for the reason that often, the public notice is an abbreviated version of the application and many objectors do not know the details of the proposal from the public notice, and many times the application itself, to be able to fully understand it and be able to tailor the objection accordingly. The commenter stated that discovery allows the objector the opportunity to recognize the potential impact from a proposed application. The commenter also suggested that the rule may be in conflict with 2-4-612(1), MCA, which requires "opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved" in an administrative contested case.

Several other commenters shared the same concerns about how the proposed rule is written, in that they felt the rule would essentially not allow objectors the opportunity to amend their objections if an applicant later amends their application. Another commenter suggested that many of the application criteria are interrelated, and while some are very simple, many times they contain hand-drawn sketches, and new issues can surface throughout the objection and hearing process. A suggestion was raised to amend the language to state: "[n]othing in this rule precludes an objector from amending an objection to an application when the objector has obtained additional information to support additional grounds for objection."

RESPONSE 7

DNRC believes that adopting the rule in its current form is necessary to implement 85-2-309, MCA, which requires DNRC to hold a contested case hearing on the objection if an objection to an application states a valid objection. The parties have the opportunity to review the application in its entirety, including the Application Review form, once it is publicly noticed. Therefore, an objector should have a fairly good understanding of the proposed project, and whether or not they should file an objection on certain criteria.

Additionally, in a contested case hearing, DNRC does not control the discovery process; however, DNRC acknowledges that most objectors modify their position once it becomes clear after discovery what the applicant is proposing. DNRC does not believe this rule prohibits an objector from supplementing the objector's information to support the objections that have been deemed valid during the contested case process. However, once an objection is deemed valid, an objector may not raise an objection to other criteria that were not included in the original Objection to Application. As for the issue of an applicant amending an application, the Court in the *Bitterroot River Protection Ass'n v. Siebel*, 326 Mont. 241, 108 P.3d 518 (2005), held that if an application is amended so significantly that the original application essentially constitutes a new application, the application would have to go through the correct and complete process again, resulting in a new priority date assigned to the application and republication to provide other objectors the opportunity to file an Objection to Application with DNRC.

COMMENT 8

DNRC received several comments regarding proposed New Rule I(13) (36.12.117) pertaining to the 15-day response time for objectors to respond to an Objection Deficiency Notice. One commenter remarked that the timeframe was inadequate, especially if an application is particularly sophisticated. The commenter also noted that applicants are allowed approximately 30-90 days to address deficiencies in an application, and stated that objectors should be given the same opportunity.

RESPONSE 8

The 15-day objection deficiency letter response time is set in 85-2-308, MCA, and therefore cannot be changed.

COMMENT 9

DNRC received a comment regarding proposed New Rule I(19) (36.12.117) stating that a new rule should be added to (19) and renumber existing (19) as (20), so that the new (19) would read as follows: "If an applicant has filed a correct and complete application and no valid objection has been filed, or if a valid objection has been filed and withdrawn, and the department has not served a statement of opinion under 85-2-310, MCA, on the applicant, the application shall be deemed to meet the standard of proof and a permit or change in appropriation right issued."

RESPONSE 9

The DNRC takes note and will consider this comment in further application processing rules. However, the department would like to clarify that a "correct and complete" application does not necessarily meet the standard of proof by a "preponderance of the evidence" required for permits and change in use applications, 85-2-311 and 85-2-402, MCA.

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 March 17, 2008.

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

In the matter of the amendment of	)	NOTICE OF AMENDMENT
ARM 38.5.6001, 38.5.6002,	)	AND REPEAL
38.5.6004, 38.5.6006, 38.5.6007,)	
38.5.6008, 38.5.6010, 38.5.8201,)	
38.5.8202, 38.5.8203, 38.5.8204,)	
38.5.8209, 38.5.8210, 38.5.8211,)	
38.5.8212, 38.5.8213, 38.5.8218,)	
38.5.8219, 38.5.8220, 38.5.8221,)	
38.5.8225, 38.5.8226, 38.5.8227,)	
38.5.8228, and 38.5.8229 and repeal)	
of ARM 38.5.8001, 38.5.8002,)	
38.5.8003, 38.5.8004, 38.5.8005,)	
38.5.8101, and 38.5.8102 pertaining)	
to public utilities, electricity suppliers,)	
and natural gas suppliers)	

TO: All Concerned Persons

1. On January 31, 2008, the Department of Public Service Regulation published MAR Notice No. 38-2-201 regarding notice of public hearing on the proposed amendment and repeal of the above-stated rules, at page 93 of the 2008 Montana Administrative Register, issue number 2.

2. A public hearing was held on March 5, 2008. One person testified at the hearing. One written comment was received by the March 5, 2008 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: Dr. Larry Nordell, representing the Montana Consumer Counsel, thanked the department for recognizing that a decision not to acquire an equity interest in a generation resource is a resource acquisition decision and incorporating that recognition into the proposed rules.

RESPONSE: The department acknowledges and thanks Dr. Nordell for his comment.

COMMENT #2: Dr. Nordell requested that the department include language in ARM 38.5.8221(2)(b) that allowed for an exception to the lower of cost or market test for pre-existing generation resources if it is shown that rate basing of a generation resource, even at a value greater than cost, benefits ratepayers.

RESPONSE: The department recognizes Dr. Nordell's concern but believes that it has adequate flexibility to address those situations in which a utility proposes acquisition of a pre-existing resource at a price that exceeds the lower of cost or market. The rules in ARM Title 38, chapter 5, subchapter 82 are guidelines. Reasonable reading of the rules would not preclude the department from permitting a deviation from the lower of cost or market standard when there is a demonstration of net benefits to ratepayers from the deviation. To make clear that the department is not bound always to use the lower of cost or market standard, the department has changed the proposed amendment.

COMMENT #3: Dr. Nordell stated that he believed ARM 38.5.8228(2)(n) is problematic. He described the manner in which NorthWestern Energy's Technical Advisory Committee (TAC) functions and its purpose. He opined that members of the TAC might be reluctant to express their views if they know that their expression may become part of a public record.

RESPONSE: The department acknowledges Dr. Nordell's concern. The department also recognizes that the TAC has implemented procedures and ground rules that prohibit the utility or any member from disclosing the position and statements of any other member. The department also recognizes that the TAC seldom takes votes of its members to reach a decision. Therefore, the department agrees with Dr. Nordell and has changed the proposed amendment to remove the proposed ARM 38.5.8228(2)(n).

COMMENT #4: Mr. Don Quander, of Holland & Hart, LLC, representing the Montana Large Customer Group (LCG) requested that the department not amend ARM 38.5.6006 in a manner that would repeal ARM 38.5.6006(6). He wrote, "While not all customers may be interested in the component charges in their bills, many are, and no substantial reason has been presented to deprive those customers of this information." He also asserted that customers must understand the costs included in the bills if future technologies are to enable customers to make intelligent choices.

RESPONSE: The department agrees with Mr. Quander that many customers are interested in the component charges that appear on their bills. The department is not intending to deprive customers of this information. However, ARM 38.5.6006(6) implemented 69-8-409, MCA which was repealed by Sec. 21, Ch. 491, L 2007. The department no longer possesses specific statutory authority to promulgate ARM 38.5.6006(6). The department believes that it is more appropriate to require billing detail in utility-specific cases and orders. The department declines Mr. Quander's request.

COMMENT #5: Mr. Quander requested that the department not amend ARM 38.5.8211 in a manner that deletes ARM 38.5.8211(2). He asserted that this section contains a substantive requirement for correct cost allocation and that there is nothing in House Bill 25 that requires or anticipates elimination of a provision that prevents shifting of electric supply costs to transmission and distribution rates. He

also stated that the proposed amendment represented a new policy action by the commission and justification required substantial evidence in the record. He represented that LCG was unaware of any evidence that would justify or support such a rule change.

RESPONSE: The department acknowledges Mr. Quander's comments, but respectfully disagrees with his assertions. Section 69-3-201, MCA, requires the department to regulate utilities in a manner that results in just and reasonable rates. Section 69-8-210(1), MCA requires the department to establish a cost recovery mechanism that allows a utility to fully recover prudently incurred electricity supply costs plus additional costs determined to be reasonable and in the public interest. Therefore, the substantive requirement for correct cost allocation derives from statute, not department administrative rules. The department cannot eliminate the statutory requirements that prevent cost shifting. Rates that included cost shifting would not be just and reasonable. The department is not changing its policy toward correct cost allocation. The department rejects Mr. Quander's request.

4. The department has amended ARM 38.5.6001, 38.5.6002, 38.5.6004, 38.5.6006, 38.5.6007, 38.5.6008, 38.5.6010, 38.5.8201, 38.5.8202, 38.5.8203, 38.5.8204, 38.5.8209, 38.5.8210, 38.5.8211, 38.5.8213, 38.5.8218, 38.5.8219, 38.5.8220, 38.5.8225, 38.5.8226, 38.5.8227, and 38.5.8229 exactly as proposed.

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

38.5.8212 RESOURCE ACQUISITION (1) through (1)(c) remain as proposed.

(d) analyze the feasibility and economic costs, risks, and benefits of rate basing versus ~~wholesale~~ alternative electricity supply arrangements;

(e) through (5) remain as proposed.

38.5.8221 AFFILIATE TRANSACTIONS (1) through (2)(a) remain as proposed.

(b) The burden of proof is on a utility to demonstrate that costs it incurs through any affiliate transactions are just and reasonable and in the public interest and, as such, are recoverable through regulated rates. Since, by definition, such transactions cannot be presumed to be conducted on a truly arm's-length basis, inevitably leaving room for gaming, self dealing, and certain subsidies, the commission will subject these transactions to greater scrutiny to reasonably protect ratepayers served under regulated rates from harm. This higher level of protection is referred to as the "no harm to ratepayer" standard. This standard has evolved over time from long standing regulatory practices and policies that require affiliated transactions to be fair, reasonable, and in the public interest before the associated costs are recoverable through rates. In keeping with the "no harm to ratepayer" standard, the commission generally will judge the reasonableness of affiliate transactions-related costs in relation to the lower of cost or market at the time of

contract execution. For purposes of this rule, cost, by definition, is the applicable regulated cost of service structure, including a return on the capital invested, to provide the relevant affiliated services;

(c) through (f) remain as proposed.

38.5.8228 MINIMUM FILING REQUIREMENTS FOR UTILITY APPLICATIONS FOR APPROVAL OF ELECTRICITY SUPPLY RESOURCES

(1) through (2)(k) remain as proposed.

(l) a complete description of each aspect of the resource for which the utility requests approval; and

(m) testimony and supporting documentation describing all pre-filing communication; ~~and~~

~~(n) testimony and supporting documentation related to any advice received from the utility's stakeholder advisory committee regarding the proposed resource and actions taken or not taken by the utility in response to such advice.~~

6. The department has repealed ARM 38.5.8001, 38.5.8002, 38.5.8003, 38.5.8004, 38.5.8005, 38.5.8101, and 38.5.8102 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, March 17, 2008.

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 December 31, 2007. This table includes those rules adopted during the period January 1, 2008, through March 31, 2008, 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 December 31, 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 2007 and 2008 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, 35
2.5.120 and other rules - Procurement of Supplies and Services - Surplus
Property, p. 1116, 1657, 36
2.6.101 Insurance Requirements, p. 1130, 37
2.6.205 and other rule - State Vehicle Use, p. 355
2.13.202 and other rules - Implementing HB 27: Defining Eligibility and
Distribution of HB 27 Surcharge Funds for Wireless 911 Emergency
Systems, p. 210
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)

- 2.43.304 Actuarial Rates and Assumptions, p. 430
- 2.43.441 Purchase of Service Credit Through Trustee-to-Trustee Fund Transfers, p. 1841, 117

(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, 2120
- 2.44.308 and other rules - Independent Contractors - Calculating Service Credits - Termination Pay - Earned Compensation - Benefit Adjustments, p. 1558, 2121, 38

(State Compensation Insurance Fund)

- 2.55.320 Classifications of Employments, p. 1566, 2123

(State Lottery Commission)

- 2.63.1201 and other rule - State Lottery's Procedures Pertaining to Prizes and Sales Incentives, p. 1569, 2009

AGRICULTURE, Department of, Title 4

- I-VII (Departments of Agriculture and Livestock) Montana Certified Natural Beef Cattle Marketing Program, p. 1
- 4.2.101 and other rules - Model Procedural Rules - Wheat and Barley Procedural Rule - Public Participation Rule in the Mint Program - Hail Insurance Program Public Participation, p. 433
- 4.4.303 Insured Crops, p. 215
- 4.5.201 and other rules - Noxious Weed List Categories, p. 217
- 4.12.1410 and other rules - Virus-indexing Program, p. 1247, 1811

STATE AUDITOR, Title 6

- I-VI Permitting the Recognition of Preferred Mortality Tables for Use in Determining Minimum Reserve Liabilities, p. 1844, 136
- I-XII Funeral Insurance Rules, p. 1718, 118
- 6.6.3101 and other rules - Long-Term Care, p. 222
- 6.6.5221 Small Business Health Insurance Purchasing Pool and Tax Credits, p. 436

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, 315
- 8.99.401 and other rules - Microbusinesses, p. 1730, 486
- 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, 324

- (Hard-Rock Mining Impact Board)
- 8.104.101 and other rules - Organizational and Procedural Rules of the Hard-Rock Mining Impact Board, p. 81

- (Board of Housing)
- I-III Board of Housing - Low Income Housing Tax Credit Program, p. 1061, 1543
- 8.111.305 and other rule - Homeownership Program, p. 267
- 8.111.501 and other rules - Housing Loans, p. 1855, 40

- (Montana Heritage Preservation and Development Commission)
- 10.125.101 and other rules - Transfer from the Department of Education - Sale of Real and Personal Property by the Montana Heritage Preservation and Development Commission, p. 2026, 492

EDUCATION, Title 10

(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

12.3.403 Replacement Licenses, p. 995, 1323

(Fish, Wildlife, and Parks Commission)

I No Wake Zone on Echo Lake, p. 85

I No Wake Zone on Swan Lake, p. 87

12.6.401 Time Zones, p. 1142, 1662

12.9.1105 Hunting Season Extensions, p. 750, 1442

ENVIRONMENTAL QUALITY, Department of, Title 17

I-III Definitions - Certification of Energy Production, Transportation, and Research Facilities for Tax Abatement and Classification, p. 2046

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, 2124

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

17.30.502 and other rules - Water Quality - Subdivisions - CECRA - Underground Storage Tanks - Department Circular DEQ-7, p. 2035

17.30.610 Water Quality - Surface Water Quality, p. 2043

17.30.617 and other rule - Water Quality - Outstanding Resource Water Designation for the Gallatin River, p. 2294, 328, 1398, 438

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

20.7.1101 and other rule - Conditions on Probation or Parole, p. 1984, 273

JUSTICE, Department of, Title 23

(Gambling Control Division)

- I Procedure for Providing Notice to Multi-Game Machine Owners and Lessees to Connect to an Approved Accounting and Reporting System, p. 440
- 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, 2126
- 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

LABOR AND INDUSTRY, Department of, Title 24

Boards under the Business Standards Division are listed in alphabetical order following the department rules.

- I-III Medical Benefits Payable by the Uninsured Employers Fund, p. 1077, 1446
- 8.11.101 and other rules - Transfer from the Department of Commerce - Licensed Addiction Counselors, p. 380
- 24.7.201 and other rules - Board of Labor Appeals - Procedural Rules, p. 813, 1325
- 24.7.302 and other rules - Board of Labor Appeals Procedural Rules, p. 8
- 24.11.445 and other rules - Unemployment Insurance Matters, p. 1258, 1669
- 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
- 24.29.1529 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
- 24.101.413 and other rule - Licensed Addiction Counselors - Renewals - Fees, p. 444

(Alternative Health Care Board)

24.111.407 and other rules - Nonroutine Applications - Licensing by Examination - Licensing by Endorsement - Natural Substance Formulary - Apprenticeship Requirements, p. 358

(Board of Architects and Landscape Architects)

24.114.401 and other rule - Fee Schedule - Examination, p. 11

(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, 382

(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

24.138.407 and other rules - Functions for Dental Hygienists - Specialty Advertising - Hygiene Diagnosis and Treatment Planning, p. 14

(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 Nursing)

24.159.301 and other rules - Definitions - Standards Related to the Practical Nurse - Prohibited IV Therapies, p. 279

(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 - Fee Schedule - Ambulatory Surgical Facilities - Continuing Education, p. 447

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

24.174.401 Fee Schedule, p. 2051

(Board of Private Alternative Adolescent Residential or Outdoor Programs)

24.101.413 and other rules - Renewals - Registration Fee Schedule - Fee Abatement - Licensing Fee Schedule, p. 451

(Board of Private Security)

24.182.401 and other rule - Experience Requirements, p. 89

(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, 325

(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

24.210.641 Unprofessional Conduct, p. 366

(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

(Board of Speech-Language Pathologists and Audiologists)

24.222.301 and other rules - Definitions - Licensure - Temporary Practice Permits - Supervision - Functions of Aides or Assistants - Continuing Education, p. 2054, 385

(Board of Veterinary Medicine)

24.225.401 and other rules - Fees - Infectious Waste - Licensing - Embryo Transfer - Euthanasia Technicians and Agencies - Complaints - Screening Panel - Nonroutine Applications, p. 2062

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)

I-VIII Advance Deposit Account Wagering on Horse Racing and Greyhound Racing, p. 18, 494

32.28.709 and other rules - Horse Racing, p. 1861, 41

MILITARY AFFAIRS, Department of, Title 34

I-VIII Montana Military Family Relief Fund, p. 1870, 43

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, 42

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, 140

36.12.102 and other rule - Forms - Form and Special Fees, p. 2075, 326

(Board of Land Commissioners)

36.25.801 and other rules - Land Banking Program, p. 289

PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

- I & II General Medicaid Services - Physician Administered Drugs, p. 376
- I-VIII Newborn Hearing Screening, p. 2082, 171
- I-IX Awarding Grants to Carry Out the Purposes of the Montana Community Health Center Support Act, p. 1990
- I-X 72-Hour Presumptive Eligibility for Adult Crisis Stabilization Services, p. 307
- I-XVI Home and Community Services for Seriously Emotionally Disturbed Youth, p. 2100, 335
- 37.8.102 and other rules - Vital Statistics, p. 1768, 2127, 169
- 37.30.405 Vocational Rehabilitation Program Payment for Services, p. 369
- 37.30.730 Vocational Rehabilitation Program Provider Fees, p. 1588, 2012
- 37.57.301 and other rules - Newborn Screening Tests and Eye Treatment, p. 1790, 44
- 37.70.401 and other rules - Low Income Energy Assistance Program (LIEAP) - Low Income Weatherization Assistance Program (LIWAP), p. 1532, 1948
- 37.70.601 Low Income Energy Assistance Program (LIEAP), p. 372
- 37.78.102 and other rules - Temporary Assistance for Needy Families (TANF), p. 1296, 1818, 172
- 37.79.102 and other rules - Children's Health Insurance Program (CHIP), p. 1591, 49
- 37.80.101 and other rules - Child Care Assistance Program, p. 1758, 174
- 37.81.104 and other rules - Pharmacy Access Prescription Drug Benefit Program (Big Sky Rx), p. 457
- 37.82.101 Medicaid Eligibility, p. 1619, 2131
- 37.82.435 Medicaid Real Property Liens, p. 1608, 2132
- 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, 53
- 37.86.1801 and other rules - Durable Medical Equipment - Medical Supplies, p. 1633, 2134
- 37.86.2207 Medicaid Reimbursement for the Therapeutic Portion of Therapeutic Youth Group Home Treatment Services, p. 31
- 37.86.3607 Case Management Services for Persons With Developmental Disabilities, Reimbursement, p. 1015, 1681
- 37.104.601 and other rules - Automated External Defibrillators, p. 2094, 337

37.108.507 Components of Quality Assessment Activities, p. 301

PUBLIC SERVICE REGULATION, Department of, Title 38

- 38.2.5001 and other rules - Protective Orders - Protection of Confidential Information, p. 833, 2135
- 38.5.1902 Cogeneration and Small Power Production, p. 1020, 2140
- 38.5.2202 and other rule - Pipeline Safety, p. 1642, 2145
- 38.5.6001 and other rules - Public Utilities - Electricity Suppliers - Natural Gas Suppliers, p. 93
- 38.5.8301 and other rule - Renewable Energy Standards for Public Utilities and Electricity Suppliers, p. 1798, 2146

REVENUE, Department of, Title 42

- I Property Tax Refund Hardship Request, p. 1804, 2156
- I & II Tax Year 2007 Property Tax Credit, p. 1807, 58
- 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, 61
- 42.2.304 and other rules - General Department Rules, p. 2000, 340
- 42.4.118 and other rules - Alternative Energy Tax Credits, p. 1913, 387
- 42.4.502 Capital Gain Credit, p. 1896, 57
- 42.4.1603 and other rule - New and Expanded Industry Credits, p. 1889, 60
- 42.4.2701 and other rule - Qualified Endowment, p. 1885, 62
- 42.4.3102 and other rule - Contractor's Gross Receipts Taxes, p. 1883, 63
- 42.4.3301 and other rules - Movie, Television, and Related Media Tax Credits, p. 1919, 64
- 42.15.108 and other rules - Individual Income Taxes, p. 1905, 178
- 42.17.101 and other rules - Mineral Royalty Backup Withholding, p. 1647, 2151
- 42.17.105 and other rules - Estimated Tax Payments, p. 1900, 65
- 42.18.128 and other rule - Property Taxes - Appraisal Plan Definitions and Disabled Veterans, p. 1645, 2155
- 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, 66
- 44.14.301 and other rules - Records and Information Management Fees, p. 1175, 1685

(Commissioner of Political Practices)

- I Limitations on Individual and Political Party Contributions, p. 471
- 44.10.331 Limitations on Receipts from Political Committees to Legislative Candidates, p. 1172, 1684
- 44.10.335 and other rules - Constituent Services Accounts, p. 474

BOARD APPOINTEES AND VACANCIES

Section 2-15-108, MCA, passed by the 1991 Legislature, directed that all appointing authorities of all appointive boards, commissions, committees, and councils of state government take positive action to attain gender balance and proportional representation of minority residents to the greatest extent possible.

One directive of 2-15-108, MCA, is that the Secretary of State publish monthly in the ***Montana Administrative Register*** a list of appointees and upcoming or current vacancies on those boards and councils.

In this issue, appointments effective in February 2008 appear. Vacancies scheduled to appear from April 1, 2008, through June 30, 2008, are listed, as are current vacancies due to resignations or other reasons. Individuals interested in serving on a board should refer to the bill that created the board for details about the number of members to be appointed and necessary qualifications.

Each month, the previous month's appointees are printed, and current and upcoming vacancies for the next three months are published.

IMPORTANT

Membership on boards and commissions changes constantly. The following lists are current as of March 17, 2008.

For the most up-to-date information of the status of membership, or for more detailed information on the qualifications and requirements to serve on a board, contact the appointing authority.

BOARD AND COUNCIL APPOINTEES FROM FEBRUARY 2008

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Alternative Health Care Board (Labor and Industry)			
Dr. Nancy Aagenes Helena Qualifications (if required): naturopathic physician	Governor	Bergkamp	2/8/2008 9/1/2011
Dr. Kathleen Stevens Billings Qualifications (if required): medical doctor	Governor	reappointed	2/8/2008 9/1/2011
Alternative Livestock Advisory Council (Fish, Wildlife and Parks)			
Mr. James Bouma Choteau Qualifications (if required): alternative livestock industry representative	Governor	reappointed	2/8/2008 1/1/2010
Mr. Stan Frasier Helena Qualifications (if required): sportsperson	Governor	reappointed	2/8/2008 1/1/2010
Dr. Don E. Woerner Laurel Qualifications (if required): veterinarian	Governor	reappointed	2/8/2008 1/1/2010
Board of Horse Racing (Livestock)			
Ms. Susan Egbert Helena Qualifications (if required): resident of district 4	Governor	Brastrup	2/8/2008 1/20/2011

BOARD AND COUNCIL APPOINTEES FROM FEBRUARY 2008

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Board of Public Education (Higher Education)			
Rep. Bernie Olson Lakeside	Governor	Fuller	2/7/2008 2/1/2015
Qualifications (if required): resident of District 1 and identifies himself as a Republican			
Board of Regents (Higher Education)			
Mr. Clayton Christian Missoula	Governor	reappointed	2/15/2008 2/1/2015
Qualifications (if required): resident of district 1 and identifies himself as an Independent			
Burial Preservation Board (Administration)			
Ms. Sherri Deaver Billings	Governor	reappointed	2/21/2008 8/22/2008
Qualifications (if required): representative of the archaeological association			
Mr. Mickey Nelson Helena	Governor	reappointed	2/21/2008 8/22/2008
Qualifications (if required): representative of the coroner's association			
Mr. George Reed Sr. Crow Agency	Governor	reappointed	2/21/2008 8/22/2008
Qualifications (if required): representative of the Crow Tribe			
Mr. Rufus Spear Lame Deer	Governor	Parker	2/21/2008 8/22/2008
Qualifications (if required): representative of the Northern Cheyenne Tribe			

BOARD AND COUNCIL APPOINTEES FROM FEBRUARY 2008

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Family Education Savings Oversight Committee (Higher Education)			
Mr. John Driscoll Helena	Governor	Kelly	2/15/2008 7/1/2011
Qualifications (if required): public representative			
Land Information Advisory Council (Administration)			
Mr. Rudy Cicon Chester	Governor	Davis	2/15/2008 6/30/2009
Qualifications (if required): land surveyor			
Montana Grass Conservation Commission (Natural Resources and Conservation)			
Mr. Steve Barnard Hinsdale	Governor	reappointed	2/8/2008 1/1/2011
Qualifications (if required): grazing district director			
Mr. Dan Teigen Teigen	Governor	reappointed	2/8/2008 1/1/2011
Qualifications (if required): grazing district preference holder			
Montana Heritage Preservation and Development Commission (Historical Society)			
Ms. Patty Dean Helena	President of the Senate	Moss	2/20/2008 0/0/0
Qualifications (if required): none specified			
Small Business Health Insurance Pool Board (Auditor's Office)			
Mr. Bob Marsenich Polson	Governor	reappointed	2/21/2008 1/1/2011
Qualifications (if required): consumer representing small business			

VACANCIES ON BOARDS AND COUNCILS -- APRIL 1, 2008 through JUNE 30, 2008

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<p>Board of Athletics (Labor and Industry) Ms. Jana Smith-Streitz, Butte Qualifications (if required): public representative</p>	Governor	4/25/2008
<p>Mr. John Paul Noyes, Kalispell Qualifications (if required): public representative</p>	Governor	4/25/2008
<p>Board of Nursing Home Administrators (Labor and Industry) Ms. Lori Henderson, Havre Qualifications (if required): nursing home administrator</p>	Governor	5/28/2008
<p>Board of Regents (Higher Education) Ms. Kerra Melvin, Butte Qualifications (if required): student</p>	Governor	6/30/2008
<p>District Court Council (Justice) Judge John C. McKeon, Malta Qualifications (if required): none specified</p>	District Court Council	6/30/2008
<p>Judge Katherine "Kitty" Curtis, Columbia Falls Qualifications (if required): none specified</p>	District Court Council	6/30/2008
<p>Interagency Coordinating Council for State Prevention Programs (Public Health and Human Services) Ms. Tootie Welker, Thompson Falls Qualifications (if required): prevention programs/services representative</p>	Governor	6/16/2008

VACANCIES ON BOARDS AND COUNCILS -- APRIL 1, 2008 through JUNE 30, 2008

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Interagency Coordinating Council for State Prevention Programs (Public Health and Human Services) cont. Ms. Diane Cashell, Bozeman Qualifications (if required): prevention programs/services representative	Governor	6/16/2008
MSU Billings Executive Board (University System) Ms. Tauzha Rukstad, Shepherd Qualifications (if required): public representative	Governor	4/15/2008
MSU Great Falls College of Technology Executive Board (University System) Mr. Dave Warner, Great Falls Qualifications (if required): public representative	Governor	4/15/2008
MSU Northern Local Executive Board (University System) Ms. Pamela A. Hillery, Havre Qualifications (if required): public representative	Governor	4/15/2008
Montana Heritage Preservation and Development Commission (Commerce) Ms. Vicki Huckle, Helena Qualifications (if required): Tourism Advisory Council representative	Governor	5/23/2008
Ms. Leslie Schmidt, Bozeman Qualifications (if required): having experience in historic preservation	Governor	5/23/2008
Ms. Maureen Wicks, Ledger Qualifications (if required): Montana historian	Governor	5/23/2008

VACANCIES ON BOARDS AND COUNCILS -- APRIL 1, 2008 through JUNE 30, 2008

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<p>Montana Noxious Weed Management Advisory Council (Agriculture) Sen. Mack Cole, Forsyth Qualifications (if required): at-large member from the agricultural community</p>	Director	6/30/2008
<p>Mr. Bob Bushnell, no city listed Qualifications (if required): representative of a recreationist/wildlife group</p>	Director	6/30/2008
<p>Mr. Dan Jackson, Pablo Qualifications (if required): representative of livestock production</p>	Director	6/30/2008
<p>Montana State University Executive Board (University System) Mr. Bill Bryan, Bozeman Qualifications (if required): public representative</p>	Governor	4/15/2008
<p>Montana-Canadian Provinces Relations Advisory Council (Commerce) Rep. Hal Jacobson, Helena Qualifications (if required): Legislative representative</p>	Governor	4/6/2008
<p>Lt. Governor John Bohlinger, Helena Qualifications (if required): Lieutenant Governor</p>	Governor	4/6/2008
<p>Sen. Sam Kitzenberg, Glasgow Qualifications (if required): Legislative representative</p>	Governor	4/6/2008
<p>Sen. Trudi Schmidt, Great Falls Qualifications (if required): Legislative representative</p>	Governor	4/6/2008

VACANCIES ON BOARDS AND COUNCILS -- APRIL 1, 2008 through JUNE 30, 2008

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Montana-Canadian Provinces Relations Advisory Council (Commerce) cont. Rep. John L. Musgrove, Havre Qualifications (if required): Legislative representative	Governor	4/6/2008
Rep. Wayne Stahl, Saco Qualifications (if required): Legislative representative	Governor	4/6/2008
Petroleum Tank Release Compensation Board (Environmental Quality) Ms. Theresa Blazicevich, Stevensville Qualifications (if required): member with environmental regulatory experience	Governor	6/30/2008
Mr. Andrew J. King, Kalispell Qualifications (if required): banker	Governor	6/30/2008
Postsecondary Scholarship Advisory Council (Higher Education) Ms. Margaret Bird, Browning Qualifications (if required): having experience in financial aid at a postsecondary institution	Governor	6/20/2008
Private Alternative Adolescent Residential or Outdoor Programs Board (Labor and Industry) Rep. Paul Clark, Trout Creek Qualifications (if required): representative of outdoor adolescent treatment programs (small size)	Governor	4/19/2008
Commissioner Carol Brooker, Plains Qualifications (if required): public member	Governor	4/19/2008
Ms. Michele Manning, Thompson Falls Qualifications (if required): representative of residential adolescent treatment programs (large size)	Governor	4/19/2008

VACANCIES ON BOARDS AND COUNCILS -- APRIL 1, 2008 through JUNE 30, 2008

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Private Alternative Adolescent Residential or Outdoor Programs Board (Labor and Industry) cont.		
Ms. Mary Alexine, Eureka Qualifications (if required): representative of residential adolescent treatment programs (medium size)	Governor	4/19/2008
Mr. Daniel Bidegaray, Bozeman Qualifications (if required): public member	Governor	4/19/2008
Public Employees' Retirement Board (Administration)		
Mr. Troy W. McGee Jr., Helena Qualifications (if required): retired public employee	Governor	4/1/2008
Colonel Robert Griffith, Helena Qualifications (if required): public member	Governor	4/1/2008
State-Tribal Economic Development Commission (Commerce)		
Mr. L. Jace Killsback, Lame Deer Qualifications (if required): representative of the Northern Cheyenne Tribe	Governor	6/30/2008
Mr. Joseph Durglo, Pablo Qualifications (if required): representative of the Confederated Salish & Kootenai Tribes	Governor	6/30/2008
Mr. Richard Sangrey, Box Elder Qualifications (if required): representative of the Chippewa Cree Tribe of the Rocky Boy's Reservation	Governor	6/30/2008
UM Helena College of Technology Executive Board (University System)		
Mr. Ray Peck, Helena Qualifications (if required): public representative	Governor	4/15/2008

VACANCIES ON BOARDS AND COUNCILS -- APRIL 1, 2008 through JUNE 30, 2008

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
UM Montana Tech Executive Board (University System) Mr. Doug Peoples, Butte Qualifications (if required): public representative	Governor	4/15/2008
UM Western Executive Board (University System) Ms. Mary Ann Sharon, Dillon Qualifications (if required): public representative	Governor	4/15/2008
University of Montana Local Executive Board (University System) Mr. Bill Woody, Missoula Qualifications (if required): public representative	Governor	4/15/2008