ISSUE NO. 8

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 The Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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

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NOTICE SECTION

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the proposed amendment of ARM 2.59.1701 through 2.59.1705 and 2.59.1710 pertaining to the licensing and regulation of mortgage brokers and loan originators and the proposed adoption of NEW RULES I through VIII regarding continuing education, prelicensing examination, designated managers, examinations, failure to correct deficiencies, grounds for the denial of an application, costs in bringing the administrative action, and scheme to defraud or mislead	)))))))))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT AND ADOPTION

TO: All Concerned Persons

1. On May 21, 2008, at 11:00 a.m., a public hearing will be held in Room 342 of the Park Avenue Building, 301 S. Park, Helena, Montana, to consider the proposed amendment and adoption of the above-stated rules.

2. The Department of Administration, Division of Banking and Financial Institutions, will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Division of Banking and Financial Institutions no later than 5:00 p.m. on May 14, 2008, to advise us of the nature of the accommodation that you need. Please contact Christopher Romano, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; telephone (406) 841-2928; TDD (406) 444-1421; facsimile (406) 841-2930; e-mail to cromano@mt.gov.

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

2.59.1701 DEFINITIONS For purposes of the Montana Mortgage Broker and Loan Originator Licensing Act and this subchapter, the following definitions apply:

(1) "Another person involved in the transaction" means a licensee, the borrower's employer, the lender, the real estate agent, or other persons or entities allowed by the lender guidelines.

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

(4) "Fraud or dishonesty" means, but is not limited to:

(a) a conviction, under the laws, rules, or regulations of any state or the federal government, that relates to fraud or dishonesty; or

(b) a conviction that involves robbery, illegal gambling, receiving stolen property, counterfeiting, extortion, check, credit card, or computer violations set forth

in criminal laws, deception, fraud, theft, embezzlement, defrauding a creditor, issuing a bad check, deceptive practices, deceptive business practices, misappropriation of funds or property, misrepresentation, omission of material facts, unauthorized use of property, forgery, identity theft, or money laundering.

~~(3)~~ (5) "Fraudulent or dishonest dealings" means, but is not limited to: ~~financial misconduct prohibited by statutes governing:~~

~~(a) mortgage brokers in this and other states; and~~

~~(b) other segments of the financial services industry, including but not limited to:~~

~~(i) securities brokerages;~~

~~(ii) banks and trust companies;~~

~~(iii) escrow offices;~~

~~(iv) title insurance companies; or~~

~~(v) other licensed or chartered financial institutions.~~

(a) a civil judgment, under the laws, rules, or regulations of any state or the federal government, that relates to fraud or dishonesty; or

(b) a civil judgment that involves deception, fraud, conversion, misappropriation of funds, misrepresentation, omission of material facts, forgery, unauthorized use of money or property, failure to pay taxes, or bad checks.

(4) remains the same, but is renumbered (6).

~~(5)~~ (7) "Material change" means:

(a) a change in the physical location of the principal location and/or branch office;

(b) a change in the phone number;

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

~~(c)~~ (e) a change in the share ownership of the company ~~that could affect control; or~~ of 10% or more;

~~(d)~~ (f) the acquisition or disposition of another company;~~.~~

(g) any civil action involving fraud or dishonesty has been filed against the licensee;

(h) any criminal charge has been filed against the licensee; or

(i) any change which would cause the department not to issue a license, if it had occurred before licensure.

(6) remains the same, but is renumbered (8).

(9) "Restitution" may include, but is not limited to, refunds of any or all the fees paid directly or indirectly by the borrower.

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

~~(8)~~ (11) "Work in a related field" means:

(a) through (b)(v) remain the same.

(vi) as a residential real estate loan closing agent; or

~~(vii) other work or educational experience as approved by the department.~~

(vii) as a state or federal regulator that examines compliance of residential mortgages of state or federally chartered financial institutions.

AUTH: 32-9-130, MCA
IMP: 32-9-103, 32-9-109, 32-9-115, 32-9-116, 32-9-117, 32-9-123, 32-9-125, 32-9-133, MCA

STATEMENT OF REASONABLE NECESSITY: It is reasonably necessary for the division to amend ARM 2.59.1701 in order to amend definitions for terms already defined in the current rules as well as to define new terms used in the amendments which passed as part of Senate Bill 92 during the 2007 Regular Legislative Session as set forth below. In the case of the amendments to the existing rules, the division seeks to address problems and issues that it has encountered in examinations and in administering the Act and the rules by amending several existing definitions as set forth herein. Sections (1) and (9) specifically refer to new language inserted by SB 92. Section (1) defines a term referred to in 32-9-125(4), MCA, relating to trust accounts. Mortgage brokers are required to deposit any money that the mortgage broker receives on behalf of a bona fide third party into the trust account until the money can be paid to the bona fide third party. In this context, the division proposes to define the term "another person involved in the transaction" to refer to the individuals who may pay closing costs on behalf of a borrower. In addition to the persons specified, the lender guidelines establish other individuals who may pay closing costs for the borrower. Since each lender is different in what they will allow, it is not possible to specify who may be allowed to pay closing costs generally. The division chose this approach because it was mandated to define the term by 32-9-125(4), MCA, and the nature of the real estate transaction controls the other persons that are involved.

Section (4) clarifies which types of convictions involving fraud or dishonesty may be taken into consideration in order to deny an application for licensure. The division has seen several instances in which licensees disclosed convictions involving theft, unauthorized use of property, burglary, and bad checks. The division believes the statutory authorization is such that these types of convictions were, in fact, intended to be included within the division's discretion to deny applications for licensure. The division chose this particular approach because the existing rule already defines certain types of convictions included so the division chose to carry on with the same approach.

Section (5) defines the types of adverse civil judgments which will be considered by the division as grounds to deny an application for licensure. The current rule limits the adverse civil judgments which will be considered by the division as grounds to deny an application for licensure to judgments related to financial misconduct in related financial industries. The new definition would broaden the types of financial misconduct to include other types of civil judgments that are fraudulent and dishonest. The division has seen applications in which applicants have civil actions against them for fraud, as well as various judgments for nonpayment of taxes owed. While some of these actions are normal business disputes, some of them are markedly different in that they involve fraud or dishonest dealings. It is the fraud or dishonest dealings that rise to the level of a judgment that the division would look closely at in the licensing process. Of course, any action to deny a license must be accompanied by notice and an opportunity for hearing. The division chose this particular approach because the existing rule already defined certain types of convictions included so the division chose to carry on with the same approach, but broaden the types of civil judgments to address the types of actions the division has seen in licensing matters.

Section (7) is being amended to include changes of which the licensee must notify the division in seeking renewal of a license. The current language of any change that could affect control has resulted in mortgage brokers asking the division what percentage change is a change that could affect control. Since licensees must notify the division of the name and address of any person that owns 10% or more of the mortgage broker entity, the division has always used 10% as a rule of thumb. The division proposes to formalize current practice in this rule. Under the current rules, licensees are required to notify the division of judgment in a criminal or civil action. However, they are not required to certify each year that there are not any new civil actions involving fraud or dishonest dealings filed against the licensee and no criminal charges have been filed against the licensee since the last application for licensure and there has not been a change which would cause the division not to issue a license, if it had occurred before licensure. This has resulted in the division renewing a license and then later finding out that the licensee had an action filed against them that would have precluded renewal of the license, had the division known about it before the license was renewed. So the division proposes to have licensees disclose changes that are relevant to licensure renewals before the renewal takes place. While it is conceivable that the licensee may have to disclose actions that are collection actions in which the defendant has counterclaimed against the licensee, the division will use its discretion to review the matters disclosed by licensees. Matters that are not significant enough to warrant licensing action under the Montana Administrative Procedure Act will not be grounds for any adverse action against the license. In addition, the division will be requiring applicants for renewal to notify the division of their current physical location and telephone number. The division periodically sends notices and communications to licensees and needs current contact information on licensees. The division chose this particular approach because the existing rule defined certain types of convictions included so the division chose to carry on with the same approach.

Section (9) defines restitution as used in 32-9-133, MCA. Restitution means making the borrower whole. In order to provide restitution to borrowers, the division needs to able to order the refunds of fees paid directly or indirectly by borrowers to mortgage brokers. There are indirect (such as yield spread premiums) as well as direct fees paid to mortgage brokers by borrowers, so these must be included in the rule as well. The division chose this approach because it was mandated to define the term and this definition is needed to address making the borrower whole.

Section (11) broadens the acceptable areas of experience that an applicant may have in order to be licensed as a mortgage broker or loan originator. The division believes the current rule is drafted too narrowly in that it excludes relevant areas of work experience that are suitable training for applicants. The division chose this particular approach because the existing rule defined certain types of acceptable work experience so the division chose to carry on with the same approach but broaden the relevant experience areas. The division chose to delete (8)(b)(vii) because the definition of work in a related field is already broad enough and includes residential mortgage loan experience that qualifies for loan originator licensing. In addition, the division believes that allowing education experience is outside of its authority under 32-9-109, MCA.

2.59.1702 PROOF OF EXPERIENCE (1) Satisfactory proof of experience ~~may include but~~ is ~~not limited to~~:

(a) ~~valid~~ copies of W-2 or 1099 tax forms verifying employment; or

(b) copies of paystubs.

~~(b) valid copies of form 1120 corporate tax returns signed by the broker or manager as owner of the business; or~~

~~(c) signed letters from a lender on the lender's letterhead verifying that the broker has competently originated loans for the required time period.~~

AUTH: 32-9-130, MCA
IMP: 32-9-108, 32-9-109, MCA

STATEMENT OF REASONABLE NECESSITY: The current version of the rule allows an applicant to submit as proof of experience corporate tax returns signed by the broker and manager of the business as well as letters on lender letterhead verifying that a broker had the requisite experience. The division has received letters on letterhead from lenders that are no longer in business and verification of the data on the letter is impossible. In addition, the division has no method to verify the accuracy of corporate tax returns signed by unknown individuals. In the past, the division has received letters purporting to be from former employers, the veracity of which is completely unverifiable. In order to tighten up the accuracy of proof of experience, the division has chosen to require valid copies of federal tax documents or paystubs. Everyone should have, or have access to, federal tax documents verifying their income from the time that they received the experience in question. However, the division has also chosen to recognize as valid proof of experience copies of paystubs from the time and place in question. The division chose this approach because it allows an applicant a simple method to prove experience but also allows the division a measure of certainty that the person worked at the place and for the time they claim.

2.59.1703 TRANSFER OF LOAN ORIGINATOR OR MORTGAGE BROKER LICENSE (1) Transfer of an individual mortgage broker or loan originator license must be approved by the department. To transfer an individual mortgage broker or loan originator license, the individual mortgage broker or ~~a~~ loan originator shall obtain a relocation application from the department. The completed relocation application must be accompanied by a nonrefundable processing fee of $50.

(a) remains the same.

(b) If the lapse in employment occurs over a renewal period, the individual mortgage broker or loan originator license must be renewed as required by 32-9-117, MCA, to qualify for a transfer of the license. The relocation six-month time frame would remain in effect and would be from the date of termination.

(2) If an individual mortgage broker or loan originator is terminated by a mortgage broker, and within six months is re-employed by the same mortgage broker, a request for reinstatement form must be filed with the department. The form ~~will be~~ is available from the department. There ~~will be~~ is a $10 processing fee for reinstatement. If the break in employment occurs over a renewal period, the individual mortgage broker or loan originator license must be renewed as required

by 32-9-117, MCA, to qualify for reinstatement. The six-month time frame would remain in effect and would be from the date of termination.

AUTH: 32-9-130, MCA
IMP: 32-9-115, 32-9-116, 32-9-117, 32-9-119, MCA

STATEMENT OF REASONABLE NECESSITY: It is reasonably necessary for the division to amend ARM 2.59.1703 in order to clarify the requirements for a mortgage broker to transfer their license. This amendment was authorized by passage of New Section 10 of Senate Bill 92 during the 2007 Regular Legislative Session and is codified as 32-9-119, MCA. The amendment requires mortgage brokers to transfer their licenses as well. The current rule addresses license transfer requirements for loan originators but does not address license transfer requirements for mortgage brokers. The new version of the rule adds mortgage brokers to the existing rule. The division chose this approach because the existing rule addresses license transfer requirements for loan originators and the division believes the same requirements should apply to mortgage brokers. It is anticipated that five mortgage brokers would transfer their license each year. This would generate an additional $250 of revenue (five individual mortgage brokers x $50 license transfer fee) for the division each year. The division anticipates that no mortgage broker will need to reinstate their license pursuant to section (2), so there will be no fiscal impact from section (2).

2.59.1704 LICENSE RENEWAL (1) Effective July, 1 2008, ~~T~~the renewal fees shall be ~~$50~~ $500 for mortgage broker entities that are not sole proprietorships, ~~$300~~ $500 for individual mortgage brokers and sole proprietors, and ~~$250~~ $400 for loan originators. An individual renewing licensure as a mortgage broker and who is also the sole owner of an entity renewing its license shall only be subject to the individual mortgage broker renewal fee. All fees are nonrefundable and must be submitted with the renewal application. The renewal application forms will be sent by the department to each licensed mortgage broker or loan originator in April. The application must be postmarked or received by May 31.

(2) The individual mortgage broker or loan originator application must be completed, signed, and dated by the applicant and may not be signed on behalf of or in lieu of the applicant. The signed and dated page of the application must be submitted in the application package or renewal application package to the department.

(a) For application of a mortgage broker entity that is a sole proprietorship, the owner must complete, sign, and date as the applicant.

(b) For application of a mortgage broker entity that is a partnership, any partner may complete, sign, and date as the applicant.

(c) For application of a mortgage broker entity that is an LLC, or corporation, or incorporation, the person responsible for the application must complete, sign, and date as the applicant.

~~(2) The continuing education year will be from June 1 to May 31.~~

~~(3) No more than six hours of continuing education credits may be carried over to the next licensing year.~~

~~(4)~~ (3) The renewal application must be accompanied by ~~evidence~~ a copy of the certificate of completion provided by the approved education provider that the continuing education requirement has been met and a recent credit report from one of the three recognized credit reporting agencies. They are Experian, Equifax, and TransUnion. The credit report must be dated within 60 days of receipt of renewal application.

~~(5)~~ (4) Mortgage brokers must include evidence of an irrevocable letter of credit or surety bond for each location.

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

~~(8)~~ (7) If the attempt to renew is after June 30, the license is considered ~~expired~~ revoked. ~~Expiration~~ Revocation terminates the right to engage in any residential mortgage broker or loan originator activities. The mortgage broker or loan originator must then apply as a new licensee.

(9) remains the same, but is renumbered (8).

(9) All renewal applications shall certify that the licensee has paid any civil penalties, fines, and restitution amounts imposed against the licensee. Failure to pay a fine, penalty, or judgment assessed against the licensee is sufficient grounds to deny a request for renewal.

(10) If the renewal application or the investigation related to the renewal application discloses additional information that would have been sufficient grounds to deny, suspend, or revoke the license, if it had been known at the time of original licensure, the license shall be denied, suspended, or revoked on that basis.

AUTH: 32-9-130, MCA
IMP: 32-9-115, 32-9-116, 32-9-117, 32-9-118, 32-9-123, MCA

STATEMENT OF REASONABLE NECESSITY: The division is proposing to amend section (1) of this rule to maintain consistent language with 32-9-117, MCA, which also sets forth that initial licensing fees are nonrefundable and must be accompanied by the application for licensure.

The division is proposing to amend the renewal fees under section (1) for mortgage brokers and loan originators to ensure that revenue collected from the mortgage broker and loan originator program is commensurate with the costs associated with their regulation by the division. The renewals fees have not increased since the inception of this licensing in 2004. The cost of regulating mortgage brokers and loan originators has increased and now substantially exceeds the current revenue from the licensing and examination fees. The increased costs are reflected in a career ladder professional program implemented to recruit and retain qualified examiners, professional education and training of the mortgage broker examiners, and increased overhead expenses in the areas of rent, travel, supplies, and communications. The division has recently increased licensing and assessment fees in other regulatory programs to ensure that revenue is commensurate with the specific costs associated with regulating those programs.

The proposed increase in renewal fees would not be effective until July 1, 2008. The first renewal deadline after the effective date of the proposed rules is May 31, 2009. It is impossible for the division to estimate the total number of mortgage broker and loan originator licenses that will be renewed by May 31, 2009.

The division has based this revenue projection on the current number of licensees. Based upon the current number of mortgage broker and loan originator licensees, the division estimates an increase in licensing renewal revenue of $101,700. There are currently 62 mortgage broker entities that would be subject to the proposed entity fee. The mortgage broker entity renewal fee would be increased from $50 to $500. The increase in mortgage broker entity renewal revenue would be $27,900 ($450 increase x 62 entity licensees). There are currently 174 mortgage broker individuals, including sole proprietors that would be subject to the proposed renewal fee increase. The mortgage broker individual and sole proprietor renewal fee would be increased from $300 to $500. The increase in mortgage broker entity renewal revenue would be $34,800 ($200 increase x 174 mortgage broker licensees). There are currently 260 loan originators that would be subject to the proposed renewal fee increase. The loan originator renewal fee would be increased from $250 to $400. The increase in loan originator renewal revenue would be $39,000 ($150 increase x 260 loan originator licensees).

The division has chosen the amounts that are contained in this rule because they are the same as the initial license application fees in statute. In the case of a mortgage broker who is both an individual licensee and the sole owner of a mortgage broker entity, the division has chosen to charge one $500 fee for renewal instead of charging two $500 fees for renewal, because 32-9-117, MCA, provides that an individual who is seeking licensure as a mortgage broker and who is the sole owner of an entity that is seeking licensure as a mortgage broker shall pay a single initial nonrefundable license application fee of $500. The division has carried that forward in the proposed fees for renewal because the division does not believe it would be fair to charge an individual who is licensed as a mortgage broker individual licensee as well as a mortgage broker entity both renewal fees. However, the division has always charged an entity a separate renewal fee because the entity has a legal existence which is separate from the individual license holder. Entities are charged a separate initial application fee by statute and should be charged a separate renewal fee as well.

New section (2) is being proposed because in the past, the division has received applications, including affidavits, which have been signed by someone other than the applicant. In the case of applications submitted by an out-of-state home office for all their in-state licensees, the person submitting the application may not have any knowledge of the specific questions being asked in the affidavit. The information may or may not be correct since the person filling out the application and signing it is not the applicant. In order to ensure that the division is receiving complete, correct, and accurate information from licensees, the division proposes to require the applicant actually complete and sign the renewal application and return it to the division. The rule is drafted in such a manner that the applicant must complete the application, not have someone else complete the application and have the applicant sign it. The division chose this particular approach to prevent failure to disclose relevant information and to ensure that the person who is making the disclosures is the applicant for renewal.

Sections (2) and (3) have been moved to NEW RULE I titled Continuing Education because they relate to the topic in that rule, not this one. The division in

this rulemaking proposes to separate the renewal rules and continuing education rules into two separate rules, instead of combining them all in one rule.

The division is proposing to amend section (3) in order to clarify that the applicant must provide a certificate of completion from a continuing education provider which has been approved by the division at the time of renewal to prove that the licensee has met the continuing education requirements for the time period. The division seeks to amend section (3) to clarify the period of time in which a credit report is valid in order to meet this license renewal requirement. This amendment will ensure that the information contained within the credit report is up-to-date to the actual period of license renewal. A credit report that is out-of-date may not contain relevant data that occurred after the credit report was issued but before the date of renewal. The division needs current information in order to verify that the renewal application is correct. The division chose this approach because the requirement for a credit report was already in rule, but the division seeks to address the need for the credit report to be current and accurate.

It is reasonably necessary for the division to amend section (4) to ensure consistent language with changes made by Senate Bill 92, which was passed during the 2007 Regular Legislative Session. In particular, 32-9-123, MCA, requires that each branch office location maintain a surety bond or irrevocable letter of credit.

It is reasonably necessary for the division to amend section (7) to ensure consistent language with 32-9-117, MCA, which states that if a licensee fails to submit required information or fees within the prescribed time period, the license is automatically revoked. Therefore the rule is being amended to use the same language as the statute.

In section (9), the division seeks to ensure that applicants have paid civil penalties, fines, and restitution as has been ordered by a judge or hearing examiner in a timely manner and prior to the annual renewal of their licenses. It would be manifestly unjust to allow an applicant who owed restitution to borrowers for prior misdeeds to renew their license without paying the amounts due and owing. In addition, fines and penalties which have been assessed against a licensee in a civil or criminal proceeding should also be paid before they are allowed to renew their license.

In section (10), the division should be allowed to use the results of its investigation to do whatever would have been done in the first instance, if the information had been known to the division. The division does, in fact, see applications where licensees misrepresent information on their initial or subsequent applications. Applicants should not be allowed to profit from misrepresentations to the division.

2.59.1705 ~~LICENSING EXAMINATION AND~~ CONTINUING EDUCATION PROVIDER REQUIREMENTS (1) A licensee ~~or applicant~~ shall receive credit for participation in a continuing education course ~~program~~ if it is presented by a provider approved by the department and the department has approved the continuing education program pursuant to this rule.

(2) To receive approval of a ~~licensing examination or~~ continuing education course, the ~~examination or~~ course provider must file an application with the department, which includes, but is not limited to the following items:

(a) ~~a description of the examination or course provider's experience in teaching courses;~~ course brochures, outlines, schedules, lesson plans, visual presentations, and course description (including a breakdown of time spent on each topic);

(b) remains the same.

(c) ~~a description of each examination or course; and~~ a complete set of curriculum materials. Materials will be retained by the department. Electronic format is acceptable;

(d) company history;

(e) sample course certificate of completion which must include, at a minimum;

(i) company name;

(ii) date of course;

(iii) course title;

(iv) instructor's signature;

(v) licensee's name; and

(vi) licensee's license number;

(f) list of other states in which approval to provide similar education is held;

(g) a satisfactory timing method to properly monitor licensee's attendance and attention for the approved hours of the course; and

(h) a comprehensive test approved by the department, to be taken at the end of the course. The licensee must pass the test with a minimum 75%.

~~(d) all examination or course materials and lesson plans.~~

(3) All instructors must have a minimum of five years of experience working as a mortgage broker, loan originator, mortgage banker, or work in a related field.

(4) The provider must submit, within 15 days of the end of the course, a class roster of licensees who successfully completed the course.

~~(3)~~ (5) Courses ~~and licensing examinations~~ must reflect the activities performed by ~~prospective mortgage brokers and loan originators~~ licensees and must provide ~~prospective mortgage brokers and loan originators~~ licensees with a basic knowledge of and competency in any of the following:

(a) the following federal regulations:

(i) Real Estate Settlement Procedures Act;

(ii) Truth in Lending Act;

(iii) Equal Credit Opportunity Act;

(iv) Fair Credit Reporting Act;

(v) Fair Housing Act;

(vi) Home Mortgage Disclosure Act;

(vii) Gramm-Leach-Bliley Act; or

(viii) the regulations promulgated pursuant to these acts;

(b) ethics in the mortgage industry;

~~(a) basics of home purchase and ownership;~~

~~(b) the mortgage industry, generally;~~

~~(c) loan evaluation and documentation;~~

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

~~(f)~~ (e) the Montana ~~Residential~~ Mortgage Broker and Loan Originator Licensing Act; ~~and~~

(f) Administrative Rules of Montana Title 2, chapter 59, subchapter 17; or

(g) other state and federal laws applicable to the mortgage broker industry.

~~(4) Appropriate subjects for licensing examinations may include:~~

~~(a) the Montana Residential Mortgage Broker and Loan Originator Licensing Act;~~

~~(b) state and federal consumer protection acts;~~

~~(c) the federal Real Estate Settlement Procedures Act, Truth in Lending Act, Equal Credit Opportunity Act, Fair Credit Reporting Act, Fair Housing Act, Home Mortgage Disclosure Act, Community Reinvestment Act, and the regulations promulgated pursuant to these acts;~~

~~(d) trust account and recordkeeping requirements of the Montana Residential Mortgage Broker and Loan Originator Licensing Act;~~

~~(e) real estate and appraisal law;~~

~~(f) arithmetical computation common to mortgage lending, including but not limited to:~~

~~(i) the computation of an annual percentage rate;~~

~~(ii) finance charges;~~

~~(iii) amount financed;~~

~~(iv) payment and amortization;~~

~~(v) credit evaluation; and~~

~~(vi) calculating debt-to-income; and~~

~~(g) ethics in the mortgage industry.~~

(6) Approved courses may be offered through the Internet or through a classroom setting in which teachers and participants are physically present for the teaching of a course. Correspondence or mail courses will not be accepted.

~~(5)~~ (7) ~~The provider shall file an application with the department which includes a copy of examinations to be used, if any, in determining satisfactory comprehension of the contents of the course and the grading scale to be used.~~ Any new or revised courses, examinations, or grading scales to be used shall be submitted to the department for approval at least ~~30~~ 60 days prior to use. Course materials may be submitted in electronic format. The department will consider examinations and continuing education disseminated by written or electronic means, including by the Internet.

(6) remains the same, but is renumbered (8).

~~(7)~~ (9) The department shall provide a list of approved continuing education providers. ~~The list shall indicate whether a provider is approved to present licensing examination and/or continuing education programs.~~

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

~~(10)~~ (12) The department may deny, revoke, suspend, or terminate approval of any provider or individual course upon a finding that:

(a) remains the same.

~~(b) during any six-month period, fewer than 50% of the provider's program students taking the examination for the first time achieve a passing score; or~~

(b) the provider failed to comply with any provision of this rule;

(c) the provider fails to take reasonable steps to ensure that the licensee spends the allotted hours in the course; or

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

(13) The provider is entitled to a hearing on the denial, suspension, or revocation held under the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, MCA. The provider shall request a hearing within ten days of the date the notice of findings is sent to them. The notice shall be served on the provider at its last known address by certified mail.

(11) and (12) remain the same, but are renumbered (14) and (15).

~~(13)~~ (16) The fee for review of an initial and biennial education provider application is $100 for the application fee and $50 for each ~~approved~~ continuing education credit hour requested. All fees are nonrefundable and must be submitted with the application.

~~(14)~~ (17) An education course relative to commercial lending, ~~or~~ commercial loan brokering, or mortgage banking may not be used to satisfy continuing education requirements under this subchapter.

(15) remains the same, but is renumbered (18).

(19) A continuing education course from another state shall satisfy the continuing education requirement if the department has approved the course for continuing education in this state.

AUTH: 32-9-130, MCA
IMP: 32-9-110, 32-9-118, 32-9-130, MCA

STATEMENT OF REASONABLE NECESSITY: In this proposed amendment, the division is separating the existing rule into two, since the current rule combines both license application and continuing education requirements. The two areas are separate and the division believes, for the sake of clarity, that they should be divided into two separate rules. Therefore throughout this rule, the division is removing prelicense examination terminology and requirements from this rule, and placing them in a separate rule. It is reasonably necessary for the division to amend section (1) in order to ensure that the rule consistently uses the same terms to refer to continuing education. The rest of the rule refers to courses, not programs. So the language is being changed to ensure internal consistency within the rule.

It is reasonably necessary for the division to amend section (2) in order to ensure that the division receives all necessary information and materials pertaining to continuing education providers and their courses. By this amendment, the division is endeavoring to ensure that continuing education is relevant and educational to licensees. The division believes that continuing education should provide licensees with education on the basic laws which licensees need to understand and comply with in order to be competent in the field. Many of the laws in this area are changing rapidly and education is needed to stay current with the requirements of doing business in this area. The division believes an effective test is necessary to ensure that licensees are learning and understanding what is being taught at continuing education courses. The division believes that approval of tests is necessary to ensure the test is a valid measuring tool. In the past the division has reviewed tests which in multiple choice answers have only one answer that is relevant to the general topic while all other answers are patently ludicrous. The division believes that a licensee should have a passing grade of 75% on the exam.

The division is concerned, based on the examination that it conducts, that mortgage brokers and loan originators do not comprehend the training that they are receiving. The division chose this approach in order to encourage mortgage brokers and loan originators to ensure that they understand the continuing education that they are receiving. The division believes a short multiple-choice or true-false test will serve this function.

The division proposes to amend section (3) to ensure that instructors have a minimum level of experience in the area and are able to understand the complexity of the business from a practical standpoint.

The division proposes to amend section (4) to ensure that the division receives the class roster in a timely manner. While the division considered allowing 10 or 20 days to receive class rosters, it settled on 15 days from the end of the class to receive the class roster. The division wants to receive the class roster in a timely manner and fears that if too long a time period is granted, it may result in data being lost or misplaced. In addition, if the class is held near the time of license renewals, the division needs timely notification of who attended the class in order to properly renew the licenses.

The division proposes to amend section (5) in order to clarify which subjects may be included in the continuing education courses. Mortgage brokering is governed by many different sets of law, some state laws which are enforced by various state agencies, including this division, as well as federal laws that are enforced by various federal agencies, and in some cases, this division. Mortgage brokers and loan originators must be able to understand and comply with these laws in order to serve their customers. In the case of some of the federal laws, they are not easy to understand. In conducting examinations, the division has seen numerous instances in which licensees are not properly disclosing the annual percentage rate, finance charges, and fees required to be disclosed by federal law. It appears to the division that some of the licensees do not understand what they are required to disclose and how they are required to disclose these items. The division believes that effective, clear, and understandable education is critical to ensure that licensees are not improperly disclosing terms of the loans they are brokering. Appropriate disclosure helps borrowers to shop for the best loan and also protects licensees from potential state or federal actions for improper disclosure.

The division believes the addition of section (6) is necessary to ensure that the licensees have the opportunity to interact with course instructors and ask questions that they may have on the subject area. For this reason, the division does not believe that mail or correspondence courses provide adequate learning opportunities for licensees.

The division plans to amend section (7) to allow itself 60 days instead of 30 days in which to review course materials. The reason for this is that the examiners who review the course materials also conduct examinations. Typically they travel approximately 50% of the time. So in any given month, they may have examinations scheduled for two weeks out of the month. In the two weeks that the examiners are back in the office, they must complete their examination reports and prepare for the next examinations. A time period of 30 days to review all the course materials is too burdensome on the examiners who have preexisting time commitments to work

around. They need additional time in order to review and approve or disapprove course materials.

The changes to section (9) are to ensure consistency by deleting references to licensing examinations. The rule is being redrafted to address only continuing education.

It is reasonably necessary for the division to amend section (12) in order to provide the division with the ability to deny the approval of providers or individual courses. The amendments to this section also strengthen the requirements for the providers by requiring that they comply with this rule and ensure that the required time is spent by licensees in completing the courses. This requirement is consistent with the provisions of 32-9-118, MCA.

It is reasonably necessary for the division to propose section (13) to ensure that enforcement actions initiated against continuing education providers are conducted in accordance with the Montana Administrative Procedure Act. Since ability of a continuing education provider to do business in this state is conditioned on their approval from the division, they must be provided due process if that approval is denied.

Section (16) is being amended to reflect that the $50 review fee per credit hour applies to both initial and biennial reviews. In the case of the initial review, the number of credit hours has not yet been approved, but the $50 review fee applies to each credit hour requested. If the division determines that the course should not be approved for the number of credit hours requested, the fee will not be refunded. The division estimates that annually it denies 24 requested credit hours. This would account for an estimated increase in revenue of $1,200 (24 denied credit hours x $50 per credit).

It is reasonably necessary for the division to amend section (17) in order to further clarify which topics are not relevant to satisfy the continuing education requirement. Since Montana's laws address residential mortgages, courses on mortgage banking or underwriting are not relevant and cannot be accepted for continuing education credits.

It is reasonably necessary for the division to propose section (19) to clarify that courses approved by the division may be taken from another state. The division believes that other states' courses can be valuable and educational to mortgage brokers and loan originators. The division does not want to preclude the opportunity to take courses presented by other states, but does want to ensure the courses will be valuable and educational to Montana mortgage brokers and loan originators.

2.59.1710 RECORDS TO BE MAINTAINED (1) and (1)(a) remain the same.

(b) applicant's name, date, name of person taking the application, HUD-1 Settlement Statement, copies of all agreements or contracts with the applicant, including any commitment and lock-in agreements, and all disclosures required by state and federal law signed and dated by the borrower, and where applicable, signed and dated by the individual mortgage broker or loan originator;

(c) through (j) remain the same.

(k) a copy of the policy of title insurance commitment on the property securing the loan; ~~and~~

(l) a copy of the first three pages of the deed of trust and final Truth in Lending disclosure signed by the borrower; and.

(m) copies of all uniform residential loan applications.

(2) A mortgage broker shall maintain at its principal Montana location a trust account records file showing a sequential listing of checks written for each bank account relating to the licensee's business as a mortgage broker, showing at a minimum, check number, the payee, amount, date, and purpose of payment, including identification of the loan to which it relates, if any. The licensee shall reconcile the bank accounts monthly.

(3) A mortgage broker shall maintain a spreadsheet of all residential mortgage applications taken, including all applications that are pending, closed, withdrawn, denied, or cancelled. The spreadsheet shall contain, at a minimum:

(a) the first and last name of the borrower(s);

(b) the age of the borrower(s);

(c) the loan number;

(d) the property address (street, city, state, and zip code);

(e) the phone number of the borrower(s);

(f) the initial application date;

(g) the date the credit report was requested for the borrower(s);

(h) the settlement date;

(i) the date the good-faith estimate was mailed or hand delivered;

(j) the date the Truth in Lending statement was mailed or hand delivered;

(k) the loan amount;

(l) the loan-to-value ratio;

(m) the status of the loan (pending, closed, withdrawn, cancelled, denied);

(n) the total fees received indirectly or directly by the mortgage broker at the closing of the loan;

(o) the total yield spread premium received by the mortgage broker at the closing of the loan; and

(p) the name of the individual mortgage broker or loan originator who originated the loan.

AUTH: 32-9-130, MCA
IMP: 32-9-121, 32-9-124, 32-9-125, MCA

STATEMENT OF REASONABLE NECESSITY: It is reasonably necessary for the division to amend section (1)(b) in order to ensure that the mortgage broker or loan originator signed the related loan documents. The requirement of a signature will clarify which mortgage broker or loan originator has originated and disclosed terms of residential mortgage loans. This helps the division, when it does examinations, to know who was involved in disclosing loan terms and rates to the borrower and on what date such disclosures were made. In doing examinations, the division has found unsigned and undated forms. It is impossible to determine when or if unsigned and undated forms were actually given to borrowers and if so, by whom.

It is reasonably necessary for the division to amend section (2) to provide for consistency with the recordkeeping requirements set forth in 32-9-121, MCA. In the

case of an entity with more than one location, it is not practical or reasonable to require each location to have its own trust account. Rather there should be one central trust account at the principal Montana location for the business that all branches use.

It is reasonably necessary for the division to propose section (3) to specify what information must be included in the residential mortgage loan files and trust account records that are necessary to enable the department to determine whether a licensee is in compliance with the applicable law and rules. The spreadsheet will enable the division to review a summary of residential mortgage activity by a licensee. This will save the examiners time in conducting examinations and result in lower fees for examinations to licensees. The division recognizes that the requirement of a spreadsheet may place an administrative burden on the licensees. However, the division believes that most licensees already have databases that can generate this information relatively easily. The division does not believe it is necessary to have the data in any particular computer program as long as the information listed in the rule is readily retrievable in a spreadsheet that contains the relevant information and is readable by the examiners. The division notes that depository institutions are also required by federal law to maintain this information for examiners. The division also notes that the information required to be on the spreadsheet is information that should be readily available to licensees in proper management of their businesses and is not outside the normal information that a well-managed organization would have readily at hand.

4. The proposed new rules provide as follows:

NEW RULE I CONTINUING EDUCATION (1) "Hour" as used in 32-9-118, MCA, means 50 minutes of instruction.

(2) Beginning June 1, 2008, and annually thereafter, all individual mortgage brokers and loan originators must complete a minimum of one hour of the required 12 hours of continuing education each year reviewing the Montana Mortgage Broker and Loan Originator Licensing Act and Administrative Rules of Montana (ARM) Title 2, chapter 59, subchapter 17. The course must be presented by a provider approved by the department.

(3) The continuing education year is from June 1 to May 31. Failure to complete continuing education requirements by May 31 will result in the revocation of license as of June 30. The mortgage broker or loan originator must then apply as a new applicant.

(4) No more than six hours of continuing education credits may be carried over to the next licensing year. The request for continuing education credits to be carried over must be submitted with the renewal application for which the education credits were taken.

(5) The department may provide continuing education courses at its discretion. The department may charge a fee to the attendees of $12.50 per hour of continuing education. The fees are nonrefundable.

AUTH: 32-9-130, MCA
IMP: 32-9-130, MCA

STATEMENT OF REASONABLE NECESSITY: New Rule I(1) defines hour for purposes of continuing education credits. The division initially was going to define hour for purposes of continuing education credits as 60 minutes. However, after some research, it appears that most nationwide continuing education providers define hour as 50 minutes, allowing a ten-minute break per hour. If Montana were to define hour as 60 minutes, it would set up a conflict between the way Montana counts continuing education hours and the way most of the rest of the states count continuing education hours. So the division proposes to define hour for purposes of continuing education credits as 50 minutes in order to be consistent with other states in allowing a ten-minute break per hour.

New Rule I(2) would require at least one credit hour of instruction per year be specifically on Montana law. The division, in conducting examinations, has found vast misunderstanding of the provisions of Montana law on the part of the licensees. This provision is designed to ensure that licensees know Montana-specific law and stay abreast of changes to the Montana laws. The division considered requiring more than one credit hour per year be specific to Montana law, but given the complexity of federal law in this area, the division felt that it did not want to take significant time away from the licensee's studies of federal laws and rules applicable to the mortgage transaction.

New Rule I(3) states what happens if the licensee fails to complete the continuing education credits required by 32-9-118, MCA, within the licensing year. The first sentence is currently in ARM 2.59.1704(2). It is being moved to New Rule I on continuing education because it relates to the topic of the new rule. While the statute sets forth the requirement for continuing education credits every year by license renewal time, it does not specify what happens if the license is not renewed by license renewal time. The new section proposed will state a remedy for failure to comply with 32-9-118, MCA.

The first sentence of New Rule I(4) is being moved from ARM 2.59.1704(3) because it relates to the topic of this new rule. New Rule I(4) is being proposed to make clear that if an applicant wishes to have continuing education credits carry over to the following licensing year, they must submit that request with the renewal application for the year in which the credits were taken. The administrative burden is simply too great on both licensees and the division to try to keep track of carryover credits that were not reported in the year in which they were earned.

Section (5) is proposed because, in order to provide training to licensees, the division must use existing staff within the limits of their existing workloads. The division incurs costs to provide training which include: cost of training space, examiner time in preparing and giving presentations, examiner time lost from examinations while the examiner is training, travel costs to places where the training is given, costs of materials and presentations to licensees, and costs of refreshments. The division currently estimates it would endeavor to offer eight continuing education sessions to licensees per year at a proposed cost of $12.50 per hour. Each session would last four hours and be attended by 25 licensees. The estimated revenue from the continuing education courses would be $10,000 (eight continuing education sessions x 25 licensees x four hours x $12.50 per hour). It is customary for companies to charge for presenting continuing education credits. The

division believes it is appropriate to charge a fee for its continuing education credits as well since it incurs costs in presenting training, but the division set the fee at a relatively low rate in order to encourage licensees to attend.

NEW RULE II PRELICENSING EXAMINATION (1) An applicant seeking an individual mortgage broker's license or a loan originator's license shall submit to a prelicensing examination provided for by the department.

(2) The prelicensing examination will be developed by the department and must be proctored by an agent approved by the department.

(3) The department shall provide a list of approved proctors.

(4) Upon completion of the prelicensing examination, the proctor shall place the examination in an envelope provided by the department, seal the envelope, and sign the back flap of the envelope to ensure confidentiality.

(5) The envelope containing the prelicensing examination shall be mailed to the department within five days.

(6) The applicant must pass the prelicensing examination with a minimum 75%.

(7) If the applicant fails to submit a completed application to the department for a license as an individual mortgage broker or loan originator within one year from the date of the prelicensing examination, the prelicensing examination is expired and the applicant must retest.

(8) The prelicensing examination will be 100 questions for loan originator license and 125 questions for individual mortgage broker license.

(9) The fee for the test is $100. All fees are nonrefundable and must be submitted with the prelicensing examination request.

AUTH: 32-9-130, MCA
IMP: 32-9-110, MCA

STATEMENT OF REASONABLE NECESSITY: New Rule II sets forth the procedures for a new prelicensing examination process. This rule seeks to ensure that applicants for licensure have a minimum level of knowledge necessary to do business in this area. In conducting examinations, it is clear to the division that some licensees lack the basic skill set that would enable them to run their businesses in a manner consistent with state and federal requirements that apply to mortgages. The division notes that House Resolution 3915 as passed by the United States House of Representatives currently contains prelicensure education and testing requirements for mortgage brokers and loan originators. House Resolution 3915 refers to the Nationwide Mortgage Licensing System and Registry as the entity that will develop and administer prelicensing testing. So at the national level as well as at the state level, regulators are looking at prelicensing examinations as a method to ensure that applicants for licensure know and understand the relevant law and rules in the area of mortgage brokering. The current passing score as set forth in House Resolution 3915 is also 75%. The proposed rule sets forth the requirements for a passing grade on the test and how the test is to be administered and processed.

The new rule on proctoring the examination is designed to ensure that the test is given to the applicant, and returned to the division promptly (within five days) so that it can be graded as quickly as possible.

This new rule is authorized by the division's rulemaking authority under 32-9-130(2), MCA, which allows fees for tests as well as developing or approving tests to be given as a prerequisite for licensure.

The division arrived at the fee in section (9) by estimating that it currently licenses 90 mortgage brokers and loan originators each year that would be subject to the testing fee. The estimated revenue from the testing fee would be $9,000 ($100 test fee x 90 licensees). The cost is designed to recover the division's costs in developing, administering, grading, and maintaining the examinations.

NEW RULE III DESIGNATED MANAGERS (1) The designated manager is responsible for assuring that all licensees working for the mortgage broker entity comply with:

(a) Title 32, chapter 9, part 1, MCA;

(b) these rules; and

(c) all applicable federal laws and rules incorporated therein.

(2) The designated manager is responsible for educating all employees on the mortgage broker entity's policies and the need to adhere to them.

AUTH: 32-9-130, MCA
IMP: 32-9-103, 32-9-122, MCA

STATEMENT OF REASONABLE NECESSITY: It is reasonably necessary for the division to propose New Rule III to clarify the responsibilities of the designated manager as it relates to compliance with statute and rules. The division has seen several instances in which the designated manager does not view his or her responsibility as including ensuring compliance with the statutes and the rules and the education of employees on the business's policies. The statute provides the designated manager is responsible for operating the business at the location where the designated manager is employed. The rule intends to clarify that this includes ensuring that the employees know and follow the law, rules, and business policies.

NEW RULE IV EXAMINATIONS (1) Upon receiving a complaint, or at its discretion, the department may examine any office, place of business, or location where records may be found of any licensee or person who may be in violation of Title 32, chapter 9, part 1, MCA, or these rules. The department shall examine for compliance with the applicable state law and all rules and regulations promulgated thereunder.

(2) At the end of an examination, the department shall provide the examinee with an oral and written report.

AUTH: 32-9-130, MCA
IMP: 32-9-130, MCA

STATEMENT OF REASONABLE NECESSITY: The division is specifically

authorized to conduct examinations of any mortgage broker transaction and residential loan files, trust account records, and other information related to loan transactions of licensees and unlicensed persons. This rule is intended to clarify that the division may examine records wherever they are located. So, for instance, if a mortgage broker is operating from their residence in violation of licensing and bonding requirements, the division may examine the records found at the residence. In the event that an unlicensed person is working out of their home, this rule would allow the division to examine the place where the unlicensed person was working. The division has traditionally provided licensees with oral and written reports of examinations. While this practice has informally existed for numerous years, it does not appear in statute or the rules. The division seeks to formalize current practice by putting it in rule.

NEW RULE V FAILURE TO CORRECT DEFICIENCIES (1) In addition to all other enforcement actions allowed by Montana law, the department may suspend or revoke a license pursuant to Title 2, chapter 4, part 6, MCA, of an entity that does not correct the deficiencies found by the department after an examination and within the time granted by the department.

AUTH: 32-9-130, MCA
IMP: 32-9-130, 32-9-133, MCA

STATEMENT OF REASONABLE NECESSITY: The division has examined licensees several years in a row to find the same violations of Montana law existing year after year. Each year the division notes the deficiencies and the business says it will correct the deficiencies, but does not do so. The division seeks to clarify that the repeated failure to address violations of Montana law, which have been documented and noted for corrective action after an examination, will result in loss of license. This authority has been provided as part of the amendments to 32-9-130(2)(c), MCA, as part of Senate Bill 92, which was passed during the 2007 Regular Legislative Session. Of course, as with any action against a licensee's license, the licensee is entitled to due process under the Montana Administrative Procedure Act prior to any action affecting his or her license.

NEW RULE VI GROUNDS FOR THE DENIAL OF AN APPLICATION (1) Any false statement or omission of fact from the statement of the applicant required by 32-9-115 and 32-9-116, MCA, shall be sufficient grounds to deny a license to an applicant. Any material false statement and any material omission of fact in an application shall be grounds for denial of a license.

AUTH: 32-9-130, MCA
IMP: 32-9-115, 32-9-116, 32-9-130, MCA

STATEMENT OF REASONABLE NECESSITY: The division has received applications in which applicants lie about their criminal history and the civil judgments against them. At the present time, there is no penalty for lying on an application. In order to promote true, correct, and complete responses in

applications, the division must have the ability to deny licenses for material false statements and material omissions of fact from applications.

NEW RULE VII COSTS IN BRINGING THE ADMINISTRATIVE ACTION

(1) Costs in bringing the administrative action as used in 32-9-133, MCA, shall include:

(a) examiner time charges;
(b) department legal counsel time charges;
(c) administrative law judge charges;
(d) court reporter costs;
(e) transcription fees;
(f) document preparation fees;
(g) other hearing costs;
(h) costs of subpoenaing documents;
(i) any other cost incurred by the department in bringing the action; and
(j) travel costs.

AUTH: 32-9-130, MCA
IMP: 32-9-133, MCA

STATEMENT OF REASONABLE NECESSITY: Senate Bill 92, which was passed during the 2007 Regular Legislative Session added section (2) to 32-9-133, MCA. That section allows the division to issue an order requiring restitution to borrowers and reimbursement of the department's cost in bringing the administrative action. The division is defining the costs of bringing the administrative action by identifying the costs associated with administrative hearings.

NEW RULE VIII SCHEME TO DEFRAUD OR MISLEAD (1) For purposes of 32-9-124, MCA, a scheme to defraud or mislead a borrower, a lender, or any other person shall include but is not limited to:

(a) misstating a borrower's income, assets, obligations, employment status, credit history, and financial resources, or the borrower's equity in the dwelling which secures repayment of the loan to a lender;

(b) stating to a lender, or more than one lender, that a borrower intends to use more than one property as a primary residence;

(c) acceptance of any fees, or charge in excess of the fees, that have been or will be remitted to a third party; and

(d) failing to disburse funds in accordance with any commitment or agreement with the borrower.

AUTH: 32-9-130, MCA
IMP: 32-9-124, MCA

STATEMENT OF REASONABLE NECESSITY: In this new rule, which implements a previously existing section of statute, the division seeks to define some types of schemes to defraud or mislead a borrower, lender, or other person that it considers to be covered by this rule. These are some of the more common

types of behaviors that the division has uncovered in the course of examinations of mortgage brokers in Montana. By enumerating some types of schemes to defraud, the division does not wish to exclude other schemes to defraud, but rather to give some examples of schemes to defraud which the division considers are covered by this rule.

5. Concerned persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Kelly O'Sullivan, Legal Counsel, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; faxed to the office at (406) 841-2930; e-mailed to kosullivan@mt.gov, and must be received no later than 5:00 p.m., May 27, 2008.

6. Kelly O'Sullivan, Legal Counsel, Division of Banking and Financial Institutions, has been designated to preside over and conduct the hearing.

7. An electronic copy of this proposal notice is available through the department's web site at http://doa.mt.gov/AdministrativeRules.asp. The department strives to make the electronic copy of the notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the department works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

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

9. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled. Senator Donald Steinbeisser, the primary bill sponsor of SB 92 (2007), was notified on July 27, 2007, by U.S. mail.

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

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

Certified to the Secretary of State April 14, 2008.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 17.50.501 through 17.50.503, 17.50.508, 17.50.509, and 17.50.513; the adoption of New Rules I through XXV; and the repeal of ARM 17.50.505, 17.50.506, 17.50.510, 17.50.511, 17.50.526, 17.50.530, 17.50.531, 17.50.542, 17.50.701, 17.50.702, 17.50.705 through 17.50.710, 17.50.715, 17.50.716, and 17.50.720 through 17.50.726 pertaining to the licensing and operation of solid waste landfill facilities	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT, ADOPTION, AND REPEAL (SOLID WASTE)

TO: All Concerned Persons

1. On May 14, 2008, at 1:00 p.m., a public hearing will be held in Room 35 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment, adoption, and repeal of the above-stated rules.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., May 5, 2008, to advise us of the nature of the accommodation that you need. Please contact Robert A. Martin, Waste and Underground Tank Management Bureau, Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-4194; fax (406) 444-1374; or e-mail rmartin@mt.gov.

3. The department is proposing to adopt New Rule I into ARM Title 17, chapter 50, subchapter 5, and the new subchapters listed below into ARM Title 17, chapter 50. The department is proposing to adopt New Rules II through V as New Subchapter I; New Rules VI through XI as New Subchapter II; New Rules XII through XVI as New Subchapter III; New Rules XVII through XXI as New Subchapter IV; and New Rules XXII through XXV as New Subchapter V.

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

17.50.501 PURPOSE AND APPLICABILITY (1) and (2) remain the same.

(3) ~~These rules apply to~~ All applicants, licensees, owners, and operators of solid waste management systems and facilities shall comply with ARM Title 17, chapter 50, subchapters 4 through [NEW SUBCHAPTER V], except as otherwise specifically provided in ~~this subchapter~~ ARM Title 17, chapter 50, subchapters 4 through [NEW SUBCHAPTER V]. Wherever there is a requirement imposed on an

owner or operator in ARM Title 17, chapter 50, subchapters 4 through [NEW SUBCHAPTER V], the licensee shall also comply with that requirement.

~~(4) The effective dates of ARM 17.50.506 and 17.50.511(1)(e) and (g) are extended until April 9, 1994, as they apply to existing landfill units and lateral expansions to existing units that meet the following requirements:~~

~~(a) the unit disposed of less than 100 tons per day of solid waste between October 9, 1991, and October 9, 1992;~~

~~(b) the unit does not dispose of more than an average per month of 100 tons per day of solid waste between October 9, 1993 and April 9, 1994; and~~

~~(c) the unit is not on the national priorities list (NPL) as found in 40 CFR, part 300, appendix B.~~

(4) Whenever a person, including an applicant or owner or operator, is required in ARM Title 17, chapter 50, subchapters 4 through [NEW SUBCHAPTER V] to submit a document for department approval of an action, the person may not take the action for which the submission is required unless the person first submits a document containing all information necessary for the department to determine if the action complies with the requirements of ARM Title 17, chapter 50, subchapters 4 through [NEW SUBCHAPTER V], and obtains department approval.

(5) ~~Existing MSWLF units that meet the requirements for the small community exemption found in ARM 17.50.506(16) or the requirements of (4) of this rule that receive waste after October 9, 1993, and stop receiving waste prior to April 9, 1994, are only subject to the final cover requirements found in ARM 17.50.530. Final cover must be installed by October 9, 1994. Owners or operators that fail to complete cover installation by October 9, 1994, are subject to all of the requirements of this subchapter unless otherwise specified.~~ When authorized by either a court order or an agreement between the department and a landowner on whose property a violation of ARM Title 17, chapter 50, subchapters 5 through [NEW SUBCHAPTER V] has occurred, the department may act, either directly or through a third party, to physically remediate a violation of ARM Title 17, chapter 50, subchapters 4 through [NEW SUBCHAPTER V].

AUTH: 75-10-204, MCA
IMP: 75-10-204, MCA

REASON: The proposed amendments to ARM 17.50.501(3) are necessary to provide an express rather than an implied requirement that all applicants, licensees, owners, and operators of solid waste management systems and facilities are required to comply with the requirements of ARM Title 17, chapter 50, subchapters 4 through New Subchapter V. The existing rules in subchapter 5 are based on EPA regulations found in 40 CFR Part 258. The Environmental Protection Agency (EPA) does not license facilities, but a solid waste management facility in Montana may not operate without a license under Montana law pursuant to 75-10-221, MCA. Therefore, it is necessary to add language making it clear that licensees are required to comply with the solid waste rules. There are requirements for the application and design process that applicants must meet prior to the construction of, and receipt of waste at, a facility, and the additional word "applicant" clarifies that the rules apply to applicants also.

The language proposed for deletion in (4) and (5) refers to effective dates for certain rules. The effective dates of some rules in the subchapter were delayed to allow smaller systems time to come into compliance or close. These effective dates have long since passed and all of the rules in the subchapter are currently applicable.

The new language that would be added to (4) provides an express rather than an implied requirement that, whenever a person is required to submit a document to the department for approval of an action, the person making the submission may not take the action requested in the submission until it is approved by the department. The proposed language is necessary to allow the department to ensure that the document contains all necessary information and ensure that the action complies with the rules.

17.50.502 DEFINITIONS In addition to the terms defined in 75-10-203, MCA, as used in this subchapter, the following terms ~~shall~~ have the meanings or interpretations shown below:

(1) remains the same.

(2) "Active life" means the period of operation beginning with the initial receipt of solid waste and ending at completion of closure activities in accordance with ~~ARM 17.50.530~~ [NEW SUBCHAPTER V].

~~(3) "Active portion" means that part of a facility or unit that has received or is receiving wastes and that has not been closed in accordance with ARM 17.50.530.~~

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

(4) "Contaminated soil" means soil, dirt, or earth that has been made impure by contact, commingling, or consolidation with organic compounds such as petroleum hydrocarbons. This definition does not include soils contaminated solely by inorganic metals, soils that meet the definition of hazardous waste as defined under ARM Title 17, chapter 53, or regulated PCB (polychlorinated biphenyls) contaminated soils.

~~(5) "Aquifer" means any geologic formation, group of formations, or part of a formation capable of yielding significant quantities of ground water to wells or springs.~~

~~(6)~~ (5) "Clean fill" means soil, dirt, sand, gravel, rocks, and rebar-free concrete, emplaced free of charge to the person placing the fill, in order to adjust or create topographic irregularities for agricultural or construction purposes.

~~(7) "Closed unit" means any solid waste disposal unit, trench, cell or area that no longer receives solid waste and has been closed in accordance with department rules.~~

~~(8)~~ (6) "Closure" means the process by which an owner or operator of a facility closes all or part of a facility in accordance with a department-approved closure plan and all applicable closure requirements specified in ~~ARM 17.50.530~~ [NEW SUBCHAPTER V].

~~(9) "Compacted soil liner" means recompacted native or amended soil with a minimum thickness of 3 feet with adequate moisture content and compaction to achieve a hydraulic conductivity of less than or equal to 1 x 10^{-7} cm/sec.~~

~~(10) "Commercial waste" means all types of solid wastes generated by stores, offices, restaurants, warehouses, and other non-manufacturing activities, and~~

~~non-processing wastes such as office and packing wastes generated at industrial facilities.~~

~~(11) "Conditionally exempt small quantity generator wastes (CESQG wastes)" means wastes from a generator defined in ARM 17.54.401(4)(c).~~

~~(12) "Construction and demolition waste" means the waste building materials, packaging, and rubble resulting from construction, remodeling, repair, and demolition operations on pavements, houses, commercial buildings, and other structures, once municipal, household, commercial and industrial wastes have been removed.~~

(13) remains the same, but is renumbered (7).

~~(14) "Cost" means all expenses associated with the permitting, licensing, design, construction, environmental compliance, operation, maintenance, ground water monitoring, corrective action, closure and post-closure care of any facility.~~

~~(15) "Director" means the chief administrative officer of the department of environmental quality.~~

~~(16) "Disease vectors" means any rodents, flies, mosquitoes, or other animals, including insects, capable of transmitting disease to humans.~~

~~(17) "EPA" means the United States environmental protection agency.~~

~~(18) "Existing unit" means any solid waste disposal unit that is receiving solid waste as of October 9, 1993. Waste placement in existing units must be consistent with past operating practices or modified practices to ensure good management.~~

~~(19)~~ (8) "Facility" means a manufacturing, processing, or assembly establishment~~;~~, a transportation terminal~~;~~, or a treatment, storage, recycling, recovery, or disposal unit operated by a person at one site. The term includes all contiguous land and structures, other appurtenances, and improvements on the land ~~(licensed or unlicensed)~~ ever used for the storage, treatment, recycling, recovery, or disposal of solid waste or for corrective action associated with such operations.

(20) and (21) remain the same, but are renumbered (9) and (10).

~~(22) "Ground water class" means a ground water quality classification established in ARM 17.30.1002.~~

~~(23) "Ground water quality standards" means the standards for ground water quality set forth in ARM 17.30.1003.~~

~~(24)~~ (11) "Industrial solid waste" means solid waste generated by manufacturing or industrial processes that is not a hazardous waste regulated under subtitle C of the federal Resource Conservation and Recovery Act of 1976 (RCRA), as amended, and codified at 42 USC 6901 through 6992k. The term includes, but is not limited to, waste resulting from the following manufacturing processes:

(a) electric power generation;
(b) fertilizer/agricultural chemicals;
(c) food and related products/byproducts;
(d) inorganic chemicals;
(e) iron and steel manufacturing;
(f) leather and leather products;
(g) nonferrous metals manufacturing/foundries;
(h) organic chemicals;
(i) plastics and resins manufacturing;
(j) pulp and paper industry;

(k) rubber and miscellaneous plastic products;

(l) stone, glass, clay, and concrete products;

(m) textile manufacturing;

(n) transportation equipment; and

(o) water treatment.

~~(25) "Infectious waste" means waste defined in 75-10-1003(4), MCA.~~

~~(26)~~ (12) "Land application unit" means an area where wastes are applied onto or incorporated into the soil surface ~~(excluding manure spreading operations)~~ for agricultural purposes or for treatment and disposal. The term does not include manure spreading operations.

(27) remains the same, but is renumbered (13).

~~(28)~~ (14) "Lateral expansion" means a horizontal expansion of:

(a) the ~~waste~~ licensed boundaries of an existing disposal ~~unit~~ facility; or

(b) an existing disposal unit.

(29) remains the same, but is renumbered (15).

(16) "Leachate collection system" means an engineered structure, located above a liner and below the refuse in a landfill unit, designed to collect leachate.

(17) "Leachate removal system" means an engineered structure that allows for the removal of leachate from a landfill unit. A leachate removal system may be, but is not necessarily, used in conjunction with a leachate collection system.

(18) "Licensee" means a person or persons who has or have been issued a license to operate a solid waste management system by the department.

(30) remains the same, but is renumbered (19).

~~(31) "Lower explosive limit" means the lowest percent by volume of a mixture of explosive gases in air that will propagate a flame at 25ºC and atmospheric pressure.~~

(32) remains the same, but is renumbered (20).

~~(33) "Municipal solid waste landfill unit (or MSWLF unit)" means a discrete area of land or an excavation that receives household waste, and that is not a land application unit, surface impoundment, injection well, or waste pile. A MSWLF unit also may receive other types of RCRA subtitle D wastes, such as commercial solid waste, nonhazardous sludge, conditionally exempt small quantity generator waste, and industrial solid waste. Such a landfill may be publicly or privately owned. A MSWLF unit may be a new MSWLF unit, an existing MSWLF unit, or a lateral expansion.~~

~~(34) "New unit" means any solid waste disposal unit that has not received waste prior to October 9, 1993.~~

~~(35) "Open burning" means the combustion of solid waste without:~~

~~(a) control of combustion air to maintain adequate temperature for efficient combustion;~~

~~(b) containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion; and~~

~~(c) control of the emission of the combustion products.~~

(36) through (38) remain the same, but are renumbered (21) through (23).

(24) "Person" has the meaning given in 75-10-203, MCA.

(25) "Post-closure care" means the minimum 30-year period of landfill care after the completion of closure where all aspects of the landfill containment,

extraction, control, and monitoring systems are inspected, operated, and maintained in accordance with a department-approved post-closure plan and all applicable requirements in [NEW SUBCHAPTER V].

(26) "RCRA" means the federal Solid Waste Disposal Act, as amended by and hereinafter referred to as the Resource Conservation and Recovery Act of 1976 and subsequent amendments, codified at 42 USC 6901 through 6992k.

(27) "Residue" means the waste material remaining after processing, incineration, composting, recovery, or recycling have been completed. Residues are usually disposed of in landfills.

~~(39) "Qualified ground water scientist" means a scientist or engineer who has received a baccalaureate or post-graduate degree in natural sciences or engineering and has sufficient training and experience in ground water hydrology and related fields as may be demonstrated by state registration, professional certifications, or completion of accredited university programs that enable that individual to make sound professional judgements regarding ground water monitoring, contaminant fate and transport, and corrective action.~~

~~(40) "Refuse container" means a portable facility used for the temporary storage of solid waste. Containers are emptied periodically and the solid waste is then taken to a disposal or resource recovery facility.~~

~~(41) "Regulated hazardous waste" means a solid waste that is a hazardous waste, as defined in 40 CFR 261.3, that is not excluded from regulation as a hazardous waste under 40 CFR 261.4(b) or was not generated by a conditionally exempt small quantity generator as defined in 40 CFR 261.5.~~

~~(42) "Run-off" means any rainwater, leachate, or other liquid that drains over land from any part of a facility.~~

~~(43) "Run-on" means any rainwater, leachate, or other liquid that drains over land onto any part of a facility.~~

~~(44) "Saturated zone" means that part of the earth's crust in which all voids are filled with water.~~

(45) remains the same, but is renumbered (28).

(29) "Special waste" has the meaning given in 75-10-802, MCA.

(30) "Solid waste" has the meaning given in 75-10-203, MCA.

~~(46) "Sewage sludge" means solid, semi-solid, or liquid residue generated during the treatment of domestic sewage in a treatment works. Sewage sludge includes, but is not limited to, domestic septage; scum or solids removed in primary, secondary, or advanced wastewater treatment processes; and a material derived from sewage sludge. Sewage sludge does not include ash generated during the firing of sewage sludge in a sewage sludge incinerator or grit and screenings generated during the preliminary treatment of domestic sewage in a treatment plant.~~

~~(47) "Sludge" means any solid, semi-solid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility exclusive of the treated effluent from a wastewater treatment plant.~~

~~(48) "Solid waste management system" as defined in 75-10-203, MCA, means a system which controls the storage, treatment, recycling, recovery, or disposal of solid waste. In addition, for the purposes of this definition, the department does not consider a container site to be a component of a solid waste~~

~~management system.~~

~~(49) "Structural components" means liners, leachate collection systems, final covers, run-on/run-off systems, and any other component used in the construction and operation of a solid waste management system that is necessary for protection of human health and the environment.~~

(50) remains the same, but is renumbered (31).

~~(51) "Transfer station" means a solid waste management facility that can have a combination of structures, machinery, or devices, where solid waste is taken from collection vehicles (public, commercial or private) and placed in other transportation units for movement to another solid waste management facility.~~

~~(52)~~ (32) "Unit" means a discrete area of land or an excavation used for the landfilling or other disposal of solid waste with either:

(a) a contiguous liner; or

(b) a contiguous cover.

~~(53) "Uppermost aquifer" means the geologic formation nearest the natural ground surface that is an aquifer, as well as lower aquifers that are hydraulically interconnected with this aquifer within the facility's property boundary.~~

(54) remains the same, but is renumbered (33).

~~(55) "Waste management unit boundary" means a vertical surface located at the hydraulically downgradient limit of the unit. This vertical surface extends down into the uppermost aquifer.~~

(56) remains the same, but is renumbered (34).

~~(57) "Wetlands" means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas.~~

AUTH: 75-10-204, MCA
IMP: 75-10-204, MCA

REASON: Many existing definitions in ARM 17.50.502 would be moved to the proposed new subchapters where the particular terms are used, and they are being proposed for deletion here. Definitions of contaminated soil, leachate collection system, leachate removal system, licensee, person, post-closure care, RCRA, special waste, and residue are proposed to be added because those terms are used in the rules in this subchapter, and the definitions are needed to provide clarity to the substantive requirements in the rules.

The proposed amendment to the definitions of active life and closure would update the citation for closure activities. The existing rule, ARM 17.50.530, is proposed to be deleted and New Subchapter V would now address closure activities.

The proposed amendment to the definition of facility would include recycling and waste recovery. These activities are included in the definition of "solid waste management system" in 75-10-203, MCA. The amendments are necessary because the department is planning to adopt rules for the licensing of recycling and waste recovery facilities.

The proposed amendment to the definition of industrial solid waste refers to the definition in RCRA. The amendment clarifies the definition, but does not change the meaning.

The proposed amendment to the definition of land application unit removes the exclusion for manure spreading operations from the first sentence of the definition and adds it as a separate sentence at the end of the definition. The revision clarifies the definition, but does not change the meaning.

The proposed amendment to the definition of lateral expansion modifies the existing definition, which is the same as the federal definition in 40 CFR 258.2, to include an expansion of a facility's licensed boundaries or of an existing unit. This recognizes that Montana licenses facilities, which EPA does not. The proposed amendment is necessary to clarify what constitutes a lateral expansion in Montana. A lateral expansion triggers measurements for submissions by the owner, operator, or licensee, and requires review and possible approvals by the department.

The proposed amendment to the definition of unit clarifies the definition, but does not change the meaning.

17.50.503 WASTE GROUPS (1) Solid wastes are grouped based on physical and chemical characteristics which determine the degree of care required in handling and disposal and the potential of the wastes for causing environmental degradation or public health hazards. Solid wastes are categorized into ~~3~~ three groups:

(a) Group II wastes include decomposable wastes and mixed solid wastes containing decomposable material but exclude regulated hazardous wastes. Examples include, but are not limited to, the following:

(i) remains the same.

(ii) commercial and industrial solid wastes such as packaging materials, liquid or solid industrial process wastes ~~which~~ that are chemically or biologically decomposable, contaminated soils, crop residues, manure, chemical fertilizers, and emptied pesticide containers ~~which~~ that have been triple rinsed or processed by methods approved by the department.

(b) through (2) remain the same.

AUTH: 75-10-204, MCA
IMP: 75-10-204, MCA

REASON: The proposed addition of contaminated soils to the Group II waste list would expressly recognize that contaminated soils are not inert and that they may not be managed as Group III or IV wastes. As Group II wastes, they must either be landfarmed to reduce the concentration of petroleum compounds, or disposed of at a Class II landfill with its more rigorous requirements, including liners, caps, and monitoring, for isolating waste from ground water and the environment.

17.50.508 APPLICATION FOR SOLID WASTE MANAGEMENT SYSTEM LICENSE (1) ~~Any owner or operator wishing to establish a solid waste management system shall first submit an original application and 3 copies for a license to the department. The application must be signed by the person~~

~~responsible for the overall operation of the facility. The department shall furnish application forms to interested persons. Such forms shall require at least the following information~~ Prior to disposing of solid waste or operating a solid waste management system, or lateral expansion, a person shall submit to the department for approval an application for a license to construct and operate a solid waste management system. The applicant shall use the application form provided by the department. The applicant shall provide the following information:

(1) through (9) remain the same, but are renumbered (a) through (i).

~~(10)~~ (j) geological, hydrological, and soil information~~, including at least the following:~~ as specified in [NEW RULE XX];

~~(a) Class II disposal facilities must submit geological, hydrological, and soil information that includes the following at a minimum:~~

~~(i) a hydrogeological and soils study as specified in ARM 17.50.705;~~

~~(ii) types and regional thickness of unconsolidated soils materials;~~

~~(iii) types and regional thickness of consolidated bedrock materials;~~

~~(iv) regional and local geologic structure, including bedrock strike and dip, and fracture patterns;~~

~~(v) geological hazards including but not limited to slope stability, faulting, folding, rockfall, landslides, subsidence, or erosion potential, that may affect the design and operation of the facility for solid waste management;~~

~~(vi) depth to and thickness of perched ground water zones and uppermost aquifers;~~

~~(vii) information regarding any domestic wells within one mile of the site boundary, including well location, well depth, depth to water, screened intervals, yields and aquifers tapped;~~

~~(viii) an evaluation of the potential for impacts to existing surface water and ground water quality from the proposed facility for solid waste management;~~

~~(b) transfer station and Class III and Class IV disposal facility applications must include sufficient soils, hydrologic and geologic information so that the department can evaluate the proposed safety and environmental impact of the proposed design;~~

~~(c) a ground water monitoring plan or a demonstration meeting the requirements of ARM 17.50.723 must be submitted for Class IV disposal facilities.~~

(11) and (12) remain the same, but are renumbered (k) and (l).

(m) a regional map (minimum scale of 1:62,500 and a minimum size of 8 1/2 inches by 11 inches) that delineates existing and proposed collection, processing, and disposal systems, the location of the closest population centers, and the local transportation systems including highways, airports, and railways;

(n) a vicinity map (minimum scale of 1:24,000 and a minimum size of 8 1/2 inches by 11 inches) that delineates zoning and existing and allowed land use, residences, surface waters, access roads, bridges, railroads, airports, historic sites, and other existing and proposed human-made or natural features relating to the project within one mile of the facility boundaries;

(o) a site plan (minimum scale of 1:24,000 with five foot contour intervals and a minimum size of 8 1/2 inches by 11 inches) that delineates property lines, proposed landfill boundary, the location of existing and proposed soil borings, monitoring wells, buildings and appurtenances, fences, gates, roads, parking areas,

drainages, culverts, storage facilities or areas, and loading areas, existing and proposed elevation contours and direction of prevailing winds, and the location of residences, potable wells, surface water bodies, property lines, and drainage swales located within the site and in the site plan area;

(p) a map indicating state waters, wetlands, and floodplains within 1,000 feet of the site;

(q) a landfill design plan pursuant to [NEW RULE XVI];

~~(13) site maps and plans, drawn to a convenient common scale, that show the location and dimensions of any planned excavations, buildings, roads, fencing, access, or other structures proposed on-site;~~

~~(14) in addition to the above required site plan, all facilities which manage Group II waste must submit technical design specifications and a site plan that includes the following:~~

~~(a) the type, quantity, and location of any material that will be required for use as a daily and intermediate cover over the life of the site and facility;~~

~~(b) the type and quantity of any material that will be required for use as liner material or final cover, including its compaction density and moisture content specifications, the design permeability, and construction quality control and construction quality assurance plans;~~

~~(c) the location and depth of cut for any liners;~~

~~(d) the location and depths of any proposed fill or processing areas;~~

~~(e) the location, dimensions, and grades of any surface water diversion structures;~~

~~(f) the location and dimensions of any surface water containment structures, including those designed to impound contaminated runoff leachate, sludge, or liquids for evaporative treatment;~~

~~(g) the location of any proposed monitoring points for surface water, ground water quality, and explosive gases;~~

~~(h) the location, type, and dimensions of any fencing to be placed on-site;~~

~~(i) the final contours and grades of any fill surface after closure;~~

~~(j) the location of each discrete phase of development;~~

~~(k) the design details and specifications of any final cap, liner, and leachate collection and removal system, including construction quality control and assurance plans and testing for construction of these elements of design;~~

~~(l) a location map showing all the proposed structures and areas for unloading, baling, compacting, storage, and loading, including the dimensions, elevations, and floor plans for these structures and areas, including the general process flow; and~~

~~(m) the design details and specifications of the facility's drainage, septic and water supply systems;~~

(15) through (18) remain the same, but are renumbered (r) through (u).

~~(19)~~ (v) closure and post-closure care plans; ~~and~~

~~(20)~~ (w) for Class II and Class IV solid waste management facilities, a copy of the proposed financial assurance required by ARM 17.50.540;

(x) a copy of a proposed deed notation that meets the requirements in [NEW SUBCHAPTER II]; and

(y) any other information determined by the department to be necessary to protect human health or the environment. The department may request an applicant to supplement an application to provide information referred to in the previous sentence.

(2) An applicant shall submit with the application a copy of a proposed policy of general liability insurance to cover bodily injury or property damage to third persons caused by sudden accidental occurrences at the facility that meets the requirements of [NEW RULE VIII].

AUTH: 75-10-204, 75-10-221, MCA
IMP: 75-10-204, 75-10-221, MCA

REASON: Existing (10)(a), concerning specific geologic information for Class II disposal facilities, is redundant and is similar to the proposed requirements for the soils and hydrologic study required at Class II facilities in New Rule XX. It is therefore being proposed for deletion.

Existing (10)(b), concerning geologic information at transfer stations and Class III and IV disposal facilities, would become redundant because proposed New Rule XX would require all facilities to submit adequate geologic information for department evaluations. It is therefore being proposed for deletion.

Existing (10)(c), concerning the ground water monitoring plan or no-migration demonstration for Class IV facilities, would become redundant with the proposed adoption of New Rule XI concerning operation and maintenance of Class IV facilities. It is therefore being proposed for deletion.

The minimum scales proposed to be added for each type of map in new (1)(m) through (o) would provide appropriate detail for site evaluation and are common scales for maps obtainable from the U.S. Geological Survey. The maps are necessary for the department to evaluate potential environmental impacts to surrounding properties and the controls necessary to protect the environment.

Proposed new (1)(w) would clarify that only Class II and IV landfill facilities must provide a copy of a financial assurance mechanism.

Section (14) would be deleted because there is no reason why only Class II facilities should be required to submit technical specifications and detailed drawings for department evaluation of potential environmental impacts. The other types of facilities should have their technical specifications and drawings reviewed also for evaluation of potential environmental impacts. Existing (14)(a) through (m) would be replaced by equivalent design requirements proposed in New Rule XVI.

Applicants would be required by new (1)(x) to provide a copy of the deed notation indicating that a facility was used for waste disposal. The applicant would need to obtain approval of the deed notation as part of the license application review process so that the proper notation would be recorded by the licensee prior to the acceptance of waste at the facility. See New Rule VIII(10). The department has experienced problems with licensees failing to record deed notations at closure of landfills, and has been forced to litigate to require land owners to record notations. This is wasteful of the department's resources and could lead to a person buying a former landfill property without being fully aware that the land contains a landfill. It is simpler and wiser to require an owner to record a notation when the owner has an

incentive to do so. The owner can accept waste and receive payment for doing so only after a notation has been recorded.

New (1)(y), which would authorize the department to require other information in a license application if necessary to protect human health or the environment, is necessary because circumstances or knowledge not contemplated at the time the rule was drafted may be relevant to the protection of human health or the environment, and the department needs the authority to be able to require additional information.

An applicant would be required by new (2) to submit, with a license application, a copy of a policy of liability insurance for sudden accidental occurrences at the facility. It is important that a licensee demonstrate that it will have insurance coverage for bodily injury or personal damages to ensure the financial health of the facility. Solid waste management facilities can be dangerous places with trucks and other heavy machinery in close proximity to small vehicles and people unloading refuse. A claim made against a facility that has no or inadequate insurance could jeopardize the financial stability of the facility and interfere with its ability to comply with this chapter. The owner would be required under New Rule VIII(11) to provide proof that a policy was in effect before waste could be accepted.

17.50.509 OPERATION AND MAINTENANCE PLAN REQUIREMENTS

(1) remains the same.

(2) The operation and maintenance plan ~~shall~~ must include:

(a) through (f) remain the same.

(g) types of waste the proposed facility will accept; ~~and~~

(h) a plan for ~~reclamation~~ closure of the disposal facility and the land's ultimate use as required under ARM ~~17.50.530.~~ Title 17, chapter 50, [NEW SUBCHAPTER V];

(i) any methane monitoring plans required under ARM ~~17.50.511~~ Title 17, chapter 50, [NEW SUBCHAPTER II];

(j) any ground water monitoring plans required under ARM ~~17.50.701, et seq.~~ Title 17, chapter 50, [NEW SUBCHAPTER IV]; ~~and~~

(k) any plans required for ~~composting or for~~ handling of special waste streams including, but not limited to:

(i) compost;

(ii) contaminated soil;

(iii) asbestos-contaminated material;

(iv) biosolids;

(v) infectious wastes; or

(vi) any other special waste determined by the department to require a handling plan to protect human health or the environment;

(l) any other plans or information on alternative daily cover required in [NEW RULE VIII]; and

(m) any other plans or information determined by the department to be necessary to protect human health or the environment.

(3) The owner, operator, or licensee shall, every five years after the issuance of the solid waste management system license and also within 45 days after the

department notifies the owner or operator that an update is necessary to protect human health or the environment, update the operation and maintenance plan to reflect changed conditions and requirements, and submit the update to the department for approval.

AUTH: 75-10-204, MCA
IMP: 75-10-204, MCA

REASON: Subsections (2)(h) through (j) are being proposed for amendment to update citations. The proposed addition of new (2)(l), concerning alternative daily cover, is necessary to conform this rule to New Rule VIII.

New (2)(k)(vi) and (m) are being proposed for amendment to make it clear that the department may require additional information or plans if it determines that they are necessary to protect human health and the environment. The reasons for this were discussed in the reason for ARM 17.50.508.

Proposed new (3), which would require licensees, owners, or operators to update the operation and maintenance (O & M) plan for a facility every five years and as necessary to reflect changed conditions and requirements, is necessary because waste management is not a static activity. The originally approved O & M plan can become outdated and may require a revision when circumstances or requirements change at the facility. In five years much can change, so it is reasonable to require an update at least that frequently. It is also reasonable for the department to be able to require an owner or operator to update an O & M plan if circumstances change to the point that the department believes an updated plan is necessary to protect human health or the environment before five years have elapsed. It is reasonable for the owner or operator to be required to submit an update within 45 days after being requested to do so. Forty-five days is sufficient time for the update to be prepared and submitted.

17.50.513 PROCESSING OF SOLID WASTE MANAGEMENT SYSTEM LICENSE APPLICATION (1) The department ~~will~~ shall review each submitted application within 60 days to ~~insure that~~ ensure it is ~~completed~~ complete as defined in Title 75, chapter 1, part 2, MCA. The department shall notify the local health officer as required in 75-10-222, MCA. The department shall complete public scoping, if necessary, during the 60-day period. If ~~additional information is required~~ the application is incomplete, the department ~~will~~ shall notify the applicant in writing within 15 days after the initial review is completed and ~~will~~ shall postpone processing the application until the ~~additional information requested~~ material necessary to complete the application is received and the application is determined to be complete. If the requested additional information is not received within 90 days after the applicant has been notified, a new application and application fee must be submitted.

(2) ~~Within 15 days after receipt of the completed application, the department shall notify in writing the local health officer in the county where the proposed solid waste management system will be located.~~ The department shall review the ~~completed~~ complete application and other relevant information and make a proposed decision based on the applicant's apparent ability to comply with the ~~act~~

~~and this subchapter~~ applicable laws and rules, and determine the need for an environmental impact statement (EIS), within the time limits found in Title 75, chapter 1, part 2, MCA.

(3) ~~A public notice will then be prepared by the department to explain its proposed decision. It shall be circulated in the following manner: one copy to the applicant, and 3 copies shall be mailed to the public health officer along with instructions that they be posted at the nearest post office and 2 other public buildings serving the geographical area of the proposed system. At least 1 news release shall be prepared and sent by the department to an area newspaper.~~ The department has adopted rules relating to the Montana Environmental Policy Act in ARM Title 17, chapter 4, subchapter 6. The environmental review process for the department's proposed action must follow these rules.

(4) ~~The purpose of the public notice is to inform the public and seek their views on the proposed license. The notice shall state the name and address of the applicant, the proposed location of the solid waste management facility, and the department's proposed decision. The public shall be informed that it has 30 days from the date of the public notice to submit written comments to the department concerning the license application.~~ Interested persons may obtain copies of the ~~completed~~ complete application and the department's environmental assessment or EIS, proposed decision, and final decision upon request~~, by enclosing the copying costs~~. The requirements of ARM Title 17, chapter 4, subchapter 6, apply to any public notice or public meetings concerning an environmental assessment or EIS.

(5) After the comment period has expired, the department ~~will~~ shall make its final decision and then notify in writing the applicant, the local health officer, ~~the applicant~~ and any other interested persons who have requested to be notified. If the department decides to issue the license, the requirements of 75-10-222 and 75-10-223, MCA, apply to the local health officer ~~has up to 15 days within which to validate the license with his signature. If he refuses to validate the license, he must notify the department, the applicant and any other interested persons in writing. His decision must be based only on whether the application complies with the act and this subchapter~~.

AUTH: 75-10-204, MCA
IMP: 75-10-204, MCA

REASON: The existing rule was first adopted in 1972 and amended in 1974 and 1977. The subchapter has not been amended since 1977. The department adopted new rules to implement the Montana Environmental Policy Act (MEPA) in 1989 and the Legislature put time limits on the time allowed to process applications in 2001. These proposed amendments are necessary to update the rule to conform to the department rules concerning MEPA and the current requirements of the law.

The proposed amendments to (1), which require that the department conduct a completeness review of applications and public scoping, if needed, within 60 days, are necessary to ensure that the time limits of Title 75, chapter 1, part 2, MCA, are met. If an application is complete, the department has 90 days under 75-1-208, MCA, to complete an environmental assessment (EA). The proposed amendments to (1), which place an affirmative duty on the department to review applications,

notify the applicant of additional information needed, and require that applicants pay an additional fee if they do not respond in a timely manner to the department's request for additional information, are necessary to ensure timely processing of applications and timely response from applicants.

The proposed amendments to the language in (2), which require the department to complete an EA within the time required by law, are necessary to ensure that timely responses to complete applications are made. One of the purposes of an EA is to determine if an EIS is necessary, and the proposed amendment would allow the department to make the determination and prepare an EIS in the time required by law.

The proposed amendments to (3) and (4), which concern public notification of a proposed licensing decision, would clarify those sections, but do not change their meaning. The department is proposing to delete some of the text, and instead have the rule cite the laws or rules that contain the relevant requirements.

The proposed amendments to (5) would reference the statutory requirements (75-10-222 and 75-10-223, MCA) concerning the notification, validation, and refusal of validation of the local health officer. The proposed amendments are necessary because the language proposed to be deleted does not include all of the requirements contained in the referenced statutes, so by deleting the incomplete language and citing statutes and rules, the regulated community has a more complete statement of the application review process.

5. The proposed new rules provide as follows:

NEW RULE I CLASS II LANDFILL UNIT RESEARCH, DEVELOPMENT, AND DEMONSTRATION PLANS (1) Except as provided in (6), the department may approve a research, development, and demonstration plan included as a condition in the license for a new Class II landfill unit, existing Class II landfill unit, or lateral expansion for which the licensee proposes to utilize innovative and new methods that vary from either or both of the following criteria provided that the Class II landfill unit has a leachate collection system designed and constructed to maintain less than a 30-centimeter depth of leachate on the liner:

(a) the run-on control systems in 40 CFR 258.26(a)(1), as adopted by reference in [NEW RULE VI]; and

(b) the liquids restrictions in 40 CFR 258.28(a), as adopted by reference in [NEW RULE VI].

(2) The department may approve a research, development, or demonstration plan for a new Class II landfill unit, existing Class II landfill unit, or lateral expansion, for which the licensee proposes to utilize innovative and new methods which vary from the final cover criteria of 40 CFR 258.60(a)(1), (a)(2), and (b)(1), as adopted by reference in [NEW RULE XXII], provided the licensee demonstrates that the infiltration of liquid through the alternative cover system will not cause contamination of ground water or surface water during the operating life and post-closure care monitoring period, or cause leachate depth on the liner to exceed 30 centimeters.

(3) Any plan approved under this rule must include terms and conditions that are at least as protective as the criteria for Class II landfill units to assure protection of human health and the environment. Such plans must:

(a) provide for the construction and operation of such landfill units for not longer than three years, unless renewed pursuant to (5);

(b) provide that the Class II landfill unit may receive only those types and quantities of municipal solid waste and nonhazardous wastes that the department determines appropriate for effectiveness and performance of the technology or process;

(c) include requirements as necessary to protect human health and the environment, including such requirements as necessary for testing and providing information to the department with respect to the operation of the landfill unit;

(d) require the submittal of an annual report to the department. The report must include a summary of all monitoring and testing results, progress in attaining project goals, and any other operating information required by the department in the approved plan; and

(e) require compliance with all applicable criteria in ARM Title 17, chapter 50, subchapters 4 through [NEW SUBCHAPTER V], except as approved under this rule.

(4) The department may request a licensee, and a licensee of a landfill unit operating under a plan approved under this rule shall comply with such a department request, to immediately terminate all operations or take appropriate corrective measures if the department determines that there is:

(a) a risk to human health or the environment; or

(b) significant noncompliance with either:

(i) the research, development, and demonstration plan; or

(ii) required corrective measures.

(5) An applicant for renewal of a plan approved under this rule shall include with its application for renewal a detailed assessment of the progress in achieving project goals, a list of problems and status with respect to problem resolution, and any other requirements that the department determines necessary to protect human health or the environment.

(6) The term of a plan approved under this rule may not exceed three years, and that of a renewal of an approved plan may not exceed three years.

(7) The total term for an approved plan for a project including renewals may not exceed twelve years.

(8) A licensee of a Class II facility operating under the small community exemption pursuant to [NEW RULE XIII] is not eligible for a variance, as provided by this rule, from 40 CFR 258.26(a) and 40 CFR 258.28(a).

(9) A licensee of a Class II facility that disposes of 20 tons of municipal solid waste per day or less, based on an annual average, is not eligible for a variance from 40 CFR 258.60(b)(1), except in accordance with 40 CFR 258.60(b)(3), as adopted by reference in [NEW RULE VI].

AUTH: 75-10-204, MCA
IMP: 75-10-204, MCA

REASON: The federal standards for research, development, and demonstration of municipal solid waste landfill (MSWLF) units are provided in 40 CFR 258.4. The proposed rule would allow the department to approve alternative designs and operational practices to further research and development goals.

Research and development is necessary to test new ideas to better design and operate landfills.

The proposed rule provides that a license for a research and development unit may be issued only for a new Class II landfill unit, existing Class II landfill unit, or lateral expansion designed and constructed with a leachate collection system that maintains no more than 30-centimeters depth of leachate on the liner. EPA has determined that the requisite demonstration of no increased risk to human health and the environment cannot be made unless the landfill unit is constructed with a leachate collection system designed to maintain no more than a 30-centimeter depth of leachate.

The proposed rule follows the EPA requirements with the exception of minor language changes for conformity with department practices. For instance, the department issues licenses and approvals, not permits, for solid waste management facilities.

NEW RULE II ADOPTION OF FEDERAL LANDFILL LOCATION RESTRICTIONS (1) Except as provided otherwise in [NEW RULE IV and V], the department adopts and incorporates by reference 40 CFR Part 258, subpart B, pertaining to landfill location restrictions.

(2) Except where inconsistent with the definitions in this chapter, the definitions in 40 CFR 258.2 are adopted and incorporated by reference.

(3) Unless expressly provided otherwise, whenever there is a reference in this subchapter to a federal regulation, the reference is to the July 1, 2006, edition of the Code of Federal Regulations (CFR).

(4) Copies of the CFR are available from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402, (202) 512-1800. The CFR can also be accessed electronically at http://www.gpoaccess.gov/cfr/index.html. Copies of the CFR are also available for public inspection and copying at the Department of Environmental Quality, 1520 E. 6th Ave., P.O. Box 200901, Helena, MT 59620-0901.

AUTH: 75-10-204, MCA
IMP: 75-10-204, MCA

NEW RULE III DEFINITIONS In this subchapter, the following terms have the meanings or interpretations shown below:

(1) "Class II landfill facility" has the meaning given in ARM 17.50.504.

(2) "Class III landfill facility" has the meaning given in ARM 17.50.504.

(3) "Closure" has the meaning given in ARM 17.50.502.

(4) "Department" means the Department of Environmental Quality provided for in 2-15-3501, MCA.

(5) "Destruction or adverse modification" means a direct or indirect alteration of critical habitat which appreciably diminishes the likelihood of the survival and recovery of threatened or endangered species using that habitat.

(6) "Disposal" has the meaning given in 75-10-203, MCA.

(7) "Endangered or threatened species" means any species listed as such pursuant to section 4 of the federal Endangered Species Act of 1973.

(8) "Facility" has the meaning given in ARM 17.50.502.

(9) "Landfill" has the meaning given in ARM 17.50.502.

(10) "Lateral expansion" has the meaning given in ARM 17.50.502.

(11) "Post-closure care" has the meaning given in ARM 17.50.502.

(12) "Solid waste management system" has the meaning given in 75-10-203, MCA.

(13) "Unit" has the meaning given in ARM 17.50.502.

(14) "Wetlands" has the meaning given in 40 CFR 232.2.

AUTH: 75-10-204, MCA
IMP: 75-10-204, MCA

NEW RULE IV EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL LANDFILL LOCATION RESTRICTIONS (1) Whenever there is a reference in this subchapter to a section of the CFR that contains the term "MSWLF unit," the term means a Class II or lined Class IV landfill unit.

(2) Whenever there is a reference in this subchapter to a section of the CFR that contains the phrase "state director" or "director of an approved state," the phrase means the department.

(3) The requirements of 40 CFR 258.14(a) are replaced with: "(a) A new Class II or lined Class IV landfill unit or lateral expansion may not be located in a seismic impact zone, unless the owner or operator submits to the department for approval a report prepared by a Montana licensed professional engineer demonstrating that all landfill containment structures including, but not limited to, the landfill liner, leachate collection system, gas control system, landfill final cover, and surface water control system, are designed to resist the maximum horizontal acceleration in lithified earth material for the site. An owner or operator of an existing Class II or lined Class IV landfill unit shall, within 45 days after being requested by the department to do so, submit to the department for approval the report required in the previous sentence. The owner or operator shall place the report in the operating record and notify the department that it has been placed in the operating record.".

(4) The introductory paragraph of 40 CFR 258.15(a) is replaced with: "(a) An applicant for a license for a new Class II or lined Class IV landfill unit or a lateral expansion located in an unstable area shall submit to the department for approval, with the application, a report prepared by a Montana licensed professional engineer demonstrating that the unit is designed to ensure that the integrity of the structural components of the unit will not be disrupted. An owner or operator of an existing Class II or lined Class IV landfill unit shall, within 45 days after being requested by the department to do so, submit to the department for approval the report required in the previous sentence. The owner or operator shall place the approved report in the operating record and notify the department that it has been placed in the operating record. The owner or operator shall consider the following factors, and any other factor determined by the department to be necessary to protect human health or the environment when determining whether an area is unstable:".

AUTH: 75-10-204, MCA
IMP: 75-10-204, MCA

NEW RULE V MONTANA-SPECIFIC LOCATION RESTRICTIONS (1) The owner or operator of a landfill facility shall comply with the following general locational requirements:

(a) a sufficient amount of land must be available to satisfy the approved design, operation, and capacity of any solid waste management system, including adequate separation of wastes from underlying ground water or adjacent surface water;

(b) local roads must be capable of providing access in all weather conditions and local bridges must be capable of supporting vehicles with maximum rated loads;

(c) a facility must be located in a manner that does not allow the discharge of pollutants in excess of state standards for the protection of state waters, public water supply systems, or private water supply systems. The department may, if necessary to protect human health or the environment, impose additional conditions for sensitive hydrogeological environments including, but not limited to, sole-source aquifers, well-head protection areas, or gravel pits;

(d) drainage structures must be installed to control surface water run-off from waste management areas and prevent surface water run-on into waste management areas;

(e) a facility must be located to allow for closure, post-closure care, and planned uses of the land after the post-closure period;

(f) a facility must confine solid waste, methane gas, and leachate to the disposal facility, unless the owner or operator submits a request for department approval for treatment at another facility;

(g) a facility may not be located in wetlands or riparian areas;

(h) a facility or solid waste management activity may not cause or contribute to the taking of any endangered or threatened species of plants, fish, or wildlife;

(i) facility or solid waste management activity may not result in the destruction or adverse modification of the critical habitat of endangered or threatened species as identified in 50 CFR Part 17; and

(j) any other locational requirement determined by the department to be necessary to protect human health or the environment.

AUTH: 75-10-204, MCA
IMP: 75-10-204, MCA

REASON: Proposed New Rules II through V would comprise New Subchapter I. The department is proposing the repeal of the existing solid waste program landfill location rules and the adoption of a new subchapter, written in an incorporation by reference (IBR) format, that contains new landfill location rules. The proposed new rules are equivalent to the existing landfill location rules. The new rule format would incorporate by reference sections of the CFR, and lists a few "Montana-specific" rules. The format change is being proposed for the following reasons:

(a) the incorporation of future changes to the federal solid waste management regulations into Montana's rules would be much easier. The incorporation of new federal regulations would be accomplished by annually updating the CFR publication date in New Rule II(3);

(b) the "Montana-specific" requirements would be easier to recognize. The "Montana-specific" requirements are listed separately following the IBR statement in each new subchapter; and

(c) the existing solid waste management program rules contain much unnecessarily repeated statutory language, which would be deleted.

The definitions in New Rule II are being proposed for the same reasons as set forth in the statement of reasonable necessity for the amendments to ARM 17.50.502.

New Rule IV(3) and (4), concerning areas with seismic activity or that are unstable, would make two changes to the federal regulations that they modify. Section (3) would add the requirement that a report by a professional engineer, stating that the landfill containment structures were designed to withstand local seismic conditions, be submitted by an applicant for a new Class II or lined Class IV landfill unit or lateral expansion, or, by an owner or operator of an existing unit, within 45 days after being requested to do so by the department and (4) would add a requirement that an applicant for a license for a new Class II or lined Class IV landfill unit or lateral expansion in an unstable area shall submit, with the application, a report on stability by a professional engineer. Section (4) would also require that an owner or operator of an existing Class II or lined Class IV landfill unit or lateral expansion in an unstable area shall submit, with the application, a report on stability by a professional engineer, within 45 days after being requested to do so by the department. The reports must be prepared by a professional engineer because only such a person is qualified to know whether the containment structures are designed to withstand predicted local seismic activity. Similarly, a professional engineer is the person qualified to address stability.

The department is proposing a new version of existing ARM 17.50.505(1)(g) in New Rule V(1)(e). ARM 17.50.505 is proposed to be repealed. The department is proposing to replace the phrase "reclamation and reuse of the land" in the existing rule with "closure, post-closure care, and planned uses of the land after the post-closure period." The phrases have similar meanings, but the proposed new phrase more precisely requires that the facility be located to allow for the planned post-closure use. The current language can be interpreted to allow location for any use.

The department is proposing in New Rule V(1)(c) and (j) to adopt language allowing it to require additional information if necessary to protect human health or the environment. The reason for this is the same as that described for the amendment to ARM 17.50.508.

The department is proposing not to cover Class III landfill units under this requirement, because the wastes in them are inert and they have no liners that could be disturbed by seismic activity. Unlined Class IV landfill units would similarly not be covered, because they do not have liners that would be disturbed.

NEW RULE VI ADOPTION OF FEDERAL LANDFILL OPERATING CRITERIA (1) Except as provided otherwise in [NEW RULE VIII], the department

adopts and incorporates by reference 40 CFR Part 258, subpart C, pertaining to landfill operating criteria.

(2) Except where inconsistent with the definitions in this subchapter, the definitions in 40 CFR 258.2 are adopted and incorporated by reference.

(3) Unless expressly provided otherwise, whenever there is a reference in this subchapter to a federal regulation, the reference is to the July 1, 2006, edition of the Code of Federal Regulations (CFR).

(4) Copies of the CFR are available from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402, (202) 512-1800. The CFR can also be accessed electronically at http://www.gpoaccess.gov/cfr/index.html. Copies of the CFR are also available for public inspection and copying at the Department of Environmental Quality, 1520 E. 6th Ave., P.O. Box 200901, Helena, MT 59620-0901.

AUTH: 75-10-204, MCA
IMP: 75-10-204, MCA

NEW RULE VII DEFINITIONS In this subchapter, the following terms have the meanings or interpretations shown below:

(1) "Active life" has the meaning given in ARM 17.50.502.

(2) "Aquifer" means any geologic formation, group of formations, or part of a formation capable of yielding significant quantities of ground water to wells or springs.

(3) "Class II landfill facility" has the meaning given in ARM 17.50.504.

(4) "Class III landfill facility" has the meaning given in ARM 17.50.504.

(5) "Class IV landfill facility" has the meaning given in ARM 17.50.504.

(6) "Closure" has the meaning given in ARM 17.50.502.

(7) "Conditionally exempt small quantity generator wastes" means wastes from a generator defined in 40 CFR 261.5.

(8) "Department" means the Department of Environmental Quality provided for in 2-15-3501, MCA.

(9) "Disease vectors" means any rodents, flies, mosquitoes, or other animals, including insects, capable of transmitting disease to humans.

(10) "Group II waste" has the meaning given in ARM 17.50.503.

(11) "Landfill" has the meaning given in ARM 17.50.502.

(12) "Post-closure care" has the meaning given in ARM 17.50.502.

(13) "Run-off" means any rainwater, leachate, or other liquid that drains over land from any part of a facility.

(14) "Run-on" means any rainwater, leachate, or other liquid that drains over land onto any part of a facility.

(15) "Transfer station" means a solid waste management facility that can have a combination of structures, machinery, or devices, where solid waste is taken from collection vehicles (public, commercial, or private) and placed in other transportation units for movement to another solid waste management facility.

(16) "Unit" has the meaning given in ARM 17.50.502.

(17) "Uppermost aquifer" means the geologic formation nearest the natural ground surface that is an aquifer, as well as lower aquifers that are hydraulically

interconnected with this aquifer within the facility's property boundary.

(18) "Wetlands" has the meaning given in 40 CFR 232.2.

AUTH: 75-10-204, MCA
IMP: 75-10-204, MCA

NEW RULE VIII EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL LANDFILL OPERATING CRITERIA (1) Whenever there is a reference in this subchapter to "landfill unit" or to a section of the CFR that contains the term "MSWLF unit," those terms mean a Class II landfill unit.

(2) Whenever there is a reference in this subchapter to a section of the CFR that contains the phrase "state director" or "director of an approved state," the phrase means the department.

(3) The landfill owner or operator shall submit for department approval an updated operation and maintenance plan pursuant to ARM 17.50.509(3).

(4) The requirements of 40 CFR 258.21(b) through (d) are replaced with: "(b) The owner or operator shall submit for departmental approval procedures for use of alternative daily cover materials and include those procedures in the operation and maintenance plan required in ARM 17.50.508 and 17.50.509. The following criteria also apply:

(i) the procedures for the use of alternative daily cover materials must provide for the application of six inches of approved cover soil at least once per week;

(ii) the owner or operator shall demonstrate in the operation and maintenance plan that the material used in, and the thickness of, the alternative daily cover will control disease vectors, fires, odors, blowing litter, scavenging, and minimize leachate without presenting a threat to human health or the environment; and

(iii) the owner or operator of a Class II landfill unit for which some portion will not receive additional waste within 90 days shall place on that portion an intermediate cover of at least one foot of approved cover soil, unless the owner or operator has submitted for department approval a demonstration that there is good cause for not covering.".

(5) The requirements of 40 CFR 258.23(c)(3) are replaced with: "(3) Within 60 days after detection, submit for department approval, and implement, a remediation plan for the control of methane gas releases, place a copy of the plan in the operating record, and notify the department that the plan has been implemented.".

(6) The remediation plan in (5) must:

(a) describe the nature and extent of the problem and the proposed remedy;

(b) provide design plans for the proposed remedy; and

(c) for construction of all methane gas control systems required in this rule, contain a submission for department approval that includes plans, specifications, reports, and certifications to the same extent as required in [New Rule XVI].

(7) The requirements of 40 CFR 258.27(a) are replaced with: "(a) Cause a discharge of pollutants into state waters, including wetlands, that violates any requirement of the Montana Water Quality Act including, but not limited to, the

Montana pollutant discharge elimination system (MPDES) requirements found in ARM Title 17, chapter 30, subchapter 13.".

(8) The requirements of 40 CFR 258.28(a) are replaced with: "(a) Bulk or non-containerized liquid waste may not be placed in a Class II landfill unit unless approved in advance by the department, and:".

(9) 40 CFR 258.28(a)(3), pertaining to Project XL, is not adopted and incorporated by reference.

(10) The following requirements concerning deed notations apply to a solid waste management facility:

(a) Before the initial receipt of waste at the facility or, if the facility is licensed and accepting waste on [THE EFFECTIVE DATE OF THIS RULE], by 50 days after [THE EFFECTIVE DATE OF THIS RULE], the owner of the land where a facility is located shall submit for department approval a notation on the deed to that land, or some other instrument that is normally examined during title search. The notation on the deed must be submitted to the department on a form provided by the department and must be accompanied by a certified exhibit of the waste disposal perimeter that references the certificate of survey for the tract that encloses the facility. The notation on the deed must in perpetuity notify any potential purchaser of the land that:

(i) the land has been used as a solid waste management system; and

(ii) its use is restricted under 40 CFR 258.61(c)(3), which is adopted by reference in [NEW RULE XXII].

(b) If the department approves the notation and exhibit, it shall notify the owner by mail.

(c) Within ten days after the department mails the approval to the owner, the owner shall record that notation with the county clerk and recorder in the county where the property is located, and place a copy of the recorded notation and the exhibit in the operating record.

(d) The land use restrictions in (10)(a)(ii) apply during the post-closure care period and in perpetuity thereafter and are binding on all successors and assigns.

(11) Before the initial receipt of waste at a solid waste management facility, or within 60 days after the effective date of this rule if the facility is accepting waste, the owner or operator shall submit for department approval, and maintain in force during the active life, a policy of general liability insurance to cover bodily injury or property damage to third persons caused by sudden accidental occurrences at the facility in the amount of $1 million per occurrence with an annual aggregate of $2 million. The owner or operator shall place a copy of the approved policy in the operating record.

(12) The owner or operator of a solid waste management facility shall manage the following special wastes according to the following criteria:

(a) asbestos-contaminated material, 40 CFR 61, subpart M, as adopted by reference in ARM 17.74.351;

(b) infectious wastes, Title 75, chapter 10, part 10, MCA; and

(c) any other special waste, as determined by the department to be necessary to protect human health or the environment.

AUTH: 75-10-204, MCA
IMP: 75-10-204, MCA

NEW RULE IX MONTANA-SPECIFIC OPERATING CRITERIA (1) In addition to the requirements of ARM 17.50.509, the owner or operator of a solid waste management facility shall satisfy the following general operating requirements:

(a) all solid waste management must be confined to areas within the facility that can be effectively maintained and operated in compliance with this subchapter. The areas to which waste is confined must be created and maintained by supervision, fencing, signs, or similar means approved by the department;

(b) the owner or operator shall take effective measures to control litter at landfill facilities;

(c) salvaging of materials by the public is prohibited unless the owner or operator submits for department approval a demonstration that it can be done in a manner protective of human health and the environment;

(d) resource recovery, recycling, and solid waste treatment facilities and components thereof must be designed, constructed, maintained, and operated to control litter, insects, rodents, odor, aesthetics, residues, wastewater, and air pollutants;

(e) a container at a transfer station used as part of a management system for Group II solid wastes must be maintained and kept in a sanitary manner and emptied at least once per week; and

(f) solid waste management facilities must be designed, constructed, and operated in a manner to prevent harm to human health and the environment.

AUTH: 75-10-204, MCA
IMP: 75-10-204, MCA

NEW RULE X MONTANA-SPECIFIC OPERATING CRITERIA FOR CLASS III LANDFILL UNITS (1) The owner or operator of a Class III landfill unit:

(a) shall accept only Group III wastes;

(b) shall cover the wastes at least every three months with not less than six inches of a department-approved cover soil;

(c) may not place bulk or non-containerized liquid waste in the unit;

(d) shall comply with 40 CFR 258.24 pertaining to air quality;

(e) shall comply with 40 CFR 258.25 pertaining to access;

(f) shall comply with 40 CFR 258.26 pertaining to run-on and run-off control systems;

(g) shall, if the unit accepts waste tires, comply with the recordkeeping requirements of 40 CFR 258.29, general requirements of 75-10-250, MCA, and financial assurance requirements of 75-10-216, MCA; and

(h) shall comply with the requirements of [NEW RULE VIII] concerning a deed notation to the same extent as required for a Class II landfill facility.

AUTH: 75-10-204, MCA
IMP: 75-10-204, MCA

NEW RULE XI MONTANA-SPECIFIC OPERATING CRITERIA FOR CLASS IV LANDFILL UNITS (1) The owner or operator of a Class IV landfill unit:

(a) shall control litter, odor, aesthetics, wastewater, and leachate;

(b) shall apply an approved cover at least every three months unless more frequent cover is needed to control litter or minimize leachate;

(c) may not accept liquid paints, solvents, glues, resins, dyes, oils, pesticides, or any other household hazardous wastes. If these wastes have not been removed from buildings prior to demolition, the owner or operator of a Class IV landfill unit may not accept the wastes as demolition waste;

(d) shall provide cost estimates and financial assurance for closure and post-closure care to the same extent as required for a Class II landfill unit in ARM 17.50.540; and

(e) shall comply with the requirements of [NEW RULE VIII] concerning a deed notation to the same extent as required for a Class II landfill unit.

(2) The owner or operator of a Class IV landfill unit shall comply with the:

(a) waste screening requirements provided in 40 CFR 258.20;

(b) disease vector control requirements provided in 40 CFR 258.22;

(c) methane gas control requirements provided in 40 CFR 258.23;

(d) air criteria requirements provided in 40 CFR 258.24;

(e) access requirements provided in 40 CFR 258.25;

(f) run-on and run-off control systems requirements as provided in 40 CFR 258.26;

(g) surface water requirements provided in 40 CFR 258.27;

(h) bulk liquids requirements provided in 40 CFR 258.28;

(i) recordkeeping requirements provided in 40 CFR 258.29; and

(j) ground water monitoring requirements provided in ARM Title 17, chapter 50, [NEW SUBCHAPTER IV], unless the owner or operator obtains department approval of a no-migration petition pursuant to [NEW RULE XVII], or a demonstration that such monitoring is not required to protect human health and the environment.

AUTH: 75-10-204, MCA
IMP: 75-10-204, MCA

REASON: Proposed New Rules VI through XI would comprise New Subchapter II. The department is proposing the repeal of the existing solid waste program landfill operation rules and the adoption of a new subchapter, written in an incorporation by reference (IBR) format, that contains new landfill operation rules. The proposed new rules are equivalent to the existing landfill operation rules. The new rule format incorporates by reference sections of the CFR, and lists a few "Montana-specific" rules. The format change is being proposed for the following reasons:

(a) the incorporation of future changes to the federal solid waste management regulations into state rules would be much easier. The incorporation of new federal regulations would be accomplished by annually updating the CFR publication date in New Rule VI(2);

(b) the "Montana-specific" requirements would be easier to recognize. The "Montana-specific" requirements are listed separately following the IBR statement in each new subchapter; and

(c) the existing solid waste management program rules contain much unnecessarily repeated statutory language, which would be deleted.

The definitions in New Rule VII are being proposed for the same reasons as set forth above in the statement of reasonable necessity for the amendments to ARM 17.50.502.

New Rule VIII(3) requires updates to operation and maintenance plans as required by ARM 17.50.509(3). The reason for the adoption of (3) is set forth in the statement of reasonable necessity for the adoption of ARM 17.50.509(3). Section 12(c) is being proposed to allow the department to require management, as special waste, those wastes determined to require special treatment in order to protect human health or the environment. The reason for this is the same as that described for the amendment to ARM 17.50.508.

The department is proposing to require in New Rule VIII(10) that the owner or operator of a solid waste management facility must record a deed notation before the initial receipt of waste, and that a facility that has already begun receiving waste must record a deed notation within 60 days after the rule's adoption. This is necessary for the same reasons provided for the amendment of ARM 17.50.508.

The department is also proposing to specify that a proposed deed notation must be submitted on a form supplied by the department and that it must contain an exhibit to a certificate of survey. The reason for these requirements is to make sure that all necessary information will be supplied, and that a certificate of survey, which has been prepared by a professional surveyor whose competence has been recognized by the state, is used as the reference in delineating the solid waste management facility boundaries.

The department is proposing to require that a deed notation give notice in perpetuity that the property was a solid waste management facility and that its use is subject to restrictions. This requirement is taken from the federal EPA's deed notation requirements in 40 CFR 258.60(i), which cover only Class II landfills. The department is proposing to require all solid waste management facilities to record deed notations because the waste in all such facilities needs to be isolated from the environment and a potential purchaser should be able to find out that solid waste was managed on the property and that its use is restricted before purchasing the property.

The department is proposing to add language that the land use restrictions referred to in the deed notation are binding during the post-closure period and in perpetuity, and that they are binding on successors and assigns. The reason for these provisions is that the federal EPA language from 40 CFR 258.61 referred only to the post-closure period, which is normally 30 years. Waste in landfills can take much longer than 30 years to break down, and must be isolated from the environment for longer. Therefore, it is necessary to have the land use restrictions to remain in place for perpetuity. It is necessary for the rule to state that the restrictions are binding on successors and assigns because the department has been advised by the National Association of Attorneys General and an assistant Colorado attorney general that the courts in some states have not enforced the

restrictions in deed notations because they are viewed as restraints on alienation of land, which are disfavored. To avoid such an interpretation, it is necessary to expressly state that the restrictions are binding on successors and assigns, which includes all future owners.

The department is proposing to require in New Rule VIII(11) that the owner or operator of a solid waste management facility must obtain an insurance policy before the initial receipt of waste and keep it in effect during the active life of the facility, and that a landfill facility that has already begun receiving waste must obtain an insurance policy within 60 days after the rule's adoption. The policy must be one of general liability insurance to cover bodily injury or property damage to third persons caused by sudden accidental occurrences at the facility in the amount of $1 million per occurrence with an annual aggregate of $2 million. This is necessary for the same reasons provided for the amendment of ARM 17.50.508.

The department is proposing to add a requirement in New Rule X(1)(i) that would require a Class III landfill facility to have a deed notation recorded before it can accept waste. The reason for this is the same as that set out in the reason for the amendments to ARM 17.50.508.

The department is proposing in New Rule XI(1)(d) and (e) that the owner or operator of a Class IV landfill facility shall obtain financial assurance pursuant to ARM 17.50.540, and record a deed notation pursuant to New Rule VIII(10). This is necessary for the same reasons provided for the amendment of ARM 17.50.508. The requirement of financial assurance for Class IV landfill facilities is not new. This requirement is currently found in ARM 17.50.542, which is proposed to be repealed.

NEW RULE XII ADOPTION OF FEDERAL LANDFILL DESIGN CRITERIA

(1) Except as provided otherwise in [NEW RULE XV and XVI], the department adopts and incorporates by reference 40 CFR Part 258, subpart D, pertaining to design criteria.

(2) Except where inconsistent with the definitions in this subchapter, the definitions in 40 CFR 258.2 are adopted and incorporated by reference.

(3) Unless expressly provided otherwise, whenever there is a reference in this subchapter to a federal regulation, the reference is to the July 1, 2006, edition of the Code of Federal Regulations (CFR).

(4) Copies of the CFR are available from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402, (202) 512-1800. The CFR can also be accessed electronically at http://www.gpoaccess.gov/cfr/index.html. Copies of the CFR are also available for public inspection and copying at the Department of Environmental Quality, 1520 E. 6th Ave., P.O. Box 200901, Helena, MT 59620-0901.

AUTH: 75-10-204, MCA
IMP: 75-10-204, MCA

NEW RULE XIII ADOPTION OF FEDERAL SMALL COMMUNITY EXEMPTION FROM 40 CFR PART 258, SUBPART D (1) Except as provided otherwise in (2), the department adopts and incorporates by reference 40 CFR 258.1(f) pertaining to the small community exemption from federal design criteria.

(2) The requirements of 40 CFR 258.1(f)(1)(ii) are replaced with: "(ii) A community that has no practicable waste management alternative and the landfill unit is located in an area that annually receives less than or equal to 25 inches of precipitation. For the purposes of this rule, the lack of a practicable waste management alternative may be demonstrated by the following:

(A) there is no access to a licensed Class II landfill within 100 miles of the community; and

(B) the cost per household of using an alternative disposal method, and the cost per household of complying with the requirements of the landfill design and operation distributed over the entire estimated active life of the landfill, will each exceed on an annual basis 1% of the median household income for the service area.".

(3) Owners or operators shall demonstrate to the department in writing that the owners or operators meet the requirements of this rule to obtain approval for a small community exemption.

AUTH: 75-10-204, MCA
IMP: 75-10-204, MCA

NEW RULE XIV DEFINITIONS In this subchapter, the following terms have the meanings or interpretations shown below:

(1) "Active life" has the meaning given in ARM 17.50.502.

(2) "Class II landfill facility" has the meaning given in ARM 17.50.504.

(3) "Class IV landfill facility" has the meaning given in ARM 17.50.504.

(4) "Closure" has the meaning given in ARM 17.50.502.

(5) "Department" means the Department of Environmental Quality provided for in 2-15-3501, MCA.

(6) "Landfill" has the meaning given in ARM 17.50.502.

(7) "Lateral expansion" has the meaning given in ARM 17.50.502.

(8) "Leachate collection system" means an engineered structure, designed to collect leachate, that is located above a liner and below the waste in a landfill unit.

(9) "Leachate removal system" means an engineered structure that allows for the removal of leachate from a landfill unit. A leachate removal system may be, but is not necessarily, used in conjunction with a leachate collection system.

(10) "Remediation" means the act of reducing contamination to a level that is protective of human health and the environment.

(11) "Unit" has the meaning given in ARM 17.50.502.

AUTH: 75-10-204, MCA
IMP: 75-10-204, MCA

NEW RULE XV EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL LANDFILL DESIGN CRITERIA (1) Whenever there is a reference in this subchapter to "landfill unit" or to a section of the CFR that contains the term "MSWLF unit," the term means a Class II or Class IV landfill unit.

(2) Whenever there is a reference in this subchapter to a section of the CFR that contains the phrase "state director" or "director of an approved state," the

phrase means the department.

AUTH: 75-10-204, MCA
IMP: 75-10-204, MCA

NEW RULE XVI MONTANA-SPECIFIC CLASS II AND CLASS IV LANDFILL DESIGN CRITERIA (1) An owner or operator shall design and construct a Class II or Class IV landfill unit or lateral expansion with a liner and a leachate collection system that meets the criteria in 40 CFR 258.40 and applicable Montana ground water quality standards, and a leachate removal system. The following design criteria and exceptions also apply:

(a) The department may approve an alternative liner design that meets the standards in (1), and provides ground water protection equivalent to 40 CFR 258.40(a)(2);

(b) A leachate collection system is not required for a landfill unit that has a department-approved no-migration petition pursuant to [NEW RULE XVII];

(c) A liner component consisting of compacted soil or compacted "in situ" subsoil must provide a hydraulic conductivity no more than 1×10^{-7} cm/sec;

(d) A liner is not required for a Class IV landfill unit located within the approved ground water monitoring network of a licensed Class II landfill facility; and

(e) The department may require any other design standard determined to be necessary to meet the requirements of (1).

(2) An owner or operator of a Class II or Class IV landfill facility shall submit to the department for approval each landfill unit design plan, including any design specifications or applicable plans or documents developed pursuant to this chapter. The design plan must demonstrate compliance with the standards of (1) and (3).

(3) The owner or operator shall design and construct a Class II or Class IV landfill unit leachate collection and leachate removal system to:

(a) meet or exceed the requirements of [NEW RULE I];

(b) provide for accurate monitoring of the leachate level (measured to within one centimeter) on the liner or base of the unit, and leachate volume removed from the unit;

(c) whenever soil or "in situ" subsoil is compacted for use as a liner component, provide a minimum slope at the base of the overlying leachate collection layer equal to at least 2%, and a maximum side slope on the liner less than or equal to 33%;

(d) provide for secondary containment and monitoring of leachate in collection sumps and removal system components;

(e) provide for increased hydraulic head in the leachate removal system; and

(f) meet any other requirements determined by the department to be necessary to protect human health or the environment.

(4) The owner or operator may, if it obtains department approval, recirculate leachate to a Class II landfill unit only if it:

(a) meets or exceeds the requirements of [NEW RULE I];

(b) is constructed with a composite liner, leachate collection, and leachate removal system; and

(c) meets any other requirements determined by the department to be necessary to meet the requirements of (1).

(5) The owner or operator shall submit to the department for approval a construction quality control (CQC) and construction quality assurance (CQA) manual describing procedures that provide for the conformance of the design with the department approved design plans and specifications required by (2).

(6) Within 60 days after construction of the landfill unit is completed, the owner or operator shall submit to the department for approval a final CQC and CQA report that describes, at a minimum, construction activities and deviations, and conformance with the requirements in (5).

(7) Within 60 days after construction of the landfill unit is completed, the owner or operator shall submit a certification, by an independent Montana licensed professional engineer, that the project was constructed according to the requirements of (2) and (5).

AUTH: 75-10-204, MCA
IMP: 75-10-204, MCA

REASON: Proposed New Rules XII through XVI would comprise New Subchapter III. The department is proposing the repeal of the existing solid waste program landfill design rules and the adoption of a new subchapter, written in an incorporation by reference (IBR) format, which contains new landfill design rules. The proposed new rules are equivalent to the existing landfill design rules. The new rule format incorporates by reference sections of the CFR, and lists a few "Montana-specific" rules. The format change is being proposed for the following reasons:

(a) the incorporation of changes to the federal solid waste management regulations into state rules would be much easier. The incorporation of new federal regulations would be accomplished by annually updating the CFR publication date in New Rule XII(3);

(b) the "Montana-specific" requirements would be easier to recognize. The "Montana-specific" requirements are listed separately following the IBR statement in each new subchapter; and

(c) the existing solid waste management program rules contain much unnecessarily repeated statutory language, which would be deleted.

Proposed New Rule XIII is equivalent to the existing small community exemption rule in ARM 17.50.506(15) and (16). This rule is being proposed for repeal.

The definitions in New Rule XIV are being proposed for the same reasons as set forth above in the statement of reasonable necessity for the amendments to ARM 17.50.502.

The proposed requirement in New Rule XVI(2) that an owner or operator of a Class II or Class IV landfill facility shall submit to the department for approval each landfill unit design plan is not new. The requirement is found in existing ARM 17.50.506 which is proposed to be repealed.

The reason for the provisions in proposed New Rule XVI(3)(f) and (4)(c), that authorize the department to require more information if necessary to determine that a design will meet standards or protect human health or the environment, is the

same as that set forth in the statement for the amendments to ARM 17.50.508.

The requirement in proposed New Rule XVI(7), that a final CQC/CQA report and an engineer's certification that the landfill unit was constructed according to its design must be submitted to the department within 60 days after construction is completed, is necessary to ensure that the department receives the report and certification in a timely manner to determine if the landfill unit was constructed according to the approved design.

NEW RULE XVII ADOPTION OF FEDERAL LANDFILL GROUND WATER MONITORING AND CORRECTIVE ACTION (1) Except as provided otherwise in [NEW RULE XIX], the department adopts and incorporates by reference 40 CFR Part 258, subpart E, pertaining to ground water monitoring and corrective action.

(2) Except where inconsistent with the definitions in this subchapter, the definitions in 40 CFR 258.2 are adopted and incorporated by reference.

(3) Unless expressly provided otherwise, whenever there is a reference in this subchapter to a federal regulation, the reference is to the July 1, 2006, edition of the Code of Federal Regulations (CFR).

(4) Copies of the CFR are available from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402, (202) 512-1800. The CFR can also be accessed electronically at http://www.gpoaccess.gov/cfr/index.html. Copies of the CFR are also available for public inspection and copying at the Department of Environmental Quality, 1520 E. 6th Ave., P.O. Box 200901, Helena, MT 59620-0901.

AUTH: 75-10-204, MCA
IMP: 75-10-204, 75-10-207, MCA

NEW RULE XVIII DEFINITIONS In this subchapter, the following terms have the meanings or interpretations shown below:

(1) "Aquifer" has the meaning given in [NEW RULE III].

(2) "Class II landfill facility" has the meaning given in ARM 17.50.504.

(3) "Class IV landfill facility" has the meaning given in ARM 17.50.504.

(4) "Closure" has the meaning given in ARM 17.50.502.

(5) "Department" means the Department of Environmental Quality provided for in 2-15-3501, MCA.

(6) "Disposal" has the meaning given in 75-10-203(3), MCA.

(7) "Landfill" has the meaning given in ARM 17.50.502.

(8) "Lateral expansion" has the meaning given in ARM 17.50.502.

(9) "Post-closure care" has the meaning given in ARM 17.50.502.

(10) "Saturated zone" means that part of the earth's crust in which all voids are filled with water.

(11) "Unit" has the meaning given in ARM 17.50.502.

(12) "Uppermost aquifer" means the geologic formation nearest the natural ground surface that is an aquifer, as well as lower aquifers that are hydraulically interconnected with this aquifer within the facility's property boundary.

AUTH: 75-10-204, MCA
IMP: 75-10-204, 75-10-207, MCA

NEW RULE XIX EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL LANDFILL GROUND WATER MONITORING AND CORRECTIVE ACTION (1) Whenever there is a reference in this subchapter to "landfill unit" or to a section of the CFR that contains the term "MSWLF unit," the term means a Class II or Class IV landfill unit.

(2) Whenever there is a reference in this subchapter to a section of the CFR that contains the phrase "state director" or "director of an approved state," the phrase means the department.

(3) The requirements of 40 CFR 258.51(c)(1) are replaced with: "(1) The owner or operator of a Class II or Class IV landfill unit shall:

(i) submit a ground water monitoring systems plan to the department for approval that includes:

(A) the location, number, depth, design, installation, development, and decommission of any monitoring wells;

(B) plans for the design, installation, development, and decommission of piezometers or other measurement, sampling, and analytical devices;

(C) discussions of the anticipated ground water monitoring system and schedule of sampling for closed portions of the facility, if applicable; and

(D) any other information determined by the department to be necessary to protect human health or the environment;

(ii) update and submit to the department for approval the ground water monitoring systems plan at least every three years, or as frequently as required by the department for facilities under corrective action. The owner or operator of a closed facility shall update the ground water monitoring systems plan at least every ten years;

(iii) notify the department that the approved ground water monitoring systems plan has been placed in the operating record; and

(iv) provide any other information determined by the department to be necessary to protect human health or the environment; and".

(4) The requirements of 40 CFR 258.53(a) are replaced with: "(a) The ground water monitoring program must include consistent sampling and analysis procedures that are designed to ensure monitoring results that provide an accurate representation of ground water quality at the background and downgradient wells installed in compliance with 40 CFR 258.51(a). The owner or operator of a facility shall notify the department that the approved sampling and analysis plan has been placed in the operating record. The owner or operator shall submit to the department for approval a sampling and analysis plan that documents sampling and analysis procedures and techniques for:

(i) sample collection;

(ii) sample preservation and shipment;

(iii) analytical procedures;

(iv) chain of custody control;

(v) quality assurance and quality control; and

(vi) any other matter determined by the department to be necessary to protect human health or the environment.".

(5) The requirements of 40 CFR 258.55(h)(1) are replaced with: "(1) For constituents for which a maximum contaminant level (MCL) has been promulgated under Montana ground water quality standards, the MCL for that constituent;".

(6) The requirements of 40 CFR 258.56(a) are replaced with: "(a) Within 90 days after finding that any of the constituents listed in 40 CFR 258, Appendix II, has been detected at a statistically significant level exceeding the ground water protection standards defined under 40 CFR 258.55(h), 40 CFR 258.55(i), or applicable Montana ground water quality standards, the owner or operator of a facility shall initiate an assessment of corrective measures. Within 180 days after finding that any of the constituents listed in 40 CFR 258, Appendix II, has been detected at a statistically significant level exceeding the ground water protection standards defined under 40 CFR 258.55(h), 40 CFR 258.55(i), or applicable Montana ground water quality standards, the owner or operator shall submit to the department for approval an assessment of corrective measures plan that addresses the criteria listed in 40 CFR 258.56(c) and any other criteria determined by the department to be necessary to protect human health or the environment.".

(7) The requirements of 40 CFR 258.57(a) are replaced with: "(a) Based on the results of the corrective measures assessment conducted under 40 CFR 258.56, the owner or operator of a facility shall:

(i) select a remedy that, at a minimum, meets the standards listed in 40 CFR 258.57(b);

(ii) submit to the department for approval a selected remedy report describing how the selected remedy would meet the standards in 40 CFR 258.57(b) through (d), and how it would be implemented;

(iii) submit design plans for the selected remedy, and construction quality control (CQC) and construction quality assurance (CQA) plans according to [NEW RULE XVI];

(iv) submit the selected remedy report to the department within 90 days from the date of the department's approval of the assessment of corrective measures plan required in (6); and

(v) notify the department that the selected remedy report, design plans, and CQC and CQA plans have been placed in the operating record.".

(8) The following provision is added as (4) to the general implementation of the corrective action program requirements in 40 CFR 258.58(a): "(4) The owner or operator of a facility shall submit to the department, by April 1 of each year, an annual corrective measures progress report. The progress report must cover the preceding 12-month period. The progress report must include the following information:

(i) a description of all corrective action work completed;

(ii) all relevant sampling and analysis data;

(iii) summaries of all deviations from the selected remedy;

(iv) summaries of all problems or potential problems encountered and any actions taken to rectify the problems;

(v) an updated schedule for achieving compliance with all applicable standards; and

(vi) any other information determined by the department to be necessary to protect human health or the environment.".

(9) The requirements of 40 CFR 258.58(b) are replaced with: "(b) An owner or operator of a facility may determine, based on information developed after implementation of the remedy has begun or other information, that compliance with requirements of 40 CFR 258.57(b) are not being achieved through the remedy selected. In such cases, the owner or operator shall implement other methods or techniques that:

(i) are developed by following the procedures in 40 CFR 258.57(b) through (d); and

(ii) could practicably achieve compliance with the requirements, unless the owner or operator makes the determination under 40 CFR 258.58(c).".

AUTH: 75-10-204, MCA
IMP: 75-10-204, 75-10-207, MCA

NEW RULE XX MONTANA-SPECIFIC HYDROGEOLOGIC AND SOILS CHARACTERIZATION (1) The owner or operator of a facility required to monitor ground water shall prepare a site-specific hydrogeologic and soils report, pursuant to (2), for the facility. The following criteria and exceptions also apply:

(a) a Class IV landfill unit located within the ground water monitoring network of a licensed Class II landfill is not required to submit a hydrogeologic and soils report;

(b) an applicant for a new solid waste management facility license or lateral expansion shall submit a department-approved hydrogeologic and soils report with the license application; and

(c) the owner or operator of an existing facility or lateral expansion shall submit to the department for approval a hydrogeologic and soils work plan, that describes the proposed sampling, analysis, and collection methods for the data required in (2), within the following time frames:

(i) draft work plan(s) must be submitted no later than 90 days after the department mails a notification to applicant that a hydrogeologic and soils report is required;

(ii) revised work plan(s) must be submitted no later than 30 days after the department comments are mailed to the applicant; and

(iii) final hydrogeologic and soils reports must be submitted no later than 180 days after the department's approval of the work plan is mailed by the department to the applicant.

(2) A hydrogeologic and soils report must include the following:

(a) descriptions of the regional and facility specific geologic and hydrogeologic characteristics affecting ground water flow beneath the facility including:

(i) regional and facility specific stratigraphy;

(ii) structural geology;

(iii) ground water potentiometric maps;

(iv) a discussion of any regional deep aquifers;

(v) regional and facility specific ground water flow patterns;

(vi) characterization of seasonal variations in the ground water flow regime; and

(vii) identification and description of the confining layers present, both above and below the saturated zone(s);

(b) an analysis of any topographic features that influence the ground water flow;

(c) a description of the hydrogeologic units that overlie the uppermost aquifer or that may be part of the leachate migration pathways at the facility including saturated and unsaturated units;

(d) a description of hydrogeologically significant sand and gravel layers in unconsolidated deposits;

(e) a description of manmade structures that affect the hydrogeology of the site such as:

(i) local water supply wells;

(ii) pipelines;

(iii) drains;

(iv) ditches; and

(v) septic tanks;

(f) for each ground water monitoring well at the facility, the following information:

(i) location;

(ii) elevation;

(iii) well log;

(iv) sampling history; and

(v) operational history; and

(g) any other information determined by the department to be necessary to protect human health or the environment.

(3) If soil borings are necessary to obtain the information required in (2), the soil borings must be conducted as follows:

(a) all borings must be within 300 feet of the limits of waste filling, if practical;

(b) borings must extend a minimum of 20 feet below the base of waste disposal areas, or to bedrock, whichever is less;

(c) the minimum required number of borings is as follows:

(i) 0-10 acres.....15 borings;

(ii) 11-20 acres..... add one boring per additional acre;

(iii) 20-40 acres..... add one boring per additional two acres; and

(iv) 41 or more acres..... add one boring per additional four acres;

(d) 75% of the required number of borings may be conducted with a backhoe to a depth of ten feet; and

(e) borings not converted to wells are abandoned pursuant to [NEW RULE XXI].

AUTH: 75-10-204, MCA
IMP: 75-10-204, 75-10-207, MCA

NEW RULE XXI MONITORING WELL ABANDONMENT (1) The owner or operator of a solid waste management facility shall:

(a) completely seal all abandoned borings, water supply wells, and monitoring wells with grout or bentonite to prevent future contamination of ground water. The sealing materials must be continuous, physically and chemically stable, and have a hydraulic conductivity of less than 1 x 10^{-5}cm/sec.;

(b) immediately abandon, after drilling and completion of soil testing, all boreholes not completed as a monitoring well, piezometer, or water supply well;

(c) for any borehole deeper than the well to be placed in it, seal with bentonite pellets or a bentonite slurry the portions of the borehole below the well screen; and

(d) conduct all abandonment activities in accordance with ARM 36.21.670 through 36.21.678 and 36.21.810.

AUTH: 75-10-204, MCA
IMP: 75-10-204, MCA

REASON: Proposed New Rules XVII through XXI would comprise New Subchapter IV. The department is proposing the repeal of the existing solid waste landfill ground water rules and the adoption of a new subchapter, written in an incorporation by reference (IBR) format, that contains new landfill ground water rules. The proposed new rules are equivalent to the existing landfill ground water rules. The new rule format incorporates by reference sections of the CFR, and lists a few "Montana-specific" rules. The format change is being proposed for the following reasons:

(a) the incorporation of future changes to the federal solid waste management regulations into state rules would be much easier. The incorporation of new federal regulations would be accomplished by annually updating the CFR publication date in New Rule XVII(3);

(b) the "Montana-specific" requirements would be easier to recognize. The "Montana-specific" requirements are listed separately following the IBR statement in each new subchapter; and

(c) the existing solid waste management program rules contain much unnecessarily repeated statutory language which would be deleted.

The definitions in New Rule XVIII are being proposed for the same reasons as set forth in the statement of reasonable necessity for the amendments to ARM 17.50.502.

The department is proposing in New Rules XIX through XXI to adopt language allowing it to require additional information if necessary to protect human health or the environment. The reason for this is the same as that described for the amendment to ARM 17.50.508.

NEW RULE XXII ADOPTION OF FEDERAL LANDFILL CLOSURE AND POST-CLOSURE CARE (1) Except as provided otherwise in [NEW RULE XXIV], the department adopts and incorporates by reference 40 CFR Part 258, subpart F, pertaining to closure and post-closure care.

(2) Except where inconsistent with the definitions in this subchapter, the definitions in 40 CFR 258.2 are adopted and incorporated by reference.

(3) Unless expressly provided otherwise, whenever there is a reference in this subchapter to a federal regulation, the reference is to the July 1, 2006, edition of the Code of Federal Regulations (CFR).

(4) Copies of the CFR are available from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402, (202) 512-1800. The CFR can also be accessed electronically at http://www.gpoaccess.gov/cfr/index.html. Copies of the CFR are also available for public inspection and copying at the Department of Environmental Quality, 1520 E. 6th Ave., P.O. Box 200901, Helena, MT 59620-0901.

AUTH: 75-10-204, MCA
IMP: 75-10-204, MCA

NEW RULE XXIII DEFINITIONS In this subchapter, the following terms have the meanings or interpretations shown below:

(1) "Active life" has the meaning given in ARM 17.50.502.

(2) "Class II landfill facility" has the meaning given in ARM 17.50.504.

(3) "Class III landfill facility" has the meaning given in ARM 17.50.504.

(4) "Class IV landfill facility" has the meaning given in ARM 17.50.504.

(5) "Closure" has the meaning given in ARM 17.50.502.

(6) "Department" means the Department of Environmental Quality provided for in 2-15-3501, MCA.

(7) "Landfill" has the meaning given in ARM 17.50.502.

(8) "Lateral expansion" has the meaning given in ARM 17.50.502.

(9) "Post-closure care" has the meaning given in ARM 17.50.502.

(10) "Unit" has the meaning given in ARM 17.50.502.

AUTH: 75-10-204, MCA
IMP: 75-10-204, MCA

NEW RULE XXIV EXCEPTIONS AND ADDITIONS TO ADOPTION OF FEDERAL LANDFILL CLOSURE AND POST-CLOSURE CARE (1) Whenever there is a reference in this subchapter to "landfill unit" or to a section of the CFR that contains the term "MSWLF unit," the term means a Class II or Class IV landfill unit.

(2) Whenever there is a reference in this subchapter to a section of the CFR that contains the phrase "state director" or "director of an approved state," the phrase means the department.

(3) The requirements of 40 CFR 258.60(c) are replaced with: "(c) The owner or operator of a facility shall submit a closure plan to the department for approval that describes the steps necessary to close all Class II and Class IV landfill units and lateral expansions at any point during their active life in accordance with the cover design requirements in 40 CFR 258.60(a) or (b), as applicable. The closure plan must include the following information and any other information determined by the department to be necessary to protect human health or the environment:".

(4) The requirements of 40 CFR 258.60(e) are replaced with: "(e) Prior to beginning closure of each Class II or Class IV landfill unit as specified in 40 CFR 258.60(f), an owner or operator of a facility shall submit a notice of the intent to close

the unit to the department and place the notice in the operating record.".

(5) The requirements of 40 CFR 258.60(i) are not adopted.

(6) The introductory paragraph of 40 CFR 258.61(c) is replaced with: "(c) The owner or operator of a Class II or Class IV landfill unit shall submit a post-closure plan to the department for approval that includes the following information and any other information determined by the department to be necessary to protect human health or the environment:".

(7) The owner or operator of a facility shall amend the closure or post-closure plan whenever changes in operation and maintenance plan or facility design plan or events that occur during the active life of the landfill significantly affect the closure or post-closure plan. The owner or operator shall also amend the closure or post-closure plan whenever there is a change in the expected year of closure. The owner or operator shall submit the necessary closure or post-closure plan amendments to the department for approval within 60 days after such changes or within a shorter period if determined by the department to be necessary to protect human health or the environment.

(8) Alternative final cover design, construction, and operation must meet the requirements in [NEW RULE I].

(9) For all closure and post-closure construction, the owner or operator of a facility shall submit for department approval plans, specifications, reports, and certifications to the same extent as required in [NEW RULE XVI].

(10) In addition to the requirements of 40 CFR 258.61, during the post-closure care period the owner or operator of a facility shall:

(a) maintain adequate vegetative cover as specified in the closure plan;

(b) maintain and operate all corrective action systems pursuant to [NEW RULE XIX];

(c) annually inspect and report on the condition of all landfill systems; and

(d) comply with any other post-closure care requirements determined by the department to be necessary to protect human health or the environment.

AUTH: 75-10-204, MCA
IMP: 75-10-204, MCA

NEW RULE XXV CLOSURE AND POST-CLOSURE CARE REQUIREMENTS FOR CLASS III LANDFILL UNITS (1) A Class III landfill unit closure plan required under ARM 17.50.508 must include:

(a) procedures for construction of two feet of final cover and placement of six inches of top soil;

(b) procedures for grading and seeding to prevent erosion;

(c) the deed notation specified in [NEW RULES VIII and X], unless all wastes are removed from the landfill unit and the owner or operator of a facility receives approval from the department to remove the notation from the deed; and

(d) any other information determined by the department to be necessary to protect human health or the environment.

(2) A Class III landfill unit post-closure plan required under ARM 17.50.508 must include descriptions of procedures for:

(a) maintaining the integrity of the final cover;

(b) maintaining adequate vegetative cover;

(c) erosion control; and

(d) any other procedures or information determined by the department to be necessary to protect human health or the environment.

(3) The owner or operator of an existing Class III landfill unit shall submit for department approval closure and post-closure plans that meet the requirements of this rule within 60 days after [THE EFFECTIVE DATE OF THIS RULE].

(4) The owner or operator of a Class III landfill unit shall give notice of intent to close the landfill to the same extent as required of a Class II landfill unit in [NEW RULE XXIV], and shall close the landfill and conduct post-closure care in compliance with the closure and post-closure plans in this rule.

AUTH: 75-10-204, MCA
IMP: 75-10-204, MCA

REASON: Proposed New Rules XXII through XXV would comprise New Subchapter V. The department is proposing the repeal of the existing solid waste program landfill closure and post-closure care rules and the adoption of a new subchapter, written in an incorporation by reference (IBR) format, that contains new landfill closure and post-closure care rules. The proposed new rules are equivalent to the existing landfill closure and post-closure care rules. The new rule format incorporates by reference sections of the CFR, and lists a few "Montana-specific" rules. The format change is being proposed for the following reasons:

(a) the incorporation of future changes to the federal solid waste management regulations into state rules would be much easier. The incorporation of new federal regulations would be accomplished by annually updating the CFR publication date in New Rule XXII(3);

(b) the "Montana-specific" requirements would be easier to recognize. The "Montana-specific" requirements are listed separately following the IBR statement in each new subchapter; and

(c) the existing solid waste management program rules contain much unnecessarily repeated statutory language, which would be deleted.

The definitions in New Rule XXIII are being proposed for the same reasons as set forth in the statement of reasonable necessity for the amendments to ARM 17.50.502.

The department is proposing in New Rules XXIV and XXV to adopt language allowing it to require additional information, if necessary, to protect human health or the environment. The reason for this is the same as that described for the amendment to ARM 17.50.508. New Rule XXIV(5) would not adopt 40 CFR 258.60(i), which concerns deed notations for landfills, because deed notation requirements are being proposed for adoption in the operating criteria in New Rule VIII(10) and must be in place well before closure, which is the subject of New Rule XXIV.

The department has determined that it is necessary to require a land owner to record a deed notation before solid waste is accepted at a new solid waste management system or, for an existing system, within 60 days after the rule becomes effective. This is a requirement of the operating rules. The reason for this

requirement is set out in the reasons for the amendments to ARM 17.50.508 and New Rule VIII(10). The federal EPA's regulation at 40 CFR 258.60(i) requires that the deed notation be recorded not before accepting waste, but rather only at the end of the closure process. The department is proposing to adopt similar, but modified, requirements in the operating rules, and if the EPA's regulation requiring a deed notation at the end of closure were adopted by reference, it would conflict with the department's proposed new rule. This could lead to confusing and contradictory interpretations. Therefore, the department is proposing not to adopt the federal deed notation regulation in the closure rules.

6. The rules proposed for repeal are as follows:

17.50.505 STANDARDS FOR SOLID WASTE MANAGEMENT FACILITIES (AUTH: 75-10-204, MCA; IMP: 75-10-204, MCA), located at page 17-4197, Administrative Rules of Montana. This rule would be replaced by New Rule II Adoption of Federal Landfill Location Restrictions, New Rule IV Exceptions and Additions to Adoption of Federal Landfill Location Restrictions, and New Rule V Additional Location Restrictions.

17.50.506 DESIGN CRITERIA FOR LANDFILLS (AUTH: 75-10-204, MCA; IMP: 75-10-204, MCA), located at page 17-4201, Administrative Rules of Montana. This rule would be replaced by New Rule XII Adoption of Federal Landfill Design Criteria, New Rule XV Exceptions and Additions to Adoption of Federal Landfill Design Criteria, and New Rule XVI Montana-Specific Design Criteria.

17.50.510 GENERAL OPERATIONAL AND MAINTENANCE REQUIREMENTS--SOLID WASTE MANAGEMENT SYSTEMS (AUTH: 75-10-204, MCA; IMP: 75-10-204, MCA), located at page 17-4215, Administrative Rules of Montana. This rule would be replaced by New Rule VI Adoption of Federal Landfill Operating Criteria, New Rule VIII Exceptions and Additions to Adoption of Federal Landfill Operating Criteria, and New Rule IX Montana-Specific Operating Criteria.

17.50.511 SPECIFIC OPERATIONAL AND MAINTENANCE REQUIREMENTS--SOLID WASTE MANAGEMENT SYSTEMS (AUTH: 75-10-204, MCA; IMP: 75-10-204, MCA), located at page 17-4217, Administrative Rules of Montana. This rule would be replaced by New Rule VI Adoption of Federal Landfill Operating Criteria, New Rule VIII Exceptions and Additions to Adoption of Federal Landfill Operating Criteria, and New Rule IX Montana-Specific Operating Criteria.

17.50.526 ENFORCEMENT (AUTH: 75-10-204, MCA; IMP: 75-10-204, MCA), located at page 17-4255, Administrative Rules of Montana. This rule would be replaced by ARM 17.50.501(4).

17.50.530 CLOSURE REQUIREMENTS FOR LANDFILLS (AUTH: 75-10-204, MCA; IMP: 75-10-204, MCA), located at page 17-4259, Administrative Rules of Montana. This rule would be replaced by New Rule XXIII Adoption of Federal Landfill Closure and Post-Closure Care, and New Rule XXV Exceptions and

Additions to Adoption of Federal Landfill Closure and Post-Closure Care.

17.50.531 POST-CLOSURE CARE REQUIREMENTS FOR CLASS II LANDFILLS (AUTH: 75-10-204, MCA; IMP: 75-10-204, MCA), located at page 17-4263, Administrative Rules of Montana. This rule would be replaced by New Rule XXIII Adoption of Federal Landfill Closure and Post-Closure Care, and New Rule XXV Exceptions and Additions to Adoption of Federal Landfill Closure and Post-Closure Care.

17.50.542 FINANCIAL ASSURANCE REQUIREMENTS FOR CLASS IV LANDFILLS (AUTH: 75-10-204, MCA; IMP: 75-10-204, MCA), located at page 17-4301, Administrative Rules of Montana. This rule would be replaced by New Rule XI Specific Operating Criteria for Class IV Landfill Units.

17.50.701 PURPOSE AND APPLICABILITY (AUTH: 75-10-204, MCA; IMP: 75-10-204, 75-10-207, MCA), located at page 17-4401, Administrative Rules of Montana. This rule would be replaced by New Rule XVII Adoption of Federal Landfill Ground Water Monitoring and Corrective Action, and New Rule XIX Exceptions and Additions to Adoption of Federal Landfill Ground Water Monitoring and Corrective Action.

17.50.702 DEFINITIONS (AUTH: 75-10-204, MCA; IMP: 75-10-204, 75-10-207, MCA), located at page 17-4402, Administrative Rules of Montana. This rule would be replaced by New Rule XVIII Definitions.

17.50.705 HYDROGEOLOGICAL AND SOILS STUDY (AUTH: 75-10-204, MCA; IMP: 75-10-204, 75-10-207, MCA), located at page 17-4415, Administrative Rules of Montana. This rule would be replaced by New Rule XX Hydrogeological and Soils Study.

17.50.706 LOCATION AND NUMBER OF MONITORING WELLS (AUTH: 75-10-204, MCA; IMP: 75-10-204, 75-10-207, MCA), located at page 17-4419, Administrative Rules of Montana. This rule would be replaced by New Rule XVII Adoption of Federal Landfill Ground Water Monitoring and Corrective Action, and New Rule XIX Exceptions and Additions to Adoption of Federal Landfill Ground Water Monitoring and Corrective Action.

17.50.707 MONITORING WELL CONSTRUCTION (AUTH: 75-10-204, MCA; IMP: 75-10-207, MCA), located at page 17-4420, Administrative Rules of Montana. This rule would be replaced by New Rule XVII Adoption of Federal Landfill Ground Water Monitoring and Corrective Action, and New Rule XIX Exceptions and Additions to Adoption of Federal Landfill Ground Water Monitoring and Corrective Action.

17.50.708 SAMPLING AND ANALYSIS PLAN (AUTH: 75-10-204, MCA; IMP: 75-10-207, MCA), located at page 17-4431, Administrative Rules of Montana. This rule would be replaced by New Rule XVII Adoption of Federal Landfill Ground

Water Monitoring and Corrective Action, and New Rule XIX Exceptions and Additions to Adoption of Federal Landfill Ground Water Monitoring and Corrective Action.

17.50.709 REPORTING AND PLANNING REQUIREMENTS (AUTH: 75-10-204, MCA; IMP: 75-10-207, MCA), located at page 17-4461, Administrative Rules of Montana. This rule would be replaced by New Rule XVII Adoption of Federal Landfill Ground Water Monitoring and Corrective Action, and New Rule XIX Exceptions and Additions to Adoption of Federal Landfill Ground Water Monitoring and Corrective Action.

17.50.710 DEFINITION OF EXTENT OF CONTAMINATION (AUTH: 75-10-204, MCA; IMP: 75-10-204, 75-10-207, MCA), located at page 17-4462, Administrative Rules of Montana. This rule would be replaced by New Rule XVII Adoption of Federal Landfill Ground Water Monitoring and Corrective Action, and New Rule XIX Exceptions and Additions to Adoption of Federal Landfill Ground Water Monitoring and Corrective Action.

17.50.715 PHASED LANDFILL CONSTRUCTION (AUTH: 75-10-204, MCA; IMP: 75-10-207, MCA), located at page 17-4481, Administrative Rules of Montana. This rule would be replaced by New Rule XVII Adoption of Federal Landfill Ground Water Monitoring and Corrective Action, and New Rule XIX Exceptions and Additions to Adoption of Federal Landfill Ground Water Monitoring and Corrective Action.

17.50.716 LATERAL LANDFILL EXPANSION (AUTH: 75-10-204, MCA; IMP: 75-10-207, MCA), located at page 17-4481, Administrative Rules of Montana. This rule would be replaced by New Rule XVII Adoption of Federal Landfill Ground Water Monitoring and Corrective Action, and New Rule XIX Exceptions and Additions to Adoption of Federal Landfill Ground Water Monitoring and Corrective Action.

17.50.720 MONITORING DURING CLOSURE (AUTH: 75-10-204, MCA; IMP: 75-10-207, MCA), located at page 17-4485, Administrative Rules of Montana. This rule would be replaced by New Rule XVII Adoption of Federal Landfill Ground Water Monitoring and Corrective Action, New Rule XIX Exceptions and Additions to Adoption of Federal Landfill Ground Water Monitoring and Corrective Action, New Rule XXIII Adoption of Federal Landfill Closure and Post-Closure Care, and New Rule XXV Exceptions and Additions to Adoption of Federal Landfill Closure and Post-Closure Care.

17.50.721 POST-CLOSURE MONITORING (AUTH: 75-10-204, MCA; IMP: 75-10-207, MCA), located at page 17-4485, Administrative Rules of Montana. This rule would be replaced by New Rule XXI Post-Closure Monitoring.

17.50.722 MONITORING WELL ABANDONMENT (AUTH: 75-10-204, MCA; IMP: 75-10-207, MCA), located at page 17-4485, Administrative Rules of

Montana. This rule would be replaced by New Rule XXII Monitoring Well Abandonment.

17.50.723 NO-MIGRATION DEMONSTRATION (AUTH: 75-10-204, MCA; IMP: 75-10-207, MCA), located at page 17-4486, Administrative Rules of Montana. This rule would be replaced by New Rule XVII Adoption of Federal Landfill Ground Water Monitoring and Corrective Action, and New Rule XIX Exceptions and Additions to Adoption of Federal Landfill Ground Water Monitoring and Corrective Action.

17.50.724 MONITORING WELL NETWORK MAINTENANCE (AUTH: 75-10-204, MCA; IMP: 75-10-207, MCA), located at page 17-4486, Administrative Rules of Montana. This rule would be replaced by New Rule XVII Adoption of Federal Landfill Ground Water Monitoring and Corrective Action, and New Rule XIX Exceptions and Additions to Adoption of Federal Landfill Ground Water Monitoring and Corrective Action.

17.50.725 DEPARTMENT APPROVAL REQUIRED (AUTH: 75-10-204, MCA; IMP: 75-10-207, MCA), located at page 17-4487, Administrative Rules of Montana. This rule would be replaced by New Rule XVII Adoption of Federal Landfill Ground Water Monitoring and Corrective Action, and New Rule XIX Exceptions and Additions to Adoption of Federal Landfill Ground Water Monitoring and Corrective Action.

17.50.726 INSPECTIONS (AUTH: 75-10-204, MCA; IMP: 75-10-207, MCA), located at page 17-4487, Administrative Rules of Montana. This rule would be replaced by New Rule XVII Adoption of Federal Landfill Ground Water Monitoring and Corrective Action, and New Rule XIX Exceptions and Additions to Adoption of Federal Landfill Ground Water Monitoring and Corrective Action.

7. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Robert A. Martin, Waste and Underground Tank Management Bureau, Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-4194; fax (406) 444-1374; or e-mail to rmartin@mt.gov, no later than May 22, 2008. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

8. Norm Mullen, attorney, has been designated to preside over and conduct the hearing.

9. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list must make a written request that includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk

vehicles; infectious waste; public water supplies; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; opencut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA; underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. Such written request may be mailed or delivered to Elois Johnson, Paralegal, Legal Unit, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901, faxed to the office at (406) 444-4386, e-mailed to ejohnson@mt.gov, or may be made by completing a request form at any rules hearing held by the department.

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

Reviewed by:

DEPARTMENT OF ENVIRONMENTAL QUALITY

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

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

Certified to the Secretary of State, April 14, 2008.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the proposed adoption of NEW RULES I through XXV, pertaining to the establishment of Peace Officers Standards and Training (POST)	))))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION

TO: All Concerned Persons

1. On May 19, 2008, at 2:00 p.m., the Department of Justice will hold a public hearing in the Conference Room of the Board of Crime Control, 3075 North Montana Avenue, Helena, Montana, to consider the proposed adoption of the above-stated rules.

2. The Department of Justice 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. on May 5, 2008, to advise us of the nature of the accommodation that you need. Please contact Ali Bovingdon, Department of Justice, 215 North Sanders, P.O. Box 201401, Helena, MT 59620-1401; telephone (406) 444-2026; Montana Relay Service 711; fax (406) 444-3549; or e-mail abovingdon@mt.gov.

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

NEW RULE I ORGANIZATION (1) The Montana Public Safety Officer Standards and Training Council (council), as created by 2-15-2029, MCA, is a quasi-judicial council allocated to the Department of Justice for administrative purposes only.

(2) The council membership is defined in 44-4-402, MCA.

(3) As used in [NEW RULES I through XXV], the definitions set forth in 44-4-401, MCA, apply.

AUTH: 2-15-2029, MCA
IMP: 2-15-2029, MCA

NEW RULE II MINIMUM STANDARDS FOR THE APPOINTMENT AND CONTINUED EMPLOYMENT OF PUBLIC SAFETY OFFICERS (1) Public safety officers must meet the applicable employment, education, and certification standards as prescribed by the Montana Code Annotated.

(2) In addition to standards set forth in the Montana Code Annotated, as defined in 44-4-401, MCA, all public safety officers shall:

(a) be a citizen of the United States or may be a registered alien if unsworn;

(b) be at least 18 years of age;

(c) be fingerprinted and a search made of the local, state, and national fingerprint files to disclose any criminal record;

(d) not have been convicted of a crime for which they could have been imprisoned in a federal or state penitentiary;

(e) be a high school graduate or have passed the general education development test and have been issued an equivalency certificate by the Superintendent of Public Instruction, or by an appropriate issuing agency of another state or of the federal government;

(f) successfully complete an oral interview and pass a thorough background check conducted by the appointing authority or its designated representative; and

(g) possess a valid driver's license if driving a vehicle will be part of the officer's duties.

AUTH: 2-15-2029, MCA
IMP: 2-15-2029, MCA

NEW RULE III REQUIREMENTS FOR PUBLIC SAFETY OFFICERS HIRED BEFORE THE EFFECTIVE DATE OF THIS REGULATION (1) A peace officer already serving under a permanent appointment prior to the effective date of this regulation shall not be required to meet any of the requirements for certification as a condition of tenure or continued employment, nor shall failure to fulfill such requirements make them ineligible for any promotional examination or consideration for promotion for which they would otherwise be eligible.

AUTH: 2-15-2029, MCA
IMP: 2-15-2029, MCA

NEW RULE IV CODE OF ETHICS (1) Regulations governing certification of public safety officers requires that a code of ethics shall be administered as an oath.

(2) The procedure for administration of the code of ethics is as follows:

(a) each applicant for certification will attest to this code of ethics and the oath shall be administered by the head of the public safety agency for which they serve, or by the Montana Law Enforcement Academy (academy) administrator or designee;

(b) the applicant and the administrator administering the oath will sign two copies of the public safety code of ethics; and

(c) one copy will be retained by the applicant and the other copy will be retained in the applicant's academy student file, which will be available for inspection by the council staff at any reasonable time.

(3) The oath of the public safety officers' code of ethics is:

"My fundamental responsibility as a public safety officer is to serve the community, safeguard lives and property, protect the innocent, keep the peace, and ensure the constitutional rights of all are not abridged.

"I shall perform all duties impartially, without favor or ill will and without regard to status, sex, race, religion, creed, political belief or aspiration. I will treat all citizens equally and with courtesy, consideration, and dignity. I will never allow personal feelings, animosities, or friendships to influence my official conduct.

"I will enforce or apply all laws and regulations appropriately, courteously, and responsibly.

"I will never employ unnecessary force or violence, and will use only such force in the discharge of my duties as is objectively reasonable in all circumstances. I will refrain from applying unnecessary infliction of pain or suffering and will never engage in cruel, degrading, or inhuman treatment of any person.

"Whatever I see, hear, or learn, which is of a confidential nature, I will keep in confidence unless the performance of duty or legal provision requires otherwise.

"I will not engage in nor will I condone any acts of corruption, bribery, or criminal activity; and shall disclose to the appropriate authorities all such acts. I will refuse to accept any gifts, favors, gratuities, or promises that could be interpreted as favor or cause me to refrain from performing my official duties.

"I will strive to work in unison with all legally authorized agencies and their representatives in the pursuit of justice.

"I will be responsible for my professional development and will take reasonable opportunities to improve my level of knowledge and competence.

"I will at all times ensure that my character and conduct is admirable and will not bring discredit to my community, my agency, or my chosen profession."

AUTH: 2-15-2029, MCA
IMP: 2-15-2029, MCA

NEW RULE V PURPOSE OF CERTIFICATES (1) Certificates are awarded by the council for the purpose of raising the level of professionalism of public safety officers and to foster cooperation among the council, agencies, groups, organizations, jurisdictions, and individuals.

(2) Basic, intermediate, advanced, supervisory, command, administrative, and other certificates are established for the purpose of promoting professionalism, education, and experience necessary to perform the duties of a public safety officer.

(3) Certificates remain the property of the council. The council shall have the power to recall, sanction, suspend, or revoke any or all certificates upon good cause as determined by the council.

AUTH: 2-15-2029, MCA
IMP: 2-15-2029, MCA

NEW RULE VI GENERAL REQUIREMENTS FOR CERTIFICATION (1) To be eligible for the award of a certificate, each officer must be a full-time or part-time public safety officer employed by a federal, state, tribal, county, municipality, city, or town, as defined by 44-4-401, MCA, at the time the application for certification is received by the council.

(2) Public safety officers shall complete the required basic training as set by the council.

(3) Public safety officers shall attest that they subscribe to the code of ethics as prescribed in [NEW RULE IV].

(4) Prior to issuance of any certificate, the public safety officer shall have completed the designated combinations of education, training, and experience as computed by the point credit hour system established annually by the council.

(5) Training hour guidelines are as follows:

(a) no training hours for the basic courses or legal equivalency courses may be applied to any other certificate; and

(b) acceptability of training hours claimed for training received from noncriminal justice sponsored agencies shall be determined by the council, and requires notice of application for credit.

(6) Applicable experience in any public safety agency will be considered by the council when determining the minimum standards for certification.

AUTH: 2-15-2029, MCA
IMP: 2-15-2029, MCA

NEW RULE VII REQUIREMENTS FOR THE BASIC CERTIFICATE (1) In addition to [NEW RULES V and VI], the following are required for the award of the basic certificate:

(a) Public safety officers hired after the effective date of this regulation shall have completed:

(i) the probationary period prescribed by law, but in any case have a minimum of one year experience with the agency;

(ii) the basic course or the equivalency as defined by the council; and

(iii) application for the basic certificate.

(b) Public safety officers hired before the effective date of this regulation shall have:

(i) completed the probationary period prescribed by the employing agency, and shall have served a minimum of one year with the present employing agency;

(ii) completed the basic course at the academy, or an equivalency as defined by the council; or

(iii) satisfied the requirements for the basic certificate by their experience, and satisfactorily performed their duties as attested to by the head of the agency for which they are employed.

(c) Public safety officers with out-of-state experience and training formerly employed by a designated federal, state, tribal, county, municipality, city, or town who do not have basic certification and are employed by a Montana law enforcement and/or public safety agency:

(i) shall have completed the probationary period prescribed by law, but in any case have a minimum of one year experience with the present employing agency;

(ii) whose training and service time is determined by the council as equivalent to the basic course must successfully complete an equivalency program, approved by the council and administered by the academy. The council will require those who fail an equivalency program to successfully complete the basic course at the academy;

(iii) whose training and service time is determined by the council as not equivalent to the basic course must, within one year of initial appointment, successfully complete the basic course; and

(iv) shall have been employed as a public safety officer for a minimum of one year within the last five years prior to employment in Montana.

(d) All of the training and equivalency requirements for the basic certificate

must be accomplished within one year of the initial appointment.

(e) Council may grant a one time extension to the one year time requirement for public safety officers upon the written application of the public safety officer and the appointing authority of the officer. The application must explain the circumstances which make the extension necessary. The council may not grant an extension to exceed 180 days. Factors that the council may consider in granting or denying the extension include but are not limited to:

(i) illness of the public safety officer or a member of the public safety officer's immediate family;

(ii) absence of reasonable access to the basic course, or the legal training course; and/or

(iii) an unreasonable shortage of personnel within the department.

(f) A public safety officer who has been issued a basic certificate by the council and whose last date of employment as a public safety officer was less than 36 months prior to the date of the person's present appointment as a public safety officer is not required to fulfill the basic educational requirements as set forth in these rules.

(g) If the last date of employment as a public safety officer is more than 36 months but less than 60 months prior to the date of present employment as a public safety officer, the public safety officer may satisfy the basic requirement by successfully passing a basic equivalency test administered by the academy. If the public safety officer fails the basic equivalency test, the basic course shall be completed within the time frames set forth in the rules. If no basic equivalency course exists for the public safety officer's specific discipline, then the applicable basic course must be completed within 36 months of the last date of employment.

AUTH: 2-15-2029, MCA
IMP: 2-15-2029, MCA

NEW RULE VIII REQUIREMENTS FOR THE PUBLIC SAFETY OFFICER INTERMEDIATE CERTIFICATE (1) In addition to [NEW RULES V and VI], the applicant for an award of the public safety officer intermediate certificate:

(a) must have served at least one year with the present employing agency and is satisfactorily performing the duties as attested to by the head of the employing law enforcement and/or public safety agency;

(b) shall possess the discipline specific basic certificate; and

(c) shall have four years experience and 200 job related POST training hours.

AUTH: 2-15-2029, MCA
IMP: 2-15-2029, MCA

NEW RULE IX REQUIREMENTS FOR PUBLIC SAFETY OFFICER ADVANCED CERTIFICATE (1) In addition to [NEW RULES V and VI], the applicant for an award of the advanced certificate:

(a) shall possess the discipline specific intermediate certificate; and

(b) shall have eight years experience and 400 job related POST training

hours.

AUTH: 2-15-2029, MCA
IMP: 2-15-2029, MCA

NEW RULE X REQUIREMENTS FOR PUBLIC SAFETY OFFICER SUPERVISORY CERTIFICATE (1) In addition to [NEW RULES V and VI], the applicant for an award of the supervisory certificate:

(a) shall possess the discipline specific intermediate certificate;

(b) shall have successfully completed a 40 hour POST approved management course; and

(c) shall have served satisfactorily as a first level supervisor currently and for one year prior to the date of application, as attested to by the head of the employing agency.

(2) A first level supervisor is a position above the operational level for which commensurate pay is authorized, is occupied by an officer who, in the upward chain of command, principally is responsible for the direct supervision of employees of an agency or is subject to assignment of such responsibilities, and most commonly is the rank of sergeant.

AUTH: 2-15-2029, MCA
IMP: 2-15-2029, MCA

NEW RULE XI REQUIREMENTS FOR PUBLIC SAFETY OFFICER COMMAND CERTIFICATE (1) In addition to [NEW RULES V and VI], the applicant for an award of the command certificate:

(a) shall possess the discipline specific supervisory certificate;

(b) shall have completed a professional development course or courses cumulating a minimum of 400 hours or more of POST approved management or leadership topic matter; and

(c) shall have served satisfactorily at the command or mid-management level currently and for one year prior to the date of appointment, as attested to by the head of the employing agency.

AUTH: 2-15-2029, MCA
IMP: 2-15-2029, MCA

NEW RULE XII REQUIREMENTS FOR PUBLIC SAFETY OFFICER ADMINISTRATIVE CERTIFICATE (1) In addition to [NEW RULES V and VI], the applicant for an award of the administrative certificate:

(a) shall possess the discipline specific advanced and command certificate; and

(b) shall have served satisfactorily at the administrative or management level of the employing agency currently and for a period of one year prior to the date of application.

(2) The administrative or management level is a senior level administrative position for which commensurate pay is authorized; occupied by an individual who,

in the upward chain of command, is either responsible for administering the agency or has broad administrative authority, or is subject to assignment of such responsibilities; and most commonly is a chief, assistant chief, sheriff, undersheriff, warden, or deputy warden of the agency.

AUTH: 2-15-2029, MCA
IMP: 2-15-2029, MCA

NEW RULE XIII QUALIFICATIONS FOR APPROVAL OF PUBLIC SAFETY OFFICER TRAINING COURSES (1) For the purposes of [NEW RULES XIV, XVI, and XIX], the following definitions apply:

(a) "field training" is instruction, training, or skill practice rendered to an officer by another officer or officers on a tutorial basis during a tour of duty while performing the normal activities of that officer's employment;

(b) "in-service training" is training provided within a law enforcement and/or public safety agency that is utilized to review and develop skills and knowledge, and is primarily unique to specific agency needs;

(c) "POST approved training" is training reviewed and approved by the council and includes, but may not be limited to basic, regional, and professional courses; and

(d) "roll call training" is instruction or training of short duration, less than two hours, within any law enforcement and/or any public safety agency, conducted when officers change shifts.

(2) The council is responsible for the approval of all public safety officer training programs:

(a) It shall be the responsibility of the sponsoring agency to follow the required reporting procedures and monitor the standards for training, trainee attendance, and performance as set by the council; and

(b) Attendance records, where applicable tests and test scores for all POST approved training courses shall be retained by the council.

(3) The course requirements for POST approved training include:

(a) meeting the requirements contained in (2), the requirements for trainee attendance and performance, and the instructor requirements;

(b) being based upon generally recognized best practice;

(c) comporting with Montana laws and court decisions; and

(d) being at least two hours or more in length.

(4) Approval requirements for training courses presented or sponsored by public safety agencies are:

(a) any public safety agency requesting approval of the training course must meet the accreditation requirements as mandated by POST prior to the commencement of a training course; and

(b) each course must be advertised and open to all public safety agencies.

AUTH: 2-15-2029, MCA
IMP: 2-15-2029, MCA

NEW RULE XIV REQUIREMENTS FOR TRAINEE ATTENDANCE AND

PERFORMANCE IN POST APPROVED COURSES (1) Trainees enrolled in any POST approved course shall be admitted only in accordance with rules of eligibility and admission as either contained herein or contained in the course announcement.

(2) Each trainee shall be required to attend all sessions of any training course in which they are enrolled, except for absences approved by the course coordinator. No trainee shall receive credits if absences exceed 10% of the total hours for the course.

(3) Any trainee who fails to comply with these rules pertaining to attendance, performance, and behavior shall be denied credits.

(4) Failure to comply with the rules contained herein or other guidelines may result in either denial of course approval or a revocation of course approval.

AUTH: 2-15-2029, MCA
IMP: 2-15-2029, MCA

NEW RULE XV THE BASIC COURSES (1) The amount of training for which credit will be granted in any basic public safety officer's course shall be prescribed by the council.

(2) Students in any basic public safety officers' course shall be required to complete instruction in the prescribed subject areas as directed by the council.

(3) The council shall annually review and approve the curriculum for all basic public safety officers' courses by examining and approving performance objectives and lesson plans which have been established for each designated training block within the prescribed subject areas.

(4) The council may approve changes from the course content established at the last annual review upon written application from the administrator of the academy providing evidence that such change is compatible with the public interest.

AUTH: 2-15-2029, MCA
IMP: 2-15-2029, MCA

NEW RULE XVI INSTRUCTOR CERTIFICATION REQUIREMENTS

(1) Persons providing POST approved training courses and employed by public safety agencies must be certified by the council.

(2) A "primary instructor" is one who delivers a specific lesson plan pertaining to a discipline. To qualify as a primary instructor, the person shall apply to the council, on a form approved by the council, and shall meet the following requirements:

(a) three years of public safety experience;

(b) education or training in the specific field, subject matter, or academic discipline to be taught;

(c) must have successfully completed a 40 hour minimum instructor development course or equivalent approved by the council;

(d) must have an endorsement from the applicant's agency head to deliver a specific lesson plan pertaining to a discipline; and

(e) must submit the specific lesson plan which includes performance objectives, instructional strategies, and complete course content.

(3) Master instructors must possess the competencies to adequately develop and deliver a broad range of curricula pertaining to a specific discipline. To qualify as a master instructor, the person shall apply to the council, on a form approved by the council, and shall meet the following requirements:

(a) must possess a primary instructor certificate;

(b) must successfully complete a minimum 40 hour curriculum design and development course or equivalent approved by the council;

(c) must have an endorsement from a professional instructor and POST director, or designee attesting to the applicant's competencies; and

(d) must have endorsement from applicant's agency head.

(4) Professional instructors are certified to deliver and instruct a broad range of topic matters to which independent accreditation is not required as a condition of delivery as prescribed by the council. To qualify as a professional instructor, the person shall apply to the council on a form approved by the council, and shall meet the following requirements:

(a) must be employed by a public safety agency as a full-time training and development specialist or equivalent; and

(b) must have endorsement from the POST director or designee and agency administrator.

(5) The council will certify approved instructors to instruct in those specific subjects for which the council has found them qualified. Each certified instructor shall be listed in an official register of the council, and each subject that each instructor is certified to teach shall be noted in said register.

(6) Initial primary and master instructor certificates shall be issued for a period of 24 months. At the end of the initial time period, certificates may be renewed for an additional 24 months, providing the instructor has remained current in the applicable discipline. This may be accomplished through continuing education and by actively instructing the course(s).

(7) After four years of continuous certification, master instructors may be recertified for a four year period.

(8) The council may deny applications for instructor certification for failure to satisfy the required qualifications. The council may recall, suspend, or revoke primary and master certificates at any time for good cause to ensure the quality of the training programs. In addition, any primary and master instructor who has not instructed during a certification period shall be required to reapply for original certification.

(9) Applications for instructor certification and renewal shall be reviewed by the council. Action on the application shall be made at the council's first regularly scheduled meeting following the review of the application.

(10) Whenever the council denies an application, renewal of certification, or recalls, suspends, or revokes an existing certification, the council will notify the applicant or holder within 15 days from the date of the council's action. Persons so notified will have 30 days from the date of receipt of notification to file with the council a written appeal of the denial or recall, suspension, or revocation. An informal hearing of the appeal will be held at the next regularly scheduled meeting of the council. During the period of the appeal, the certificate shall be suspended, and all findings and decisions will be pursuant to [NEW RULE XXV].

AUTH: 2-15-2029, MCA
IMP: 2-15-2029, MCA

NEW RULE XVII REQUIREMENTS FOR DESIGNATED INCIDENT COMMAND CERTIFICATION (1) Designated incident command certification is established for the purpose of promoting standardized incident management and streamlined interagency mutual aid during multi-day or multi-jurisdictional emergencies through the use of a state or federally recognized Incident Command System (ICS). An officer assigned to an ICS command or general staff position is usually a senior officer, trained within a specific area of expertise, who is routinely assigned within a jurisdiction to coordinate or take charge of specific aspects of emergency response or extraordinary circumstances.

(2) The council shall issue incident command certificates designated by:

(a) emergency response specialty; and

(b) area of expertise denoted as any of the ICS command staff positions or any of the general staff positions of planning, logistics, or finance.

(3) In addition to [NEW RULES V and VI], applicants for an award of a designated incident command certificate:

(a) shall possess an intermediate certificate;

(b) shall have completed an approved ICS course;

(c) shall have completed the required hours of additional training and testing for the command or general staff position for which certification is being sought;

(d) shall be trained within a specialized area of emergency response;

(e) shall have successfully served in a command or general staff capacity as attested to on an application by the applicant's agency administrator; and

(f) shall be eligible to respond as overhead support for mutual aid requests outside of the applicant's jurisdiction, as attested to on an application by the applicant's agency administrator.

AUTH: 2-15-2029, MCA
IMP: 2-15-2029, MCA

NEW RULE XVIII CORONER EDUCATION AND CONTINUED EDUCATION AND EXTENSION OF TIME LIMIT FOR CONTINUED CERTIFICATION

(1) Coroner education shall be conducted by the council as prescribed in 7-4-2905, MCA.

(2) New coroners shall complete the 40 hour basic coroner course at the academy or other equivalent course approved by POST:

(a) the basic coroner course must be completed in accordance with 7-4-2905, MCA.

(3) Coroners must complete 16 hours of advanced training at least once every two years.

(a) The council may extend the two year time limit requirement for the continuation of coroner's certification, set forth in 7-4-2905, MCA, upon the written application of the coroner or the appointing authority of the deputy. The application must explain the circumstances which necessitate the extension;

(b) Factors considered in granting or denying an extension include, but are not limited to:

(i) illness of the coroner/deputy coroner or an immediate family member;

(ii) absence of reasonable access to the coroner's advanced course; or

(iii) an unreasonable shortage of personnel;

(c) The council may not grant an extension to exceed 180 days; and

(d) The council will not grant extensions after the expiration of the two year time limit.

AUTH: 2-15-2029, MCA
IMP: 2-15-2029, MCA

NEW RULE XIX DEFINITIONS As used in [NEW RULES XX through XXV], the following definitions apply:

(1) "Certification" means any basic or advanced standards and training certification granted by the council after completion of the specific requirements as set forth in these rules.

(2) "Complainant" means:

(a) any person or entity making a complaint against a public safety officer to the council; or

(b) the POST executive director acting upon any credible knowledge, information, or belief.

(3) "Council" means the public safety officer standards and training council as created by 2-15-2029, MCA.

(4) "Director" means the executive director of the public safety officer standards and training council, as established by these rules.

(5) "Formal proceedings" means proceedings for suspension or revocation that the director determines cannot be settled at the preliminary stage of review, investigation, and/or informal proceeding stage, and must proceed pursuant to notice and hearing.

(6) "Governmental unit" means any governmental entity which is statutorily empowered with administration, supervision, or oversight over a public safety agency or officer.

(7) "Informal proceedings" means proceedings that do not require notice and hearing, and may include but not be limited to sanctions, stipulations, and/or memorandums of understanding.

(8) "Presiding officer" means the chair of the council or their designated representative, who shall regulate the course of hearings held by the council.

(9) "Public safety officer" means an officer, as defined in 44-4-401, MCA.

(10) "Respondent" means the public safety officer against whom a complaint has been made or their legal representative.

(11) "Revocation" means the permanent cancellation by the council of a public safety officer's certification.

(12) "Sanction" means a consequence or punishment for a violation of [NEW RULE XX], or the accepted norms of being a public safety officer.

(13) "Suspension" means the annulment, for a period of time set by the council, of a public safety officer's certification.

(14) "Uncertifiable officer" means a public safety officer who:

(a) is employed as a public safety officer, but does not possess the basic certificate, as described in [NEW RULE VII];

(b) has been the object of a complaint filed pursuant to [NEW RULE XXI];

(c) has been afforded the process which is due under law; and

(d) has been found to be subject to suspension or revocation pursuant to [NEW RULE XX].

AUTH: 2-15-2029, MCA
IMP: 2-15-2029, MCA

NEW RULE XX GROUNDS FOR SANCTION, SUSPENSION, OR REVOCATION OF POST CERTIFICATION (1) The council shall consider and rule on any complaint made against any public safety officer that may result in the sanction, revocation, or suspension of that officer's certification.

(2) The grounds for sanction, suspension, or revocation of the certification of public safety officers are as follows:

(a) willful falsification of material information in conjunction with official duties;

(b) a physical or mental condition that substantially limits the person's ability to perform the essential duties of a public safety officer, or poses a direct threat to the health and safety of the public or fellow officers, and that cannot be eliminated by reasonable accommodation;

(c) addiction to or the unlawful use of controlled substances or other drugs;

(d) unauthorized use of or being under the influence of alcoholic beverages while on duty, or the use of alcoholic beverages in a manner which tends to discredit the profession;

(e) the commission of a felony, an offense which would be a felony if committed in this state, or an offense involving dishonesty, unlawful sexual conduct, or physical violence;

(f) neglect of duty or willful violation of orders or policies, procedures, rules, or regulations;

(g) willful violation of the code of ethics set forth in these rules;

(h) other conduct or a pattern of conduct which tends to significantly undermine public confidence in the profession;

(i) failure to meet the minimum standards for employment set forth in these rules;

(j) failure to meet the minimum training requirements provided in these rules; or

(k) acts that are reasonably identified or regarded as so improper or inappropriate that by their nature and in their context are harmful to the agency's or officer's reputations.

(3) Conviction of any felony, an offense which would be a felony if committed in this state, or of an offense for which the person could have been imprisoned in a federal or state penitentiary will be cause for an automatic referral to the council for revocation of an officer's certification.

AUTH: 2-15-2029, MCA

IMP: 2-15-2029, MCA

NEW RULE XXI PRELIMINARY PROCEDURE IN PROCEEDINGS FOR SUSPENSION OR REVOCATION OF CERTIFICATION (1) Any complaint made against a public safety officer that alleges grounds for sanction, suspension, or revocation that is not made by the director or the governmental unit employing the officer shall be made initially to the appropriate governmental unit by the complainant.

(2) The appropriate governmental unit shall issue a written ruling on the initial complaint. A copy of the initial complaint and the governmental unit's written ruling shall be forwarded to the director.

(3) If a complainant wishes to pursue their complaint with the council, the complaint must be in writing and provide at least the following information:

(a) name, address, and telephone number of the complainant (the director may keep this information confidential for good cause shown);

(b) name and place of employment of the person complained against; and

(c) a full and complete description of the incident.

(4) Complaints made by or filed with the director shall be investigated by the director and/or their designee.

(5) Following review and investigation of a complaint, the director may take any appropriate action, including but not limited to the following:

(a) file a formal complaint with the council on their own behalf;

(b) send a written letter of inquiry to the subject of the complaint, explaining the allegation of violation and requesting an explanation or statement of intent to cure the violation;

(c) issue an appropriate sanction, enter into a stipulation or memorandum of understanding with the officer or his counsel, or otherwise informally resolve the complaint;

(d) accept the voluntary surrender of a certificate issued by the council; or

(e) for good cause, recommend closure of the investigation of a complaint.

(6) In all cases that are not forwarded to the council for formal proceedings, the director shall, when the case is closed, file a written report setting forth the circumstances and resolution of the case.

AUTH: 2-15-2029, MCA
IMP: 2-15-2029, MCA

NEW RULE XXII COMMENCEMENT OF FORMAL PROCEEDINGS FOR SUSPENSION OR REVOCATION OF CERTIFICATION (1) Formal proceedings may be commenced only after the filing of a complaint as described in these rules, the director's determination that formal proceedings are necessary, the designation of a presiding officer, and the issuance of a written order to show cause, and notice of opportunity for hearing.

(2) Formal proceedings for suspension or revocation are subject to the Montana Administrative Procedure Act, and must be conducted pursuant to that act.

(3) In formal proceedings, the respondent must file an answer, or be in

default. The answer shall contain at least a statement of grounds of opposition to each allegation of the complaint which the respondent opposes.

(4) Service shall be made in a manner consistent with Montana law.

(5) If a review of the conduct of a person holding a certificate subject to revocation or suspension under these rules is pending before any court, council, tribunal, or agency, the director may, in their discretion, stay any proceedings for revocation and suspension pending before the council.

(6) In the event the respondent fails to answer, appear, or otherwise defend a complaint against them of which the respondent had notice, the presiding officer may enter an order containing findings of fact, conclusions of law, and an opinion in accordance with the Montana Administrative Procedure Act, Montana Rules of Civil Procedure, and/or any other rule of law applicable.

(7) Any party may represent themselves, or may at their own expense be represented by an attorney licensed to practice law in the state.

(8) A representative from the office of the Attorney General may present the case of the complainant.

(9) The presiding officer may utilize a legal advisor to assist in conducting the hearing. If the presiding officer's legal advisor is employed by the office of the Attorney General, their contact with the representative from the office of the Attorney General who presents the case of the petitioner shall be restricted to that permitted by law.

(10) Unless required for disposition of ex parte matters authorized by law, after issuance of notice of hearing, the presiding officer may not communicate with any party or their representative in connection with any issue of fact or law in such case, except upon notice and opportunity for all parties to participate.

AUTH: 2-15-2029, MCA
IMP: 2-15-2029, MCA

NEW RULE XXIII DECISION AND ORDER (1) In the event a certificate is suspended, the council shall state in its decision and order the length of time for which the certificate is suspended and the reasons therefore. In suspending a certificate, the council shall be guided by generally accepted professional standards. A respondent who has had certification suspended may apply for recertification once the period of suspension has passed.

(2) In the event a certificate is revoked or suspended, the respondent shall surrender the certificate(s) to the council and forfeit the position authority and powers afforded the officer in this state.

(3) In the event a certificate is revoked or suspended, employment in any public safety discipline during the time of suspension is prohibited, and permanently prohibited under a revocation order.

AUTH: 2-15-2029, MCA
IMP: 2-15-2029, MCA

NEW RULE XXIV RECORD OF PROCEEDINGS (1) The record shall consist of the items enumerated in 2-4-614, MCA, and a audio recording of oral

proceedings shall be the official record of the proceedings.

AUTH: 2-15-2029, MCA
IMP: 2-15-2029, MCA

NEW RULE XXV APPEALS (1) If requested by the respondent, an appeal may be made to the Montana Board of Crime Control pursuant to [NEW RULE IV in MAR Notice No. 23-14-189]. The decision of the Montana Board of Crime Control is the final agency decision subject to judicial review.

AUTH: 2-15-2029, MCA
IMP: 2-15-2029, MCA

RATIONALE AND JUSTIFICATION: The department is proposing the new rules because the 60th Legislature enacted SB 273, which establishes a Montana POST Advisory Council to replace the POST Advisory Council currently under the Montana Board of Crime Control.

4. Concerned persons may submit their data, views, or arguments either or in writing at the hearing. Written data, views, or arguments may also be submitted to: Ali Bovingdon, Department of Justice, 215 North Sanders, P.O. Box 201401, Helena, MT 59620-1401; telephone (406) 444-2026; Montana Relay Service 711; fax (406) 444-3549; or e-mail abovingdon@mt.gov, and must be received no later than 5:00 p.m. on May 22, 2008.

5. Ali Bovingdon of the Department of Justice has been designated to preside over and conduct the hearing.

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

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. 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 contact person in (4) above, or may be made by completing a

request form at any rules hearing held by the department. A copy of the interested persons request form may be printed from the Department of Justice's web site at http://doj.mt.gov/resources/administrativerules.asp, and mailed to the rule reviewer.

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

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

/s/ Ali Bovingdon
ALI BOVINGDON
Rule Reviewer

Certified to the Secretary of State on April 14, 2008.

BEFORE THE DEPARTMENT OF JUSTICE
BOARD OF CRIME CONTROL
OF THE STATE OF MONTANA

In the matter of the proposed repeal of Title 23, chapter 14, subchapters 4, 5, 8, and 9, reflecting transfer of POST duties to a new division; repeal of ARM 23.14.207, pertaining to decision-making authority; repeal of ARM 23.15.105, pertaining to payments of claims; proposed adoption of NEW RULES I through IX, establishing appeal procedures from POST decisions; and amendment of ARM 23.14.101, reflecting changes in statute	)))))))))))	NOTICE OF PUBLIC HEARING ON PROPOSED REPEAL, ADOPTION, AND AMENDMENT

TO: All Concerned Persons

1. On May 19, 2008, at 2:00 p.m., a public hearing will be held in the Conference Room of the Board of Crime Control, 3075 North Montana Avenue in Helena, Montana, to consider the proposed repeal, adoption, and amendment of the above-stated rules.

2. The Board of Crime Control 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 Crime Control no later than 5:00 p.m., May 5, 2008, to advise us of the nature of the accommodation needed. Please contact Claudia Martin, Board of Crime Control Office Manager; 3075 North Montana Avenue, P.O. Box 201408, Helena, Montana 59620-1408; telephone (406) 444-3604; fax (406) 444-4722; or e-mail clmartin@mt.gov.

3. The board proposes to repeal the following rules:

23.14.401 ADMINISTRATION OF PEACE OFFICERS STANDARDS AND TRAINING, found at page 23-409 of the Administrative Rules of Montana.

AUTH: 44-4-301, MCA
IMP: 7-32-303, 44-4-301, MCA

23.14.402 MINIMUM STANDARDS FOR THE EMPLOYMENT OF PEACE OFFICERS, found at page 23-415 of the Administrative Rules of Montana.

AUTH: 44-4-301, MCA
IMP: 7-32-303, 7-32-4112, MCA

23.14.403 REQUIREMENTS FOR PEACE OFFICERS HIRED BEFORE AND AFTER THE EFFECTIVE DATE OF THIS REGULATION, found at page 23-415 of the Administrative Rules of Montana.

AUTH: 44-4-301, MCA
IMP: 7-32-303, 44-4-301, MCA

23.14.404 GENERAL REQUIREMENTS FOR CERTIFICATION, found at page 23-416 of the Administrative Rules of Montana.

AUTH: 44-4-301, MCA
IMP: 44-4-301, 44-11-301 through 44-11-305, MCA

23.14.405 REQUIREMENTS FOR THE BASIC CERTIFICATE, found at page 23-418 of the Administrative Rules of Montana.

AUTH: 44-4-301, MCA
IMP: 7-32-303, 44-4-301, 44-11-301 through 44-11-305, MCA

23.14.406 REQUIREMENTS FOR THE INTERMEDIATE CERTIFICATE, found at page 23-418.1 of the Administrative Rules of Montana.

AUTH: 44-4-301, MCA
IMP: 44-4-301, MCA

23.14.407 REQUIREMENTS FOR THE ADVANCED CERTIFICATE, found at page 23-419 of the Administrative Rules of Montana.

AUTH: 44-4-301, MCA
IMP: 44-4-301, MCA

23.14.408 REQUIREMENTS FOR THE SUPERVISORY CERTIFICATE, found at page 23-419 of the Administrative Rules of Montana.

AUTH: 44-4-301, MCA
IMP: 44-4-301, MCA

23.14.409 REQUIREMENTS FOR THE COMMAND CERTIFICATE, found at page 23-419.1 of the Administrative Rules of Montana.

AUTH: 44-4-301, MCA
IMP: 44-4-301, MCA

23.14.410 REQUIREMENTS FOR THE ADMINISTRATIVE CERTIFICATE, found at page 23-420 of the Administrative Rules of Montana.

AUTH: 44-4-301, MCA

IMP: 44-4-301, MCA

23.14.411 PURPOSE OF CERTIFICATES AND AWARDS, found at page 23-421 of the Administrative Rules of Montana.

AUTH: 44-4-301, MCA
IMP: 44-4-301, MCA

23.14.412 QUALIFICATIONS FOR CERTIFICATION OF LAW ENFORCEMENT ACADEMY AND TRAINING COURSES, found at page 23-421 of the Administrative Rules of Montana.

AUTH: 44-4-301, MCA
IMP: 7-32-303, 7-32-4112, MCA

23.14.413 CERTIFICATION REQUIREMENTS FOR TRAINEE ATTENDANCE AND PERFORMANCE, found at page 23-423.1 of the Administrative Rules of Montana.

AUTH: 44-4-301, MCA
IMP: 7-32-303, 7-32-4112, MCA

23.14.415 CODE OF ETHICS, found at page 23-425 of the Administrative Rules of Montana.

AUTH: 44-4-301, MCA
IMP: 44-4-301, MCA

23.14.416 THE BASIC COURSE, found at page 23-426 of the Administrative Rules of Montana.

AUTH: 44-4-301, MCA
IMP: 44-4-301, MCA

23.14.419 INSTRUCTOR CERTIFICATE REQUIREMENTS, found at page 23-427 of the Administrative Rules of Montana.

AUTH: 44-4-301, MCA
IMP: 44-4-301, MCA

23.14.420 REQUIREMENTS FOR DESIGNATED INCIDENT COMMAND CERTIFICATION, found at page 23-429 of the Administrative Rules of Montana.

AUTH: 44-4-301, MCA
IMP: 44-4-301, MCA

23.14.503 REFERENCED ADMINISTRATIVE RULES OF MONTANA

APPLY TO NON-SWORN OFFICERS, found at page 23-437 of the Administrative Rules of Montana.

AUTH: 44-4-301, MCA
IMP: 44-4-301, MCA

23.14.504 NOTICE OF APPOINTMENT OR TERMINATION OF NON-SWORN OFFICERS, found at page 23-437 of the Administrative Rules of Montana.

AUTH: 44-4-301, MCA
IMP: 44-4-301, MCA

23.14.510 MINIMUM QUALIFICATIONS FOR PUBLIC SAFETY COMMUNICATIONS OFFICERS, found at page 23-438 of the Administrative Rules of Montana.

AUTH: 7-31-202, MCA
IMP: 7-31-201, 7-31-202, 10-4-101, MCA

23.14.511 REQUIREMENTS FOR PUBLIC SAFETY COMMUNICATIONS OFFICER BASIC CERTIFICATE, found at page 23-438 of the Administrative Rules of Montana.

AUTH: 7-31-203, MCA
IMP: 7-31-201, 7-31-202, 7-31-203, 10-4-101, MCA

23.14.512 REQUIREMENTS FOR THE PUBLIC SAFETY COMMUNICATIONS OFFICER INTERMEDIATE CERTIFICATE, found at page 23-439 of the Administrative Rules of Montana.

AUTH: 44-4-301, MCA
IMP: 7-31-203, MCA

23.14.513 REQUIREMENTS FOR THE PUBLIC SAFETY COMMUNICATIONS OFFICER ADVANCED CERTIFICATE, found at page 23-439 of the Administrative Rules of Montana.

AUTH: 44-4-301, MCA
IMP: 7-31-203, MCA

23.14.514 REQUIREMENTS FOR THE PUBLIC SAFETY COMMUNICATIONS OFFICER SUPERVISORY CERTIFICATE, found at page 23-440 of the Administrative Rules of Montana.

AUTH: 44-4-301, MCA
IMP: 7-31-203, MCA

23.14.515 REQUIREMENTS FOR THE PUBLIC SAFETY COMMUNICATIONS OFFICER COMMAND CERTIFICATE, found at page 23-440 of the Administrative Rules of Montana.

AUTH: 44-4-301, MCA
IMP: 7-31-203, MCA

23.14.516 REQUIREMENTS FOR THE PUBLIC SAFETY COMMUNICATIONS OFFICER ADMINISTRATIVE CERTIFICATE, found at page 23-441 of the Administrative Rules of Montana.

AUTH: 44-4-301, MCA
IMP: 7-31-203, MCA

23.14.525 MINIMUM QUALIFICATIONS FOR DETENTION OFFICERS, found at page 23-442 of the Administrative Rules of Montana.

AUTH: 44-4-301, MCA
IMP: 7-32-303, 44-4-301, MCA

23.14.526 REQUIREMENTS FOR DETENTION OFFICER BASIC CERTIFICATE, found at page 23-443 of the Administrative Rules of Montana.

AUTH: 44-4-301, MCA
IMP: 44-4-301, MCA

23.14.527 REQUIREMENTS FOR THE DETENTION OFFICER INTERMEDIATE CERTIFICATE, found at page 23-443 of the Administrative Rules of Montana.

AUTH: 44-4-301, MCA
IMP: 44-4-301, MCA

23.14.528 REQUIREMENTS FOR THE DETENTION OFFICER ADVANCED CERTIFICATE, found at page 23-444 of the Administrative Rules of Montana.

AUTH: 44-4-301, MCA
IMP: 44-4-301, MCA

23.14.529 REQUIREMENTS FOR THE DETENTION OFFICER SUPERVISORY CERTIFICATE, found at page 23-444 of the Administrative Rules of Montana.

AUTH: 44-4-301, MCA
IMP: 44-4-301, MCA

23.14.530 REQUIREMENTS FOR THE DETENTION OFFICER COMMAND

CERTIFICATE, found at page 23-445 of the Administrative Rules of Montana.

AUTH: 44-4-301, MCA
IMP: 44-4-301, MCA

23.14.531 REQUIREMENTS FOR THE DETENTION OFFICER ADMINISTRATIVE CERTIFICATE, found at page 23-446 of the Administrative Rules of Montana.

AUTH: 44-4-301, MCA
IMP: 44-4-301, MCA

23.14.555 MINIMUM QUALIFICATIONS FOR PROBATION AND PAROLE OFFICERS, found at page 23-447 of the Administrative Rules of Montana.

AUTH: 44-4-301, MCA
IMP: 46-23-1003, MCA

23.14.556 REQUIREMENTS FOR PROBATION AND PAROLE OFFICER BASIC CERTIFICATE, found at page 23-447 of the Administrative Rules of Montana.

AUTH: 44-4-301, MCA
IMP: 46-23-1003, MCA

23.14.570 MINIMUM QUALIFICATIONS FOR JUVENILE PROBATION OFFICERS AND RECORD KEEPING, found at page 23-447 of the Administrative Rules of Montana.

AUTH: 44-4-301, MCA
IMP: 41-5-705, MCA

23.14.571 REQUIREMENTS FOR THE JUVENILE PROBATION OFFICER BASIC CERTIFICATE, found at page 23-448 of the Administrative Rules of Montana.

AUTH: 44-4-301, MCA
IMP: 41-5-702, MCA

23.14.572 MINIMUM QUALIFICATIONS FOR COMMERCIAL VEHICLE INSPECTORS, found at page 23-448 of the Administrative Rules of Montana.

AUTH: 44-4-301, MCA
IMP: 7-32-303, 44-4-301, 44-4-302, MCA

23.14.573 REQUIREMENTS FOR COMMERCIAL VEHICLE INSPECTOR BASIC CERTIFICATE, found at page 23-449 of the Administrative Rules of

Montana.

AUTH: 44-4-301, MCA
IMP: 7-32-303, 44-4-301, 44-4-302, MCA

23.14.801 DEFINITIONS, found at page 23-457 of the Administrative Rules of Montana.

AUTH: 44-4-301, MCA
IMP: 44-4-301, MCA

23.14.802 GROUNDS FOR SUSPENSION OR REVOCATION OF MONTANA PEACE OFFICERS' STANDARDS AND TRAINING CERTIFICATION, found at page 23-459 of the Administrative Rules of Montana.

AUTH: 44-4-301, MCA
IMP: 44-4-301, MCA

23.14.803 PRELIMINARY PROCEDURE IN PROCEEDINGS FOR SUSPENSION OR REVOCATION OF CERTIFICATION, found at page 23-459.1 of the Administrative Rules of Montana.

AUTH: 44-4-301, MCA
IMP: 44-4-301, MCA

23.14.804 COMMENCEMENT OF FORMAL PROCEEDINGS FOR SUSPENSION OR REVOCATION OF CERTIFICATION, found at page 23-459.2 of the Administrative Rules of Montana.

AUTH: 44-4-301, MCA
IMP: 44-4-301, MCA

23.14.807 DECISION AND ORDER, found at page 23-459.4 of the Administrative Rules of Montana.

AUTH: 44-4-301, MCA
IMP: 44-4-301, MCA

23.14.808 RECORD OF PROCEEDINGS, found at page 23-459.4 of the Administrative Rules of Montana.

AUTH: 44-4-301, MCA
IMP: 44-4-301, MCA

23.14.901 CORONER EDUCATION AND CONTINUED EDUCATION AND EXTENSION OF TIME LIMIT FOR CONTINUED CERTIFICATION, found at page 23-461 of the Administrative Rules of Montana.

AUTH: 7-4-2905, MCA
IMP: 7-4-2905, MCA

REASONABLE NECESSITY: The board is proposing to repeal Title 23, chapter 14, subchapters 4, 5, 8, and 9 because the Peace Officers Standards and Training Advisory Council responsibilities assigned to the board were transferred to a newly created and independent Montana Public Safety Officer Standards and Training Council under the provisions of SB 273 passed by the 2007 regular session of the Legislature and approved by the Governor. The Montana Public Safety Officer Standards and Training Council is responsible for adopting its own rules.

23.14.207 EXECUTIVE APPEAL, which can be found at page 23-406 of the Administrative Rules of Montana.

AUTH: 44-4-301, MCA
IMP: 44-4-301, MCA

REASONABLE NECESSITY: The board is proposing to repeal ARM 23.14.207 because the board derives final decision-making authority from state and federal law regarding grant applications.

23.15.105 PROPORTIONATE REDUCTION IN CLAIMS PAID, which can be found at page 23-470 of the Administrative Rules of Montana.

AUTH: 53-9-104, MCA
IMP: 53-9-108, MCA

REASONABLE NECESSITY: The board is proposing to repeal ARM 23.15.105 because the Crime Victims Compensation Program was transferred to the Department of Justice, Office of the Attorney General, by the 2001 Legislature and is no longer operated or controlled by the board. Following this legislative change, rules were enacted to implement the legislation in 2002; however, ARM 23.15.105 was mistakenly left in as a duty assigned to the board.

4. The board proposes to adopt the following new rules:

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

(1) "Board" is the Board of Crime Control.

(2) "Committee" is the Appeal Review Committee of the Board of Crime Control.

(3) "Council" is the Montana Public Safety Officer Standards and Training Council.

(4) "Executive director" is the executive director of the Board of Crime Control.

(5) "Hearing examiner" is a person appointed in accordance with 2-4-611,

MCA.

(6) "Parties" means the aggrieved party or the council.

AUTH: 44-4-301(2), 44-4-403(3), MCA
IMP: 44-4-301(2), 44-4-403(3), MCA

NEW RULE II PURPOSE (1) These rules describe the appeal process from certification decisions of the council pursuant to 44-4-403(3), MCA.

AUTH: 44-4-301(2), 44-4-403(3), MCA
IMP: 44-4-301(2), 44-4-403(3), MCA

NEW RULE III APPEAL REVIEW COMMITTEE (1) The board hereby establishes an appeal review committee as described in (2), for purposes of the initial review and recommendation to the board.

(2) There is an appeal review committee of the board, which consists of three members of the board, plus one alternate who is also a member of the board. Committee members and an alternate are appointed by the executive director for a term of two years. The executive director shall designate the committee chairperson.

(3) A board member designated as a member of the council, as provided in 44-4-402, MCA, may not participate in appeals brought to the board from decision of the council.

AUTH: 44-4-301(2), 44-4-403(3), MCA
IMP: 44-4-301(2), 44-4-403(3), MCA

NEW RULE IV RIGHT TO APPEAL (1) Any party aggrieved by a decision of the council pursuant to 44-4-403, MCA, may seek review of the determination by the board, through its designated committee.

(2) The aggrieved party must seek review by filing a notice of appeal within ten working days after the day the final decision is mailed.

(3) The notice of appeal must include a statement of the party's intent to appeal the decision of the council, and must set forth the specific errors by the council, and the issues to be raised.

(4) The completed and signed notice of appeal shall be mailed to the council at 2260 Sierra Road East, Helena, Montana 59602, and to the executive director at 3075 North Montana Avenue, P.O. Box 201408, Helena, Montana 59620-1408.

(5) The notice of appeal must be postmarked no later than ten working days after the date the council's written decision was mailed.

(6) Failure to comply with the above requirements forfeits the right of appeal.

(7) A properly filed notice of appeal stays enforcement of the council's decision.

AUTH: 44-4-301(2), 44-4-403(3), MCA
IMP: 44-4-301(2), 44-4-403(3), MCA

NEW RULE V RECORD OF PROCEEDINGS (1) The record of the decision by the council shall be provided to the executive director within 30 days after the notice of appeal is filed.

(2) Unless otherwise stipulated by the parties, the contents of the record shall be determined pursuant to 2-4-614, MCA.

(3) The parties may stipulate to submission of less than the entire record.

AUTH: 44-4-301(2), 44-4-403(3), MCA
IMP: 44-4-301(2), 44-4-403(3), MCA

NEW RULE VI NOTICE OF REVIEW (1) Upon receipt of the record of proceedings, the committee shall give written notice of the date, time, and place of the review hearing to all interested parties.

(2) The review hearing, if possible, should occur not less than ten working days prior to the next regularly scheduled meeting of the board. If the review hearing cannot be included as part of the next regularly scheduled meeting of the board, the committee shall set another date, time, and place at its earliest convenience.

(3) At the request of a party, or upon its own motion, the board may, for good cause, continue the review.

AUTH: 44-4-301(2), 44-4-403(3), MCA
IMP: 44-4-301(2), 44-4-403(3), MCA

NEW RULE VII COMMITTEE REVIEW PROCEDURE (1) The committee review is informal; however, any party may be represented by an attorney.

(2) The committee may hear argument concerning the findings of fact and conclusions of law of the hearing examiner or the council, if appropriate, or any alleged procedural defect in the proceedings below.

(3) Findings of fact must be supported by evidence in the record. Failure of the hearing examiner to make a finding on a critical fact may be corrected by the board's remand to the hearing examiner.

(4) Errors of law or procedural defects do not warrant reversal unless substantial rights are affected.

(5) The committee shall not consider any new evidence at the hearing unless good cause is shown for failing to produce it before the hearing examiner. If good cause is shown and the new evidence is to be allowed, the committee shall remand to the hearing examiner for consideration and a ruling.

(6) In its discretion, the committee may request briefs from the parties.

(7) The committee must keep a record of its proceedings substantially in compliance with the provisions of 2-4-614, MCA.

AUTH: 44-4-301(2), 44-4-403(3), MCA
IMP: 44-4-301(2), 44-4-403(3), MCA

NEW RULE VIII RECOMMENDATION OF THE APPEAL REVIEW COMMITTEE (1) The committee must render a written recommendation suggesting

that the board either affirm the council's decision, reverse the council's decision, or remand to the hearing examiner for additional findings.

(2) A copy of the committee's recommendation shall be delivered or mailed to each party, as well as the executive director, who will then mail a copy of the recommendation to each noncommittee board member.

AUTH: 44-4-301(2), 44-4-403(3), MCA
IMP: 44-4-301(2), 44-4-403(3), MCA

NEW RULE IX BOARD FINAL DECISION (1) The board shall, at its next regularly scheduled meeting, either adopt the committee's recommendation or send the recommendation back to the committee for further consideration.

(2) Once adopted by the board, the committee's recommendation becomes a final agency decision subject to judicial review.

(3) The board shall index all final decisions and make them available for public inspection.

AUTH: 44-4-301(2), 44-4-403(3), MCA
IMP: 44-4-301(2), 44-4-403(3), MCA

REASONABLE NECESSITY: Senate Bill 273 requires the board to adopt rules governing an appeal process for a person who has been denied certification or recertification, or whose certification or recertification has been suspended or revoked by the POST council as provided in 44-4-301(2) and 44-4-403(3), MCA.

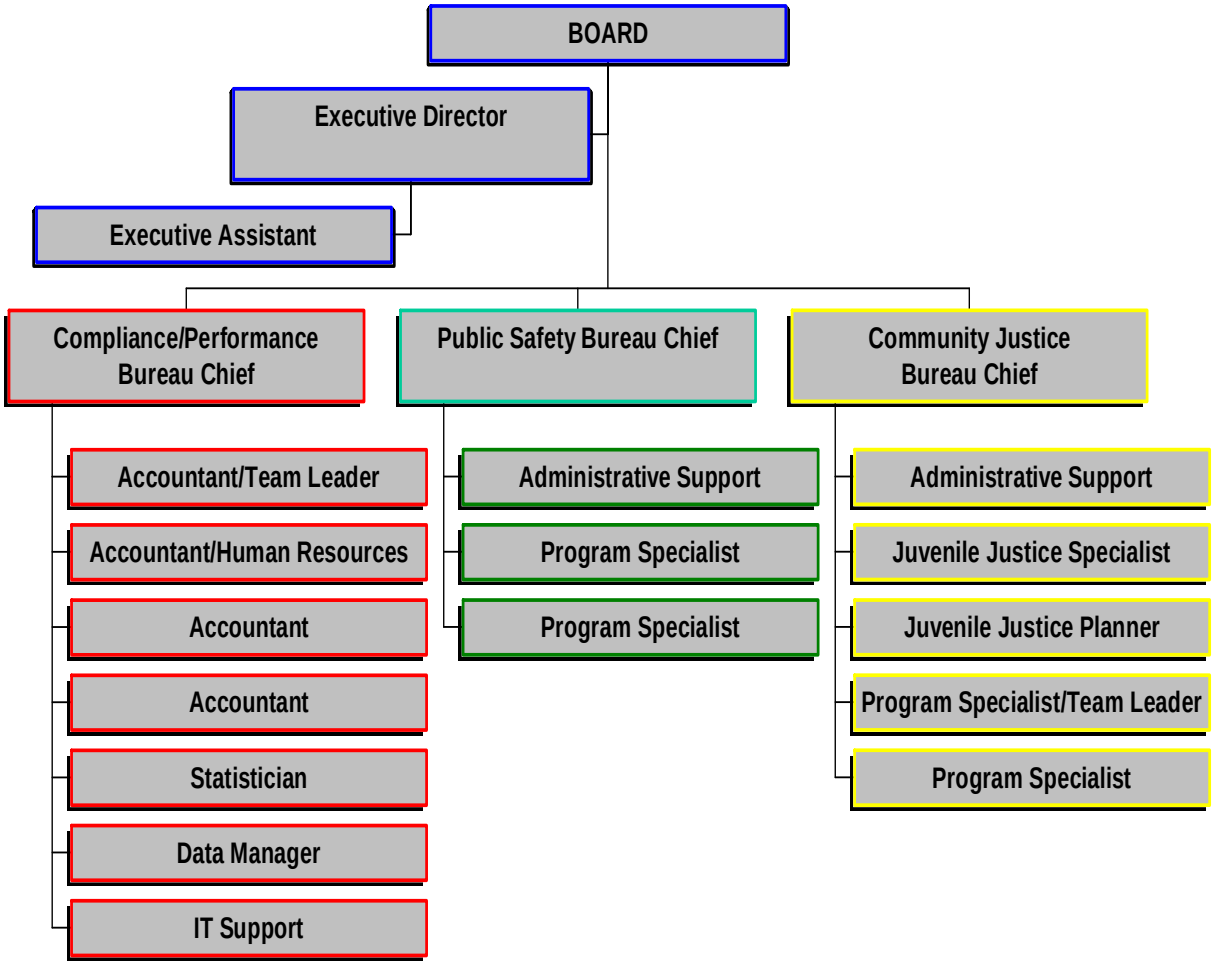
5. The rule proposed to be amended provides as follows, stricken matter interlined, new matter underlined:

23.14.101 BOARD OF CRIME CONTROL FUNCTIONS (1) The board is comprised of members engaged in, affiliated with, or related to law enforcement, public safety, and criminal justice in the state of Montana.

~~(2) The statutes relating to the board are contained in 44-4-301 , 2-15-2006 , 15-25-122 , 53-9-101 , 7-32-303 , MCA and Title 41, chapter 5, MCA (Youth Court Act) .~~

(3) through (6) remain the same, but are renumbered (2) through (5).

Montana Board of Crime Control



AUTH: 2-15-2006, 44-4-301, MCA
IMP: 2-15-2006, 44-4-301, MCA

REASONABLE NECESSITY: The board is proposing the amendments because the original section (2) contains three statutes that have either been repealed or amended in a manner that no longer apply to the board. Section 15-25-122, MCA, was repealed in 1995, 53-9-101, MCA, was amended by the 2001 Regular Session to move the Crime Victims Compensation Act of Montana from the board to the Attorney General's Office, and 7-32-303, MCA, was amended in SB 273, section 12 of the 2007 Regular Legislative Session to reflect transfer of the POST functions of the board to the Public Safety Officer Standards and Training Council.

6. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Claudia Martin, Board of Crime Control, 3075 North Montana Avenue, P.O. Box 201408, Helena, Montana 59620-1408; telephone (406) 444-3604; fax (406) 444-4722; or e-mail clmartin@mt.gov, and must be received no later than 5:00 p.m., May 22, 2008.

7. Ali Bovingdon, Assistant Attorney General, has been designated to preside over and conduct the hearing.

8. An electronic copy of this Notice of Public Hearing is available through the board's web site at http://www.mbcc.mt.gov/, under "New and Upcoming", entitled "Proposed Administrative Rule Changes," and through the Department of Justice's web site at http://doj.mt.gov/resources/administrativerules.asp. The board and department strive to make the electronic copies of this Notice of Public Hearing conform to the official version of the Notice, as printed in the Montana Administrative Register, but advise 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 board and department strive to keep their web sites accessible at all times, concerned persons should be aware that the web sites may be unavailable during some periods, due to system maintenance or technical problems.

9. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, 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 (6) above, or faxed to the office at (406) 444-4722, or may be made by completing a request form at any rules hearing held by the board.

10. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was notified by letter dated February 14, 2008, sent postage prepaid by regular mail.

/s/ Roland Mena
ROLAND MENA
Executive Director
Board of Crime Control

/s/ Ali Bovingdon
ALI BOVINGDON
Rule Reviewer

Certified to Secretary of State April 14, 2008.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the proposed amendment of ARM 23.16.1805 concerning refund of permit fee	)))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On May 14, 2008, at 9:30 a.m., the Montana Department of Justice will hold a public hearing in the conference room at the Gambling Control Division, 2550 Prospect Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rule.

2. The Department of Justice will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m. on May 12, 2008, to advise us of the nature of the accommodation that you need. Please contact Rick Ask, Gambling Control Division, 2550 Prospect Avenue, P.O. Box 201424, Helena, MT 59620-1424; telephone (406) 444-1971; fax (406) 444-9157; Montana Relay Service 711; or e-mail rask@mt.gov.

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

23.16.1805 REFUND OF PERMIT FEE (1) ~~Refund of a~~ Except as provided in (2) and (3), no permit fee will be ~~allowed only if the application for a permit is denied or withdrawn before issuance of the permit. No permit fee, in part or whole, will be~~ refunded after a permit is issued, regardless of whether the permit is used after issuance.

(2) A permit fee will be refunded if the permit application is denied or withdrawn before issuance of the permit.

(3) A permit fee may be refunded, upon written request, if applicant demonstrates that the permit was issued as the result of an inadvertent input error in the electronic permitting system and the erroneously permitted video gambling machine was not placed in service after issuance of the permit.

AUTH: 23-5-115, MCA
IMP: 23-5-612, MCA

RATIONALE AND JUSTIFICATION: The proposed amendment is reasonable and necessary in view of the division's recent implementation of an electronic system that allows gambling licensees to apply online for video gambling machine (vgm) permits. Previously, vgm permits were issued manually by the department upon receipt of a paper application. The department's conversion to an electronic tax reporting and permitting system now allows gambling licensees to

apply for vgm permits, and pay fees for those permits, over the internet where the fees are paid and the permits issued virtually instantly.

Initial experience shows that online applicants occasionally make input errors that can result in issuance of a permit for an incorrectly identified vgm. To obtain the correct permit, the owner must apply for another permit and pay additional fees. The department recognizes that, consistent with its current refund policy, the vgm owner should receive a refund for an erroneously permitted vgm, so long as the vgm was not placed into service after issuance of the permit. Because the current rule does not allow fee refunds for permits erroneously issued through the electronic permitting system, this rule amendment will allow the department to issue a refund upon a written request and demonstration by the machine owner that the permit was issued due to an inadvertent input error while using the electronic permitting system, and that the machine was not placed into service.

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 Rick Ask, Gambling Control Division, 2550 Prospect Avenue, P.O. Box 201424, Helena, MT 59620-1424; fax (406) 444-9157; or e-mail rask@mt.gov, and must be received no later than May 22, 2008.

5. An electronic copy of this Notice of Proposed Amendment is available through the Department of Justice's web site at http://doj.mt.gov/resources/administrativerules.asp. The department strives to make the electronic copy of the Notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the Department of Justice 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.

6. The Department of Justice maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices of rules regarding the Crime Control Division, the Central Services Division, the Forensic Sciences Division, the Gambling Control Division, the Highway Patrol Division, the Law Enforcement Academy, the Division of Criminal Investigation, the Legal Services Division, the Consumer Protection Division, the Motor Vehicle Division, the Justice Information Systems Division, or any combination thereof. Such written request may be mailed or delivered to Rick Ask, 2550 Prospect Avenue, P.O. Box 201424, Helena, MT 59620-1424; fax (406) 444-9157; or e-mail rask@mt.gov, or may be made by completing a request form at any rules hearing held by the Department of Justice.

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

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

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

/s/ Stuart Segrest
STUART SEGREST
Rule Reviewer

Certified to the Secretary of State April 14, 2008.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the proposed amendment of ARM 24.17.127 related to prevailing wage rates for public works projects using building construction services, heavy construction services, and highway construction services	) NOTICE OF PUBLIC HEARING) ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On May 16, 2008, at 1:30 p.m., the Department of Labor and Industry (department) will hold a public hearing to be held in the first floor conference room (room 104), 1327 Lockey Avenue, Walt Sullivan Building, Helena, MT to consider the proposed amendment of the above-stated rule.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., on May 9, 2008, to advise us of the nature of the accommodation that you need. Please contact the Research and Analysis Bureau, Workforce Services Division, Department of Labor and Industry, Attn: Mike Smith, P.O. Box 1728, Helena, MT 59624-1728; telephone (406) 444-5567; fax (406) 444-2638; TDD (406) 444-0532; or e-mail MikeSmith@mt.gov.

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

24.17.127 ADOPTION OF STANDARD PREVAILING RATE OF WAGES

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

(e) The current building construction services rates are contained in the ~~2007~~ 2008 version of "The State of Montana Prevailing Wage Rates - Building Construction Services" publication.

(f) remains the same.

(g) The current heavy and highway construction services rates are contained in the ~~2007~~ 2008 version of "The State of Montana Prevailing Wage Rates - Heavy and Highway Construction Services" publication.

(2) and (3) remain the same.

AUTH: 2-4-307, 18-2-409, 18-2-431, 39-3-202, MCA
IMP: 18-2-401, 18-2-402, 18-2-403, 18-2-406, 18-2-411, 18-2-412, 18-2-422, 18-2-431, MCA

REASON: There is reasonable necessity to amend ARM 24.17.127 to update various prevailing wage rates. Payment of prevailing wage rates is required in most public works contracts by 18-2-422, MCA.

There is reasonable necessity to amend the prevailing wages for building construction services, which were last updated in 2007. Pursuant to 18-2-401, MCA, the department conducts an annual survey of wages for building construction services. There is also reasonable necessity to update the prevailing wage rates for heavy and highway construction services to track with current federal Davis-Bacon Act heavy construction services rates and highway construction services rates.

4. A copy of the proposed 2008 publications, identified as "preliminary building construction rates" and "preliminary heavy and highway construction rates", are available and can be accessed on-line via the internet at: http://lmi.mt.gov.

5. A printed version of the proposed 2008 publications is also available by contacting Mike Smith, at the address or telephone numbers listed in paragraph 2.

6. Concerned persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Mike Smith, Research and Analysis Bureau, Workforce Services Division, Department of Labor and Industry, P.O. Box 1728, Helena, MT 59624-1728; telephone (406) 444-5567; fax (406) 444-2638; TDD (406) 444-0532; or e-mail MikeSmith@mt.gov, and must be received no later than 5:00 p.m., May 23, 2008.

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

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

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

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

/s/ MARK CADWALLADER	/s/ KEITH KELLY
Mark Cadwallader	Keith Kelly, Commissioner
Alternate Rule Reviewer	DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State April 14, 2008

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the proposed amendment of ARM 24.29.1402, 24.29.1404, 24.29.1406, 24.29.1416, 24.29.1427, 24.29.1430, 24.29.1431, and 24.29.1522, the proposed amendment and transfer of 24.29.1504, and the proposed adoption of NEW RULE I, all related to the workers' compensation medical fee schedule for facilities	)))))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT, AMENDMENT AND TRANSFER, AND ADOPTION

TO: All Concerned Persons

1. On May 16, 2008, at 9:00 a.m., the Department of Labor and Industry (department) will hold a public hearing to be held in Room 152, Capitol Building, Helena, Montana, to consider the proposed amendment, amendment and transfer, and adoption of the above-stated rules.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., on May 9, 2008, to advise us of the nature of the accommodation that you need. Please contact the Workers' Compensation Regulations Bureau, Employment Relations Division, Department of Labor and Industry, Attn: Jeanne Johns, P.O. Box 8011, Helena, MT 59624-8011; telephone (406) 444-7710; fax (406) 444-3465; TDD (406) 444-5549; or e-mail jjohns@mt.gov.

3. GENERAL STATEMENT OF REASONABLE NECESSITY: The 2007 Legislature passed Chap. 330, L. 2007 (HB 738) and Chap. 117, L. 2007 (SB 108). These sections of law require the Department of Labor and Industry to establish administrative rules setting the reimbursement rates for facilities that provide medical services to injured workers. Through this notice, the department is proposing to adopt a Medicare-based fee schedule for workers' compensation reimbursement. The department proposes this approach because Medicare is a nationally recognized system that is already widely used and understood by many health care providers. Further, in comparison to the previously established fee schedule system, the Medicare fee schedule is more uniform because the methodology results in a predictable reimbursement no matter where in the state the injured worker is treated. A Medicare system also provides cost containment because it is based on costs rather than charges. Using this fee schedule would also allow comparison of workers' compensation rates to Medicare and to other commercial payer rates which also use the Medicare methodology.

The department developed proposed NEW RULE I (the Medicare-based fee schedule) following substantial consultations with a leading medical fee schedule

developer, INGENIX Corp, representatives from Plan No. 1, No. 2, and No. 3 (including third-party administrators), and representatives of acute care hospitals and ambulatory surgical centers. Proposed NEW RULE I represents what the department believes is a consensus on the appropriate methodology for a facility fee schedule between the providers and the payors (insurers) as to what a new facility fee schedule should include.

In addition to proposing a Medicare-based fee schedule, the rules propose to change the terminology where needed in order to clarify that the proposed rules cover all providers that care for an injured worker including ambulatory surgery centers, known as ASCs. Previously, ASCs were not regulated by the fee schedules developed pursuant to the Workers' Compensation Act. As a result, ASCs were being reimbursed at 100 percent of billed charges, which is not comparable with hospital outpatient service medical reimbursements. The department's general requirement to set fees pursuant to Chapter 330 includes ASCs. In order to clarify that ASCs will be included in the fee schedule, the department proposes to use the term "facility" throughout because the term includes both hospitals and ASCs.

The department believes that there is reasonable necessity to amend, rather than repeal, the existing fee schedule rules despite the fact that some of the rules will be superseded by new rules for services provided on or after July 1, 2008. The department believes that disputes over medical services and fees payable sometimes linger for years, and that payment of old bills can be handled more promptly when the applicable rules are still "on the books."

The department also believes that in some cases, adoption of new rules will be less confusing than merely amending the existing rules and in other cases, amending the existing rules will suffice. Where rules are simply amended, the old version of the rule applies until the amendment takes effect and the new version applies on or after the effective date. The department notes that when new rules are adopted, each will be assigned a unique rule number, which will assist providers, insurers, and the department in making sure that the correct rule is being applied with respect to services furnished on or after the applicability date of the rule. The department believes that the adoption of the proposed new rule makes it more likely that the correct payment is made by the insurer to the provider.

The department is proposing that the amendments and NEW RULE I will apply to services that are rendered on and after July 1, 2008. The department recognizes that depending on the comments received during the public comment process, a July 1, 2008, applicability date may not be feasible, and that a somewhat later applicability date may be appropriate. The department reserves the right, in light of comments, to adjust the applicability dates in the proposed rule amendments and NEW RULE I so that facilities and payors have a reasonable time in which to prepare for implementation of the final version of the amendments and new rule.

This general statement applies to all the proposed rules changes, with specific or additional rationales included for each rule.

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

24.29.1402 PAYMENT OF MEDICAL CLAIMS (1) Payment of medical claims ~~shall~~ must be made in accordance with the schedule of ~~nonhospital~~ facility and nonfacility medical fees ~~and the hospital rates~~ adopted by the department.

(2) through (7) remain the same.

AUTH: 39-71-203, MCA
IMP: 39-71-203, 39-71-510, 39-71-704, MCA

REASON: There is reasonable necessity to change the terminology in the rule from "nonhospital medical fees and hospital rates" to "facility and nonfacility medical fees" due to the changes enacted by Chapter 330. The proposed change in terminology clarifies that ASCs will be covered by the new rules. For any services provided before the effective date of the amended rule, ASCs will continue to be reimbursed at 100 percent of charges. Following the effective date of the amendments, ASCs will be reimbursed according to the proposed fee schedule. The department is proposing that the amendments will take effect on July 1, 2008.

24.29.1404 DISPUTED MEDICAL CLAIMS (1) and (2) remain the same.

(3) ~~Hospital~~ Facility records ~~shall~~ must be furnished to the insurer upon request. ~~Hospitals~~ Facilities must ~~shall~~ obtain~~, upon admission,~~ the necessary release by their administrative procedures.

(4) remains the same.

AUTH: 39-71-203, MCA
IMP: 39-71-203, 39-71-704, MCA

REASON: There is reasonable necessity to change the terminology in the rule due to the changes enacted by Chapter 330. The proposed amendments change the reference from "hospital" records to "facility" records, thereby clarifying the terminology to include not only hospital services, but services provided by an ASC. Because the change is minor and straightforward, the department does not believe it is necessary to propose a new rule with a beginning date to address the issue of including ASCs in the rule's requirements.

24.29.1406 ~~HOSPITAL~~ FACILITY BILLS (1) ~~Hospital~~ Facility bills should be submitted when the injured worker is discharged from the ~~hospital~~ facility or every 30 days.

(2) To the extent possible, electronic billing must be utilized by both providers and payers in the billing and reimbursement process to facilitate the rapid transmission of data, lessen the opportunity for errors, and lessen system costs.

(3) It is the responsibility of the facility to use the proper service codes on any bills submitted for payment. The failure of a provider to do so, however, does not

relieve the insurer's obligation to pay the bill, but it may justify delays in payment until proper coding of the services provided is received by the insurer.

(4) Insurers must make timely payments of facility bills. In cases where there is no dispute over liability, the insurer must, within 30 days of receipt of a facility's charges, pay the charges according to the rates established by these rules.

(5) Insurer-initiated medical necessity review, claim audits, and other administrative review procedures must be conducted on a post-payment basis.

AUTH: 39-71-203, MCA
IMP: 39-71-105, 39-71-107, 39-71-203, 39-71-704, MCA

REASON: There is reasonable necessity to amend this rule to implement changes enacted by Chapter 330. The proposed changes clarify the terminology to include not only hospital services, but services provided by an ASC. In addition, because ARM 24.29.1427 is proposed to have a specific ending date for its applicability, language in (4) which is based on ARM 24.29.1427 is proposed to be added here because it will continue to apply to all services provided. This language naturally falls within the subject of the payment process used for submission and payment of facility bills. In addition, the rule requires the electronic submission of bills to the extent possible to lessen the errors in the system that have been reported to the department. Finally, regarding (5), the rates proposed by the department assume that prompt payment is made by the insurer to the health care provider because of the time value of money. Numerous providers have indicated to the department that payment is often delayed by insurers. The proposed rules clarify that insurers may continue to dispute medical necessity and conduct other claim audits, but those activities must be conducted on a post-payment basis.

24.29.1416 APPLICABILITY OF DATE OF INJURY, DATE OF SERVICE

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

(a) remains the same.

(b) ~~hospital~~ facility charges;

(c) remains the same.

(d) ~~medical equipment and supplies~~ DME.

(2) When services, procedures, or supplies are bundled for purposes of billing and the bundling covers more than one day, the first date a service, procedure, or supply is furnished must be used as the date provided for purposes of this rule.

AUTH: 39-71-203, MCA
IMP: 39-71-704, 39-71-727, MCA

REASON: There is reasonable necessity to change the terminology in the rule due to the changes enacted by Chapter 330. The rule directs that payments for medical services be determined by the specific department rates in effect on the date the medical service is provided. The proposed amendments change the terminology

from hospital to facility in order to include ASCs. The changes also recognize the new bundling payment methodology used with MS-DRG and APC coding. Because the change is minor and straightforward, the department does not believe it is necessary to propose a new rule with a proposed beginning date.

24.29.1427 HOSPITAL SERVICE RULES FOR ~~CLAIMS ARISING ON OR AFTER~~ SERVICES PROVIDED FROM JANUARY 1, 2008, THROUGH JUNE 30, 2008 (1) This rule applies to services provided from ~~on or after~~ January 1, 2008, through June 30, 2008.

(2) and (3) remain the same.

AUTH: 39-71-203, MCA
IMP: 39-71-704, MCA

REASON: There is reasonable necessity to amend ARM 24.29.1427 to implement changes enacted by Chapter 330. This proposed change corrects an error in the previous adoption to specify that the rule applies to services provided during the specified timeframe rather than claims arising on or after the specified timeframe. Because NEW RULE I is proposed to direct payment of facility bills on or after July 1, 2008, the proposed changes also set an ending date.

24.29.1430 HOSPITAL RATES FROM JULY 1, 1998, THROUGH JUNE 30, 2001 (1) through (3) remain the same.

AUTH: 39-71-203, MCA
IMP: 39-71-704, MCA

REASON: There is reasonable necessity to amend the catchphrase to clarify the dates of applicability of the rule. This proposed change corrects an error in the previous adoption to specify that the rule applies to services provided during the specified timeframe.

24.29.1431 HOSPITAL RATES FROM ~~BEGINNING~~ JULY 1, 2001, THROUGH JUNE 30, 2008 (1) through (3) remain the same.

AUTH: 39-71-203, MCA
IMP: 39-71-704, MCA

REASON: There is reasonable necessity to amend ARM 24.29.1431 to implement changes enacted by Chapter 330. NEW RULE I is proposed to direct payment of facility bills on or after July 1, 2008, so the proposed change sets an ending date.

24.29.1522 MEDICAL EQUIPMENT AND SUPPLIES FOR DATES OF SERVICE ON OR AFTER JANUARY 1, 2008 (1) This rule applies to ~~equipment and supplies~~ DME provided on or after January 1, 2008.

(2) Except for prescription medicines as provided by ARM 24.29.1529, reimbursement for ~~medical equipment and supplies~~ DME dispensed through a

medical provider is calculated by using the RVU listed in the RBRVS times the conversion factor established in ARM 24.29.1538 in effect on the date of service. If a RVU is not listed or if the RVU is listed as null, reimbursement is limited to a total amount that is determined by adding the cost of the item plus the freight cost plus the lesser of either $30.00 or 30 percent of the cost of the item. An invoice documenting the cost of the equipment or supply must be sent to the insurer upon the insurer's request.

(a) remains the same.

(3) If a provider adds value to ~~medical equipment or supplies~~ DME (such as by complex assembly, modification, or special fabrication), then the provider may charge a reasonable fee for those services. Merely unpacking an item is not a "value-added" service. While extensive fitting of devices may be billed for, simple fitting (such as adjusting the height of crutches) is not billable.

(4) remains the same.

AUTH: 39-71-203, MCA
IMP: 39-71-704, MCA

REASON: There is reasonable necessity to amend the term "medical equipment and supplies" to "DME" in this rule in order to correspond with the proposed definition changes in ARM 24.29.1504. The definition is proposed to be changed from medical equipment and supplies to DME because DME is the term more commonly referred to by users of these rules.

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

24.29.1504 (24.29.1401A) DEFINITIONS As used in ~~this~~ subchapters 14 and 15, the following definitions apply:

(1) "Acute care hospital" or "hospital" means a health care facility appropriately licensed by the Department of Public Health and Human Services that provides inpatient and outpatient medical services to injured workers experiencing acute illness or trauma. Acute care hospitals are sometimes referred to as regulated hospitals.

(2) "Ambulatory Payment Classification (APC)" means the reimbursement system adopted by the department for outpatient services.

(3) "Ambulatory surgery center (ASC)" means a health care facility that operates primarily for the purpose of furnishing outpatient surgical services to patients.

(4) "Base rate" means the dollar value which is multiplied by the relative weight of the MS-DRG or APC to determine payment.

(5) "Bundling" means the practice of grouping multiple services, procedures, and supplies into one charge item instead of billing each separately.

(6) "CMS" means the Centers for Medicare and Medicaid Services.

(7) "Correct Coding Initiative (CCI)" means the code edits adopted by the department that are used to correct contradictory billing information.

~~(1)~~ (8) "Current Procedural Terminology~~" or "~~(CPT)" codes means codes and descriptors of procedures owned, copyrighted, and ~~as~~ published by the American Medical Association.

(2) remains the same but is renumbered (9).

(10) "Durable medical equipment (DME)" means durable medical appliances or devices used in the treatment or management of a condition or complaint, along with associated nondurable materials and supplies required for use in conjunction with the appliance or device.

(3) and (4) remain the same but are renumbered (11) and (12).

~~(5)~~ (13) "Healthcare Common Procedure Coding System~~" or "~~(HCPCS)" means the identification system for health care matters developed by the federal government, and includes level one codes, known as CPT codes, and level two codes that were developed to use for supplies, procedures, or services that do not have a CPT code. These codes also include successor codes for CPT and HCPCS established by the American Medical Association and CMS.

(14) "Implantable" means an object or device that is made to replace and act as a missing biological structure that is surgically implanted, embedded, inserted, or otherwise applied. The term also includes any related equipment necessary to operate, program, and recharge the implantable.

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

(16) "Inpatient services" means services rendered to a person who is formally admitted to a hospital and whose length of stay exceeds 23 hours.

~~(7) "Medical equipment and supplies" means durable medical appliances or devices used in the treatment or management of a condition or complaint, along with associated nondurable materials required for use in conjunction with the device or appliance.~~

(17) "Medicare-Severity Diagnosis Related Group (MS-DRG or DRG)" means the inpatient diagnosis classifications of circumstances where patients demonstrate similar resource consumption, length of stay patterns, and medical severity status that are adopted by the department and are used for billing purposes.

(8) and (9) remain the same but are renumbered (18) and (19).

(20) "Outpatient" means a patient who is not admitted for inpatient or residential care.

(10) through (12) remain the same but are renumbered (21) through (23).

(24) "Ratio of cost to charges (RCC)" means the computed ratio using charges and the hospital's Medicare cost report.

(13) and (14) remain the same but are renumbered (25) and (26).

(27) "Service or services" means procedures, services, and supplies.

(28) "Status indicator (SI)" codes mean CPT codes treated in the same fashion or category, such as packaged services.

(15) and (16) remain the same but are renumbered (29) and (30).

AUTH: 39-71-203, MCA
IMP: 39-71-704, MCA

REASON: There is reasonable necessity to amend ARM 24.29.1504 to implement changes enacted by Chapter 330. The proposed amendments add new definitions

for terms used in or required by the Medicare rate schedule being proposed in NEW RULE I for services provided by a facility, as those terms are not commonly understood but are an integral part of the proposed fee schedule. The proposed amendments also transfer the rule from subchapter 15 to 14 so that all the definitions apply to both subchapters.

6. The proposed new rule provides as follows:

NEW RULE I FACILITY SERVICE RULES AND RATES FOR SERVICES PROVIDED ON OR AFTER JULY 1, 2008 (1) The department adopts the fee schedules provided by this rule to determine the reimbursement amounts for medical services provided at a facility on or after July 1, 2008. An insurer is not obligated to pay more than the fee provided by the fee schedules for a service provided within the state of Montana. The fee schedules, available on-line via the internet at http://erd.dli.state.mt.us/wcregs/medreg.asp, are comprised of the following elements:

(a) The Montana Hospital Inpatient Services MS-DRG Reimbursement Fee Schedule;

(b) The Montana Hospital Outpatient and ASC Fee Schedule Organized by APC;

(c) The Montana Hospital Outpatient and ASC Fee Schedule Organized by CPT/HCPCS;

(d) The Montana Durable Medical Equipment, Prosthetics, Orthotics, and Supplies Fee Schedule;

(e) The Montana Ambulance Fee Schedule;

(f) The Montana CCI Code Edits Listing;

(g) The Montana RCC and other Montana RCC-based Calculations;

(h) The base rates and conversion formulas established by the department.

(2) The application of the base rate depends on the date the medical services are provided.

(3) Critical access hospitals and medical assistance facilities are reimbursed at 100 percent of the usual and customary charges.

(4) Any services provided by a type of facility not explicitly addressed by this rule must be paid at 75 percent of usual and customary charges.

(5) Hospitals and ASCs must, on an annual basis, submit to the department data reporting Medicare, Medicaid, commercial, unrecovered, and workers' compensation claims reimbursement in a standard form supplied by the department. Hospitals and ASCs must also, on an annual basis, submit to the department copies of audited financial reports. The department may in its discretion conduct audits of any facility financial records to confirm the accuracy of submitted information.

(6) Individual medical providers who furnish professional services in a hospital, ASC, or other facility setting must bill insurers directly and must be reimbursed using the nonfacility fee schedule. Those reimbursements are excluded from any calculation of outlier payments.

(7) Facility pharmacy reimbursements are made as follows:

(a) If a facility pharmacy dispenses prescription drugs to an individual during the course of treatment in the provider's facility, reimbursement is part of the MS-DRG or APC reimbursement.

(b) If a patient's medications are not included in the MS-DRG or APC service bundle, a pharmacy or pharmacist located in a facility must be reimbursed pursuant to ARM 24.29.1529.

(8) The following applies to inpatient services provided at an acute care hospital:

(a) The department may establish the base rate annually.

(i) Effective July 1, 2008, the base rate is $7,735.

(b) Payments for inpatient acute care hospital services must be calculated using the base rate multiplied by the Montana MS-DRG weight. For example, if the MS-DRG weight is 0.5, the amount payable is $3,867.50, which is the base rate of $7,735 multiplied by 0.5.

(c) The threshold for outlier payments is $50,000 plus the Montana MS-DRG payment amount. If the outlier threshold is met, the outlier payment must be the MS-DRG reimbursement amount plus the charges above the threshold multiplied by the sum of 15 percent and the specific hospital's operating RCC. The total payment for the services is the outlier payment plus the Montana MS-DRG payment.

(i) For example, if the hospital submits total charges of $100,000, the MS-DRG reimbursement amount is $35,000, and the RCC is 0.50, then the resultant calculation for reimbursement is as follows: The $35,000 is added to the threshold amount ($50,000) and the difference between the sum ($85,000) and the charges ($100,000) of $15,000 would be multiplied by .65 (the RCC of .5 plus .15) to obtain the outlier payment of $9,750. The total payment to the hospital in this example would be $35,000 + $9,750 = $44,750.

(ii) The department may establish the inpatient outlier amount annually.

(d) Where an implantable exceeds $10,000 in cost, hospitals may seek additional reimbursement beyond the normal MS-DRG payment. For invoiced items, reimbursement is set at the actual amount paid plus 15 percent. If an item is not invoiced, the payment must be 75 percent of charges. When a hospital seeks additional reimbursement pursuant to this rule, the implantable charge is excluded from any calculation for an outlier payment. Handling and freight charges must be included in the facility's invoiced cost and are not to be reimbursed separately.

(e) All services provided during an uninterrupted patient encounter leading to an inpatient admittance must be included in the inpatient stay.

(f) The following applies to facility transfers when a patient is transferred for continuation of medical treatment between two acute care hospitals:

(i) A hospital transferring a patient is paid as follows: The MS-DRG reimbursement amount is divided by the number of days duration listed for the DRG; the resultant per diem amount is then multiplied by two for the first day of stay at the transferring hospital; the per diem amount is multiplied by one for each subsequent day of stay at the transferring hospital; and the amounts for each day of stay at the transferring hospital are totaled. If the result is greater than the MS-DRG reimbursement amount, the transferring hospital is paid the MS-DRG reimbursement amount. Associated outliers and add-ons are then added to the payment.

(ii) A hospital discharging a patient is paid the full MS-DRG payment plus any appropriate outliers and add-ons.

(iii) Facility transfers do not include costs related to transportation of a patient to obtain medical care. Such reimbursements are covered by ARM 24.29.1409.

(g) Readmissions to inpatient care that occur for the same diagnosis within two weeks of discharge may be subject to medical review and may result in the two claims being combined to yield a single payment.

(9) The following applies to outpatient services provided at an acute care hospital or an ASC:

(a) The department may establish the base rate for outpatient service at an acute care hospital annually.

(i) Effective July 1, 2008, the base rate for hospital outpatient services is $105.

(b) The department may establish the base rate for ASCs annually.

(i) Effective July 1, 2008, the base rate for ASCs is $79, which is 75 percent of the hospital base rate.

(c) Payments for outpatient services in a hospital or an ASC are based on the Montana APC system. The payment must be calculated by multiplying the base rate times the APC weight. If the APC weight is not listed or if the APC weight is listed as null, reimbursement must be paid at 75 percent of usual and customary charges.

(d) Billing for outpatient surgical services rendered by a hospital or an ASC must be submitted on a CMS Uniform Billing (UB-04) form or CMS 1500 form.

(e) CCI code edits must be used to determine bundling and unbundling of charges.

(f) Outpatient medical services include observation in an outpatient status.

(g) The threshold for outlier payments is $2,500 per CPT code plus the APC reimbursement amount. If the outlier threshold is met, the outlier payment must be the APC reimbursement amount, plus the charges above the threshold multiplied by 65 percent.

(i) For example, if the hospital or ASC submits total charges per CPT code of $15,000 and the APC reimbursement amount is $10,000, then the resultant calculation process is as follows: The $10,000 is added to the threshold amount ($2,500) and the difference between the sum ($12,500) and the charges ($15,000) of $2,500 is multiplied by .65 to obtain the outlier payment of $1,625. The total payment to the hospital or ASC in this example would be $10,000 + $1,625=$11,625.

(ii) The department may establish the outpatient outlier amount annually.

(h) Where an implantable exceeds $5,000 in cost, hospitals or ASCs may seek additional reimbursement beyond the normal APC payment. For invoiced items, reimbursement is set at the actual amount paid plus 15 percent. If an item is not invoiced, the payment must be 75 percent of charges. When an ASC or hospital seeks additional reimbursement pursuant to this rule, the implantable charge is excluded from any calculation for an outlier payment. Handling and freight charges must be included in the facility's invoiced cost and are not to be reimbursed separately.

(i) The following applies to patient transfers from an ASC to an acute care hospital:

(i) An ASC transferring a patient is paid the APC reimbursement.

(ii) The acute care hospital is paid the MS-DRG reimbursement.

(iii) Facility transfers do not include costs related to transportation of a patient to obtain medical care. Such reimbursements are covered by ARM 24.29.1409.

(j) "Q" status indicator codes will not be discounted.

AUTH: 39-71-203, MCA
IMP: 39-71-203, 39-71-704, MCA

REASON: There is reasonable necessity to adopt NEW RULE I to implement changes enacted by Chapter 117 and Chapter 330 directing reimbursement for medical services provided to a workers' compensation patient at a facility. NEW RULE I is proposed to establish payments for services provided by facilities on or after July 1, 2008, by adopting specific fee schedules designed by Medicare. However, due to the prohibition contained in 2-4-307(3), MCA, the department cannot adopt the Medicare systems updates as they are made. Under the Montana Administrative Procedure Act, in order to adopt those updates the department is required to undertake additional formal rulemaking before those changes can be incorporated into the facility fee schedule. Accordingly, the department is proposing to adopt the Medicare schedules fixed at a certain point in time as indicated by the rule. The schedules chosen are proposed to be called the Montana fee schedules and will be posted on the department's web site.

In addition, there is reasonable necessity to adopt the provisions of NEW RULE I(5) that require providers to report certain cost information to the department. The department believes that such information is needed in order to make sure that the fee schedules do not unfairly cost-shift reimbursement rates, thus resulting in the underpayment or overpayment by workers' compensation insurers of costs. The department notes that although similar information has historically been collected by the department of public health and human services, collection of that information has recently ceased, and thus there appears to be no other source of the information other than directly from the hospitals and ASCs. The department also notes that the reporting form for hospitals and ASCs will include information directing the provider to identify any information that the provider considers to be a "trade secret" which is protected from public disclosure under Montana law.

7. Concerned persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Jeanne Johns, Workers' Compensation Regulation Section Supervisor, Workers' Compensation Regulation Bureau, Employment Relations Division, Department of Labor and Industry, P.O. Box 8011, Helena, MT 59624-8011; by facsimile to (406) 444-3465; or by e-mail to jjohns@mt.gov, and must be received no later than 5:00 p.m., May 23, 2008.

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

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

10. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled. The primary sponsor of House Bill 738 was notified on May 17, 2007, by regular mail. The primary sponsor of Senate Bill 108 was notified on May 17, 2007, by regular mail.

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

/s/ MARK CADWALLADER	/s/ KEITH KELLY
Mark Cadwallader	Keith Kelly, Commissioner
Rule Reviewer	DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State April 14, 2008

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

In the matter of the amendment of ARM 37.12.401 pertaining to laboratory testing fees	)))))	NOTICE OF PROPOSED AMENDMENT NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On May 24, 2008, the Department of Public Health and Human Services proposes to amend the above-stated rule.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice. If you need to request an accommodation, contact the department no later than 5:00 p.m. on May 12, 2008, to advise us of the nature of the accommodation that you need. 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 amended provides as follows. New matter is underlined. Matter to be deleted is interlined.

37.12.401 LABORATORY FEES FOR ANALYSES (1) Fees for clinical and environmental analyses performed by the laboratory of the Department of Public Health and Human Services are set to reflect the actual costs of the tests and services provided.

(2) The Department of Public Health and Human Services shall maintain a list of all tests available from the lab and the price of each test. The department adopts and incorporates by reference the Laboratory Test Fee List effective July 1, ~~2007~~ 2008, which shall be available on the web site of the Department of Public Health and Human Services at www.dphhs.mt.gov, and by mail upon request to the lab at the Department of Public Health and Human Services, Public Health and Safety Division, P.O. Box 6489, Helena, MT 59604-6489.

(3) The fee for a specific lab test will be lowered by the Department of Public Health and Human Services to a level not exceeding the cost to the department of the test in question whenever a change of analysis method warrants lower fees.

(4) Fees for analyses other than those listed will be established at the level of comparable analyses.

AUTH: 50-1-202, MCA
IMP: 50-1-202, MCA

4. ARM 37.12.401 provides information regarding the fees charged for biological and environmental tests performed by the Montana State Laboratory, in conformity with state statute. The Department of Public Health and Human Services (the department) proposes to modify the rules to reference the new version of the state laboratory fee list, which provides an average increase of 4% in the cost of lab services, though fee increases on a test-by-test basis vary. The revised fees are necessary to keep the fees charged for lab service in line with the actual current cost associated with providing that service.

The proposed fee increases will result in a cumulative increase in fees for all laboratory services of approximately $125,000, affecting the approximately 1,000 annual customers of the state laboratory. The fee increases proposed represent the minimum increases necessary to maintain the state laboratory's current level of services, and are reasonably necessary to allow the state laboratory to fulfill its obligations as an adjunct to public health and health care functions in the state of Montana. The proposed fees account for the increased costs incurred by the laboratory since the last fee increase, including increased personnel costs, increased costs of supplies, and increased costs of new and replacement testing equipment.

The department considered not increasing its testing fees, but concluded that not doing so would result in the laboratory spending more to provide services than it would recover in service fees, and would result in the laboratory having to discontinue services.

The department will post the proposed revised fee list along with a copy of this notice in the rules notices section of the DPHHS web site at www.dphhs.mt.gov/legalresources/ruleproposals/index.shtml.

5. Interested persons may submit their data, views, or arguments concerning the proposed action in writing 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 May 22, 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.

6. 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 public hearing and submit this request, along with any written comments to Gwen Knight, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 202951, Helena MT 59620-2951; by fax (406)444-9744; or by e-mail to dphhslegal@mt.gov no later than 5:00 p.m. on May 22, 2008.

7. If the Department of Public Health and Human Services receives requests

for a public hearing on the proposed action from either 10% or 25, whichever is less, of 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 no less than 25 members who will be directly affected, a hearing will be held at a later date and a notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 100 based on the 1000 customers affected by rules covering state laboratory fees and services.

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.

/s/ John Koch
Rule Reviewer

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

Certified to the Secretary of State April 14, 2008.

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

In the matter of the adoption of New Rule I and the amendment of ARM 37.40.302, 37.40.307, 37.40.311, and 37.40.347 pertaining to Medicaid nursing facility reimbursement	)))))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION AND AMENDMENT

TO: All Interested Persons

1. On May 14, 2008, at 2:00 p.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 and amendment 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 May 5, 2008. Please contact Rhonda Lesofski, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena MT 59604-4210; telephone (406)444-4094; fax (406)444-1970; e-mail dphhslegal@mt.gov.

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

RULE I REIMBURSEMENT FOR UNIT OF GOVERNMENT NURSING FACILITIES (1) Reimbursement for services provided by nursing facilities who are defined as a unit of government is limited to amounts consistent with economy and efficiency as provided in this rule and does not exceed the allowable cost of providing the services.

(2) For nursing facility services by a provider defined as a unit of government located in the state of Montana, the Montana Medicaid program will pay, for each Medicaid patient day, an interim per diem rate determined in accordance with this rule, minus the amount of the Medicaid recipient's patient contribution.

(3) Effective July 1, 2008, and in subsequent rate years, nursing facilities which are defined as units of government will be reimbursed in amounts not to exceed the lesser of:

(a) allowable cost; or

(b) the rate established under ARM 37.40.307.

(4) The interim rate for each facility will be determined as follows:

(a) Prior to the billing of July services each rate year, the department will determine an interim payment rate for each unit of government provider.

(b) The provider's interim payment rate will be determined based upon the lesser of:

(i) the department's estimate of actual allowable cost calculated from the most recently filed annual cost report and indexed to the midpoint of the rate year using the data resources incorporated (DRI) skilled nursing facility market basket index; or

(ii) the rate established under ARM 37.40.307.

(5) The department may consider, but shall not be bound by, the provider's cost estimates in estimating actual allowable costs. The provider's interim payment rate is an estimate only and shall not bind the department in any way in the final rate determination under (1) and (3).

(6) The provider's final rate as provided in (1) shall be determined based upon the provider's cost report for the rate year filed in accordance with ARM 37.40.346, after desk review or audit by the department's audit staff. The difference between actual allowable cost allocable to services to Medicaid residents, as limited in (4), and the total amount paid through the interim payment rate, as limited in (3) will be settled through the overpayment and underpayment procedures specified in ARM 37.40.347. In no event will the final rate exceed the amount established under ARM 37.40.307.

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

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

37.40.302 DEFINITIONS Unless the context requires otherwise in this subchapter, the following definitions apply:

(1) and (2) remain the same.

(3) "Cost limit" means the limit of Medicaid payments to governmentally operated nursing facility providers defined as units of government. For purposes of this subchapter, the cost limit is equal to the cost of providing services to Medicaid individuals that do not exceed an individual facility's cost of serving Medicaid individuals, consistent with economy and efficiency.

(3) through (20) remain the same but are renumbered (4) through (21).

(22) "Unit of government nursing facility" means a nursing facility that is operated by the state, a city, a county, a special purpose district, or another governmental unit that has taxing authority or direct access to tax revenues. Entities that do not have taxing authority, but do have direct access to tax revenues that are imposed by a parent or related unit of government are recognized as governmental.

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

37.40.307 NURSING FACILITY REIMBURSEMENT (1) remains the same.

(2) Effective July 1, 2001, and in subsequent rate years, nursing facilities will be reimbursed using a price based reimbursement methodology. The rate for each facility will be determined using the operating component defined in (2)(a) and the direct resident care component defined in (2)(b):

(a) through (c) remain the same.

(d) The total payment rate available for the period July 1, ~~2007~~ 2008 through June 30, ~~2008~~ 2009 will be the rate as computed in (2), plus any additional amount computed in ARM 37.40.311 and 37.40.361.

(3) Providers who, as of July 1 of the rate year, have not filed with the department a cost report covering a period of at least six months participation in the Medicaid program in a newly constructed facility shall have a rate set at the statewide median price as computed on July 1, ~~2007~~ 2008. Following a change in provider as defined in ARM 37.40.325, the per diem rate for the new provider shall be set at the previous provider's rate, as if no change in provider had occurred.

(4) For unit of government facilities as defined in ARM 37.40.302, the provider's interim and final payment rates shall be as provided in [RULE I].

~~(4)~~ (5) For ICF/MR services provided by nursing facilities located within the state of Montana, the Montana Medicaid program will pay a provider as provided in ARM 37.40.336.

~~(5)~~ (6) In addition to the per diem rate provided under (2) or the reimbursement allowed to an ICF/MR provider under ~~(4)~~ (5), the Montana Medicaid program will pay providers located within the state of Montana for separately billable items, in accordance with ARM 37.40.330.

(6) through (12) remain the same but are renumbered (7) through (13).

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

37.40.311 RATE ADJUSTMENT FOR COUNTY FUNDED RURAL NURSING FACILITIES (1) through (4) remain the same.

(5) For purposes of this rule, a provider defined as a unit of government nursing facility is subject to a limit of reimbursement not to exceed cost, consistent with economy and efficiency. These facilities are limited to the lesser of the "cost limit" as defined in ARM 37.40.302 for purposes of this one time lump sum payment or the lump sum distribution calculated as provided in (3).

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

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

37.40.347 COST SETTLEMENT PROCEDURES (1) through (6) remain the same.

(7) Nursing facilities defined as units of government must submit annually a cost report to the department that reflects the individual provider's cost of serving Medicaid recipients during the year.

(a) The department will review the cost report to determine that costs on the report were properly allocated to Medicaid, are in amounts consistent with economy and efficiency, and that Medicaid payments to the facility during the year did not exceed the provider's cost.

(b) The provider is responsible for any overpayment resulting from the procedures under (7) and (7)(a).

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

5. The Department of Public Health and Human Services (the department) is proposing the adoption of Rule I and the amendment of ARM 37.40.302, 37.40.307, 37.40.311, and 37.40.347 pertaining to Medicaid nursing facility reimbursement. These proposed rules and amendments are necessary to implement federal regulations and legislative funding beginning July 1, 2008.

RULE I

The department is proposing a new Medicaid reimbursement rule for providers defined as "unit of government nursing facilities". This rule is necessary to implement federal regulations amended May 29, 2007 at 72 Federal Register 29748. It provides for an interim 2009 rate with final reimbursement determined from cost reports. Medicaid reimbursement for a unit of government nursing facility cannot exceed allowable costs. The department believes the proposed rate methodology is the best possible compromise between administrative requirements and optimum reimbursement amounts.

ARM 37.40.302

The proposed amendments to this rule would add definitions of "cost limit" and "unit of government nursing facility". The proposed definitions are intended to be the same as those in the applicable federal regulations.

ARM 37.40.307

At the time of publication the department does not have all of the information necessary to calculate final payment rates for nursing facility providers according to the methodology at ARM 37.40.307. This methodology is explained below. The department intends to implement rates effective July 1, 2008. The final rates will be set according to final case mix information and funding levels authorized by the 2007 Montana Legislature.

The department will deliver rate schedules to all providers in advance of the rule hearing. The rate sheets will verify proposed rates and are intended to facilitate comments. They will be delivered as soon as case mix information, Medicaid utilization data, and other details necessary to compute accurate reimbursement rates become available. The rates will distribute the funding as necessary to meet the department goals of a price based system of reimbursement and will be computed so as to incorporate and implement legislatively appropriated funding levels.

ARM 37.40.311

On May 29, 2007, the Centers for Medicare and Medicaid Services (CMS) adopted changes to 42 CFR Parts 433, 447, and 457 related to cost limits for providers operated by "units of government" and altering the definition of public status that would apply to nursing facility services. These changes were under a congressional moratorium for one year which will expire in May of 2008. Montana will be required to incorporate the CMS changes and update Medicaid nursing facility reimbursement rules and the rules related to rate adjustments to county funded rural nursing facilities. In addition, these rules impose a cost limitation on facilities that are operated by units of government and will require review of costs of operation submitted by these facilities and cost settlement if rates have been paid in excess of supported Medicaid costs.

ARM 37.40.347

These proposed rule changes would continue the funding and methodology for Direct Care Worker Wage Increases to be used only to raise direct care worker wages and related benefits through an increase in provider rates. Funds in the Direct Care Worker Wage Increase may not be used to offset any other wage increase mandated by any other laws, contracts, or written agreements which will go into effect at the same time as or after the Direct Care Worker Wage Increase. Funds in the Direct Care Worker Wage Increase must be used first to raise Certified Nurse Aide Direct Care Worker Wage and Benefits to $8.50 an hour, including related benefits. Any remaining funds may be used only to raise wages and related benefits up to $0.70 an hour for direct care workers and other low-paid staff. The department shall provide documentation that these funds are used solely for direct care worker wage increases. The documentation must include initial wage rates, wage rates after the rate increases have been applied, and wage rates every six months after the rate increases have been granted.

The 2007 Montana Legislature authorized the department to distribute funding from the health and Medicaid initiatives account in the state special revenue fund and the general fund to provide for a 2.5% rate increase for nursing facility providers in state fiscal year 2009.

Price Based System

For rate year 2009 (July 1, 2008 - June 30, 2009), the nursing facility per diem rate will be computed annually and will include components for operating costs and nursing costs.

The operating component includes both operating expenses and capital combined. This is the same rate for all nursing facilities and it represents 80% of the overall price. The nursing component will be adjusted for individual nursing facility acuity and is 20% of the overall price.

The minimum data set (MDS) case mix assessment data will be used in the computation of each facility's resident acuity. Each nursing facility's case mix index

will be calculated quarterly based upon a fixed point in time, using the most recent annual or quarterly MDS information. Nonclassifiable MDS assessment will be excluded from the computation of case mix indices during the transition period. Medicaid case mix indices for annual rate setting will be based on the most recent four quarter average of Medicaid Case Mix Indices (CMIs) for each nursing facility.

Price Based Rate Increase

Funding from I-149 tobacco tax initiative revenues, the state general fund, and federal funds of approximately $3,581,868 will provide a 2.5% rate increase for nursing facility providers based on the state and federal share of funding for nursing facility reimbursement.

Sustained Payments for Direct Care Wage and Benefit Increases

The department will continue the funding implemented in FY 2008 to facilities to sustain wage and benefits increases that raised Certified Nurse Aide Direct Care Worker Wage and Benefits to $8.50 an hour, including related benefits, and to sustain wages and related benefits up to $0.70 an hour for direct care workers and other low-paid staff.

These funds will be distributed in the form of a direct care wage add on to the established price based rate set on July 1, 2009.

Cost Limits for Providers Operated by Units of Government

The proposed changes related to Nursing Facility Reimbursement and Rate Adjustment for County Funded Rural Nursing Facilities would incorporate federal law changes to 42 CFR Parts 433, 447, and 457. Only units of government are able to participate in financing of the nonfederal share of Medicaid expenditures and health care providers operated by units of government are limited to Medicaid reimbursement levels that do not exceed the cost of providing covered services to eligible Medicaid recipients. This cost limitation for units of government applies to the rate adjustments made through the "at risk" payment methodology as well as to the total calculated Medicaid rate set through the nursing facility reimbursement methodology.

For payments made to providers operated by units of government the proposed changes define a method for identifying and allocating costs based on annually submitted cost reports. The department will verify that costs on the report were properly allocated to Medicaid and will verify that Medicaid payments to the provider during the year did not exceed the provider's cost.

The proposed changes also identify a process for recovery of overpayments if it is determined that a provider operated by a unit of government received reimbursement exceeding the cost settlement.

Alternatives Considered

If funding levels are not sufficient to continue a price based approach, the department will be faced with the following issues. Statewide occupancy rates are at 74% in Montana nursing facilities at the current time. At the same time, the care needs of the typical nursing facility resident are increasing. These residents are being admitted at an older age with medically fragile and complex care needs that can no longer be met in home or community settings. As these trends toward lower occupancy and increased acuity continue, it becomes more important than ever those nursing facility providers receive rate increases reflective of the increased cost of doing business. If Medicaid rates do not economically stabilize small rural providers of nursing facility services, they will find it more difficult to keep their doors open. Decreasing occupancy levels and the inability to predict the level of funding available will make it impossible to determine the best way to provide nursing facility services in their communities. Increased costs due to lower occupancy levels and unpredictability in the system of reimbursement are likely to be passed on to privately paying individuals.

Additionally, the Legislature continues to approve the use of local county matching funds as a source of revenue for nursing facility providers in order to maintain access to, and the quality of, nursing facility services.

After the moratorium expires on May 29, 2008, the federal regulations would limit the payments that can be made to government providers by capping reimbursement payments at individual facility cost, would redefine the facilities eligible to be public providers and would impose new restrictions on nonfederal funding sources. The result will be to narrow the sources of funds available to states to finance Medicaid expenditures.

The department proposes to limit reimbursement for government operated providers to amounts consistent with economy and efficiency by establishing a limit of reimbursement not to exceed cost. Since the rule would apply to services rendered on or after the moratorium, the department will be required to incorporate changes and update Medicaid nursing facility reimbursement rules related to these federal regulation changes as part of this notice. If the department did not incorporate these changes the state of Montana would be at risk for loss of federal financial participation to the extent rates for these providers exceeded their cost to deliver services to Medicaid recipients or to the extent Montana Medicaid was no longer in compliance with federal limitations.

There is a remote possibility that Congress will prevent CMS from implementing these rule provisions by extending the moratorium beyond the May 2008 date. If that occurs, these rule changes and limitations will not be implemented by the department.

Estimated Financial/Budget Impacts

The total state and federal funding available for fiscal year 2009 is currently projected at $152,868,877, including $15,471,514 in state special revenue and $28,686,071 in state general funds. The estimated total funding available for fiscal year 2009 for nursing facility reimbursement is estimated at approximately $183,655,093 of combined state funds and federal funds, including $30,872,500 in patient contributions, $407,999 in personal needs funding increases, and $3,581,868 of new funding related to the 2.5% provider rate increase. Anticipated nursing facility care days for state fiscal year 2009 are estimated 1,165,000 days.

The estimated financial impact of the proposed provider funding is approximately $2,655,000 in increased state funds, federal funds, and patient contributions in fiscal year 2009 over the FY 2008 funding levels.

The estimated total funding impact of the one time payments to 'at risk' nonstate government providers and other nursing facilities not determined to be 'at risk' has been appropriated at $3,786,730 state special revenue funds and approximately $11,275,590 in total appropriated funding for the nursing facility program.

The Centers for Medicare and Medicaid Services (CMS) has promulgated a new rule that narrows the sources of funds available in Montana to finance Medicaid expenditures under the inter-governmental transfer (IGT) program. This rule imposes cost limits for providers operated by "units of government" and alters the definition of "public" status. County funding and state lump sum distributions of the FY 2009 IGT program after the moratorium expires on May 25, 2008 would be limited. The rule would limit the payments that can be made to government providers through intergovernmental fund transfers by capping reimbursement payments at individual facility cost. The federal regulations redefine eligible public providers and impose new restrictions on nonfederal funding sources. The department proposes to limit reimbursement for government operated providers to amounts consistent with economy and efficiency by establishing a limit of reimbursement not to exceed cost.

The estimated impact on the reimbursement for the five facilities defined as "units of government" who would be limited under this rule proposal is a decrease in Medicaid funding of approximately $1,051,391 in FY 2009. The estimated impact on the IGT program (using FY 2008 data) for nine additional facilities that would be eliminated from or limited in the "at risk" program for county facilities is a decrease in Medicaid funding of $1,056,186. The total impact of the federal regulation change on funding available to finance Medicaid expenditures in Montana through the IGT program is $2,107,577 in FY 2009.

6. The department intends the proposed rule changes to be applied effective July 1, 2008.

7. Interested persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Rhonda Lesofski, Office of Legal Affairs, Department of Public Health

and Human Services, P.O. Box 4210, Helena MT 59604-4210, no later than 5:00 p.m. on May 22, 2008. Comments may also be faxed to (406)444-1970 or e-mailed to dphhslegal@mt.gov. The department maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. To be included on such a list, please notify this same person or complete a request form at the hearing.

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/ John Koch
Rule Reviewer

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

Certified to the Secretary of State April 14, 2008.

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

In the matter of the amendment of ARM 37.86.1101, 37.86.1102, and 37.86.1105 pertaining to Medicaid requirements and reimbursement for outpatient drugs	)))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Interested Persons

1. On May 14, 2008, at 1:00 p.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 amendment 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 May 5, 2008. Please contact Rhonda Lesofski, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena MT 59604-4210; telephone (406)444-4094; fax (406)444-1970; e-mail dphhslegal@mt.gov.

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

37.86.1101 OUTPATIENT DRUGS, DEFINITIONS (1) through (2) remain the same.

(3) "Maintenance medications" means oral tablet or capsule drugs:

(a) that have a low probability for dosage or therapy changes due to side effects;

(b) are subject to serum drug concentration monitoring or therapeutic response of a course of prolonged therapy;

(c) whose most common use is to treat a chronic disease state. Therapy with the drug is not considered curative or promoting of recover; and

(d) the drug is administered continuously rather than intermittently.

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

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

37.86.1102 OUTPATIENT DRUGS, REQUIREMENTS ~~DEFINITIONS~~ (1) through (4) remain the same.

(5) Each prescription shall be dispensed in the quantity ordered except that:

(a) remains the same.

(b) Notwithstanding the above, ~~prescriptions may not be dispensed in quantities greater than a 34-day supply.~~ maintenance medications may be dispensed in quantities sufficient for a 90-day supply or 100 units, whichever is greater. Other medications may not be dispensed in quantities greater than a 34-day supply. The department will post a list of current drug classes which will be considered maintenance medications and will be posted on the department's web site at http://medicaidprovider.hhs.mt.gov.

(6) through (8) remain the same.

(9) A provider shall maintain a signature log to act as proof of delivery of prescription drugs. Each recipient, or an individual acting on behalf of the recipient, must sign the log each time a prescription drug is delivered. For prescription drugs delivered to a nursing facility, the individual charged with ensuring the security of pharmaceutical supplies may sign the log after verifying delivery of all prescription drugs.

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

AUTH: 53-2-201, 53-6-113, MCA
IMP: 53-2-201, 53-6-101, 53-6-113, 53-6-141, MCA

37.86.1105 OUTPATIENT DRUGS, REIMBURSEMENT (1) remains the same.

(2) The dispensing fee for filling prescriptions shall be determined for each pharmacy provider annually.

(a) remains the same.

(b) The dispensing fees assigned shall range between a minimum of $2.00 and a maximum of ~~$4.86~~ $4.94.

(c) through (7) remain the same.

AUTH: 53-2-201, 53-6-113, MCA
IMP: 53-2-201, 53-6-101, 53-6-113, 53-6-141, MCA

4. The Department of Public Health and Human Services (the department) is proposing amendments to Administrative Rules of Montana (ARM) 37.86.1101 and 37.86.1102 that would allow Medicaid providers to dispense maintenance medications sufficient for a 90-day supply or 100 units, whichever is greater. Other medications would be dispensed in quantities as great as a 34-day supply. This would be a significant increase from the current rule limiting all medications to a 34-day maximum supply. The department is also proposing an amendment that would add a requirement that providers maintain a signature log for all prescriptions.

Finally, the department is proposing amendments to ARM 37.86.1105 that would implement a 1.67% increase to the Medicaid pharmacy dispensing fee as allowed by legislative appropriation. This would increase the maximum dispensing fee from $4.86 to $4.94 for in-state providers.

ARM 37.86.1101

The department is proposing a new definition to describe "maintenance medications" that would be subject to the 90-day or 100 unit dispensing limit as proposed in ARM 37.86.1102. For a further explanation, please see the discussion below.

ARM 37.86.1102

The department is proposing amendments to this rule that would allow Medicaid pharmacy providers to dispense maintenance medications in amounts sufficient for a 90-day supply or 100 units, whichever is greater. Other medications would be dispensed in quantities as great as a 34-day supply. This change is necessary for several reasons.

First, it would allow the department to mirror some of the most common third party carriers available to Medicaid recipients. These carriers often allow or mandate the greater 90-day quantities for maintenance medications. Medicaid recipients who currently have such a prescription plan are forced to choose between their primary insurance getting a 90-day supply and paying the copay, or using Medicaid for a shorter 34-day's supply. Technical constraints prohibit adjudicating the claim applying both benefits for the recipient. Recipients typically opt to file with Medicaid, forcing the department to "pay and chase" meaning the department pays first and seeks reimbursement through the other insurance. This option leaves Medicaid with an initial higher overall payment and an administrative burden with a possibility that it may not collect from the primary insurer. The department estimates that $3.4 million dollars worth of prescriptions annually could have been billed to other insurances had this proposed policy been in effect. It is unknown how much actual cost savings this could have generated, but other insurance carriers typically pay 50-80% of the cost of the prescription when utilized.

Recent studies show that utilizing 90-day refill programs increases compliance and decreases overall health plan and member costs for those recipients who take medications for chronic diseases. See Impact of a 90-day retail refill program on prescription drug utilization and expenditures. Shawn X Sun, et al, Drug Benefit Trends, August 2007. The department is proposing that the 90-day refill allowance be limited to generic maintenance medications in chronic disease states, such as high blood pressure, heart disease, diabetes, and other medical conditions where compliance to medication regimens increases positive outcomes. The department is working closely with the Drug Utilization Review (DUR) board to develop a specific list of medications considered for the extended supply.

Cost savings would be realized by decreasing the dispensing fees paid by two-thirds, that is only one dispensing fee is charged to the department rather than three. In the case of generic maintenance medications, the cost of the medication is minimal. For example, the current prescription cost for a 34-day supply of lisinopril 10 mg is $6.97 total ($2.03 for the drug, plus a $4.94 dispensing fee). Multiplied by 3 months, it would cost the department $20.91 for 102 days of medication. The recipient's cost share would be $1.00 each time, a total of $3.00. If the recipient

were to pick up 100 doses of this prescription, the cost would be $10.91 ($5.97 for the cost of the drug plus a $4.94 dispensing fee). The recipient's cost share would be $1.00 for that prescription. Additional cost savings would be realized by billing other third party payors for the majority of the costs, as explained above.

The department previously used a widespread 90-day/100 dose program, which was discontinued because of cost concerns and the possibility of recipients receiving medications for those months that they might not be eligible for Medicaid. In this proposal, the department is limiting the increased days supply allowance to those generic medications where the benefits of increased compliance outweigh the potential for losses. In the example above, the department may pay an extra $3.94 if the recipient filled 100 days of the medication and then was ineligible for Medicaid for the next two months. However, if the recipient remained on Medicaid and filled the allowed 34-day supply each month the department would pay $9.94 more than if the recipient was allowed to fill 100 units of the medication.

The DUR board suggested starting the program with generic oral medications used to treat high blood pressure, heart disease, diabetes, thyroid disorders, and with oral birth control medications. In state fiscal year 2007, 67,271 prescriptions were reimbursed for the identified maintenance drugs totaling over $1.19 million. $300,000 of this prescription expense was for dispensing fees. By decreasing the total amount of claims for these medications, the department may save $200,000 in dispensing fees alone ($89,107 state share). The cost savings realized by following with other third party carriers is unknown at this time; however, over state fiscal year 2007, 544 claims with third party liability listed attempted to enter a 90- or 100-day supply and were rejected.

The department is also proposing an amendment to this rule that would require Medicaid pharmacy providers to maintain a signature log for all prescriptions. This proposal follows a recommendation from both interdepartmental and contracted auditors. This measure would further assure that the medications paid by Montana Medicaid get to the appropriate recipients. The fiscal impact from this provision cannot be determined; however, there is cost savings anticipated from audit recovery.

ARM 37.86.1105

The department is proposing a 1.67% increase to the Medicaid dispensing fees for pharmacy providers, as allowed by legislative appropriation. This will increase the maximum dispensing fee from $4.86 to $4.94 for in-state providers. Out-of-state and new providers will still be paid a $3.50 dispensing fee and those in-state pharmacies who do not submit a dispensing fee at the request of the department will be paid a $2.00 dispensing fee. Also, pharmacies with a cost to dispense of less than $4.94 will receive their actual cost. The department anticipates this proposal would increase Medicaid prescription drug spending by $38,184 annually. $26,167 of this increase is federal share, $12,106 state share. This increase is the same for all Medicaid provider types as intended by the 2007 Montana Legislature when it made

the appropriation.

Fiscal effects

The department analyzed the impact of these rules using generally accepted statistical methods. The overall impact to the budget as a result of the proposed changes will be an annual savings of $36,773 state share funds.

5. Interested persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Rhonda Lesofski, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena MT 59604-4210, no later than 5:00 p.m. on May 22, 2008. Comments may also be faxed to (406)444-1970 or e-mailed to dphhslegal@mt.gov. The department maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. To be included on such a list, please notify this same person or complete a request form at the hearing.

6. An electronic copy of this proposal notice is available through the Secretary of State's web site at http://sos.mt.gov/ARM/Register. The Secretary of State strives to make the electronic copy of this notice conform to the official version of the notice as printed in the Montana Administrative Register, but advises all concerned persons that, in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. The web site may be unavailable at times, due to system maintenance or technical problems.

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

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

/s/ John Koch
Rule Reviewer

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

Certified to the Secretary of State April 14, 2008.

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

In the matter of the amendment of ARM 37.86.805, 37.86.1004, 37.86.1506, 37.86.2405, 37.86.2505, and 37.86.2605 pertaining to hearing aid services, dental, home infusion therapy, durable medical equipment, and ambulance services	)))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Interested Persons

1. On May 15, 2008, at 11:00 a.m., the Department of Public Health and Human Services will hold a public hearing in the Wilderness Room, 2401 Colonial Drive, Helena, Montana, to consider the proposed amendment 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 May 5, 2008. Please contact Rhonda Lesofski, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena MT 59604-4210; telephone (406)444-4094; fax (406)444-1970; e-mail dphhslegal@mt.gov.

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

<u>37.86.805 HEARING AID SERVICES, REIMBURSEMENT</u> (1) The department will pay the lower of the following for covered hearing aid services and items:

(a) remains the same.

(b) the amount specified for the particular service or item in the department's fee schedule. The department adopts and incorporates by reference the department's fee schedule dated ~~October 2007~~ <u>July 2008</u>. A copy of the department's fee schedule is posted at http://medicaidprovider.hhs.mt.gov. A copy of the department's fee schedule may be obtained from the Department of Public Health and Human Services, Health Resources Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

(2) remains the same.

AUTH: <u>53-2-201</u>, 53-6-113, MCA
IMP: <u>53-6-101</u>, 53-6-113, 53-6-141, MCA

37.86.1004 REIMBURSEMENT METHODOLOGY FOR SOURCE BASED RELATIVE VALUE FOR DENTISTS (1) For procedures listed in the relative values for dentists scale, reimbursement rates shall be determined using the following methodology:

(a) remains the same.

(b) The conversion factor used to determine the Medicaid payment amount for services provided to eligible individuals is ~~$30.85~~ $31.27.

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

37.86.1506 HOME INFUSION THERAPY SERVICES, REIMBURSEMENT

(1) Subject to the requirements of these rules, the Montana Medicaid program will pay for home infusion therapy services on a fee basis, as specified in the department's home infusion therapy services fee schedule. The department adopts and incorporates by reference the Home Infusion Therapy Services Fee Schedule dated ~~October 2007~~ July 2008. A copy of the department's fee schedule is posted at the Montana Medicaid provider web site at http://medicaidprovider.hhs.mt.gov. A copy of the Home Infusion Therapy Services Fee Schedule may also be obtained from the Department of Public Health and Human Services, Health Resources Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951. The specified fees are on a per day or a per dose basis as specified in the fee schedule. The fees are bundled fees which cover all home infusion therapy services as defined in ARM 37.86.1501.

(2) through (4)(c) remain the same.

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

37.86.2405 TRANSPORTATION AND PER DIEM, REIMBURSEMENT

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

(2) The department adopts and incorporates by reference the department's Personal Transportation Fee Schedule effective ~~November 2006~~ July 2008 which sets forth the reimbursement rates for transportation, per diem, and other Medicaid services. A copy of the department's fee schedule is posted at the Montana Medicaid provider web site at http://medicaidprovider.hhs.mt.gov. A copy of the fee schedule may also be obtained from the Department of Public Health and Human Services, Health Resources Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

(3) and (4) remain the same.

(5) Mileage for transportation in a personally owned vehicle is reimbursed at the rate ~~of $0.22 per mile~~ provided in the department's personal transportation fee schedule.

AUTH: 53-2-201, 53-6-113, MCA
IMP: 53-6-101, 53-6-113, 53-6-141, MCA

37.86.2505 SPECIALIZED NONEMERGENCY MEDICAL TRANSPORTATION, REIMBURSEMENT (1) through (1)(b) remain the same.

(2) The department adopts and incorporates by reference the department's fee schedule dated ~~November 2006~~ July 2008 which sets forth the reimbursement rates for specialized nonemergency medical transportation services and other Medicaid services. A copy of the fee schedule is posted at the Montana Medicaid provider web site at http://medicaidprovider.hhs.mt.gov. A copy of the department's fee schedule may be obtained from the Department of Public Health and Human Services, Health Resources Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

AUTH: 53-2-201, 53-6-113, MCA
IMP: 53-6-101, 53-6-113, 53-6-141, MCA

37.86.2605 AMBULANCE SERVICES, REIMBURSEMENT (1) through (1)(b) remain the same.

(2) The department adopts and incorporates by reference the department's Ambulance Fee Schedule effective ~~October 2007~~ July 2008. A copy of the fee schedule is posted at the Montana Medicaid provider web site at http://medicaidprovider.hhs.mt.gov. A copy of the department's fee schedule may be obtained from the Department of Public Health and Human Services, Health Resources Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

(3) through (4) remain the same.

AUTH: 53-2-201, 53-6-113, MCA
IMP: 53-6-101, 53-6-113, 53-6-141, MCA

4. The proposed amendments are necessary to implement Medicaid reimbursement rate increases mandated in appropriations made by the 2007 Montana Legislature. The proposed rates would be 1.67% more than currently paid for hearing aid, dentist, home infusion therapy, transportation, and ambulance services.

The exception is the dental fee schedule, ARM 37.86.1004. The department added a policy adjuster to propose a lower rate increase due to several factors. Effective October 2007, a significant provider rate increase was implemented. The utilization data is not accurate at this time due to high claims inventory at the department's fiscal intermediary. This makes it difficult to estimate current expenditures for dental services. Based on provider feedback the department has determined dental code D1206 (therapeutic application of fluoride varnish) was previously set at an erroneous level. The department proposes to set the fee at a calculated rate of 85% of the average usual and customary fee billed to the department in state fiscal year 2007. The department proposes the rate to change from $80.21 to $28.16 for procedure code D1206.

Based on the rising cost of fuel, the department has raised the reimbursement rate of all mileage codes in the transportation program to include ARM 37.86.2405,

37.86.2505, and 37.86.2506. The rate increase is commensurate with the percentage of cost increase for each type of fuel based on a $0.03 increase in the mileage rate for each 20% increase in fuel cost over the preceding 12 months.

The department did not consider alternatives to the proposed amendments because the funding appropriated in the General Appropriations Act of 2007, 2007 Laws of Montana, Chapter 5, commonly referred to as "HB2" is restricted to Medicaid provider rate increases.

Estimated financial and budget effects:

SFY 2009	Program	Fed	State	Total
37.86.805	Hearing Aid Services	$5,943	$2,776	$8,719
37.86.1004	Dental Program	$282,293	$131,854	$414,147
37.86.1506	Home Infusion Therapy	$13,007	$6,076	$19,083
37.86.2405	Transportation and Per Diem	$61,556	$28,914	$90,470
37.86.2505	Specialized Nonemergency Transportation	$750	$352	$1,102
37.86.2605	Ambulance	$49,259	$23,008	$72,267

Number of persons affected:

The proposed rule changes could affect an estimated 137,627 Medicaid recipients and the following number of providers listed by program:

SFY 2009	Program	Total
37.86.805	Hearing Aid Services	30
37.86.1004	Dental Program	352 dental providers 22 denturist providers
37.86.1506	Home Infusion Therapy	17
37.86.2405	Transportation and Per Diem	10
37.86.2505	Specialized Nonemergency Transportation	28
37.86.2605	Ambulance	146

5. Interested persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Rhonda Lesofski, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena MT 59604-4210, no later than 5:00 p.m. on May 22, 2008. Comments may also be faxed to (406)444-1970 or e-mailed to dphhslegal@mt.gov. The department maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. To be included on such a list, please notify this same person or complete a request form at the hearing.

6. An electronic copy of this proposal notice is available through the

Secretary of State's web site at http://sos.mt.gov/ARM/Register. The Secretary of State strives to make the electronic copy of this notice conform to the official version of the notice as printed in the Montana Administrative Register, but advises all concerned persons that, in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. The web site may be unavailable at times, due to system maintenance or technical problems.

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

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

/s/ John Koch
Rule Reviewer

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

Certified to the Secretary of State April 14, 2008.

BEFORE THE DEPARTMENT OF COMMERCE
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I pertaining to the administration of the 2008-2009 Federal Community Development Block Grant (CDBG) Program	)))))	NOTICE OF ADOPTION

TO: All Concerned Persons

1. On November 21, 2007, the Department of Commerce published MAR Notice No. 8-94-61 pertaining to the public hearing on the proposed adoption of the above-stated rule at page 1850 of the 2007 Montana Administrative Register, Issue Number 22.

2. The department has adopted New Rule I (8.94.3724) as proposed.

3. The department has thoroughly considered the comments received. A summary of the comments received and the department's responses to each follows. Public comments received at the Treasure State Endowment Program (TSEP) Administrative Rules Hearing, December 12, 2007, directed by the commenter to both TSEP and CDBG are also included.

COMMENT #1: Two comments were received that objected to the proposed change in scoring levels for TSEP priority #3, which is the same as CDBG Ranking Criterion #3, "Project Concept and Technical Design". One commenter stated that preliminary engineering reports are the perfect tie breaker as compared to issues such as public support. The other commenter noted that the scoring weight of technical aspects of the project is being reduced with the proposed quartile scoring system, yet this part of the project application represents over 75% of the cost of preparing the application.

RESPONSE #1: The department decided to use four levels versus five levels to score CDBG Ranking Criterion #3, because of the difficulty in distinguishing between a good preliminary engineering report and an excellent one. This particular issue has been a major point of contention for many years with applicants, engineers, and legislators. The proposed change will allow the department to clearly distinguish between preliminary engineering reports that are adequately prepared and those that have potentially serious issues that have not been adequately addressed. The department does not plan to modify the proposed change.

COMMENT #2: Two comments were received regarding a comment attached to one of the examples of projects used in the application guidelines for scoring of TSEP Statutory Priority #1, which is the same as CDBG Ranking Criterion #2, "Need for Project" - specifically certain types of wastewater projects. The comment states: "The opportunities for contact with people must be documented with photos, maps,

or other supporting evidence in order to demonstrate the level of public use of the area." One commenter stated that the proposal suggesting that public contact with wastewater discharges be documented may be difficult to do. It would not be practical, for example, to wait by a stream so that people floating by can be photographed. The other commenter stated that it is difficult, if not impossible, to document a situation where someone has come in contact with wastewater. Furthermore, the requirement that wastewater projects must meet this higher level of documentation is inherently unfair. Does the program require photos and maps of people drinking water with elevated levels of contaminants? Any increased level of documentation should apply to all potential projects uniformly.

RESPONSE #2: The department is simply requesting that applicants provide as much documentation as they can, in the form of photographs primarily, so that the engineers reviewing the technical information can gain a better understanding of the area and the problem. The review engineers will probably not have the opportunity to visit the site in person and need as much insight into the nature of the area from the application in order to determine if the area is likely to be visited by the public or used for recreational purposes. For example, an aerial photo of the area obtained from the Internet accompanied by a few photos from different angles is all that is being requested. The department will more clearly state in the application guidelines what is being requested from applicants based on the example provided in the previous sentence. In regard to the last comment, all projects are held to a similar level of documentation. Data regarding contaminants in drinking water, modeling of fire flow, and photographs of decayed pipe are just a few examples of documentation that may be appropriate for other types of projects. The department does not plan to modify the proposed change.

COMMENT #3: One comment was received at the TSEP hearing regarding the scoring level definitions and examples that were added to both the TSEP and CDBG application guidelines. The commenter stated that the department should maintain some subjectivity in the process that would allow reviewers to recognize health and safety impacts. He stated that not every problem "fits into a box."

RESPONSE #3: The examples of the different kinds of projects that fit into each scoring level under CDBG Ranking Criterion #2, "Need for Project", are simply illustrations for the benefit of the reader, and are not intended to cover every possible scenario or unique situation. The definition of the scoring levels is the principal guide for the ranking team when scoring projects. New and additional examples are added over time as differing circumstances arise in the application ranking process, in order to assist in scoring projects. The department does not plan to modify the proposed change.

COMMENT #4: One comment was received requesting that group homes for special populations be eligible within either the public facility or housing categories.

RESPONSE #4: Last year in response to comments, projects designed to provide temporary, short-term, or transitional housing facilities were transferred from the

Housing and Neighborhood Renewal category to the Public Facilities category. The department does not plan to modify this previous change. It is the intent of the department that all housing proposals providing permanent, long-term housing be directed to the Housing and Neighborhood Renewal category; all other forms of housing, including facilities designed for special populations or a short-term use, are intended to be reviewed under the Public Facilities category.

/s/ KELLY A. CASILLAS
KELLY A. CASILLAS
Rule Reviewer

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

Certified to the Secretary of State April 14, 2008.

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

In the matter of the repeal of a temporary emergency rule closing the Smith River from Camp Baker to Eden Bridge	))))	NOTICE OF REPEAL OF A TEMPORARY EMERGENCY RULE

TO: All Concerned Persons

1. On March 27, 2008, the Fish, Wildlife and Parks Commission (commission) adopted a temporary emergency rule closing the Smith River from Camp Baker to Eden Bridge, published at page 626 of the 2008 Montana Administrative Register, Issue No. 7. There was intermittent ice on the Smith River that caused the river to be impassible to recreationists. Within the rule, the commission delegated its authority to the Department of Fish, Wildlife and Parks to determine, in consultation with the commissioner in the region, when the Smith River was again safe for public use.

2. Since warmer weather has melted the intermittent ice, MAR Notice No. 12-343 is no longer necessary. As this situation no longer constitutes an imminent peril to public health, safety, and welfare, the commission is repealing the rule. The repeal of the rule will be sent as a press release to newspapers throughout the state. Also, signs informing the public of the closure will be removed at access points. The repeal notice will be sent to interested parties, and published in Issue No. 8 of the 2008 Montana Administrative Register.

3. The repeal of the temporary emergency rule is effective April 14, 2008.

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

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

/s/ Rebecca Jakes Dockter
Rebecca Jakes Dockter
Rule Reviewer

Certified to the Secretary of State April 14, 2008.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the adoption of NEW RULE I procedure for providing notice to multi-game machine owners and lessees to connect to an approved accounting and reporting system	)))))	NOTICE OF ADOPTION

TO: All Concerned Persons

1. On March 13, 2008, the Department of Justice published MAR Notice No. 23-16-193 regarding the public hearing on the proposed adoption of the above-stated rule at page 440, 2008 Montana Administrative Register, Issue Number 5.

2. The Department of Justice has adopted New Rule I (23.16.2103) exactly as proposed.

3. A public hearing was held on April 2, 2008. No adverse comments or suggestions were offered at the public hearing and no changes have been made to the proposed rule.

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

/s/ Ali Bovingdon
ALI BOVINGDON
Rule Reviewer

Certified to the Secretary of State April 14, 2008.

BEFORE THE BOARD OF MEDICAL EXAMINERS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of ARM 24.156.1306 professional conduct and standards of professional practice	)))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On November 8, 2007, the Board of Medical Examiners (board) published MAR Notice No. 24-156-69 regarding the amendment of the above-stated rule, at page 1751 of the 2007 Montana Administrative Register, issue no. 21.

2. No comments or testimony were received.

3. The board has amended ARM 24.156.1306 exactly as proposed.

BOARD OF MEDICAL EXAMINERS
DR. ARTHUR FINK, DO, 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 April 14, 2008

BEFORE THE BOARD OF REALTY REGULATION
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of ARM 24.210.641 unprofessional conduct	)))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On February 28, 2008, the Board of Realty Regulation (board) published MAR Notice No. 24-210-31 regarding the proposed amendment of the above-stated rule, at page 366 of the 2008 Montana Administrative Register, issue no. 4.

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

COMMENT 1: Two comments suggested a grammatical correction in the first line of ARM 24.210.641(5)(z) to retain the word "with" instead of replacing it with "to."

RESPONSE 1: Following discussion, the board finds no substantive difference between the two words and is amending the rule exactly as proposed.

COMMENT 2: One commenter suggested there may be confusion concerning the phrase "payment to a principal." The commenter stated that by definition, there are two principals to each transaction but using "the" in the sentence raises the question whether the commission can be reduced only to the principal with whom the specific agent is working.

RESPONSE 2: The board concluded that any principal could receive a payment and is amending the rule to clarify the board's intent.

COMMENT 3: A comment supported any amendment reversing the 2007 amendment and allowing for consumer choice.

RESPONSE 3: The board acknowledges the comment.

3. The board has amended ARM 24.210.641 with the following changes, stricken matter interlined, new matter underlined:

24.210.641 UNPROFESSIONAL CONDUCT (1) through (5)(y) remain as proposed.

(z) paying a commission in connection to a real estate sale or transaction to a person who is not licensed as a real estate broker or real estate salesperson under this chapter; however, payment to ~~the principal~~ any principals or reducing the commission owed by ~~the principal~~ any principals is not considered payment of a commission to an unlicensed person;

(aa) through (6) remain as proposed.

BOARD OF REALTY REGULATION
MARILYN FLOBERG, CHAIRPERSON

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

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

Certified to the Secretary of State April 14, 2008

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

In the matter of the amendment of ARM 37.70.601 pertaining to Low Income Energy Assistance Program (LIEAP)	))))	NOTICE OF AMENDMENT

TO: All Interested Persons

1. On February 28, 2008, the Department of Public Health and Human Services published MAR Notice No. 37-431 pertaining to the public hearing on the proposed amendment of the above-stated rule, at page 372 of the 2008 Montana Administrative Register, issue number 4.

2. The department has amended ARM 37.70.601 as proposed.

3. No comments or testimony were received.

/s/ Barbara Hoffmann
Rule Reviewer

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

Certified to the Secretary of State April 14, 2008.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption of New Rules I (42.4.4114), II (not adopted), and III (42.4.4115) relating to property tax incentives for new investment, development research, and technology related to renewable energy	)))))))	NOTICE OF ADOPTION

TO: All Concerned Persons

1. On November 21, 2007, the department published MAR Notice No. 42-2-782 regarding the proposed adoption of the above-stated rules at page 1878 of the 2007 Montana Administrative Register, issue no. 22.

2. A public hearing was held on December 17, 2007, to consider the proposed adoption. Those attending the hearing were: Dennis Lopach, Attorney, representing REC Silicon; Mary Whittinghill, Executive Director, Montana Taxpayers Association; and Ken Morrison, representing TransCanada/PPL Montana. Oral and written testimony is summarized as follows along with the response of the department:

COMMENT NO. 1: Ms. Whittinghill stated that the language contained in New Rule I(3), (6), (7), and (8) seem to be redundant of statutory language.

RESPONSE NO. 1: The department concurs in part with Ms. Whittinghill's comments and will not adopt sections (3) and (7). The department maintains that the language in sections (6) and (8) are needed and therefore will be adopted. Specifically, section (6) is intended to clarify that the Department of Environmental Quality is responsible for revocation of certifications. Section (8) clarifies that if transmission lines were classified as class fourteen property based on false information, the transmission lines will be reclassified as class nine property.

COMMENT NO. 2: Ms. Whittinghill requested that abated property be valued in a similar manner than other centrally assessed property and that the depreciation method to be used be clarified.

RESPONSE NO. 2: The department has and will continue to value property according to generally accepted accounting and appraisal practices and methods to properly arrive at the correct market value under the law. The department does not think the use of specific valuation formulas or depreciation schedules will provide an accurate market value.

COMMENT NO. 3: Ms. Whittinghill suggested that the ARM section referenced in New Rule I(5) as ARM 42.22.1309 should be corrected to reference

ARM 42.22.1306.

RESPONSE NO. 3: The department concurs and thanks Ms. Whittinghill for identifying this error. The reference will be corrected as shown below.

COMMENT NO. 4: Mr. Lopach and Ms. Whittinghill provided comments concerning New Rule II and the fact that the rule may contradict or, at least be, inconsistent with the statutory language.

RESPONSE NO. 4: The department has decided not to adopt New Rule II. As the department receives requests for abatement it will conduct an individual review to properly apply the plain text of the statute to determine eligibility. After the department has received some abatement requests, it will take the opportunity to analyze the requests and determine the need for additional rules.

COMMENT NO. 5: Ms. Whittinghill encouraged the department to coordinate filing procedures with the Department of Environmental Quality to ensure taxpayers have a clear understanding of the filing requirements and local governments are not caught off guard with changing valuations. She also stated that there should be language to clarify commencement of construction and qualifying periods to provide for purchase of equipment and changes in land use for property tax purposes.

RESPONSE NO. 5: The department agrees with Ms. Whittinghill's comments and has already had a number of meetings with the Department of Environmental Quality to ensure continuity in the implementation of these rules, as well as that agency's rules. The department doesn't believe that language clarifying the commencement of construction and a qualifying period is appropriate in the rule language dealing with the exemption provided for under the provisions of New Rule III.

COMMENT NO. 6: Ms. Whittinghill and Mr. Morrison stated that they do not believe New Rule III(1) requiring the property owner of record to make application to the department for an exemption follows the statutory language. Section 15-6-229, MCA, requires the owner or operator of a transmission line to make the application.

RESPONSE NO. 6: The department acknowledges that the specific language in 15-6-229, MCA, identifies only the owner or operator of the transmission line as applicants for the exemption. However, while the statute specifies, it does not do so at the exclusion of the owner or operator. Since the exemption which is sought, subject to the provisions of 15-6-229, MCA, would apply only to qualifying land, the department feels it is proper to allow the land owner to make the application, in addition to either the owner or operator of the transmission line. If the owner or operator of the transmission line fails to gain any benefit from the exemption, it seems logical to assume that the same parties may not make application for the benefit of the land owner.

COMMENT NO. 7: Ms. Whittinghill and Mr. Morrison stated that rather than

filing applications with each of the department's county offices and having them forward the application to the central office, it would be better to have applicants file directly with the central office in Helena.

RESPONSE NO. 7: The department disagrees and intends to follow the current property tax exemption process. It seems very clear that 15-6-229(2)(a), MCA, requires a separate application be made for each county in which an exemption is sought. The amount of land subject to each exemption application would have to be verified by each affected local Department of Revenue office. Once that occurs, the information will be forwarded to the central office in Helena for a final determination.

COMMENT NO. 8: Ms. Whittinghill and Mr. Morrison stated that section (5) in New Rule III seems to imply the exemption applies only to constructed lines. They stated that they believe the exemption can also apply to lines under construction.

RESPONSE NO. 8: The department concurs and proposes to amend that section of the rule as shown below.

COMMENT NO. 9: Ms. Whittinghill and Mr. Morrison also stated that they believe much of the language in New Rule III(1) appears to duplicate current statutory language.

RESPONSE NO. 9: The department concedes that some of the language duplicates statutory wording, but in administering this exemption provision, the department believes that for taxpayer convenience and clarity purposes, it's necessary that some statutory wording be used to set out the provisions that are required in meeting the exemption criteria.

3. As a result of the comments received the department will not adopt New Rule II and amends New Rule I (42.4.4114) and New Rule III (42.4.4115) with the following changes, stricken matter interlined, new matter underlined:

NEW RULE I (42.4.4114) ENERGY PRODUCTION OR DEVELOPMENT TAX ABATEMENT ELIGIBILITY FOR NEW INVESTMENT IN THE CONVERSION, TRANSPORT, MANUFACTURE, RESEARCH, AND DEVELOPMENT OF RENEWABLE ENERGY, CLEAN COAL ENERGY, AND CARBON DIOXIDE EQUIPMENT AND FACILITIES (1) and (2) remain as proposed.

~~(3) For clean advanced coal research and development equipment or renewable energy research equipment, the qualifying equipment, up to the first $1 million of the value of the equipment at the facility, shall be assessed by the department at 50% of its taxable value for the qualifying period identified in (2). The abatement does not extend to any equipment in excess of the first $1 million of equipment located at the facility.~~

(4) through (6) remain as proposed but are renumbered (3) through (5).

~~(7) If a taxpayer's certification is revoked, the taxpayer forfeits the abatement or classification under 15-6-157, or 15-6-158, MCA, and may not reapply for~~

~~abatement for that property.~~

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

AUTH: 15-24-3116, MCA
IMP: 15-6-141, 15-6-157, 15-6-158, 15-6-159, 15-24-3101, 15-24-3102, 15-24-3111, 15-24-3112, 15-24-3116, MCA

NEW RULE III (42.4.4115) EXEMPTION FOR LAND ADJACENT TO TRANSMISSION LINE RIGHT-OF-WAY OR EASEMENT (1) through (4) remain as proposed.

(5) If the transmission line is either constructed or under construction after January 1 of a tax year and an application for exemption is submitted for the right-of-way or easement by March 1 of that tax year and the property qualifies for the exemption, the exemption will be effective for the whole tax year.

AUTH: 15-24-3116, MCA
IMP: 2-15-1763, 15-6-229, MCA

4. The department adopts New Rule I (42.4.4114) and New Rule III (42.4.4115) with the amendments shown above.

5. An electronic copy of this Adoption Notice is available through the department's site on the World Wide Web at www.mt.gov/revenue, under "for your reference"; "DOR administrative rules"; and "upcoming events and proposed rule changes." The department strives to make the electronic copy of this Adoption Notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

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

Certified to Secretary of State April 14, 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.

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BOARD APPOINTEES AND VACANCIES

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

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

In this issue, appointments effective in March 2008 appear. Vacancies scheduled to appear from May 1, 2008, through July 31, 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 April 1, 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 MARCH 2008

Appointee	Appointed by	Succeeds	Appointment/End Date
Board of Hearing Aid Dispensers (Labor and Industry)			
Mr. Gene Bukowski	Governor	Peterson	3/3/2008
Billings			7/1/2010
Qualifications (if required): hearing aid dispenser with a master's degree and national certification			
Dr. Stephen Kramer	Governor	reappointed	3/3/2008
Billings			7/1/2010
Qualifications (if required): otolaryngologist			
Board of Occupational Therapy Practice (Labor and Industry)			
Ms. Amy J. Gilbertson	Governor	Ammondson	3/10/2008
Great Falls			12/31/2011
Qualifications (if required): occupational therapist			
Board of Outfitters (Labor and Industry)			
Mr. John Wilkinson	Governor	Flynn	3/26/2008
Miles City			10/1/2010
Qualifications (if required): fishing and hunting outfitter			
Board of Pharmacy (Labor and Industry)			
Ms. Susan Hagen	Governor	Pasha	3/14/2008
Glasgow			7/1/2012
Qualifications (if required): public representative			
Board of Psychologists (Labor and Industry)			
Rep. Linda L. Holden	Governor	Colberg	3/4/2008
Valier			9/1/2012
Qualifications (if required): public representative			

BOARD AND COUNCIL APPOINTEES FROM MARCH 2008

Appointee	Appointed by	Succeeds	Appointment/End Date
Board of Radiologic Technologists (Labor and Industry)			
Mr. Mike Nielsen	Governor	Delaney	3/14/2008
Billings			7/1/2010
Qualifications (if required): radiologic technician			
Board of Research and Commercialization (Commerce)			
Mr. Martin R. Connell	President of the Senate	not listed	3/27/2008
Billings			3/27/2010
Qualifications (if required): none specified			
Board of Sanitarians (Labor and Industry)			
Mr. James Zabrocki	Governor	Kylander	3/18/2008
Miles City			7/1/2010
Qualifications (if required): sanitarian			
Facility Finance Authority (Administration)			
Mr. Matthew B. Thiel	Governor	Dietrich	3/3/2008
Missoula			1/1/2011
Qualifications (if required): attorney			
Public Defender Commission (Administration)			
Mr. Gabriel Grant	Governor	Small	3/26/2008
Browning			7/1/2009
Qualifications (if required): member of organization advocating on behalf of racial minorities			
Mr. William Snell	Governor	Bischel	3/26/2008
Billings			7/1/2010
Qualifications (if required): employee of organization providing addictive behavior counseling			

BOARD AND COUNCIL APPOINTEES FROM MARCH 2008

Appointee	Appointed by	Succeeds	Appointment/End Date
Water and Waste Water Operators' Advisory Council (Environmental Quality)			
Mr. Donald Coffman	Governor	reappointed	3/26/2008
Harlem			10/16/2013
Qualifications (if required): water treatment plant operator			

VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2008 through JULY 31, 2008

Board/current position holder	Appointed by	Term end
Aging Advisory Council (Public Health and Human Services)		
Rep. Antoinette R. Hagener, Havre Qualifications (if required): Public Representative	Governor	7/18/2008
Rep. Beverly Barnhart, Bozeman Qualifications (if required): Public Representative	Governor	7/18/2008
Ms. Jessie James-Hawley, Harlem Qualifications (if required): public representative	Governor	7/18/2008
Ms. Lauren Lynch, Butte Qualifications (if required): public representative	Governor	7/18/2008
Agriculture Development Council (Agriculture)		
Mr. Bill Koenig, Kalispell Qualifications (if required): agriculture producer	Governor	7/1/2008
Ms. Patricia Quisno, Harlem Qualifications (if required): actively engaged in agriculture	Governor	7/1/2008
Mr. Verges Aageson, Guildford Qualifications (if required): actively engaged in agriculture	Governor	7/1/2008
Mr. David Tyler, Belgrade Qualifications (if required): actively engaged in agriculture	Governor	7/1/2008

VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2008 through JULY 31, 2008

Board/current position holder	Appointed by	Term end
Board of Banking (Administration)		
Mr. John King, Kalispell	Governor	7/1/2008
Qualifications (if required): state bank officer of a small size bank		
Ms. Carolyn Colman, West Yellowstone	Governor	7/1/2008
Qualifications (if required): public representative		
Board of Funeral Service (Labor and Industry)		
Mr. Douglas D. Lowry, Big Timber	Governor	7/1/2008
Qualifications (if required): mortician		
Board of Hearing Aid Dispensers (Labor and Industry)		
Ms. Lee Frantz Oines, Missoula	Governor	7/1/2008
Qualifications (if required): Dispenser with a Master's Degree and National Certification		
Mr. Herbert Winsor, Helena	Governor	7/1/2008
Qualifications (if required): Public Representative with Hearing Aid		
Board of Nursing Home Administrators (Labor and Industry)		
Ms. Lori Henderson, Havre	Governor	5/28/2008
Qualifications (if required): nursing home administrator		
Board of Pharmacy (Labor and Industry)		
Ms. Colette Bernica, Great Falls	Governor	7/1/2008
Qualifications (if required): public member		
Mr. Jim Cloud, Stevensville	Governor	7/1/2008
Qualifications (if required): registered pharmacy technician		

VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2008 through JULY 31, 2008

Board/current position holder	Appointed by	Term end
Board of Physical Therapy Examiners (Labor and Industry)		
Mr. Richard Smith, Missoula	Governor	7/1/2008
Qualifications (if required): physical therapist		
Board of Public Accountants (Labor and Industry)		
Mr. Thomas Shea, Bozeman	Governor	7/1/2008
Qualifications (if required): certified public accountant		
Board of Radiologic Technologists (Labor and Industry)		
Ms. Anna L. Hazen, Fort Benton	Governor	7/1/2008
Qualifications (if required): permit holder		
Ms. Charlotte M. Kelley, Helena	Governor	7/1/2008
Qualifications (if required): public representative		
Mr. Charles McCubbins, Columbia Falls	Governor	7/1/2008
Qualifications (if required): radiologic technician		
Mr. Ronald Darby, Billngs	Governor	7/1/2008
Qualifications (if required): doctor of medicine who employs radiologic technicians		
Dr. Hugh B. Cecil, Kalispell	Governor	7/1/2008
Qualifications (if required): radiologist		
Board of Regents (Higher Education)		
Ms. Kerra Melvin, Butte	Governor	6/30/2008
Qualifications (if required): student		

VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2008 through JULY 31, 2008

Board/current position holder	Appointed by	Term end
Board of Sanitarians (Labor and Industry)		
Ms. Kathleen Driscoll, Hamilton Qualifications (if required): public representative	Governor	7/1/2008
Mayor Gene Townsend, Three Forks Qualifications (if required): public representative	Governor	7/1/2008
Mr. Gerald Cormier, Billings Qualifications (if required): sanitarian	Governor	7/1/2008
Board of Veterinary Medicine (Labor and Industry)		
Dr. Jean Lindley, Miles City Qualifications (if required): veterinarian	Governor	7/31/2008
Community Service Commission (Labor and Industry)		
Rep. Sheila Rice, Great Falls Qualifications (if required): representative of volunteer agencies	Governor	7/1/2008
Mr. Bob Maffit, Helena Qualifications (if required): representative of the disabilities community	Governor	7/1/2008
Mr. Robert E. Harris, Great Falls Qualifications (if required): public member	Governor	7/1/2008
Ms. Pat Murphy, Hamilton Qualifications (if required): representative of youth services	Governor	7/1/2008

VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2008 through JULY 31, 2008

Board/current position holder	Appointed by	Term end
Community Service Commission (Labor and Industry) cont.		
Mr. James B. Corson, Billings Qualifications (if required): public representative	Governor	7/1/2008
District Court Council (Justice)		
Judge John C. McKeon, Malta Qualifications (if required): none specified	District Court Council	6/30/2008
Judge Katherine "Kitty" Curtis, Columbia Falls Qualifications (if required): none specified	District Court Council	6/30/2008
Economic Development Advisory Council (Commerce)		
Ms. Sheila Hogan, Butte Qualifications (if required): public representative	Governor	7/23/2008
Ms. Kathie Bailey, Lewistown Qualifications (if required): public representative	Governor	7/23/2008
Ms. Linda Twitchell, Wolf Point Qualifications (if required): public representative	Governor	7/23/2008
Ms. Estelle Tafoya, Red Lodge Qualifications (if required): public representative	Governor	7/23/2008
Family Education Savings Program Oversight Committee (Commissioner of Higher Education)		
Mr. Ed Jasmin, Bigfork Qualifications (if required): public member	Governor	7/1/2008

VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2008 through JULY 31, 2008

Board/current position holder	Appointed by	Term end
Information Technology Managers Advisory Council (Administration)		
Mr. Barney Benkelman, Helena Qualifications (if required): none specified	Director	7/1/2008
Mr. Art Pembroke, Helena Qualifications (if required): none specified	Director	7/1/2008
Ms. Tammy Peterson, Helena Qualifications (if required): none specified	Director	7/1/2008
Mr. Mike Jacobson, Helena Qualifications (if required): none specified	Director	7/1/2008
Mr. Dick Clark, Helena Qualifications (if required): none specified	Director	7/1/2008
Mr. John Daugherty, Helena Qualifications (if required): none specified	Director	7/1/2008
Mr. Rick Bush, Helena Qualifications (if required): none specified	Director	7/1/2008
Mr. Mike Bousliman, Helena Qualifications (if required): none specified	Director	7/1/2008
Interagency Coordinating Council for State Prevention Programs (Public Health and Human Services)		
Ms. Tootie Welker, Thompson Falls Qualifications (if required): prevention programs/services representative	Governor	6/16/2008

VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2008 through JULY 31, 2008

Board/current position holder	Appointed by	Term end
Interagency Coordinating Council for State Prevention Programs (Public Health and Human Services) cont.		
Ms. Diane Cashell, Bozeman	Governor	6/16/2008
Qualifications (if required): prevention programs/services representative		
Kindergarten to College Work Group (Governor)		
Director Keith Kelly, Helena	Governor	7/13/2008
Qualifications (if required): Commissioner of Labor and Industry		
Rep. David Ewer, Helena	Governor	7/13/2008
Qualifications (if required): Budget Director		
Superintendent Linda McCulloch, Helena	Governor	7/13/2008
Qualifications (if required): Superintendent of Public Instruction		
Director Joan Miles, Helena	Governor	7/13/2008
Qualifications (if required): Director of the Department of Public Health and Human Services		
Rep. Jonathan Windy Boy, Box Elder	Governor	7/13/2008
Qualifications (if required): governor's representative		
Mr. Evan Barrett, Butte	Governor	7/13/2008
Qualifications (if required): Chief Business Development Officer		
Ms. Sheila Stearns, Helena	Governor	7/13/2008
Qualifications (if required): Commissioner of Higher Education		
Mr. Dick Clark, Helena	Governor	7/13/2008
Qualifications (if required): Chief Information Officer		

VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2008 through JULY 31, 2008

Board/current position holder	Appointed by	Term end
Kindergarten to College Work Group (Governor) cont.		
Director Tony Preite, Helena Qualifications (if required): Director of the Department of Commerce	Governor	7/13/2008
Ms. Janine Pease, Billings Qualifications (if required): Board of Regents representative	Governor	7/13/2008
Ms. Erin Williams, Missoula Qualifications (if required): parent representative	Governor	7/13/2008
Mr. Steve Meloy, Helena Qualifications (if required): Board of Public Education representative	Governor	7/13/2008
Mr. James Stipcich, Helena Qualifications (if required): Student Assistance Foundation representative	Governor	7/13/2008
Mr. Steve Gettel, Great Falls Qualifications (if required): School for Deaf and Blind representative	Governor	7/13/2008
Ms. Rachel Grosvold, Butte Qualifications (if required): student representative	Governor	7/13/2008
Mental Disabilities Board of Visitors (Governor)		
Ms. Joan Nell Macfadden, Great Falls Qualifications (if required): experience with emotionally disturbed children	Governor	7/1/2008
Mr. Graydon Davies Moll, Polson Qualifications (if required): experience with developmentally disabled adults	Governor	7/1/2008

VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2008 through JULY 31, 2008

Board/current position holder	Appointed by	Term end
Mental Disabilities Board of Visitors (Governor) cont.		
Ms. Sandra Mihelish, Helena	Governor	7/1/2008
Qualifications (if required): experience with welfare of mentally ill individuals		
Montana Heritage Preservation and Development Commission (Commerce)		
Ms. Vicki Hucke, Helena	Governor	5/23/2008
Qualifications (if required): Tourism Advisory Council representative		
Ms. Leslie Schmidt, Bozeman	Governor	5/23/2008
Qualifications (if required): having experience in historic preservation		
Ms. Maureen Wicks, Ledger	Governor	5/23/2008
Qualifications (if required): Montana historian		
Montana Historical Society Board of Trustees (Historical Society)		
Dr. Thomas A. Foor, Missoula	Governor	7/1/2008
Qualifications (if required): archeologist		
Mr. William M. Holt, Lolo	Governor	7/1/2008
Qualifications (if required): public member		
Ms. Sharon Lincoln, Billings	Governor	7/1/2008
Qualifications (if required): public member		
Montana Noxious Weed Management Advisory Council (Agriculture)		
Sen. Mack Cole, Forsyth	Director	6/30/2008
Qualifications (if required): at-large member from the agricultural community		

VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2008 through JULY 31, 2008

Board/current position holder	Appointed by	Term end
Montana Noxious Weed Management Advisory Council (Agriculture) cont.		
Mr. Bob Bushnell,	Director	6/30/2008
Qualifications (if required): representative of a recreationist/wildlife group		
Mr. Dan Jackson, Pablo	Director	6/30/2008
Qualifications (if required): representative of livestock production		
Petroleum Tank Release Compensation Board (Environmental Quality)		
Ms. Theresa Blazicevich, Stevensville	Governor	6/30/2008
Qualifications (if required): member with environmental regulatory experience		
Mr. Andrew J. King, Kalispell	Governor	6/30/2008
Qualifications (if required): banker		
Postsecondary Scholarship Advisory Council (Higher Education)		
Ms. Margaret Bird, Browning	Governor	6/20/2008
Qualifications (if required): having experience in financial aid at a postsecondary institution		
Public Defender Commission (Administration)		
Mr. Daniel Donovan, Great Falls	Governor	7/1/2008
Qualifications (if required): attorney nominated by the Montana Supreme Court		
Mr. James Park Taylor, Pablo	Governor	7/1/2008
Qualifications (if required): attorney nominated by the Montana State Bar		
Ms. Caroline Fleming, Miles City	Governor	7/1/2008
Qualifications (if required): public representative nominated by the House Speaker		

VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2008 through JULY 31, 2008

Board/current position holder	Appointed by	Term end
Public Defender Commission (Administration) cont.		
Ms. Jennifer L. Hensley, Butte	Governor	7/1/2008
Qualifications (if required): member of an organization advocating on behalf of people with mental illness		
Research and Commercialization Technology Board (Commerce)		
Mr. Michael Dolson, Hot Springs	Governor	7/1/2008
Qualifications (if required): Native American		
State-Tribal Economic Development Commission (Governor)		
Mr. L. Jace Killsback, Lame Deer	Governor	6/30/2008
Qualifications (if required): representative of the Northern Cheyenne Tribe		
Mr. Joseph Durglo, Pablo	Governor	6/30/2008
Qualifications (if required): representative of the Confederated Salish & Kootenai Tribes		
Mr. Richard Sangrey, Box Elder	Governor	6/30/2008
Qualifications (if required): representative of the Chippewa Cree Tribe of the Rocky Boy's Reservation		
Teachers' Retirement Board (Administration)		
Mr. Scott A. Dubbs, Lewistown	Governor	7/1/2008
Qualifications (if required): teaching profession and a member of the retirement system		
Telecommunications Advisory Council Services for Persons with Disabilities (Public Health and Human Services)		
Ms. Char Harasymczuk, Billings	Governor	7/1/2008
Qualifications (if required): hearing disabled		

VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2008 through JULY 31, 2008

Board/current position holder	Appointed by	Term end
Telecommunications Advisory Council Services for Persons with Disabilities (Public Health and Human Services) cont.		
Ms. Colette Custer, Plentywood Qualifications (if required): independent local exchange company representative	Governor	7/1/2008
Ms. Kristen Bruner-Kober, Billings Qualifications (if required): audiologist	Governor	7/1/2008
Mr. Charles Charette, Lame Deer Qualifications (if required): hearing disabled	Governor	7/1/2008
Tourism Advisory Council (Commerce)		
Ms. Ramona Holt, Lolo Qualifications (if required): public member from Glacier Country	Governor	7/1/2008
Mr. Michael Scholz, Big Sky Qualifications (if required): public member from Yellowstone Country	Governor	7/1/2008
Mr. Ed DesRosier, East Glacier Park Qualifications (if required): public member from Glacier Country	Governor	7/1/2008
Commissioner Dolores Plumage, Chinook Qualifications (if required): public member from Russell Country	Governor	7/1/2008
Mr. Jonathan Stoltz, Pendroy Qualifications (if required): public member from Russell Country	Governor	7/1/2008

VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2008 through JULY 31, 2008

Board/current position holder	Appointed by	Term end
Tourism Advisory Council (Commerce) cont.		
Ms. Sandra Cahill, Livingston	Governor	7/1/2008
Qualifications (if required): resident of Yellowstone Country		