ISSUE NO. 13

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 The Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

In the matter of the proposed amendment of ARM 4.10.1806 relating to waste pesticide disposal and recyclable plastic container fees	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On August 7, 2008, at 10:00 a.m. the Montana Department of Agriculture will hold a public hearing in Room 225 of the Scott Hart Building, 303 N. Roberts at Helena, Montana, to consider the proposed amendment of the above-stated rule.

2. The Department of Agriculture will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Agriculture no later than 5:00 p.m. on July 31, 2008, to advise us of the nature of the accommodation that you need. Please contact Cort Jensen at the Montana Department of Agriculture, 303 North Roberts, P.O. Box 200201, Helena, MT 59620-0201; Phone: (406) 444-3144; Fax: (406) 444-5409; or e-mail: agr@mt.gov.

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

4.10.1806 FEES (1) Participants in the disposal program ~~must~~ may be required to pay a fee commensurate with department program costs. ~~of $1.00 per pound for disposal of acceptable pesticides in which the total quantity is less than or equal to 200 pounds. The minimum charge for participation in the program will be $5.00.~~ The fee will be set by the director annually by June 30, and will not exceed $2 per pound.

~~(2) Participants in the disposal program who dispose of total quantities of acceptable pesticides greater than 200 pounds must pay a fee of $1.00 per pound for the first 200 pounds and $ .50 per pound for additional amounts over 200 pounds.~~

~~(3) The department may elect to accept pesticides containing dioxins into the disposal program at a higher fee to the participant.~~

~~(4)~~ (2) Participants who submit recyclable pesticide containers to the program ~~must~~ may be required to pay a fee ~~of $2.00 per container~~ commensurate with department program costs for recycling. The fee will be set by the director annually by June 30, and will not exceed 50 cents per pound.

(3) Fees for pesticide disposal and plastic container recycling may exceed the fees set in (1) and (2) for pesticides or containers that have handling and/or disposal requirements resulting in costs exceeding the fees set under (1) and (2). The fee for these pesticides or containers will not exceed the cost of disposal or recycling.

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

AUTH: 80-8-111, MCA
IMP: 80-8-111, MCA

REASON: The proposed change in the rule to a fee commensurate with program cost will allow the department flexibility to set fees as the costs of the disposal and recycling program change. The cost of pesticide disposal has both increased and decreased since the program's inception in 1994 reflecting cost variations and competition within the disposal industry. Cost may change on an annual basis. A fee commensurate with program costs would permit the department to adjust fees annually to match costs. A flexible fee schedule would also permit the department to implement program participation incentives such as offering no fee for disposal of amounts below a set poundage to encourage the participation of small pesticide users and small farms. Historically, program cost has been less than the revenue generated resulting in a carryover. Surveys and comments from pesticide users indicate that some low volume pesticide users have not participated in the disposal program because they felt the cost for disposal was too high.

The current fee for plastic container recycling is $2 per container which exceeds the recycling cost for smaller (2.5 gallon) containers. The proposed recycling fee, "not to exceed 50 cents per pound" should cover most recycling costs.

ECONOMIC IMPACT: The pesticide disposal program offered by the department on an annual basis is available to all residents of Montana. Program participation varies by year and by location, however on average, 45-60 participants use the program in any given year.

The intent of the proposed rule change is to make the pesticide disposal program where the revenues would not exceed expenditures over a long-term average.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Cort Jensen at the Montana Department of Agriculture, 303 North Roberts, P.O. Box 200201, Helena, MT 59620-0201; Fax: (406) 444-5409; or e-mail: agr@mt.gov. Any comments must be received no later than 5:00 p.m. on August 14, 2008.

5. The Department of Agriculture maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name, e-mail, and mailing address of the person 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 Montana Department of Agriculture, 303 North Roberts, P.O. Box 200201, Helena, MT 59620-0201; Fax: (406) 444-5409; or e-mail: agr@mt.gov or

may be made by completing a request form at any rules hearing held by the Department of Agriculture.

6. An electronic copy of this Notice of Proposed Amendment is available through the department's web site at www.agr.mt.gov, under the Administrative Rules section. The department strives to make the electronic copy of the Notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the department strives to keep its 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.

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

DEPARTMENT OF AGRICULTURE

/s/ Ron de Yong
Ron de Yong, Director

/s/ Cort Jensen
Cort Jensen, Rule Reviewer

Certified to the Secretary of State, July 7, 2008.

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

In the matter of the amendment of ARM 6.10.126, pertaining to Unethical Practices by Broker-Dealers and Salesmen Defined, and the adoption of NEW RULE I pertaining to Filing Requirements for Transactional Exemption	)))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT AND ADOPTION

TO: All Concerned Persons

1. On August 8, 2008, at 10:00 a.m., the State Auditor and Commissioner of Securities will hold a public hearing in the 2nd floor conference room of the State Auditor's Office, 840 Helena Ave., Helena, Montana, to consider the proposed amendment and adoption of the above-stated rules.

2. The State Auditor and Commissioner of Securities 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., August 1, 2008, to advise us of the nature of the accommodation that you need. Please contact Darla Sautter, State Auditor's Office, 840 Helena Ave., Helena, Montana, 59601; telephone (406) 444-2726; TDD (406) 444-3246; fax (406) 444-3497; or e-mail dsautter@mt.gov.

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

6.10.126 "UNETHICAL PRACTICES" BY BROKER-DEALERS AND SALESMEN DEFINED (1) through (2)(e) remain the same.

(f) the use of a senior specific certification or designation by any person in connection with the offer, sale, or purchase of securities, or the provision of advice as to the value of or the advisability of investing in, purchasing, or selling securities, either directly or indirectly or through publications or writings, or by issuing or promulgating analyses or reports relating to securities, that indicates or implies that the user has special certification or training in advising or servicing senior citizens or retirees, in such a way as to mislead any person shall be a dishonest and unethical practice in the securities business within the meaning of 30-10-201(13)(g), MCA. The prohibited use of such certifications or professional designation includes, but is not limited to, the following:

(i) use of a certification or professional designation by a person who has not actually earned or is otherwise ineligible to use such certification or designation;

(ii) use of a nonexistent or self-conferred certification or professional designation;

(iii) use of a certification or professional designation that indicates or implies a level of occupational qualifications obtained through education, training, or experience that the person using the certification or professional designation does not have; and

(iv) use of a certification or professional designation that was obtained from a designating or certifying organization that:

(A) is primarily engaged in the business of instruction in sales and/or marketing;

(B) does not have reasonable standards or procedures for assuring the competency of its designees or certificants;

(C) does not have reasonable standards or procedures for monitoring and disciplining its designees or certificants for improper or unethical conduct; or

(D) does not have reasonable continuing education requirements for its designees or certificants in order to maintain the designation or certificate.

(g) there is a rebuttable presumption that a designating or certifying organization is not disqualified solely for purposes of (2)(f)(iv), when the organization has been accredited by:

(i) The American National Standards Institute;

(ii) The National Commission for Certifying Agencies; or

(iii) an organization that is on the United States Department of Education's list entitled "Accrediting Agencies Recognized for Title IV Purposes" and the designation or credential issued therefrom does not primarily apply to sales and/or marketing.

(h) in determining whether a combination of words (or an acronym standing for a combination of words) constitutes a certification or professional designation indicating or implying that a person has special certification or training in advising or servicing senior citizens or retirees, factors to be considered shall include:

(i) use of one or more words such as "senior," "retirement," "elder," or like words, combined with one or more words such as "certified," "registered," "chartered," "adviser," "specialist," "consultant," "planner," or like words, in the name of the certification or professional designation; and

(ii) the manner in which those words are combined.

(i) for purposes of this rule, a senior certification or professional designation does not include a job title within an organization that is licensed or registered by a state or federal financial services regulatory agency, when that job title:

(i) indicates seniority or standing within the organization; or

(ii) specifies an individual's area of specialization within the organization.

(j) for purposes of (2)(i), financial services regulatory agency includes, but is not limited to, an agency that regulates broker-dealers, investment advisers, or investment companies as defined under the Investment Company Act of 1940.

(k) nothing in these rules shall limit the administrator's authority to enforce existing provisions of law;

(f) and (g) remain the same, but are renumbered (l) and (m).

AUTH: 30-10-107, MCA
IMP: 30-10-201, MCA

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

NEW RULE I FILING REQUIREMENTS FOR TRANSACTIONAL EXEMPTION PURSUANT TO 30-10-105(15), MCA (1) A request for a transactional exemption pursuant to 30-10-105(15), MCA, shall include the following:

(a) a letter of request explaining why an exemption would serve the purposes of 30-10-102, MCA;

(b) a U-2 consent to service of process form; and

(c) a fee of $50.

(2) A transactional exemption granted pursuant to a request under (1) is effective for one year following the date of the commissioner's granting of the exemption request. Prior to the expiration date of the exemption, an exemption may be renewed by filing a $50 fee with the commissioner. A renewed exemption shall be effective for one year commencing upon the expiration of the exemption filing being renewed.

AUTH: 30-10-105, MCA
IMP: 30-10-209, MCA

STATEMENT OF REASONABLE NECESSITY: It is necessary to adopt ARM 6.10.126(2)(f) through 6.10.126(2)(j) to promote the public interest, and for the protection of investors. They are consistent with the purposes of the policy and provisions of Title 30, chapter 10, parts 1 through 3, MCA.

ARM 6.10.126(2)(f) is necessary to define specific types of activity that are prohibited by 30-10-201(13)(g), MCA. Recently, NASSAA member states that the SEC (federal regulator) and FinRA (self-regulating organization) have seen an increase in the use of unsupported and unaccredited senior designations as a means to commit fraudulent acts against senior investors. The agency finds this rule a necessary tool in its efforts to curb the fraudulent use of such designations.

ARM 6.10.126(2)(g) is necessary to define rebuttable presumptions against the prohibited activity described in NEW RULE I, placing a limitation on the agency to avoid oppressive use of the agency's regulatory powers while allowing appropriate regulation of persons using senior designations unlawfully.

ARM 6.10.126(2)(h) is necessary to define criteria specific to the unlawful designations in order to avoid any vagueness or ambiguity with regard to what terms and what actions constitute an unlawful senior designation.

ARM 6.10.126(2)(i) is necessary to clarify that the definition of unlawful "senior designations" is limited to those that are used to mislead or misrepresent a person's ability to perform certain tasks associated with the securities industry.

ARM 6.10.126(2)(k) is necessary to clarify that the rule is not an unlawful limitation on the State Auditor in the capacity of ex-Officio Securities Commissioner.

NEW RULE I is necessary to promote the public interest, for the protection of investors, and they are consistent with the purposes of the policy and provisions of Title 30, chapter 10, part 1 through 3, MCA. The addition of this rule to the Securities Department's rules is required by the Legislative Auditor to inform the public regarding the fees and other requirements to effect a transactional exemption pursuant to 30-10-105(15), MCA.

5. Concerned persons may submit their data, views, or arguments concerning the proposed action either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Roberta Cross Guns, Staff Attorney, State Auditor's Office, 840 Helena Ave., Helena, Montana, 59601; telephone (406) 444-2040; fax (406) 444-5558; or e-mail rcrossguns@mt.gov, and must be received no later than 5:00 p.m., August 15, 2008.

6. Roberta Cross Guns, State Auditor's Office, has been designated to preside over and conduct this hearing.

7. The department maintains a list of concerned persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Such written request may be mailed or delivered to Darla Sautter, 840 Helena Ave., Helena, Montana 59601; telephone (406) 444-2726; TDD (406) 444-3246; fax (406) 444-3497; or e-mail dsautter@mt.gov, or may be made by completing a request form at any rules hearing held by the department.

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

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

/s/ Christina L. Goe	/s/ Janice S. VanRiper
Christina L. Goe	Janice S. VanRiper
Rule Reviewer	Deputy State Auditor

Certified to the Secretary of State July 7, 2008.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 17.8.102, 17.8.301, 17.8.901, 17.8.1007, 17.8.1201, 17.8.1206, and 17.8.1212 pertaining to incorporation by reference of current federal regulations and other materials into air quality rules	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT (AIR QUALITY)

TO: All Concerned Persons

1. On August 6, 2008, at 2:00 p.m., the Board of Environmental Review will hold a public hearing in Room 111, Metcalf Building, 1520 E. Sixth Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The board will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact Elois Johnson, Paralegal, no later than 5:00 p.m., July 25, 2008, to advise us of the nature of the accommodation that you need. Please contact Elois Johnson at P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail ejohnson@mt.gov.

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

17.8.102 INCORPORATION BY REFERENCE--PUBLICATION DATES

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

(a) adopted a federal regulation by reference, the reference is to the July 1, ~~2006~~ 2007, edition of the Code of Federal Regulations (CFR);

(b) adopted a section of the United States Code (USC) by reference, the reference is to the 2000 edition of the USC and Supplement ~~IV~~ V (~~2006~~ 2005);

(c) adopted another rule of the department or of another agency of the state of Montana by reference, the reference is to the December 31, ~~2006~~ 2007, edition of the Administrative Rules of Montana (ARM).

(2) If EPA or a federal court of competent jurisdiction vacates, or otherwise nullifies, any emission standard, in whole or in part, incorporated by reference pursuant to ARM 17.8.103(1)(a) through (j), the affected emission standard or part thereof shall not be effective after the date of any such decision.

(3) The following subparts, or portions thereof, of 40 CFR Part 60, are excluded from incorporation by reference:

(a) 40 CFR 60, Subpart CCCC, Standards of Performance for Commercial and Industrial Solid Waste Incineration Units for which Construction is Commenced After November 30, 1999, or for which Modification or Reconstruction is Commenced on or After June 1, 2001 (40 CFR 60.2000 through 60.2265, and all associated appendices and tables), as vacated June 8, 2007, by the U.S. Circuit

Court of Appeals, D.C. Circuit, ruling.

(4) The following subparts, or portions thereof, of 40 CFR Part 63 are excluded from incorporation by reference:

(a) 40 CFR 63, Subpart JJJJJ, National Emission Standards for Hazardous Air Pollutants for Brick and Structural Clay Products Manufacturing (40 CFR 63.8380 through 63.8515, and all associated appendices and tables), as vacated March 13, 2007, by the U.S. Circuit Court of Appeals, D.C. Circuit;

(b) 40 CFR 63, Subpart KKKKK, National Emission Standards for Hazardous Air Pollutants for Clay Ceramics Manufacturing (40 CFR 63.8530 through 63.8665, and all associated appendices and tables), as vacated March 13, 2007, by the U.S. Circuit Court of Appeals, D.C. Circuit;

(c) 40 CFR 63, Subpart DDDDD, National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers and Process Heaters (40 CFR 63.7480 through 63.7575, and all associated appendices and tables), as vacated June 8, 2007, by the U.S. Circuit Court of Appeals, D.C. Circuit;

(d) Portions of 40 CFR 63, Subpart DDDD, National Emission Standards for Hazardous Air Pollutants for Plywood and Composite Wood Products, as vacated June 19, 2007, by the U.S. Circuit Court of Appeals, D.C. Circuit.

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

17.8.301 DEFINITIONS For purposes of this subchapter, the following definitions apply:

(1) through (16) remain the same.

(17) "Process weight rate" means the rate established as follows:

(a) ~~F~~for continuous or long-run steady-state operations, the total process weight for the entire period of continuous operation or for a typical portion thereof, divided by the number of hours of such period or portion thereof~~.~~;

(b) ~~F~~for cyclical or batch operations, the total process weight for a period that covers a complete operation or an integral number of cycles, divided by the hours of actual process operation during such a period. Where the nature of any process or operation or the design of any equipment is such as to permit more than one interpretation of this definition, the interpretation that results in the minimum value for allowable emissions shall apply.

(18) and (19) remain the same.

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

17.8.901 DEFINITIONS In this subchapter the following definitions apply:

(1) through (10) remain the same.

(11) "Major modification" means any physical change in, or change in the method of, operation of a major stationary source that would result in a significant net emissions increase of any pollutant subject to regulation under the FCAA.

(a) remains the same.

(b) A physical change in, or change in the method of, operation does not

include:

(i) through (20) remain the same.

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

17.8.1007 BASELINE FOR DETERMINING CREDIT FOR EMISSIONS AND AIR QUALITY OFFSETS (1) For the purposes of this subchapter, the following requirements shall apply:

(a) the requirements of ARM 17.8.906, except that 17.8.906(7) through (9) ~~is~~ are not applicable to offsets required under this subchapter;

(b) remains the same.

(c) in the case of emission offsets involving volatile organic compounds and oxides of nitrogen, offsets will generally be acceptable if they are obtained from within the areas specified in (1)(b). If the proposed offsets would be from sources located at considerable distances from the new source, the department shall increase the ratio of the required offsets and require a showing by the applicant that nearby offsets were investigated and reasonable alternatives were not available; ~~and~~

(d) in the case of emission offsets involving sulfur dioxide, particulates, and carbon monoxide, areawide mass emission offsets are not acceptable, and the applicant shall perform atmospheric simulation modeling to ensure that emission offsets provide a positive net air quality benefit. The department may exempt the applicant from the atmospheric simulation modeling requirement if the emission offsets provide a positive net air quality benefit, are obtained from an existing source on the same premises or in the immediate vicinity of the new source, and the pollutants disperse from substantially the same effective stack height; and

(e) remains the same.

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

17.8.1201 DEFINITIONS In this subchapter, unless indicated otherwise, the following definitions apply:

(1) and (2) remain the same.

(3) "Affected states" means all states that are:

(a) ~~that are~~ contiguous to Montana and whose air quality may be affected by a source requiring an air quality operating permit, permit modification, or permit renewal; or

(b) ~~that are~~ within 50 miles of a source requiring an air quality operating permit, permit modification, or permit renewal.

(4) through (33) remain the same.

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

17.8.1206 INFORMATION REQUIRED FOR AIR QUALITY OPERATING PERMIT APPLICATIONS (1) and (2) remain the same.

(3) Insignificant emissions units need not be addressed in an application for

an air quality operating permit, except that the application must include a list of such insignificant emissions units and emissions from insignificant ~~emission~~ emissions units must be included in emission inventories and are subject to assessment of permit fees. Emission inventories are to be calculated or estimated using accepted engineering methods which may include, but are not limited to, use of appropriate emission factors, material balance calculations, or best engineering judgement or process knowledge. Insignificant ~~emission~~ emissions units may be listed by category.

(4) through (11) remain the same.

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

17.8.1212 REQUIREMENTS FOR AIR QUALITY OPERATING PERMIT CONTENT RELATING TO MONITORING, RECORDKEEPING, AND REPORTING

(1) and (2) remain the same.

(3) All applicable reporting requirements must be included in the permit. Each air quality operating permit shall incorporate the following requirements relating to reporting:

~~(a) All applicable reporting requirements must be included in the permit.~~

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

(4) remains the same.

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

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

The board is proposing to amend ARM 17.8.102 to adopt revisions to federal regulations published in the Federal Register (FR) between July 1, 2006, and June 30, 2007, that are included in the July 1, 2007, edition of the Code of Federal Regulations (CFR). Significant revisions to the affected CFR include the following:

40 CFR Part 50: amendments to 40 CFR § 50.3; 50.6(b); 50.13; Appendices K, L, N, and O. Based on its review of the air quality criteria and national ambient air quality standards (NAAQS) for particulate matter (PM), EPA revised the primary and secondary NAAQS for PM to provide increased protection of public health and welfare, respectively. Regarding primary standards for fine particles (generally referring to particles less than or equal to 2.5 micrometers (µm) in diameter, PM2.5), EPA revised the level of the 24-hour PM2.5 standard to 35 micrograms per cubic meter (µg/m3), providing increased protection against health effects associated with short-term exposure (including premature mortality and increased hospital admissions and emergency room visits), and retained the level of the annual PM2.5 standard at 15 µg/m3, continuing protection against health effects associated with

long-term exposure (including premature mortality and development of chronic respiratory disease). Regarding primary standards for particles less than or equal to 10µm in diameter (PM10), EPA retained the 24-hour PM10 standard to protect against the health effects associated with short-term exposure to coarse particles (including hospital admissions for cardiopulmonary diseases, increased respiratory symptoms, and possibly premature mortality). Finding that the available evidence did not suggest an association between long-term exposure to coarse particles at current ambient levels and health effects, EPA revoked the annual PM10 standard. EPA revised the 24-hour PM2.5 secondary standard by making it identical to the revised 24-hour PM2.5 primary standard, retained the annual PM2.5 and 24-hour PM10 secondary standards, and revoked the annual PM10 secondary standard. This suite of secondary PM standards is intended to provide protection against PM-related public welfare effects, including visibility impairment, effects on vegetation and ecosystems, and materials damage and soiling. EPA also revised its regulations so that air quality monitoring data showing an exceedance or violation of the NAAQS will not result in redesignation of the area's attainment or nonattainment status if the state adequately demonstrates that the exceedance or violation resulted from an exceptional event. The regulations require states to take reasonable measures to mitigate the impacts of an exceptional event.

40 CFR Part 51: amendments to Appendix M, finalizing Methods 203A, 203B, and 203C for determining visible emissions using data reduction procedures that are more appropriate for State Implementation Plan (SIP) rules than Method 9, the method currently used. This action was requested by the states and was needed for the special data reduction requirements in their rules. The intended effect is to provide states with an expanded array of data reduction procedures for determining compliance with their SIP opacity regulations.

40 CFR Part 53: Subpart A, Subpart C, and Subpart E, §§ 53.1; 53.2; 53.3; 53.4; 53.5; 53.8; and 53.9; Table A-1; Appendix A; §§ 53.30 through 53.35 and §§ 53.50 through 53.59. These changes, which apply to monitoring for criteria pollutants, were intended by EPA to reduce required monitoring for pollutants for which most areas have reached attainment, to better focus monitoring resources on current air quality challenges. The changes will also allow states and local monitoring agencies more flexibility to design their monitoring programs to reflect local conditions.

40 CFR Part 60: Addition of Subpart IIII, Standards of Performance for Stationary Compression Ignition Internal Combustion Engines, which provides standards of performance applicable to manufacturers, owners, and operators of stationary compression ignition (CI) internal combustion engines (ICE) as specified in the rule; addition of Subpart KKKK, Standards of Performance for Stationary Combustion Turbines, which establishes emission standards and compliance schedules for controlling emissions from stationary combustion turbines for which construction, modification, or reconstruction commenced after February 18, 2005; and amendments to §§ 60.106(b)(3), 60.284(f), 60.752(b)(2)(iii)(A), 60.754(e), Appendix A-7, Method 24, § 6.7, Appendix B, Performance Specification 2, and §

13.2. This action amends various source testing provisions in the New Source Performance Standards (NSPS) to correct inadvertent errors and amend a testing provision.

40 CFR Part 63: Amendments to Subpart M, National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities. For existing area sources (large and small), the revisions require implementation of an enhanced leak detection and reporting (LDAR) program and prohibit the use of existing transfer machines. For new area sources (large and small), the revisions require implementation of an enhanced LDAR program and use of a nonvented dry-to-dry machine with a refrigerated condenser and secondary carbon adsorber. These added requirements do not apply to new coresidential sources because these sources are prohibited from using perchloroethylene (PCE). The rule prohibits the use of all existing transfer machines two years from the effective date of the rule by requiring owners or operators to eliminate any PCE emissions from clothing transfer between the washer and dryer. For coresidential area sources, the rule prohibits new PCE machines in residential buildings by requiring that owners or operators eliminate PCE emissions from dry cleaning systems installed after December 21, 2005. The revisions to Part 60 include amendments to Subpart EEEE, National Emission Standards for Hazardous Air Pollutants: Organic Liquids Distribution (Non-Gasoline). After promulgation of the NESHAP, the administrator received petitions for administrative reconsideration of the promulgated rule, and several petitions for judicial review of the final rule were filed in the United States Court of Appeals for the District of Columbia Circuit. On November 14, 2005, pursuant to a settlement agreement between some of the parties to the litigation, EPA published a notice of proposed amendments to address some of the concerns raised in the petitions. In this action, EPA promulgated those amendments, adding additional vapor balancing options, and making technical corrections to the rule. EPA also amended Subpart FFFF, National Emission Standards for Hazardous Air Pollutants: Miscellaneous Organic Chemical Manufacturing to provide additional compliance options, modify initial and continuous compliance requirements, and simplify recordkeeping and reporting requirements. Collectively, these provisions were intended to reduce the burden associated with demonstrating compliance, without affecting emissions control or the ability of enforcement agencies to ensure compliance.

Other proposed amendments to the rules include: the addition of ARM 17.8.102(2), allowing for removal of affected CFR requirements, as incorporated, without the need for rulemaking if future requirements contained in the CFR, and incorporated by reference, are vacated; the addition of ARM 17.8.102(3) and (4), providing exclusions from incorporation by reference for specific requirements of the CFR that have been vacated; and minor editorial changes to conform to the current format of the Secretary of State's office and to correct typographical errors. These nonsubstantive "housekeeping" changes would amend ARM 17.8.301, ARM 17.8.901, ARM 17.8.1007, ARM 17.8.1201, ARM 17.8.1206, and ARM 17.8.1212.

4. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Elois Johnson, Paralegal, Department of Environmental Quality, 1520

E. Sixth Avenue, P.O. Box 200901, Helena, Montana 59620-0901; faxed to (406) 444-4386; or e-mailed to ejohnson@mt.gov, no later than 5:00 p.m., August 14, 2008. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

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

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

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

Reviewed by: BOARD OF ENVIRONMENTAL REVIEW

/s/ David Rusoff BY: */s/ Joseph W. Russell*
DAVID RUSOFF JOSEPH W. RUSSELL, M.P.H.,
Rule Reviewer Chairman

Certified to the Secretary of State, July 7, 2008.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 17.8.505 and 17.8.514 pertaining to air quality operation fees and open burning fees	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT (AIR QUALITY)

TO: All Concerned Persons

1. On August 6, 2008, at 3:00 p.m., the Board of Environmental Review will hold a public hearing in Room 111, Metcalf Building, 1520 E. Sixth Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The board will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact Elois Johnson, Paralegal, no later than 5:00 p.m., July 25, 2008, to advise us of the nature of the accommodation that you need. Please contact Elois Johnson at Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail ejohnson@mt.gov.

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

17.8.505 AIR QUALITY OPERATION FEES (1) through (6) remain the same.

(7) The air quality operation fee for facilities other than portable facilities or registered oil and gas well facilities is based on the actual, or estimated actual, amount of air pollutants emitted by the facility during the previous calendar year and is an administrative fee of ~~$500~~ 600, plus ~~$29.96~~ 31.29 per ton of PM-10, sulfur dioxide, lead, oxides of nitrogen, and volatile organic compounds emitted.

(8) through (13) remain the same.

AUTH: 75-2-111, 75-2-220, 75-2-234, MCA
IMP: 75-2-211, 75-2-220, 75-2-234, MCA

REASON: Pursuant to 75-2-220, MCA, the department assesses air quality permit application fees, annual air quality operation fees, and open burning permit fees. In the aggregate, these fees must be sufficient to cover the department's costs of developing and administering the permitting requirements for the Clean Air Act of Montana. Under ARM 17.8.510, the structure and the amount of the fees are to be determined and reviewed annually by the board.

Annual air quality operation fees are required for all facilities that hold an air quality permit, that will be required to obtain an air quality permit pursuant to the Title V air quality operating permit program, or that are registered oil and gas well facilities. For facilities other than portable facilities and registered oil and gas well

facilities, for which a flat administrative fee is assessed, the air quality operation fee has been based on the actual, or estimated actual, amount of air pollutants emitted during the previous calendar year and includes an administrative fee plus a per-ton fee for tons of PM-10, sulfur dioxide, lead, oxides of nitrogen, and volatile organic compounds emitted. The amount of money the department needs to generate through the collection of air quality operation fees depends on the legislative appropriation, the amount of fee carryover from the previous fiscal year, and the projected application fees. The emission component of the operation fee is revised also to account for changes in the total amount of pollutants emitted in the state in the previous calendar year.

The board is proposing to set the air quality operation fees to be billed in calendar year 2008. Air quality fees billed in 2008 will fund the department's activities in fiscal year 2009, and would be based on emissions from calendar year 2007.

The legislative appropriation for fiscal year 2008 was $3,860,228. However, an amended appropriation amount for fiscal year 2008 should be noted. The fiscal year 2008 appropriation documented in MAR Notice No. 17-258, which was published at p. 795, 2007 Montana Administrative Register, issue number 12, and adopted at p. 1664, 2007 Montana Administrative Register, issue number 20, was overestimated due to a delay in receiving the actual appropriation, including the department's pay plan, from the 60th Legislature. The actual appropriation amount for fiscal year 2008 was corrected from $3,875,703, as provided in that MAR notice, to $3,860,228, a difference of $15,475. This change does not impact the fiscal year 2009 operating and open burning fee rule development. The amount of the carryover from fiscal year 2007 was $203,327. The total amount of pollutants reported for calendar year 2007 fees was 95,832 tons, and the per-ton component of the air quality operation fee was $29.96.

In fiscal year 2009, the board is proposing to increase the administrative portion of the annual operating fee for stationary sources from $500 to $600. This change would provide consistency with the current fee charged for the administration of the portable source and registration programs, for which the department provides similar administrative services. Further, this change would result in an increase in department revenue of approximately $30,000/year and, consequently, a decrease in the per-ton component of the operating fee for stationary sources.

The appropriation for fiscal year 2009 is $3,966,080, an increase of $105,852 from this fiscal year. The projected carryover from fiscal year 2008 is $0. The total amount of pollutants reported for 2008 fees is 98,661 tons. Based upon the appropriation, the estimated carryover, the projected permit application fees, and the emission inventory, in order to cover the department's costs of developing and administering the air quality permitting program, it is necessary for the board to increase the per-ton charge to $31.29. Therefore, the board is proposing to amend ARM 17.8.505(7) by replacing the per-ton charge of $29.96 with $31.29.

In calendar year 2007, the total amount of fees assessed was $3,541,368. The amount of fees that would be assessed in 2008, to meet the fiscal year 2009 budget, would be $3,832,302, for an increase of $290,934. In calendar year 2008, fees would be assessed for 1,243 facilities.

17.8.514 AIR QUALITY OPEN BURNING FEES (1) through (4) remain the same.

(5) The air quality major open burning permit application fee is the greater of the following, as adjusted by any amount determined pursuant to (6):

(a) a fee calculated using the following formula:

tons of total particulate emitted in the previous appropriate calendar year,
multiplied by $~~21.07~~ 17.40; plus
tons of oxides of nitrogen emitted in the previous appropriate calendar year,
multiplied by $~~5.27~~ 4.35; plus
tons of volatile organic compounds emitted in the previous appropriate calendar year,
multiplied by $~~5.27~~ 4.35; or

(b) through (7) remain the same.

AUTH: 75-2-111, MCA
IMP: 75-2-211, 75-2-220, MCA

REASON: The board is proposing to amend ARM 17.8.514 by revising the fee required for major open burning permit applications for fiscal year 2009. Each year, in consultation with the Montana Airshed Group, which includes the major open burners in the state, the department develops a budget reflecting the cost the department will incur that fiscal year in operating its Smoke Management Program for major open burners. Fees assessed to individual burners are based upon the budget and the burner's actual, or estimated actual, emissions from the previous calendar year in which the burner conducted open burning pursuant to an air quality major open burning permit. For calendar year 2007, the major open burners reported 8,787 tons of emissions, compared to 4,826 tons for calendar year 2006, or an increase of 3,961 tons.

The operating budget for the 12 major open burners in fiscal year 2009 is $77,278, compared to a budget of $46,159 for fiscal year 2008. The increase of $31,119 in major open burning funding is due to increases of $29,267 in personnel costs as a result of increased use of staff time in the Smoke Management Program, particularly with regard to forecasting dispersion conditions for prescribed burning. The increase in the need for additional staff time also reflects an increase in workload for permitting functions and planning and advisory activities relating to smoke management and coordination activities with the Idaho/Montana Airshed Group. The department also now manages the smoke emissions database, the Airshed Management System (AMS), and the budget reflects staff time costs associated with database analysis and maintenance. The increases are offset by decreases of $2,281 in travel costs. The budget also reflects the elimination of the cost of an internet server at $1,660 as the department now administers AMS and does not require this service any longer. The budget also includes an increase of indirect costs as a result of the increases in personnel and operating costs. The board is proposing to decrease the permit fees from $21.07 per ton of particulate,

$5.27 per ton of oxides of nitrogen, and $5.27 per ton of volatile organic compounds emitted to $17.40, $4.35, and $4.35, respectively.

The cumulative amount of the fees would equal the budget of $77,278. This amount would be distributed among the 12 major open burners.

4. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Elois Johnson, Paralegal, Department of Environmental Quality, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana 59620-0901; faxed to (406) 444-4386; or e-mailed to ejohnson@mt.gov, no later than 5:00 p.m., August 14, 2008. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

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

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

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

Reviewed by: BOARD OF ENVIRONMENTAL REVIEW

/s/ David Rusoff
DAVID RUSOFF
Rule Reviewer

BY: */s/ Joseph W. Russell*
JOSEPH W. RUSSELL, M.P.H.,
Chairman

Certified to the Secretary of State, July 7, 2008.

BEFORE THE DEPARTMENT OF CORRECTIONS
OF THE STATE OF MONTANA

In the matter of the adoption of New Rules I through V pertaining to confidentiality of youth records	)))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION

TO: All Concerned Persons

1. On August 21, 2008, at 1:00 p.m., the Department of Corrections will hold a public hearing in Room 24 of the Department of Corrections Annex at 515 N. Sanders, at Helena, Montana, to consider the proposed adoption of the above-stated rules.

2. The Department of Corrections will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Corrections no later than 5:00 p.m. on August 11, 2008, to advise us of the nature of the accommodation that you need. Please contact Myrna Omholt-Mason, Department of Corrections, P.O. Box 201301, Helena, Montana, 59620-1301; telephone (406) 444-3911; fax (406) 444-4920; or e-mail momholt-mason@mt.gov.

3. The new rules are necessary to implement the provisions of Title 41, chapter 5, part 2, MCA, which require the Department of Corrections to adopt appropriate control methods to ensure adequate integrity, security, and confidentiality of any electronic records of a youth, collected, generated, disseminated, or maintained by the department in any management information system, as authorized under Title 53, chapter 1, part 2, MCA.

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

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

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

(2) "Department" means the Department of Corrections.

(3) "State enterprise technology policy" means an executive branch information technology policy published by the Department of Administration.

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

(5) "Validation tables" means a mechanism to ensure that the data that are entered fall within specific boundaries. The table contains the only acceptable data that may be entered into the system so the person entering the data is restricted to enter only those words or numbers that are in the validation table.

(6) "Youth management information system" means the computer systems and staff who manage the systems in the Department of Corrections and which contain information and records involving the management of youth under supervision of the Department of Corrections.

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

AUTH: 41-5-220, MCA
IMP: 41-5-220, 41-5-221, MCA

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

NEW RULE II YOUTH ELECTRONIC RECORDS (1) The department will maintain an electronic youth management information system. The department will maintain the electronic youth management information system separate from any adult electronic management information system.

AUTH: 41-5-220, MCA
IMP: 41-5-220, 41-5-221, MCA

REASON: The agency proposes New Rule II, Youth Electronic Records, to establish that the agency will implement a youth management information system and that it will be separate from any adult system.

NEW RULE III INTEGRITY OF YOUTH ELECTRONIC RECORDS IN DEPARTMENT YOUTH MANAGEMENT INFORMATION SYSTEM (1) To control the integrity of the information in the youth management information system, only authorized persons will be given the capability to enter data into the system as granted authorization by the Youth Services Division administrator or designee to enter data.

(2) Persons who are granted authorization to enter data will be specially trained by the department to enter correct data into the youth management information system.

(3) The statistics unit of the department will periodically run reports to validate the integrity of the information in the youth management information system. The statistics unit will identify missing or incomplete information with these reports.

(4) When a person enters or changes data in the youth management information system, the system will record the name and user identification of the person who entered or changed the data, and the date and time it was entered, changed, or deleted.

(5) The system will utilize validation tables whenever possible.

AUTH: 41-5-220, MCA
IMP: 41-5-220, 41-5-221, MCA

REASON: The agency proposes New Rule III to establish procedures by which the department will assure the integrity of information in the youth management information system.

NEW RULE IV SECURITY OF YOUTH ELECTRONIC RECORDS IN DEPARTMENT YOUTH MANAGEMENT INFORMATION SYSTEM (1) To control the security of the information in the youth management information system, the Youth Services Division administrator or designee will give to the Information and Business Technology Bureau security officer(s) the names of persons who need access to the youth management information system. The Information and Business Technology Bureau security officer(s) or designee will grant or deny access to the persons whose names are forwarded. Upon recommendation of the Youth Services Division administrator or designee, the Information and Business Technology Bureau security officer(s) will remove or terminate previously granted access.

(2) The department's chief information officer may periodically review access that has been granted, denied, or terminated.

(3) Youth Services Division personnel who learn of or suspect a security breach in the youth management information system must report the security breach to the department's chief information officer.

(4) Any employee with access to the youth management information system who engages in unauthorized use, disclosure, alteration, or destruction of data will be subject to appropriate disciplinary action, including possible dismissal and legal action.

(5) The Information and Business Technology Bureau of the department is responsible for physical security and access control to the hardware that hosts the youth management information system.

(6) The Information and Business Technology Bureau of the department will secure back-up tapes off-site in compliance with state enterprise technology policy.

AUTH: 41-5-220, MCA
IMP: 41-5-220, 41-5-221, MCA

REASON: The agency proposes New Rule IV to establish procedures by which the department will assure the security of information in the youth management information system.

NEW RULE V CONFIDENTIALITY OF YOUTH ELECTRONIC RECORDS IN DEPARTMENT YOUTH MANAGEMENT INFORMATION SYSTEM (1) The information in the youth management information system is confidential and shall not be disseminated to anyone outside the department unless specifically authorized by the Youth Services Division administrator or designee.

(2) Each individual who is granted access to the youth management information system shall be responsible for maintaining the confidentiality of the information.

(3) No statistical report the department prepares will contain any identifying information of a youth or any information that would allow identification of a youth.

AUTH: 41-5-220, MCA
IMP: 41-5-220, 41-5-221, MCA

REASON: The agency proposes New Rule V to establish procedures by which the department will assure the confidentiality of information in the youth management information system.

5. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Myrna Omholt-Mason at the contact information listed in paragraph 2, and must be received no later that 5:00 p.m. on August 28, 2008.

6. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail address, 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 Myrna Omholt-Mason, at the contact information listed in paragraph 2, or may be made by completing a request form at any rules hearing held by the department.

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

8. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was notified on June 24, 2008 by regular mail.

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

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

/s/ Mike Ferriter
MIKE FERRITER
Director
Department of Corrections

Certified to the Secretary of State July 7, 2008.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the proposed amendment of ARM 23.16.1827, concerning record keeping requirements	)))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On August 12, 2008, at 9:00 a.m., the Montana Department of Justice will hold a public hearing in the conference room at the Gambling Control Division, 2550 Prospect Avenue, Helena, Montana, to consider the proposed amendment of the above-stated 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 August 8, 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:

23.16.1827 RECORD KEEPING REQUIREMENTS (1) and (2) remain the same.

(a) a correct lifetime audit ticket as provided for by department rules, which must include progressive accounting data if applicable. For those reporting manually and on a tier II automated accounting and reporting system on a 7-day reporting interval, ~~T~~the lifetime audit ticket must be printed for each machine at least once every seven days. For those reporting on a tier II automated accounting and reporting system on a 14-day reporting interval, the lifetime audit ticket must be printed for each machine at least once every 14 days;

(b) through (6)(b) remain the same.

AUTH: 23-5-115, ~~23-5-605,~~ 23-5-621, 23-5-637, MCA
IMP: 23-5-115, 23-5-136, 23-5-605, 23-5-610, 23-5-621, 23-5-628, 23-5-637, MCA

RATIONALE AND JUSTIFICATION: The proposed amendment is reasonable and necessary to make record keeping requirements consistent with requirements for electronic reporting of video gambling machine (VGM) taxes. Presently, VGM owners are authorized under ARM 23.16.1826 to report quarterly tax information on either a 7-day or 14-day reporting interval. The 14-day reporting interval was allowed because smaller and more rural or isolated gambling establishments often

have VGM tax information gathered by route operators who visit the establishments only every two weeks. This rule amendment will allow the route operator to print a VGM audit ticket on the 14-day interval, which will be consistent with the electronic reporting of tax information for those establishments.

4. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Rick Ask, Gambling Control Division, 2550 Prospect Avenue, P.O. Box 201424, Helena, MT 59620-1424; Fax (406) 444-9157; or e-mail rask@mt.gov, and must be received no later than August 14, 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/ J. Stuart Segrest
J. STUART SEGREST
Rule Reviewer

Certified to the Secretary of State July 7, 2008.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the proposed amendment of ARM 24.30.102, relating to occupational safety matters in public sector employment) NOTICE OF PUBLIC HEARING) ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On August 8, 2008, at 10:00 a.m., the Department of Labor and Industry (department) will hold a public hearing to be held in the third floor conference room (room 314), Walt Sullivan Building, 1327 Lockey Avenue, Helena, Montana to consider the proposed amendment of the above-stated rule.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., on August 1, 2008, to advise us of the nature of the accommodation that you need. Please contact the Employment Relations Division, Attn: Jeff Lazarus, P.O. Box 1728, Helena, MT 59624-1728; telephone (406) 444-6418; fax (406) 444-9396; TDD (406) 444-0532; or e-mail jlazarus@mt.gov.

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

24.30.102 OCCUPATIONAL SAFETY AND HEALTH CODE FOR PUBLIC SECTOR EMPLOYMENT (1) and (2) remain the same.

(3) The Department of Labor and Industry adopts a safety code for every place of employment conducted by a public sector employer. This safety code adopts by reference the following occupational safety and health standards found in the Code of Federal Regulations, as of ~~July 1, 2007~~ July 1, 2008:

(a) Title 29, Part 1910; and

(b) Title 29, Part 1926.

(4) All sections adopted by reference are binding on every public sector employer even though the sections are not separately printed in a separate state pamphlet and even though they are omitted from publication in the Montana Administrative Register and the Administrative Rules of Montana. The safety standards adopted above and printed in the Code of Federal Regulations, Title 29, as of ~~July 1, 2007~~ July 1, 2008, are considered under this rule as the printed form of the safety code, and shall be used by the department and all public sector employers, employees, and other persons when referring to the provisions of the safety code. All the provisions, remedies, and penalties found in the Montana Safety Act apply to the administration of the provisions of the safety code adopted by this rule.

(5) remains the same.

AUTH: 50-71-311, MCA
IMP: 50-71-311, 50-71-312, MCA

REASON: There is reasonable necessity to amend this rule in order to incorporate by reference the current federal rules promulgated by the Occupational Health and Safety Administration (OSHA). These rules are periodically updated to ensure that public sector employers and employees have essentially the same duties and protections that apply to employers and employees in the private sector. The July 1, 2008, version of the Code of Federal Regulations is proposed for incorporation by reference because it is the most current version.

4. Concerned persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Jeff Lazarus, Bureau Chief, Safety Bureau, Employment Relations Division, Department of Labor and Industry, P.O. Box 1728, Helena, Montana 59624-1728; by facsimile to (406) 444-9396; or by e-mail to jlazarus@mt.gov, and must be received no later than 5:00 p.m., August 15, 2008.

5. 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.

6. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and e-mail or postal address of the person to receive notices and specifies the subject matter of notices regarding Department of Labor and Industry administrative rulemaking proceedings or other administrative proceedings which the person wishes to receive. 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.

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

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

/s/ MARK CADWALLADER
Mark Cadwallader
Alternate Rule Reviewer

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

Certified by the Secretary of State July 7, 2008

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

In the matter of the proposed amendment of ARM 24.180.301 definitions, 24.180.401 fees, 24.180.404 applications, 24.180.407 examinations, 24.180.504 journeyman qualifications, 24.180.506 master qualifications, 24.180.603 reciprocity, 24.180.607 temporary practice permits, 24.180.704 medical gas piping endorsement, and adoption of NEW RULE I reissuance of retirement status license	))))))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT AND ADOPTION

TO: All Concerned Persons

1. On August 11, 2008, at 1:00 p.m., a public hearing will be held in room B-07, 301 South Park Avenue, Helena, Montana to consider the proposed amendment and adoption of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Plumbers (board) no later than 5:00 p.m., on August 6, 2008, to advise us of the nature of the accommodation that you need. Please contact Jason Steffins, Board of Plumbers, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2329; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2309; e-mail dlibsdplu@mt.gov.

3. GENERAL STATEMENT OF REASONABLE NECESSITY: The board has determined that reasonable necessity exists to generally amend the board rules at this time. Some of the amendments are technical in nature, such as renumbering or amending punctuation to comply with ARM formatting requirements. Other changes replace out-of-date terminology for current language and processes, delete unnecessary or redundant sections, and amend rules and catchphrases for accuracy, consistency, simplicity, better organization, and ease of use. Authority and implementation cites are being amended throughout to accurately reflect all statutes implemented through the rules and provide the complete sources of the board's rulemaking authority. Where additional specific bases for a proposed action exist, the board will identify those reasons immediately following that rule.

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

<u>24.180.301 DEFINITIONS</u> (1) and (2) remain the same.

(3) "Installation of plumbing and drainage systems" means~~,~~ but is not limited to~~,~~ the measuring, laying-out, cutting, fitting, soldering, and gluing of pipe and/or the installation of fixtures and equipment for the purpose of connecting potable water or sewage.

(4) through (6) remain the same.

(7) "Supervision" means:

(a) is readily available for consultation with journeyman plumbers and with the authority having jurisdiction;

(b) provides periodic evaluation of journeyman plumbers' professional competence; and

(c) provides professional guidance to journeyman plumbers on an on-going basis.

AUTH: 37-69-202, 37-69-401, MCA
IMP: 37-69-102, ~~37-69-202,~~ 37-69-401, MCA

REASON: The board determined it is reasonable and necessary to amend this rule and add a definition for "supervision" to clearly set forth the responsibilities of master plumbers as supervisors of journeyman plumbers in their employ. The absence of a definition has at times inhibited the board's ability to enforce its rule against masters loaning their licenses to others, i.e., being designated the person in charge of a plumbing shop to enable it to pull permits and bid jobs but providing virtually no supervision to the journeyman plumbers who perform the work.

24.180.401 FEE SCHEDULE (1) Applicants approved by the board to take the licensing examination(s) shall pay the examination fee directly to the vendor. The fee is set by the vendor and varies by examination. Information concerning current vendor examination fees is available from the board office.

~~(1)~~(2) Application fee	$ 60
~~(2) Examination fee~~	~~175~~
~~(3) Reexamination fee~~	~~175~~
~~(4) Administration of examination on alternate date~~	~~400~~

(5) through (10) remain the same but are renumbered (3) through (8).

(9) Retirement status certificate fee (one-time fee)	25

(11) remains the same but is renumbered (10).

AUTH: 37-1-134, 37-69-202, 37-69-401, MCA
IMP: 37-1-134, 37-1-141, 37-1-304, 37-1-305, 37-69-303, 37-69-306, 37-69-308, 37-69-311, 37-69-401, MCA

REASON: It is reasonably necessary to amend this rule to implement the board's decision to convert to vendor examinations. Following the shift to vendor exams, the board will no longer be responsible for setting or collecting exam fees, or administering the examinations and the board is eliminating the three fees as unnecessary. Applicants will pay fees directly to the examination vendor. The board notes that the initial decrease in board revenue will balance out with a related decrease in board costs with the shift to vendor administered exams.

The 2007 Montana Legislature enacted Chapter 502, Laws of 2007 (Senate Bill 153), which created a retirement license for plumbers. The bill was signed by the Governor on May 16, 2007, and became effective October 1, 2007. The board is adding a new fee at (9) to implement the legislation. The board has determined that the license in retirement status does not have to be annually renewed in the retirement status and it will not lapse, expire, or terminate on account of nonrenewal.

It is estimated that approximately 165 applicants and licensees will be affected by these proposed fee changes resulting in a $27,725 reduction in annual revenue.

24.180.404 APPLICATIONS (1) ~~Applications~~ An application for a master ~~plumber's license~~ or journeyman ~~plumber's~~ plumber license ~~may~~ must be submitted to the department ~~be made by anyone professing the qualifications set forth in 37-69-304 and 37-69-305, MCA. The application for examination shall be made to the department,~~ and must be accompanied ~~with~~ by the ~~proper~~ appropriate fee.

~~(2) No application for examination will be considered unless it is accompanied by the proper duly-documented supporting evidence and is received 15 days prior to the next scheduled board meeting. Approved applicants may take the next available quarterly exam following the board meeting at which their application is approved.~~

~~(3) Those applications received after the deadline will be processed for the following examination.~~

~~(4) Upon receipt and approval of an application for the journeyman or master plumber's examination, the department will send to the applicant an admittance notice for the examination. The admittance notice must be presented by the candidate at the examination.~~

~~(5)~~(2) An application will remain ~~be~~ on file for one year from the date of receipt. If ~~no action is taken by~~ the applicant has not met all qualifications and been issued a license within ~~one year~~ that period, the application terminates, the fee is ~~will be~~ forfeited, and any passing score achieved by the applicant on the written licensure examination is no longer valid. To reapply, an application and appropriate fee must be submitted ~~and reapplication will be required~~.

AUTH: 37-1-131, 37-69-202, MCA
IMP: 37-69-303, MCA

REASON: It is reasonable and necessary to amend this rule to comply with the board's shift to vendor administered exams. Setting examination deadlines and scheduling and administering the exams will no longer be done by the board and these provisions are no longer necessary.

The board is also amending this rule to clarify the process and implications for stale applications. While not a new process, the board is specifically delineating that after a year, the application will terminate and any passing written exam score will be invalidated. The board concluded that invalidating the written exam score due to an application's termination will ensure that licensure is based upon a demonstration of current competencies. The amendment also clarifies that meeting licensure requirements within one year is in an applicant's best interest.

24.180.407 EXAMINATIONS (1) ~~Individuals who have been approved for the examination or are reexamining shall be required to submit an examination fee 15 days prior to the examination date. Applicants whose fees are not received by the deadline shall be required to sit for the next available examination.~~ All master applicants must successfully complete a written examination with a score of 70 percent or greater.

(2) All journeyman applicants must successfully complete a written examination and a practical examination with a score of 70 percent or greater on each examination. The written examination must be passed before an applicant may take the practical examination.

(3) If an applicant fails three written examinations within the one year period of an application's viability, the applicant must submit proof of completion of 20 hours of continuing education as provided in ARM 24.180.2102 before the applicant will be approved to take the examination a fourth time. An applicant who fails the fourth written examination may not reapply for licensure for one year.

~~(2) Examinations to determine the fitness of an applicant, either master plumber or journeyman plumber, will be held at the pleasure of the board, at not less than three month intervals. The examination will be held in the city of Helena, Montana, unless the board specifically designates a different place for any such examination.~~

~~(3) Special examinations may be held in event the examination date and place regularly set by the board conflicts with religious beliefs of the applicant, and in that event, the applicant may petition the board by letter requesting such special examination. If the board allows such a special examination, it shall set a time and place thereof in its discretion.~~

~~(4) Requests for administration of examination on an alternate date must be submitted in writing to the department and include the proper fee. Requests must include the reason for the request, and a desired date of the examination. If the department approves the alternate date, it shall set a time and place thereof in its discretion.~~

~~(5) All master applicants will be required to successfully complete a written examination with a score of 70 percent or better before the appropriate license will be issued. All journeyman applicants will be required to successfully complete a written and practical examination with a score of 70 percent or better before the appropriate license will be issued.~~

~~(6) Examination papers may be reviewed in the board office for a period of 60 days immediately following the examination date only. Note taking will be allowed during the time of review, but the notes must be left in the board office.~~

~~(7) Appeals concerning the examination must be submitted in writing for response by the board.~~

~~(8) Any applicant for the journeyman's or master's license who shall sit for and fail the examination two consecutive times will not be allowed to retake the examination for a period of one year commencing with the date of the last examination that he failed. After one year, the applicant shall submit a notarized statement from an individual acceptable to the board, which attests to 20 hours of~~

~~additional training acceptable to the board before the applicant will be approved to again take the examination.~~

~~(9) When an applicant fails to take the examination for which the applicant was scheduled, the fee shall be forfeited and application for any subsequent examination will require another examination fee.~~

AUTH: 37-1-131, 37-69-202, MCA
IMP: 37-69-304, 37-69-305, 37-69-306, ~~37-69-307,~~ MCA

REASON: The board has chosen to convert to vendor produced, maintained, and administered licensing examinations in lieu of having its own examinations. The vendor has special expertise and experience in developing, maintaining, and administering psychometrically validated and defensible licensing examinations for plumbers.

The board is amending this rule to require separate passing scores on the written and practical journeyman examinations. The current requirement of a consolidated score of 70 percent or greater on the written and practical exams allows an applicant to do quite poorly on the written exam and very well on the practical exam and still pass. The board concluded that a separate passing score for each component is necessary so that applicants' knowledge of the Uniform Plumbing Code can be independently verified.

The board is adding (3) in conjunction with other amendments in this notice to allow applicants to take the written exam three times before further education is required and to test a maximum of four times before having to wait a year to reapply. The board concluded that this amendment gives applicants a greater value for their application fee without compromising public safety. The current requirements regarding retakes were largely dictated by the frequency that exams were offered but the vendor exams will be available more frequently and in more locations.

24.180.504 QUALIFICATIONS - JOURNEYMAN (1) The board will accept the following documentation of experience for journeyman plumber applicants ~~plumbers~~:

(a) ~~a notarized statement~~ written affirmation from a licensed master plumber(s) or a licensed plumbing contractor(s) by whom the applicant was employed, certifying by detailed description of the applicant's plumbing experience, that the applicant meets the qualifications set by 37-69-304, MCA. The written affirmation must verify that the applicant has a minimum of 7500 aggregate hours of experience in the field of plumbing over a period of not less than five years ~~the time and dates of employment and the type of plumbing work that was performed during the applicant's employment. Verification statements must verify five years of actual experience in the field of plumbing, at a minimum of 1500 hours per year~~;

(b) a copy of an apprenticeship completion certificate or certified statement issued by the United States Department of Labor, Employment and Training Administration (ETA), Office of Apprenticeship Training, Employer and Labor Services (OATELS), or a recognized state apprenticeship agency/council. Experience granted for a registered apprenticeship is contingent upon successfully completing the requirement of the apprenticeship program;

(c) through (d)(ii) remain the same.

(iii) completion of a course of study in a technical institute or other recognized educational program, none of the above to exceed two years of the five-year experience requirement~~;~~.

(e) upon documentation of practice in the fields of steam fitting, hydronics, and industrial piping, the experience will be accepted as equivalent to a maximum of two years of the five-year experience requirement.

~~(2) Other documentation such as W-2 forms or other time/pay records may only be used to supplement experience documentation when none of the other forms listed above are available due to unusual or unforeseen circumstances, which circumstances must be explained fully and the records approved for use by the board.~~

AUTH: 37-1-131, 37-69-202, MCA
IMP: 37-69-304, MCA

REASON: The board is amending this rule to eliminate the notarization requirement for employer experience verifications to be consistent with renewal applications which are no longer notarized. The board may still deem a false or misleading representation to be actionable against the applicant and any Montana-licensed master who makes such a representation concerning the applicant's experience.

The current rule defines one year of experience for journeyman licensure qualification purposes as 1500 hours of experience per year which is consistent with the statutory definition of one year of experience for master licensure in 37-69-305, MCA. Requiring 1500 hours of experience per year for five years has led to denial of journeyman licensure where, for example, an applicant has less than 1500 hours experience in one year and more than 1500 hours in another year even though the total hours meet or exceed 7500 hours. The board notes that five years of plumbing experience is legislatively mandated and the amended rule will still not allow an applicant who obtains 7500 hours in less than five years to take the journeyman license exam early.

Section 37-69-304(1)(a), MCA, specifically allows time and pay records as proof of plumbing experience and so (2) of this rule qualifying the acceptability of those records or disallowing them was inconsistent with statute. Therefore, (2) is being deleted.

24.180.506 QUALIFICATIONS - MASTER (1) The board will accept the following documentation of experience for master plumber applicants ~~plumbers~~:

(a) ~~A notarized statement~~ Written affirmation from a licensed master plumber(s) or a licensed plumbing contractor(s) by whom the applicant was employed certifying by detailed description of the applicant's plumbing experience, that the applicant meets the qualifications set by 37-69-305, MCA. ~~time and dates of employment of applicant as a journeyman plumber and the type of plumbing work performed, which must include evidence of three years of experience working with a licensed master plumber or in a supervisory capacity in the field of plumbing.~~

(b) Practice in the fields of steam fitting, hydronics, and industrial piping will not be considered as acceptable experience in the field of plumbing for the master license experience requirement.

~~(2) Other documentation such as W-2 forms or other time/pay records may only be used to supplement experience documentation when none of the other forms listed above are available due to unusual or unforeseen circumstances, which circumstances must be explained fully and the records approved for use by the board.~~

AUTH: 37-1-131, 37-69-202, MCA
IMP: 37-69-305, MCA

REASON: It is necessary and reasonable to amend the rule to eliminate the notarization requirement for employer experience verifications to be consistent with renewal applications which are no longer notarized. The board may still deem a false or misleading representation to be actionable against the applicant and any Montana-licensed master who makes a false or misleading representation concerning the applicant's experience. Section 37-69-305(1)(a), MCA, specifically allows time and pay records as proof of plumbing experience and so (2) of this rule qualifying the acceptability of those records or disallowing them was inconsistent with statute. Therefore, (2) is being deleted.

24.180.603 RECIPROCITY (1) The board may enter into a written reciprocal agreement for journeyman licensure with the ~~license~~ licensing authority of another state or jurisdiction if the other state or jurisdiction's qualifications for journeyman licensure include the following ~~conditions are met and are reviewed annually to ensure ongoing equivalent standards~~:

(a) ~~the state requires~~ five years of ~~actual and~~ documented experience in the field of plumbing; and

(b) ~~the state's~~ a written examination ~~is~~ based on the Uniform Plumbing Code with a minimum passing score of 70 percent.~~;~~

~~(c) the state requires both a written and practical portion on the state's examination; and~~

~~(d) the state requires a minimum passing score of 70 percent on their examination.~~

(2) If the other state or jurisdiction does not require a practical examination with a minimum passing score of 70 percent, the applicant for journeyman licensure by reciprocity shall be required to pass the Montana practical examination with a score of 70 percent or greater.

(3) The board shall review the journeyman licensure qualifications of the reciprocal states or jurisdictions annually to verify ongoing equivalency.

~~(2)~~(4) A current copy of the reciprocal ~~state's~~ state or jurisdiction's journeyman licensure requirements must be kept on file at the board office.

~~(3) The board shall approve the reciprocal agreement in open session and shall execute the agreement by the presiding chairperson's signature.~~

AUTH: 37-1-131, 37-69-202, MCA

IMP: 37-1-304, MCA

REASON: It is reasonable and necessary to amend this rule to establish that if a state has qualifications for journeyman plumber licensure equivalent to Montana's qualifications except that the other state does not require a practical examination, the board may still enter into a reciprocal agreement with that state's licensing authority. The applicant licensed in that state who seeks licensure in Montana by reciprocity would not have to retake the written licensure examination or have plumbing experience verification but the applicant would have to pass the Montana practical examination as a condition of licensure. The word "actual" in reference to plumbing experience is deleted because it is superfluous. The deletion does not signify any change in the nature or quality of plumbing experience required for licensure.

Section (3) is being deleted as unnecessary since all nonadjudicatory board business must be conducted in open session and a majority vote is required to take any action.

24.180.607 TEMPORARY PRACTICE PERMITS (1) An applicant for ~~a master or~~ journeyman ~~plumbing~~ or master plumber license shall be issued a temporary practice permit to perform only journeyman plumber functions upon approval of the applicant to take the examination for the licensure sought and upon receipt of the ~~may act as a journeyman plumber after making application to the board for licensure, paying~~ appropriate fees. Master applicants holding temporary practice permits may not perform plumbing functions requiring a master plumber license~~, being approved to write the examination and being issued a temporary permit~~.

(2) A temporary practice permit terminates 110 days after issuance, or upon the applicant's fourth failure of the written examination, or upon the applicant's failure of the practical examination with a score of less than 65 percent ~~shall run out on the last day of the month of the next scheduled examination or upon receipt of the results~~, whichever occurs first. ~~If the applicant fails or does not write the next scheduled examination, a temporary permit may be renewed at the discretion of the board, on a case-by-case basis upon receipt of a letter requesting renewal of a temporary practice permit and stating their intention to take the next scheduled examination. The letter must be accompanied by the examination fee. If the applicant does not take the next scheduled examination, the temporary practice permit will run out and the examination fee will be forfeited.~~

(3) A second temporary practice permit will be issued ~~only~~ to an applicant who~~:~~

~~(a) has failed the examination with a score of~~ scores between 65 ~~through~~ and 69 percent~~;~~ on the practical examination or, in the board's discretion, to an applicant

~~(b) is scheduled~~ unable to take the practical examination for which the applicant is ~~next~~ scheduled due to a documented hardship. ~~examination; and~~

~~(c) upon receipt of:~~

~~(i) a letter from the applicant requesting a second temporary permit and requesting to be scheduled for the next scheduled examination;~~

~~(ii) a letter from the employer stating that the applicant is employed and under the direct supervision of a licensed master plumber; and~~

~~(iii) payment of the appropriate fees.~~

~~(4) If the applicant does not appear for, cancels, or fails the next scheduled examination, the second temporary permit runs out on the date the board office learns of that occurrence.~~

~~(5) An applicant for the master plumbing license may not work as a master until such time as the applicant successfully passes the master's examination and a master plumber's license has been issued to the applicant.~~

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

REASON: It is reasonably necessary to amend (2) to clarify when a temporary practice permit terminates and under what circumstances a second temporary permit will be issued. The board concluded that the current section is poorly written and served to confuse readers. Following amendment, the termination of temporary practice permits will no longer be linked to scheduled exam dates. Since the exam dates will be set by an exam vendor, aligning temporary permit termination with exam dates is no longer workable. The board notes that the amendment carries forward the restriction on the functions that may be performed by a master applicant holding a temporary practice permit which the board deems necessary for public protection.

24.180.704 APPLICATION FOR MEDICAL GAS PIPING ENDORSEMENT

(1) through (2)(a) remain the same.

(b) documentation that provides proof the applicant has successfully completed an approved training program which meets the criteria of ASSE series 6000 professional qualification standards and a third-party testing source acceptable to the board, and has obtained certification in the installation of medical gas systems, based on NFPA 99C and Section IX of the ASME Welding and Brazing Codes; and

(c) ~~a recent photograph of the applicant; and~~

~~(d)~~ the nonrefundable application fee.

(3) and (4) remain the same.

AUTH: 37-1-131, 37-69-202, 37-69-401, MCA
IMP: 37-69-401, MCA

REASON: The board is amending this rule to eliminate the photograph requirement for medical gas piping installation endorsement applicants. The physical license does not include a photograph and the board concluded that simply having a photograph in the applicant's file is not necessary for the public protection.

5. The proposed new rule provides as follows:

RULE I REISSUANCE OF LICENSE ON ACTIVE STATUS FOLLOWING RETIREMENT (1) A plumber whose license has been placed on retirement status pursuant to 37-69-311, MCA, may have the license reissued on active status by submitting a written request together with a renewal fee.

(2) In the event a license has been on retirement status for more than three years at the time a request to have the license reissued on active status is received, the retired plumber must pass the written licensure examination before the license may be reissued.

AUTH: 37-1-131, 37-69-202, MCA
IMP: 37-69-311, MCA

REASON: The 2007 Montana Legislature enacted Chapter 502, Laws of 2007 (Senate Bill 153), which created a retirement license for plumbers. The bill was signed by the Governor on May 16, 2007, and became effective October 1, 2007. The board is adopting this new rule to establish the competency requirements for reissuance plumbers that must be met in certain circumstances before a license on retirement status may be reissued on active status. The Uniform Plumbing Code is reviewed and modified approximately every three years. The board concluded that it is necessary for the public's protection to require a plumber who has been on retirement status for more than three years to demonstrate knowledge of the current plumbing code before reissuing the license on active status. When the license is reissued in an active status, the plumber need not have met the regular continuing education requirements.

6. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Plumbers, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2309, or by e-mail to dlibsdplu@mt.gov, and must be received no later than 5:00 p.m., August 19, 2008.

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

8. The Board of Plumbers maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies the

person wishes to receive notices regarding all Board of Plumbers administrative rulemaking proceedings or other administrative proceedings. The request must indicate whether e-mail or standard mail is preferred. Such written request may be sent or delivered to the Board of Plumbers, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2309, e-mailed to dlibsdplu@mt.gov, or made by completing a request form at any rules hearing held by the agency.

9. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was notified on February 4, 2008, by regular mail.

10. Lorraine Schneider, attorney, has been designated to preside over and conduct this hearing.

BOARD OF PLUMBERS
TIM REGAN, PRESIDING OFFICER

/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 July 7, 2008

BEFORE THE BOARD OF REAL ESTATE APPRAISERS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the proposed amendment of ARM 24.207.401 fees, 24.207.402 adoption of USPAP, 24.207.403 regulatory reviews, 24.207.501 examination, 24.207.502 application requirements, 24.207.504 through 24.207.507 education requirements, 24.207.508 and 24.207.509 experience, 24.207.510 scope of practice, 24.207.517 trainee requirements, 24.207.518 mentor requirements, 24.207.520 renewals, and 24.207.2101 continuing education	)	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On August 12, 2008, at 11:00 a.m., a public hearing will be held in room 439, 301 South Park Avenue, Helena, Montana to consider the proposed amendment of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Real Estate Appraisers (board) no later than 5:00 p.m., on August 7, 2008, to advise us of the nature of the accommodation that you need. Please contact Barb McAlmond, Board of Real Estate Appraisers, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2325; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2323; e-mail dlibsdrea@mt.gov.

3. GENERAL STATEMENT OF REASONABLE NECESSITY: The board determined it is reasonable and necessary to amend the rules throughout to comply with ARM punctuation and formatting requirements. The board is amending the rules to replace out-of-date terminology with current language and to achieve better organization and consistency in language use. The board has found equivalency courses to be inconsistent and substandard and has not previously accepted any USPAP equivalent courses. Therefore, the board is also amending the rules to delete all equivalency course provisions. Authority and implementation cites are being amended to accurately reflect all statutes implemented through the rules and to provide the complete sources of the board's rulemaking authority. Where additional specific bases for a proposed action exist, the board will identify those reasons immediately following that rule.

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

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

(d) course approval per course payable by course provider ~~100~~ 200

(e) course renewal approval per course ~~50~~ 100

(f) through (m) remain the same.

AUTH: 37-1-131, 37-1-134, 37-54-105, MCA
IMP: 37-1-131, 37-1-134, 37-1-141, 37-54-105, 37-54-112, ~~37-54-201,~~ 37-54-202, 37-54-212, 37-54-302, 37-54-310, ~~37-54-403,~~ MCA

REASON: It is reasonably necessary to amend this rule to increase fees for the review and approval of education courses. Per 37-1-134, MCA, the board must set fees commensurate with associated costs. The board is raising these fees in response to the increased staff time required to review and approve these courses. The board estimates the fee increases will affect 100 applicants for initial course approval and 50 applicants for renewal course approval, and result in a $15,000 annual increase in board revenue.

24.207.402 ADOPTION OF USPAP BY REFERENCE (1) Upon review of the publication known as Uniform Standards of Professional Appraisal Practice (USPAP), published by The Appraisal Foundation, the board adopts and incorporates by reference the ~~2006~~ 2008 edition of USPAP. The board adopts and incorporates by reference the advisory opinions listed as an addendum to the USPAP publication, for the purpose of explaining and interpreting professional appraisal practice standards as required by 37-54-105, MCA.

(2) Upon review of the publication known as USPAP Frequently Asked Questions (USPAP FAQ), published by The Appraisal Foundation, the board adopts and incorporates by reference the ~~2006~~ 2008 edition of USPAP FAQ, for the purpose of explaining and interpreting the standards as provided by 37-54-105, MCA.

~~(3) A copy of the revised USPAP will be sent to each licensee each time a revised version of USPAP is adopted and incorporated by reference by the board.~~

~~(4)~~(3) Copies of USPAP and USPAP FAQ may be obtained from The Appraisal Foundation, 1155 15th Street NW, Suite 1111, Washington, DC 20005-3317, or may be reviewed in the board office at 301 South Park, Helena, MT 59620-0513.

AUTH: 37-54-105, MCA
IMP: 37-54-105, 37-54-403, MCA

REASON: The board determined it is reasonably necessary to amend this rule to update references to the most current versions of the professional standards and the frequently asked questions publication of the Appraisal Standards Board of The Appraisal Foundation, as required by 37-54-403, MCA. The board is deleting (3) from this rule as it is no longer necessary for the board to provide updated copies of the USPAP to licensees. The USPAP course is now required every two years and education providers provide licensees the current version at that time.

24.207.403 REGULATORY REVIEWS (1) The board may request, by a random selection, that licensed or certified real estate appraisers submit a copy of an appraisal report for review for compliance with the Uniform Standards of Professional Appraisal Practice (USPAP) as promulgated by The Appraisal Foundation.

(2) remains the same.

AUTH: 37-54-105, MCA
IMP: 37-1-136, 37-54-416, MCA

24.207.501 EXAMINATION (1) and (2) remain the same.

(a) licensed residential - 75 percent~~,~~;

(b) certified residential - 77 percent~~,~~; and

(c) and (3) remain the same.

AUTH: 37-1-131, 37-54-105, MCA
IMP: 37-1-131, 37-54-105, 37-54-202, 37-54-302, MCA

24.207.502 APPLICATION REQUIREMENTS (1) and (2) remain the same.

(3) The applicant shall submit ~~original or certified documents~~ documentation in support of the application. ~~The board may permit such documents to be withdrawn upon substitution of a true copy.~~

(4) The board shall review ~~fully-completed~~ applications for compliance with board law and rules and shall notify the applicant in writing of the results of the evaluation of the application. The board may request such additional information or clarification of information provided in the application as it deems reasonably necessary. Incomplete applications shall be acknowledged with a statement regarding incomplete portions.

(5) Application must also include work product that is applicable to the level of licensure sought:

(a) licensure level - single family residential appraisals are required;

(b) certified residential - two to four family income producing residential appraisals are required;

(c) general certification - nonresidential report with all approaches to value with income approach, cost approach, and sales comparison approach are required.

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

AUTH: 37-1-131, 37-54-105, MCA
IMP: 37-1-131, 37-54-105, 37-54-202, MCA

REASON: The board is amending this rule to clarify the application process and reduce staff time in requesting duplicate work product. While not new application requirements, the board is adding (5) to address confusion among applicants by clearly stating the work product that is required for each level of licensure.

24.207.504 QUALIFYING EDUCATION REQUIREMENTS (1) Educational and training courses must receive prior approval by the board. Each course shall be approved for a three-year period only, and must be resubmitted, with all updated information required in (4) ~~below~~, for reapproval at the end of the three-year period.

(2) remains the same.

(a) the course was developed by persons qualified in the subject matter and instructional design~~.~~;

(b) the program content is current~~.~~;

(c) the instructor is qualified with respect to course content and teaching methods~~.~~; or

(d) the number of participants and physical facilities are consistent with the teaching methods~~.~~; and

(e) and (3) remain the same.

(a) universities, colleges, junior colleges, or community colleges accredited by a regional accrediting body accepted by the appropriate agency of the state of Montana;

(b) professional appraisal and real estate related organizations, provided that the organization is a member of The Appraisal Foundation as defined in 37-54-102~~(3)~~, MCA~~.~~;

(c) proprietary schools holding valid certificates of approval from the state of Montana; or

(d) such other providers as approved by the board.

(4) To apply for approval a course provider must make application in the manner prescribed by the board and pay the proper fee 30 days prior to offering the course. The application shall include~~,~~ but not be limited to:

(a) remains the same.

(b) all texts, workbooks, handouts, or other course materials;

(c) instructors and their qualifications, including selection, training, and evaluation criteria;

(d) and (e) remain the same.

(5) A passing score ~~of 70 percent~~ for ~~the~~ each course is required.

(6) through (11) remain the same.

(a) accredited colleges or universities~~.~~;

(b) accredited community or junior colleges~~.~~;

(c) real estate appraisal or real estate related organizations~~.~~;

(d) state or federal agencies or commissions~~.~~;

(e) proprietary schools~~.~~; or

(f) and (12) remain the same.

(a) the distance education (online) course serves to protect the public by contributing to the maintenance and improvement of the quality of real estate appraisal services provided by real estate appraiser licensees to the public;

(b) remains the same.

(c) the distance education (online) course provider must be certified by the International Distance Education Certification Center (IDECC) and provide appropriate documentation that the IDECC certification is in effect. Approval will cease immediately should IDECC certification be discontinued for any reason; and

(d) the distance education (online) course meets all other requirements as prescribed in the statutes and rules that govern the operation of approved courses.

(13) Distance education (online) may only total up to 50 percent of qualifying education requirements for each level of licensure.

AUTH: 37-1-131, 37-54-105, MCA
IMP: 37-1-131, 37-54-105, 37-54-202, MCA

REASON: The board is amending (5) of this rule to no longer require a 70 percent passing score for each course. The board recognizes that not all college courses use passing percentages and will accept courses with simple pass/fail scoring. It is reasonable and necessary to amend this rule to clarify that distance education courses are online courses and that these courses may only constitute half of an applicant's qualifying education requirements. The board concluded that to ensure adequate education and qualified applicants, it is necessary to require that at least half of the education be obtained in a classroom setting.

24.207.505 QUALIFYING EDUCATION REQUIREMENTS FOR LICENSED REAL ESTATE APPRAISERS (1) Applicants for original licensure as a licensed real estate appraiser shall complete at least 90 classroom hours of instruction, 15 hours of which must cover the Uniform Standards of Professional Appraisal Practice (USPAP) as promulgated by The Appraisal Foundation at the time the educational offering was completed and at least 15 hours of which must cover report writing. Applicants must demonstrate that their education involves coverage of all topics listed below with particular emphasis on the ~~appraisal~~ appraisals of one- to four-unit residential properties:

(a) through (m)(ii) remain the same.

(iii) operating expense ratios~~;~~.

(n) remains the same.

(o) appraisal standards and ethics; and

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

(c) the 15-hour national USPAP course ~~or its equivalent~~ 15 hours

(d) through (3) remain the same.

(4) Effective January 1, 2008, applicants for original licensure as a licensed real estate appraiser shall complete at least 150 hours of board approved instruction, 15 hours of which must cover the USPAP as promulgated by The Appraisal Foundation at the time the educational offering was completed and at least 15 hours of which must cover report writing. Applicants shall demonstrate that their education involves coverage of all topics listed in (1) with particular emphasis on the appraisal of one-~~unit~~ to four-unit residential properties.

AUTH: 37-1-131, 37-54-105, MCA
IMP: 37-1-131, 37-54-105, 37-54-202, MCA

24.207.506 QUALIFYING EDUCATION REQUIREMENTS FOR RESIDENTIAL CERTIFICATION (1) Applicants for certification as certified residential real estate appraisers shall provide evidence of completion of 120 hours

of board approved instruction, 15 hours of which must cover the Uniform Standards of Professional Appraisal Practice (USPAP) as promulgated by The Appraisal Foundation and at least 15 hours of which must cover report writing.

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

(c) the 15-hour national USPAP course ~~or its equivalent~~ 15 hours

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

(b) 21 semester credit hours covering the subject matter of English composition, principles of economics (micro or macro), finance, algebra, geometry or higher mathematics, statistics, introduction to computers (word processing/spreadsheets), and business or real estate law. In lieu of the required courses, an associate degree will qualify~~.~~;

(c) a passing score of 70 percent or a pass/fail grade must be achieved for semester credit hours;

(d) semester credit hours must be received from an accredited college; and

(e) online college credits must be received from an accredited college.

AUTH: 37-1-131, 37-54-105, MCA
IMP: 37-1-131, 37-54-105, 37-54-303, MCA

REASON: The board is amending (5) of this rule to address questions from residential certification applicants regarding the education requirements.

24.207.507 QUALIFYING EDUCATION REQUIREMENTS FOR GENERAL CERTIFICATION (1) Applicants for certification as certified general real estate appraisers shall provide evidence of 180 hours of board approved instruction, 15 hours of which must cover the Uniform Standards of Professional Appraisal Practice (USPAP), as promulgated by The Appraisal Foundation and at least 15 hours of which must cover report writing.

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

(c) the 15-hour national USPAP course ~~or its equivalent~~ 15 hours

(d) through (k) remain the same.

(5) To upgrade from a trainee~~, a~~ or licensed real estate appraiser ~~or a certified residential real estate appraiser~~ to a certified general ~~real estate~~ appraiser, an ~~appraiser~~ applicant may use prior education that also meets the specific criteria identified in (4) and a minimum of 30 semester credit hours covering the requirements of (7)(b) ~~obtained for licensure as a licensed real estate appraiser with the additional 90 hours being obtained from nonresidential courses~~.

(6) To upgrade from ~~a~~ certified residential real estate appraiser to a certified general real estate appraiser, an ~~appraiser~~ applicant may use prior education ~~obtained~~ for licensure that meets the specific criteria identified in (4) and a minimum of 30 semester credit hours covering the requirements of (7)(b) ~~as a licensed real estate appraiser or residential certification with the additional 60 hours being obtained from nonresidential courses~~.

(7) and (7)(a) remain the same.

(b) 30 semester credit hours covering the subject matter courses of English composition, economics (micro or macro), finance, algebra, geometry or higher mathematics, statistics, introduction to computers (word processing/spreadsheets),

business or real estate law, and two elective courses in either accounting, geography, agricultural economics, business management, or real estate. In lieu of the required courses, a bachelors degree will qualify.

AUTH: 37-1-131, 37-54-105, MCA
IMP: 37-1-131, 37-54-105, 37-54-303, MCA

REASON: The board determined it is reasonably necessary to amend this rule to clarify the education requirements for progression between different levels of licensure. The amendments are necessary to comply with new education requirements for each level of licensure enacted by AQB and effective January 1, 2008.

24.207.508 AD VALOREM TAX APPRAISAL EXPERIENCE (1) Experience credit may be awarded to ad valorem tax appraisers who demonstrate that they use techniques to value properties in compliance with the Uniform Standards of Professional Appraisal Practice (USPAP), and effectively use the appraisal process. Applicants will be questioned on appraisal techniques by the board during an oral interview.

(2) and (3) remain the same.

(a) The documentation shall include an experience log which is ~~provided~~ prescribed by the board, completed by the applicant, and attested to by the applicant's supervisor. This form will indicate the type of experience and hours applicable to ad valorem necessary to confirm the necessary experience hours for the designation sought by the applicant, including individual property appraisals, tax appeals, model specifications, and model calibrations.

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

(b) Applicants for certification as a certified general real estate appraiser shall hold a Department of Revenue commercial, industrial, or agricultural certification.

(5) Experience accepted under other provisions of applicable statutes or rules such as ARM 24.207.503 may be combined with any portion of the ad valorem experience set forth above.

(6) remains the same.

AUTH: 37-1-131, 37-54-105, MCA
IMP: 37-1-131, 37-54-105, MCA

REASON: The board is adding the reference to ARM 24.207.503 to guide individuals to the other experience requirements in rule and address questions from applicants.

24.207.509 QUALIFYING EXPERIENCE (1) through (1)(g) remain the same.

(h) ~~condemnation~~ eminent domain appraisals.

(2) through (5) remain the same.

(6) All experience submitted to the board must be done in conformance with the Uniform Standards of Professional Appraisal Practice (USPAP) as promulgated by The Appraisal Foundation that is current at the time the appraisal is completed.

(7) through (11) remain the same.

AUTH: 37-1-131, 37-54-105, MCA
IMP: 37-1-131, 37-54-105, 37-54-202, 37-54-303, MCA

24.207.510 SCOPE OF PRACTICE (1) Real property appraisers must adhere to a specific scope of practice and must comply with the competency provision of the Uniform Standards of Professional Appraisal Practice (USPAP).

(a) The licensed real property classification applies to the appraisal of ~~noncomplex~~ one ~~to four~~ unit residential properties ~~units~~ having a market value less than $1,000,000 and ~~complex one~~ two to four residential units having a market value less than $250,000.

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

AUTH: 37-1-131, 37-54-105, MCA
IMP: 37-1-131, 37-54-105, 37-54-201, MCA

REASON: It is reasonably necessary to update this rule to comply with current federal guidelines regarding the scope of practice for real property appraisers.

24.207.517 TRAINEE REQUIREMENTS (1) through (1)(b) remain the same.

(c) have completed ~~45 hours~~ a minimum of 50 percent of approved qualifying education including 15 hours of Uniform Standards of Professional Appraisal Practice (USPAP) in the principles of real estate appraisal prior to making application; and

(d) complete ~~an additional 45 hours~~ the remainder of approved qualifying education hours within the next 12 months or the next renewal, whichever is greater.

~~(2) For the purposes of ARM 24.207.503, appraisal experience obtained after October 1, 2003, will be credited only if earned by a licensed trainee. A licensed trainee may claim credit for appraisal experience obtained between October 1, 2000, and September 30, 2003, if the appraisal experience was obtained within the 36 months immediately prior to the individual's licensure as a trainee.~~

(3) remains the same but is renumbered (2).

~~(4)~~(3) A trainee shall maintain an activity experience log ~~for each mentor on forms approved~~ as prescribed by the board for qualifying activity completed in accordance with USPAP.

(5) through (12)(b) remain the same but are renumbered (4) through (11)(b).

(c) the 15-hour national USPAP course ~~or its equivalent~~ 15 hours

(d) remains the same.

AUTH: 37-1-131, ~~37-1-141,~~ 37-54-105, MCA
IMP: 37-1-131, ~~37-1-141,~~ 37-54-105, 37-54-201, 37-54-202, 37-54-303, 37-54-403, MCA

REASON: The board is amending this rule to update the current format for trainee programs. The education courses now offered with 2008 education criteria are no longer in same hourly format as previously identified in the original trainee program. The board is deleting (2) as obsolete and no longer necessary.

24.207.518 MENTOR REQUIREMENTS (1) ~~Beginning October 1, 2003, a mentor for a licensed real estate appraisal trainee shall:~~ A mentor for a licensed trainee must:

(a) be a certified residential or certified general appraiser for a minimum of two years; ~~A licensed appraiser mentoring a trainee prior to October 1, 2003, may continue to mentor the licensed trainee for not more than 18 months;~~

(b) remains the same.

(i) a mentor shall make application on forms approved by the board and submit two appraisal reports prepared by the mentor in accordance with Uniform Standards of Professional Appraisal Practice (USPAP) standards;

(ii) failure to prepare appraisal reports in compliance with USPAP can result in denial of mentor status~~;~~.

(c) remains the same.

(d) be in good standing with the board and not currently hold a probationary license with the board;

(e) and (f) remain the same.

(g) review and sign the activity experience log prescribed by the board of their trainee, certifying its accuracy;

(h) inspect the first ~~100~~ 50 properties with each trainee under the mentor's supervision;

(i) remains the same.

(j) be limited to mentoring trainees in ~~geographic~~ areas where the mentor is competent to perform appraisals.

(2) remains the same.

(3) Any and all disciplinary actions against your license must be disclosed for board review.

AUTH: 37-1-131, 37-54-105, MCA
IMP: 37-1-131, 37-54-105, 37-54-201, 37-54-202, 37-54-301, 37-54-403, 37-54-411, ~~37-54-416,~~ MCA

REASON: The board determined it is reasonable and necessary to amend this rule and delete the dates and time table required for the mentor application process as the information is obsolete and no longer necessary.

The board is amending this rule to add provisions regarding probationary licenses and reporting of prior discipline. The board concluded that it is in the best interest of the mentor and the public to ensure mentors demonstrate compliance with professional standards of practice, laws, and rules. Considering past disciplinary actions of a mentor applicant is consistent with information required for initial licensure and renewals.

The board is also amending this rule to decrease the number of required inspections. The board concluded that because of the large size of Montana, it is

unreasonable to require 100 inspections and requiring 50 inspections will still adequately protect the public.

24.207.520 RENEWALS (1) and (2) remain the same.

(3) At the end of their two year education cycle, licensees shall ~~complete and submit an education reporting form at the time of renewal~~ attest to completing the required continuing education.

(4) Incomplete renewal ~~and education reporting~~ forms will not be accepted and will be returned to the licensee. Any form returned to the licensee must be properly completed and resubmitted before the renewal date set by ARM 24.101.413.

(5) remains the same.

AUTH: 37-1-131, 37-1-319, 37-54-105, MCA
IMP: 37-1-131, 37-1-141, 37-1-319, 37-54-105, 37-54-310, MCA

REASON: The board is amending this rule and ARM 24.207.2101 to simplify the renewal and continuing education processes and facilitate the department's online license renewal system. Licensees will still be required to complete continuing education pursuant to ARM 24.207.2101, however licensees will no longer have to submit forms and documentation of completion of continuing education. Continuing education compliance will be monitored through random audits provided by 37-1-131, MCA, and ARM 24.207.2101.

24.207.2101 CONTINUING EDUCATION (1) through (5) remain the same.

~~(6) An education reporting form executed under the penalty of perjury of the laws of Montana attesting to the successful completion of the continuing education requirement must be submitted to the board by the date set by ARM 24.101.413 of the licensee's educational reporting cycle.~~

~~(7) An incomplete education reporting form will not be accepted and will be returned to the licensee. Any form returned to the licensee must be properly completed and resubmitted before the date set by ARM 24.101.413.~~

(8) and (9) remain the same but are renumbered (6) and (7).

~~(10) Education reporting forms will be mailed to all real estate appraiser licensees at their last address of record. Failure to receive an education reporting form does not eliminate the reporting requirement.~~

AUTH: 37-1-131, 37-1-319, 37-54-105, 37-54-303, MCA
IMP: 37-1-131, 37-1-306, 37-54-105, 37-54-303, 37-54-310, MCA

5. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Real Estate Appraisers, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2323, or by e-mail to dlibsdrea@mt.gov, and must be received no later than 5:00 p.m., August 20, 2008.

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

7. The Board of Real Estate Appraisers maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies the person wishes to receive notices regarding all Board of Real Estate Appraisers administrative rulemaking proceedings or other administrative proceedings. The request must indicate whether e-mail or standard mail is preferred. Such written request may be sent or delivered to the Board of Real Estate Appraisers, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2323, e-mailed to dlibsdrea@mt.gov, or made by completing a request form at any rules hearing held by the agency.

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

9. Don Harris, attorney, has been designated to preside over and conduct this hearing.

BOARD OF REAL ESTATE APPRAISERS
KRAIG KOSENA, 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 July 7, 2008

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

In the matter of the proposed amendment of ARM 36.12.102, Forms, 36.12.103, Form and Special Fees, 36.12.115, Water Use Standards, and the proposed repeal of ARM 36.12.108, Public Notice Costs	))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT AND REPEAL

To: All Concerned Persons

1. On August 15, 2008, at 10:00 a.m., the Department of Natural Resources and Conservation will hold a public hearing in the Fred Buck Conference Room (bottom floor), at the Department of Natural Resources and Conservation, Water Resources Building, 1424 Ninth Avenue, Helena, Montana, to consider the proposed amendment 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. on July 31, 2008, to advise us of the nature of the accommodation that you need. Please contact Kim Overcast, Montana Department of Natural Resources and Conservation, 1424 Ninth Avenue, Helena, MT 59620, telephone (406) 444-6614, fax (406) 444-0533, e-mail kovercast@mt.gov.

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

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

(a) through (s) remain the same.

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

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

(v) Form No. 640, "Certification of Water Right Ownership Update" (must be completed and submitted to the county clerk and recorder with a Realty Transfer

Certificate when a water right is being divided or exempted [reserved] from the property);

(w) Form No. 641, "DNRC Ownership Update, Divided Interest" (use for a water right that will be divided);

(x) Form No. 642, "DNRC Ownership Update, Exempt (Reserved) Water Right" (use for a water right that will be exempted [reserved] from a sale of land and the seller will retain ownership of the water right); and

(y) Form No. 643, "DNRC Ownership Update, Severed Water Right" (use to sever a water right from land. A severed water right does not involve a land sale).

AUTH: 85-2-113, MCA
IMP: 85-2-424, MCA

REASONABLE NECESSITY: Form Numbers 640, 641, 642, and 643 are needed to ensure that the department obtains the necessary information from water right owners who are dividing, reserving, or severing a water right.

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

(a) through (q) remain the same.

(r) For Form No. 641, DNRC Ownership Update, Divided Interest, there shall be a fee of $50 for each divided water right.

(s) For Form No. 642, DNRC Ownership Update, Exempt (Reserved) Water Right, there shall be a fee of $25 for each exempted water right.

(t) For Form No. 643, DNRC Ownership Update, Severed Water Right, there shall be a fee of $50 for each severed water right.

(2) There shall be no fees charged for filing the following forms:

(a) through (c) remain the same.

(d) Form No. 625, Correction to a Water Right.; and

(e) Form No. 640, Certification of Water Right Ownership Update.

(3) remains the same.

AUTH: 85-2-113, MCA
IMP: 85-2-426, MCA

REASONABLE NECESSITY: Pursuant to 85-2-113, MCA, the department may prescribe fees for public service provided under the Montana Water Use Act. The department evaluated processing costs for the new forms and determined the fee amount. The proposed fees for the new forms are expected to generate revenues of $3250 each year and will affect approximately 80 people.

36.12.115 WATER USE STANDARDS (1) through (3) remain the same.

(4) For fire protection reservoirs located within a basin closure area, evaporation losses must be made up from nontributary water sources or addressed in a~~n augmentation~~ mitigation plan.

(5) and (6) remain the same.

AUTH: 85-2-113, MCA
IMP: 85-2-362 through 85-2-364, 85-2-368, MCA

REASONABLE NECESSITY: In previous rulemaking, the term "augmentation" was replaced with the term "mitigation". The department found that one reference to "augmentation" was not changed. This rule is needed to correct that error.

4. The department proposes to repeal the following rule:

36.12.108 PUBLIC NOTICE COSTS found at ARM page 36-1742.

AUTH: 85-2-113, MCA
IMP: 85-2-307, MCA

REASONABLE NECESSITY: The department has determined that it, rather than the applicant, should complete the public notice process. The current rules were adopted to explain the process to the applicant and therefore no longer apply.

5. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted in writing to Kim Overcast, Department of Natural Resources and Conservation, 1424 Ninth Avenue, Helena, MT 59620; fax (406) 444-5918; or e-mail kovercast@mt.gov, and must be postmarked no later than August 15, 2008.

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

7. An electronic copy of this Notice of Public Hearing on Proposed Amendment and Repeal is available through the department's web site at http://www.dnrc.mt.gov. The department strives to make the electronic copy of this Notice of Public Hearing on Proposed Amendment and Repeal 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.

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 that the person wishes to receive notices regarding conservation districts and resource development, forestry, oil and gas conservation, trust land management, water resources, or a combination thereof. Notices will be sent by e-mail unless a mailing

preference is noted in the request. Such written request may be sent or delivered to the contact person in (5) above 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, do not apply.

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

/s/ Mary Sexton
MARY SEXTON
Director
Natural Resources and Conservation

/s/ Anne Yates
ANNE YATES
Rule Reviewer

Certified to the Secretary of State on July 7, 2008.

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

In the matter of the amendment of ARM 37.86.2402 pertaining to preferred hospital transportation reimbursement	)))))	NOTICE OF PROPOSED AMENDMENT NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On August 16, 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 wish to participate in this rulemaking process 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 July 30, 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)444-5622; fax (406)444-1970; 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.

<u>37.86.2402 TRANSPORTATION AND PER DIEM, REQUIREMENTS</u>

(1) and (2) remain the same.

(3) Coverage for transportation and per diem is only available for transportation and per diem to the site of medical services at the provider closest to the locality of the recipient or to a ~~preferred out-of-state hospital~~ <u>Center of Excellence</u>, as defined in ARM 37.86.2901, if prior authorization requirements have been met.

(a) through (15)(h) remain the same.

AUTH: 53-6-113, MCA
IMP: 53-6-101, 53-6-141, MCA

4. The Department of Public Health and Human Services (the department) is proposing an amendment to ARM 37.86.2402, pertaining to Medicaid transportation and per diem, requirements. The proposed rule change is necessary to bring Medicaid transportation and per diem provisions into conformity with the proposed designation of certain out-of-state health care providers as "Centers of Excellence" to be effective October 1, 2008. For information about the proposed rate methodology, please see MAR Notice No. 37-435.

The alternative to the proposed amendment would be to make no changes to the

existing rule. Leaving ARM 37.86.2402 unchanged would adversely result in transportation and per diem charges the department would be unable to pay. In order to fairly implement the proposed "Centers of Excellence" rules, the department has rejected the no change option.

The proposed amendments have no effect on Medicaid benefits or expenditures that have not been considered in MAR Notice No. 37-435.

There are approximately 100 Medicaid recipients who could be affected by the proposed amendments annually.

5. This rule amendment is proposed to be effective October 1, 2008.

6. Interested persons may submit comments concerning the proposed action in writing to Rhonda Lesofski, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena 59604-4210; by fax (406)444-1970; or by e-mail to dphhslegal@mt.gov. no later than 5:00 p.m. on August 14, 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.

7. If persons who are directly affected by the proposed action wish to comment orally or in writing at a public hearing, they must make a written request for a public hearing and submit such request with any written comments to Rhonda Lesofski, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena MT 59604-4210; by fax (406)444-1970; or by e-mail to dphhslegal@mt.gov no later than 5:00 p.m. on August 14, 2008.

8. 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 those who are directly affected by the proposed action; from the administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be ten based on the 100 Medicaid recipients who could be affected by the proposed amendments annually.

9. An electronic copy of this proposal notice is available through the Secretary of State's web site at http://sos.mt.gov/ARM/Register. The Secretary of State strives to make the electronic copy of 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.

10. 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 July 7, 2008.

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

In the matter of the amendment of ARM 37.86.610, 37.86.705, and 37.86.2207 pertaining to Medicaid acute services reimbursement	)))))	NOTICE OF PROPOSED AMENDMENT NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On August 16, 2008, the Department of Public Health and Human Services proposes to amend 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 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 July 30, 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)444-5622; 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.

37.86.610 THERAPIES, REIMBURSEMENT (1) remains the same.

(2) Subject to the requirements of this rule, the Montana Medicaid program pays the following for therapy services:

(a) For patients who are eligible for Medicaid, the lower of:

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

(ii) ~~90% of the reimbursement provided in accordance with the methodologies described in ARM 37.85.212.~~ the amount provided in the department's Montana Medicaid speech therapy fee schedule dated January 1, 2008, occupational therapy fee schedule dated January 1, 2008, and physical therapy fee schedule dated October 1, 2007, which are adopted and incorporated by reference. A copy of the department's speech, occupational, and physical fee schedules are posted at the Montana Medicaid provider web site at http://medicaidprovider.hhs.mt.gov. A copy of the department's Montana Medicaid Speech Therapy Fee Schedule, Occupational Therapy Fee Schedule, or Physical Therapy 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.

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

37.86.705 AUDIOLOGY SERVICES, REIMBURSEMENT (1) remains the same.

(2) Subject to the requirements of this rule, the Montana Medicaid program pays the following for audiology services:

(a) For patients who are eligible for Medicaid, the lower of:

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

(ii) ~~90% of the reimbursement provided in accordance with the methodologies described in ARM 37.85.212~~ the amount provided in the department's Montana Medicaid Audiology fee schedule dated October 1, 2007, which is adopted and incorporated by reference. A copy of the department's audiology fee schedule is posted at the Montana Medicaid provider web site at http://medicaidprovider.hhs.mt.gov. A copy of the department's Montana Medicaid Audiology 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.

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

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

(2) Reimbursement for outpatient chemical dependency treatment, nutrition, and private duty nursing services is specified in the department's fee schedule. This cross reference does not outline reimbursement. The department adopts and incorporates by reference the department's private duty nursing services EPSDT Fee Schedule dated ~~January 2007~~ July 2008 and the nutrition EPSDT Fee Schedule dated ~~July 2006~~ July 2008. The fee schedules are posted at http://medicaidprovider.hhs.mt.gov. Reimbursement for outpatient chemical dependency treatment is outlined in ARM 37.27.912. A copy of the 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 (10) remain the same.

(11) Reimbursements for school based health related services are specified in the School Based Health Service Fee Schedule dated October 2007, which is adopted and incorporated by reference. A copy of the school based health service fee schedule is posted at http://medicaidprovider.hhs.mt.gov. Rates are ~~90% of the fees as specified in (1)(a) through (d),~~ adjusted to reimburse these services at the federal matching assistance percentage (FMAP) rate.

(12) and (13) remain the same.

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

4. The Department of Public Health and Human Services (the department) is proposing amendments to ARM 37.86.610, 37.86.705, and 37.86.2207, pertaining to Medicaid acute services. The proposed rule changes are necessary to bring

Medicaid reimbursement rates for therapies, audiology services, and school based health related services into conformity with the reimbursement methodology proposed for the resource based relative value scale (RBRVS) ARM 37.85.212 to be effective July 1, 2008. For information about the proposed rate methodology, please see MAR Notice No. 37-435.

The alternative to the proposed amendments would be to make no changes to the existing rules. Leaving the existing rules unchanged would adversely result in lower than intended reimbursement amounts for these provider types. In order to fairly implement the proposed RBRVS reimbursement methodology, the department has rejected the no change option.

The proposed amendments have no effect on Medicaid benefits or expenditures that have not been considered in MAR Notice No. 37-435.

There are approximately 102,000 Medicaid recipients and about 6,000 RBRVS providers that could be affected by the proposed amendments annually.

5. The department intends to apply these rules retroactively to July 1, 2008. A retroactive application of the proposed rules does not result in a negative impact to any affected party.

6. Interested persons may submit comments concerning the proposed action in writing to Rhonda Lesofski, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena 59604-4210; by fax (406)444-1970; or by e-mail to dphhslegal@mt.gov. no later than 5:00 p.m. on August 14, 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.

7. If persons who are directly affected by the proposed action wish to comment orally or in writing at a public hearing, they must make a written request for a public hearing and submit such request with any written comments to Rhonda Lesofski, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena MT 59604-4210; by fax (406)444-1970; or by e-mail to dphhslegal@mt.gov no later than 5:00 p.m. on August 14, 2008.

8. 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 those who are directly affected by the proposed action; from the administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 10,803 based on approximately 102,000 Medicaid recipients and about 6,000 RBRVS providers and 25 EPSDT providers that

could be affected by the proposed amendments annually.

9. An electronic copy of this proposal notice is available through the Secretary of State's web site at http://sos.mt.gov/ARM/Register. The Secretary of State strives to make the electronic copy of 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.

10. 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 July 7, 2008.

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

In the matter of the adoption of New Rules I through XI, the amendment of ARM 37.88.206, 37.88.306, 37.88.606, 37.89.103, 37.89.106, 37.89.114, 37.89.115, 37.89.118, 37.89.119, and 37.89.131, and the repeal of 37.86.112 and 37.89.135 pertaining to the mental health services plan	)))))))))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION, AMENDMENT, AND REPEAL

TO: All Interested Persons

1. On August 6, 2008 at 1:30 p.m., the Department of Public Health and Human Services will hold a public hearing in the Wilderness Room, 2401 Colonial Drive, Helena, Montana, to consider the proposed adoption, amendment, and repeal of the above-stated rules.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process (including reasonable accommodations at the hearing site) or who need an alternative accessible format of this notice. If you need an accommodation, contact the department no later than 5:00 p.m. on July 28, 2008. Please contact Rhonda Lesofski, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena MT 59604-4210; telephone (406)444-4094; fax (406)444-1970; e-mail dphhslegal@mt.gov.

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

RULE I MENTAL HEALTH FOR YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE (SED), DEFINITIONS As used in this chapter, the following terms apply:

(1) "Applicant" means a youth with SED for whom the process to determine eligibility has been initiated but not completed.

(2) "Correctional or detention facility" means: -

(a) the Pine Hills youth correctional facility;

(b) the Riverside youth correctional facility;

(c) a Department of Corrections boot camp;

(d) a juvenile detention center;

(e) a city or county criminal detention facility; or

(f) any privately operated or out-of-state correctional or detention facility that the state of Montana may choose to utilize in place of one of the above facilities or categories of facilities.

(3) "Covered diagnosis" services are defined in ARM 37.89.103.

(4) "Emergency" means a serious medical or behavioral condition resulting from mental illness which arises unexpectedly and manifests symptoms of sufficient severity to require immediate care to avoid jeopardy to the life or health of the youth or harm to another person by the youth.

(5) "Federal poverty level" or "FPL" means the poverty guidelines for the 48 contiguous states and the District of Columbia as published under the "Annual Update of the HHS Poverty Guidelines" in the Federal Register each year on or about February 15 and subsequent annual updates.

(6) "Inpatient psychiatric services" means psychiatric care provided in a licensed hospital, psychiatric residential treatment facility, or hospital-based residential psychiatric care.

(7) "Licensed mental health center" means a mental health center licensed in accordance with ARM 37.106.1906 through 37.106.1965.

(8) "Medically necessary" for Medicaid and MHSP is defined as provided in ARM 37.82.102.

(9) "Mental health professional" means a psychiatrist, licensed psychologist, licensed clinical social worker, or licensed professional counselor.

(10) "Mental Health Services Plan (MHSP)" for youth with SED, in accordance with [RULES I through XI] is a defined set of services.

(11) "Provider" means a person or entity that has enrolled and entered into a provider agreement with the department in accordance with the requirements of ARM 37.85.401 through 37.85.513 to provide mental health services to youth with SED on Medicaid or the Mental Health Services Plan.

(12) "Provider agreement" means the written enrollment agreement entered into between the department and a person or entity to provide mental health services to youth with SED.

(13) "Serious Emotional Disturbance (SED)" criteria are defined in [RULE II].

(14) "System of Care Account" is defined in 52-2-309, MCA, and allows the department to fund via the state special revenue fund the administering and delivering of services to high-risk youth with multiagency service needs and to provide for the youth's care, protection, and mental, social, and physical development.

(15) "Youth" means:

(a) for Medicaid services, a person 17 years of age and younger or a person who is up to 20 years of age and is enrolled in secondary school; or

(b) for MHSP, a person through 17 years of age and younger and is not eligible for Medicaid or the Children's Health Insurance Plan (CHIP) and meet the financial eligibility for MHSP.

AUTH: 53-2-201, 53-6-113, 53-21-703, MCA
IMP: 53-1-601, 53-1-602, 53-1-603, 53-2-201, 53-21-201, 53-21-202, 53-21-701, 53-21-702, MCA

RULE II YOUTH MENTAL HEALTH SERVICES, SERIOUS EMOTIONAL DISTURBANCE CRITERIA (1) "Serious emotional disturbance (SED)" means with respect to a youth from the age of six through 17 years of age that the youth meets the requirements of (1)(a) and (1)(b).

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

(i) childhood schizophrenia (295.10, 295.20, 295.30, 295.60, 295.90);

(ii) oppositional defiant disorder (313.81);

(iii) autistic disorder (299.00);

(iv) pervasive developmental disorder not otherwise specified (299.80);

(v) Asperger's disorder (299.80);

(vi) separation anxiety disorder (309.21);

(vii) reactive attachment disorder of infancy or early childhood (313.89);

(viii) schizo affective disorder (295.70);

(ix) mood disorders (296.0x, 296.2x, 296.3x, 296.4x, 296.5x, 296.6x, 296.7, 296.80, 296.89);

(x) obsessive-compulsive disorder (300.3);

(xi) dysthymic disorder (300.4);

(xii) cyclothymic disorder (301.13);

(xiii) generalized anxiety disorder (overanxious disorder) (300.02);

(xiv) posttraumatic stress disorder (chronic) (309.81);

(xv) dissociative identity disorder (300.14);

(xvi) sexual and gender identity disorder (302.2, 302.3, 302.4, 302.6, 302.82, 302.83, 302.84, 302.85, 302.89);

(xvii) anorexia nervosa (severe) (307.1);

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

(xix) intermittent explosive disorder (312.34); and

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

(b) As a result of the youth's diagnosis determined in (1)(a) and for a period of at least six months, or for a predictable period over six months the youth consistently and persistently demonstrates behavioral abnormality in two or more spheres, to a significant degree, well outside normative developmental expectations, that cannot be attributed to intellectual, sensory, or health factors:

(i) has failed to establish or maintain developmentally and culturally appropriate relationships with adult care givers or authority figures;

(ii) has failed to demonstrate or maintain developmentally and culturally appropriate peer relationships;

(iii) has failed to demonstrate a developmentally appropriate range and expression of emotion or mood;

(iv) has displayed disruptive behavior sufficient to lead to isolation in or from school, home, therapeutic, or recreation settings;

(v) has displayed behavior that is seriously detrimental to the youth's growth, development, safety, or welfare, or to the safety or welfare of others; or

(vi) has displayed behavior resulting in substantial documented disruption to the family including, but not limited to, adverse impact on the ability of family members to secure or maintain gainful employment.

(c) SED with respect to a youth under six years of age means the youth exhibits a severe behavioral abnormality that cannot be attributed to intellectual, sensory, or health factors and that results in substantial impairment in functioning for a period of at least six months and obviously predictable to continue for a period of at least six months, as manifested by one or more of the following:

(i) atypical, disruptive, or dangerous behavior which is aggressive or self-injurious;

(ii) atypical emotional responses which interfere with the child's functioning, such as an inability to communicate emotional needs and to tolerate normal frustrations;

(iii) atypical thinking patterns which, considering age and developmental expectations, are bizarre, violent, or hypersexual;

(iv) lack of positive interests in adults and peers or a failure to initiate or respond to most social interaction;

(v) indiscriminate sociability (e.g., excessive familiarity with strangers) that results in a risk of personal safety of the child; or

(vi) inappropriate and extreme fearfulness or other distress which does not respond to comfort by care givers.

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

(2) The department adopts and incorporates by reference the ICD-9-CM diagnosis codes with meanings found in the Ingenix ICD-9-CM Code Book (2006), published by Ingenix. The department also adopts and incorporates by reference the DSM-IV diagnosis codes with meanings found in the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition Text Revision (2000), published by the American Psychiatric Association of Washington, D.C. These systems of coding provide the codes and meanings of the diagnostic terms commonly used by treating professionals and are incorporated in order to provide common references for purposes of the provision of services through the Mental Health Services Plan. Copies of applicable portions of the ICD-9-CM and the DSM-IV may be obtained from the Department of Public Health and Human Services, Health Resource Division, Children's Mental Health Bureau, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

AUTH: 53-2-201, 53-6-113, 53-21-703, MCA
IMP: 53-1-601, 53-1-602, 53-1-603, 53-2-201, 53-21-201, 53-21-202, 53-21-701, 53-21-702, MCA

RULE III MENTAL HEALTH SERVICES (MHS) PLAN FOR YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE, ELIGIBILITY (1) An individual is eligible for covered services under the MHS plan if:

(a) the individual is a youth through 17 years of age and younger with a serious emotional disturbance in accordance with [RULE II];

(b) the family of which the individual is a member has a total family income, without regard to other family resources, at or below 160% of the most recently published federal poverty level (FPL); and

(c) the youth is not eligible for Medicaid or the Children's Health Insurance Plan (CHIP).

(2) If a youth who is determined eligible for the MHS plan based upon a pending Medicaid application is later determined to be eligible for Medicaid:

(a) any payment received by the provider under the MHS plan for services provided during the effective period of Medicaid eligibility must be refunded to the department; and

(b) all services provided to the youth during the effective period of Medicaid eligibility may be billed to Medicaid according to applicable Medicaid requirements.

(3) For purposes of determining financial eligibility under (1), the department references the criteria outlined in ARM 37.79.201, 37.79.206, and 37.79.209 except for:

(a) the annual family income without regard to other family resources is at or below 160% of FPL;

(b) the applicant's family member may be employed by the state of Montana; and

(c) the applicant's family does not have to meet the requirement of having had creditable health insurance coverage prior to becoming eligible.

AUTH: 53-2-201, 53-6-113, 53-21-703, MCA
IMP: 53-1-601, 53-1-602, 53-1-603, 53-2-201, 53-21-201, 53-21-202, 53-21-701, 53-21-702, MCA

RULE IV MENTAL HEALTH SERVICES (MHS) PLAN FOR YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE, LIMITATIONS (1) This subchapter is not intended to and does not establish an entitlement for any youth to be determined eligible for or to receive any services under the plan. The department may, in its discretion, limit services, rates, eligibility, and the number of youth determined eligible under the plan based upon such factors as availability of funding, the degree of financial need, the degree of medical need, or other factors.

(a) If the department determines with respect to the MHS plan that it is necessary to reduce, limit, suspend, or terminate eligibility or benefits, reduce provider reimbursement rates, reduce or eliminate service coverage or otherwise limit services, benefits, or provider participation rates, in a manner other than provided in this subchapter, the department may implement such changes by providing ten days advance notice published in Montana major daily newspapers with statewide circulation, and by providing:

(i) ten days advance written notice of any individual eligibility and coverage changes to affected enrolled youth; and

(ii) ten days advance written notice of coverage, rate, and provider participation changes to affected providers.

(2) If the department determines that the average per-case cost of Mental Health Services Plan expenditures times the number of enrollees will exceed total appropriations, it will suspend enrollment of new recipients.

(a) The department will place the names of youth applying for enrollment who would be eligible but for the suspension of new enrollments on a waiting list.

(b) When total MHSP enrollment falls below the number which, when multiplied by the average per-case cost, equals total appropriations, the department will enroll youth whose names appear on the waiting list. Enrollment from the waiting list will be made in order of severity of need, with qualified applicants whose needs are most severe first as determined by the department based on the following:

(i) diagnosis;

(ii) functional impairment as evaluated by a licensed mental health professional designated by the department; or

(iii) availability of appropriate alternative means to obtain treatment.

AUTH: 53-2-201, 53-6-113, 53-21-703, MCA
IMP: 53-1-601, 53-1-602, 53-1-603, 53-2-201, 53-21-201, 53-21-202, 53-21-701, 53-21-702, MCA

RULE V MENTAL HEALTH SERVICES (MHS) PLAN FOR YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE, COVERED SERVICES (1) Medically necessary mental health services for a youth with SED who meets financial criteria are covered under the plan for enrolled youth, except as provided in this subchapter.

(2) Covered services include:

(a) evaluation and assessment of psychiatric conditions by licensed and enrolled mental health providers;

(b) primary care providers, as defined in ARM 37.86.5001, for screening and identifying psychiatric conditions and for medication management;

(c) a psychotropic drug formulary, as specified in (4);

(d) medication management, including lab services necessary for management of prescribed medications medically necessary with respect to a covered diagnosis; and

(e) treatment planning, individual, group, and family therapy, and consultations performed by licensed psychologists, licensed clinical social workers, and licensed professional counselors for treatment of covered diagnoses in private practice or in mental health centers.

(3) Coverage of medically necessary mental health services for a covered diagnosis will not be denied solely because the member also has a noncovered diagnosis.

(4) The plan covers the medically necessary psychotropic medications listed in the department's Mental Health Services Plan drug formulary if medically necessary with respect to a covered diagnosis. The department may revise the formulary from time to time. A copy of the current formulary may be obtained from the Department of Public Health and Human Services, Addictive and Mental Disorders Division, 555 Fuller, P.O. Box 202905, Helena, MT 59620-2905.

(5) The MHS plan covers medically necessary mental health services for any covered diagnosis for a member with a primary diagnosis of mental retardation or developmental disability, but does not cover treatment, habilitation, or other services required by the member's mental retardation or developmental disability.

(6) The MHS plan does not cover:

(a) inpatient or emergency hospital services;

(b) inpatient psychiatric residential treatment services;

(c) any form of transportation services; and

(d) detoxification, drug or alcohol evaluation, treatment, or rehabilitation, regardless of the member's diagnosis.

(7) A youth who is in a correctional or detention facility is not entitled to services under the plan, except as specifically provided in these rules.

(a) The plan covers discharge planning services in relation to a covered diagnosis prior to release from a correctional or detention facility for a youth who is:

(i) within 60 days of release;

(ii) a youth under the custody of the department's division of child and family services or the Department of Corrections and who is in a correctional or detention facility;

(iii) being held in a juvenile correction facility.

(b) A youth incarcerated in a local government criminal detention facility who has not been adjudicated may receive medically necessary mental health services for covered diagnosis during incarceration, except that the plan does not cover the youth's security or detention needs.

(c) A youth may receive medically necessary mental health services for covered diagnoses after leaving the correctional or detention facility, except that the plan does not cover the youth's security or detention needs.

AUTH: 53-2-201, 53-6-113, 53-21-703, MCA
IMP: 53-1-601, 53-1-602, 53-1-603, 53-2-201, 53-21-201, 53-21-202, 53-21-701, 53-21-702, MCA

RULE VI MENTAL HEALTH SERVICES (MHS) PLAN FOR YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE, PROVIDER PARTICIPATION

(1) Providers of services may request enrollment in the plan and may participate in the plan only upon approval of enrollment and according to the written provider agreement between the provider and the department and the requirements of this subchapter.

(a) The provisions of ARM 37.85.402 shall apply for purposes of provider enrollment in the plan. Providers must enroll with the department's Medicaid fiscal agent in the same manner and according to the same requirements applicable under the Montana Medicaid Program. The department may accept current Medicaid enrollment for purposes of enrollment under the plan, if the provider agrees, in a form acceptable to the department, to be bound by applicable plan requirements.

(b) For purposes of enrollment in the plan, providers must be and remain enrolled in the Montana Medicaid program for the same category of service and must meet the same qualifications and requirements that apply to the provider's category of service under the Montana Medicaid program.

(2) Providers in the following categories may request enrollment in the MHS plan:

(a) psychiatrists;

(b) primary care providers, as defined in ARM 37.86.5001;

(c) licensed psychologists;

(d) licensed clinical social workers;

(e) licensed professional counselors; and

(f) outpatient pharmacies.

(3) A provider who is denied enrollment has no right to an administrative review or fair hearing as provided in ARM 37.5.304, et seq. or any other department rule.

(a) Enrollment does not imply or create any guarantee of or right to any level of utilization or reimbursement for any provider.

(4) The provisions of ARM Title 37, chapter 85, subchapter 4 and other Medicaid program laws, rules, and regulations regarding particular categories of service apply to participating providers and the services provided under the plan, except as specifically provided in this subchapter or the provider agreement.

(a) The provisions of ARM 37.85.414 regarding maintenance of records and related issues applies to providers of mental health services under the plan.

(i) The department and any legally authorized agency of the state or federal government may inspect any facilities and records pertaining to services provided under the plan, including those of any provider participating in the plan.

(ii) Upon request, providers must provide complete copies of medical records to the department or its agents.

(b) For all enrolled youth, providers must comply with the same confidentiality requirements that apply to information regarding Medicaid recipients.

(c) The department may collect from a provider any overpayment under the plan as provided with respect to Medicaid overpayments in ARM 37.85.406. The department may recover overpayments by withholding or offset as provided in ARM 37.85.513.

(i) The notice and hearing provisions of ARM 37.5.310 and 37.85.512 apply to a department overpayment determination under (4)(c).

(d) The department may sanction a provider based upon the same grounds that sanctions may be imposed against a provider under the Montana Medicaid program, except that a sanction may not be imposed with respect to a provider's conduct or omission under the plan based upon a Medicaid requirement or prohibition that is not applicable to the plan under these rules.

(i) Sanctions imposed under (4)(d) may include termination or suspension from plan participation and required attendance at provider education sessions at the provider's expense.

(ii) The department must consider the factors listed in ARM 37.85.505 in determining whether to impose a sanction and what sanction, if any, to impose. The provisions of ARM 37.85.506 and 37.85.507 shall apply to any sanction imposed under (4)(d).

(iii) The notice and hearing provisions of ARM 37.5.310 and 37.85.512 apply to a department sanction determination under (4)(d).

(5) An enrolled provider has no right to an administrative review or fair hearing as provided in ARM 37.5.113 and 37.85.411 or any other department rule for:

(a) a determination by the department or its agent that a particular service, item, or treatment is not medically necessary; or

(b) any other issues related to the provider agreement, the provision of services to recipients, or the plan, except as specifically permitted by this subchapter.

(6) An enrolled provider shall be provided an opportunity for administrative review and fair hearing as provided in ARM 37.5.310 to contest a denial of correct payment by the department to the provider for a service provided to a youth if:

(a) the department has determined that the particular service, including the amount, duration, and frequency of the service, is medically necessary for the youth to treat a covered diagnosis and has authorized the particular service for the youth according to applicable requirements; and

(b) the department has determined that the youth is eligible for the plan according the requirements of [RULE III].

(7) For purposes of applying the provisions of any Medicaid rule as required by this subchapter, references in the Medicaid rule to "Medicaid" or the "Montana Medicaid program" or similar references, shall be deemed to apply to the plan as the context permits.

AUTH: 53-2-201, 53-6-113, 53-21-703, MCA
IMP: 53-1-601, 53-1-602, 53-1-603, 53-2-201, 53-21-201, 53-21-202, 53-21-701, 53-21-702, MCA

RULE VII MENTAL HEALTH SERVICES (MHS) PLAN FOR YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE, AUTHORIZATION REQUIREMENTS

(1) The MHS plan for youth with serious emotional disturbance does not require prior authorization of covered services.

AUTH: 53-2-201, 53-6-113, 53-21-703, MCA
IMP: 53-1-601, 53-1-602, 53-1-603, 53-2-201, 53-21-201, 53-21-202, 53-21-701, 53-21-702, MCA

RULE VIII MENTAL HEALTH SERVICES (MHS) PLAN FOR YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE, PREMIUM PAYMENTS, AND COPAYMENTS (1) Youth enrolled in the MHS plan are exempt from premium payments and copayments.

(2) The Medicaid copayment provisions of ARM 37.85.204 are not applicable to mental health services provided under the MHS plan.

AUTH: 53-2-201, 53-6-113, 53-21-703, MCA
IMP: 53-1-601, 53-1-602, 53-1-603, 53-2-201, 53-21-201, 53-21-202, 53-21-701, 53-21-702, MCA

RULE IX MENTAL HEALTH SERVICES (MHS) PLAN FOR YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE, PROVIDER REIMBURSEMENT

(1) Reimbursement of enrolled providers for mental health services covered under the plan and provided to MHS plan youth is as provided in ARM Title 37, chapters 5, 40, 82, 85, 86, and 88 for the same service or category of service under the Montana Medicaid program, except as otherwise provided in this subchapter.

(a) For services covered under the plan, reimbursement under the plan is subject to the same requirements, restrictions, limitations, rates, fees, and other provisions that would apply to the service if it were provided to a Medicaid recipient, except as otherwise provided in these rules. However, if a service is not covered under the plan, the fact that the service is or would be covered by Medicaid if provided to a Medicaid recipient, does not entitle the provider, youth, or any other person or entity to coverage or reimbursement of the service under the plan.

(i) For purposes of applying Medicaid rules to plan services, a person eligible for the plan under [RULE III] is not Medicaid eligible.

(2) Provider claims for mental health services provided to youth under the plan must be submitted to the department's Medicaid Management Information System (MMIS) contractor according to requirements set forth in ARM 37.85.406. Payments will be made to the provider through the department's Medicaid MMIS contractor.

(3) Providers must accept the amounts payable under this rule as payment in full for services provided to youth. For purposes of this rule, the requirements of ARM 37.85.406 regarding payment in full apply to the provider, except as provided in this subchapter.

(a) Providers may bill a youth who fails to show up for a scheduled service if such billing is consistent with a written policy maintained and posted by the provider, if the youth has been informed of the policy in writing, and if the policy applies equally to private pay patients and members.

(4) The provisions of ARM 37.85.407 apply with respect to third party resources and seeking payment from these sources.

AUTH: 53-2-201, 53-6-113, 53-21-703, MCA
IMP: 53-1-601, 53-1-602, 53-1-603, 53-2-201, 53-21-201, 53-21-202, 53-21-701, 53-21-702, MCA

RULE X MENTAL HEALTH SERVICES (MHS) PLAN FOR YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE, NOTICE, GRIEVANCE AND RECONSIDERATION, AND RIGHTS (1) The department or its designee must notify the youth or the youth's designated representative in writing of a decision denying eligibility or a request for services. The requirements of ARM 37.5.505 do not apply to the notice. The notice will state:

(a) the youth's name and identifying information;

(b) a statement of the decision, including the specific services, dates, and other information necessary to identify the matter at issue;

(c) a concise statement of the reasons for the decision; and

(d) an explanation of how to request a grievance or reconsideration regarding the determination.

(2) If the department fails to provide notice or fails to timely provide notice or if a notice required by (1) fails to comply substantially with the requirements of (1), the remedy is the provision of a new notice which does comply substantially with (1) and a new opportunity to request a reconsideration regarding the decision specified in the notice. A failure to give adequate or timely notice under (1) does not entitle the member to an authorization for the services that were denied.

(3) A youth has the right to any applicable grievance processes provided in ARM 37.5.318(5)(a) regarding a denial or termination of plan eligibility.

(4) The department or its designee may request additional supporting information or documentation from the youth or the provider for purposes of a grievance or informal reconsideration.

(a) The department will consider the written materials submitted and the rationale for the decision. In its discretion, if the department finds that resolution of the issues would be aided, the department may contact persons involved in the case, interested agencies, or mental health professionals and may request that the youth, youth's representative, a mental health professional, a provider representative, or other appropriate persons to appear in person or by telephone conference to discuss the case.

(b) The department must make a decision on the informal reconsideration and notify the youth or the youth's representative in writing of the decision.

(5) A youth must request a grievance according to the requirements specified by the department's designee.

(6) A youth must request an informal reconsideration within 30 days after receiving notice of the grievance decision. A youth that does not timely request an informal reconsideration is deemed to have accepted the determination and is not entitled to any further notice or review opportunity.

(7) A youth is not entitled to continuation of benefits under these rules, ARM 37.5.316, or 42 CFR, part 431, subpart E.

(8) A youth is entitled only to the processes specifically provided in this rule to contest an adverse decision by the department or its designee.

(9) A youth is not entitled to any grievance, reconsideration, review, hearing, or other appeal process with respect to changes in eligibility coverage or other plan benefits which result from generally applicable changes in eligibility requirements, coverage provisions, rates, imposition of limitations, or other changes.

AUTH: 53-2-201, 53-6-113, 53-21-703, MCA
IMP: 53-1-601, 53-1-602, 53-1-603, 53-2-201, 53-21-201, 53-21-202, 53-21-701, 53-21-702, MCA

RULE XI YOUTH SYSTEM OF CARE ACCOUNT, REQUIREMENT (1) The department shall use funds from this account to reimburse in state or community based service providers that allow high risk youth with multiagency service needs to be served in the least restrictive and most appropriate setting.

(2) The youth must be eligible for Medicaid.

(3) The youth must meet serious emotional disturbance (SED) criteria outlined in [RULE II].

(4) The youth must be at high risk for one of the following:

(a) needing more restrictive level of care;

(b) remaining in restrictive level of care if no other appropriate placement options are available;

(c) posing a safety risk to self or others; and

(d) having multiple treatment and/or placement failures.

(5) The services the youth receives:

(a) shall provide for the care and protection and mental, social, and physical development of the high risk youth with multiagency service needs;

(b) must be specified in the youth's integrated treatment plan and are not eligible for reimbursement from another source;

(c) must be identified as part of a multiagency planning process;

(d) shall maintain the youth in a community setting or return the youth to a community setting as a priority; and

(e) shall place high-risk youth out-of-state as a last resort.

AUTH: 53-2-201, 53-6-113, 53-21-703, MCA
IMP: 53-1-601, 53-1-602, 53-1-603, 53-2-201, 53-21-201, 53-21-202, 53-21-701, 53-21-702, MCA

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

37.88.206 LICENSED CLINICAL SOCIAL WORK SERVICES, REIMBURSEMENT (1) remains the same.

(2) Subject to the requirements of this rule, the Montana Medicaid program pays the following for licensed clinical social worker services:

(a) For patients who are eligible for Medicaid, the lower of:

(i) remains the same.

(ii) ~~62% of the reimbursement provided in accordance with the methodologies described in ARM 37.85.212.~~ the amount specified in the department's Medicaid mental health fee schedule.

(3) remains the same.

AUTH: 53-2-201, 53-6-113, 53-21-703, MCA
IMP: 53-1-601, 53-1-602, 53-1-603, 53-6-101, 53-6-113, 53-21-202, 53-21-701, 53-21-702, MCA

37.88.306 LICENSED PROFESSIONAL COUNSELOR SERVICES, REIMBURSEMENT (1) remains the same.

(2) Subject to the requirements of this rule, the Montana Medicaid program pays the following for licensed professional counselor services:

(a) For patients who are eligible for Medicaid, the lower of:

(i) remains the same.

(ii) ~~62% of the reimbursement provided in accordance with the methodologies described in ARM 37.85.212.~~ the amount specified in the department's Medicaid Mental Health Fee Schedule.

(3) remains the same.

AUTH: 53-2-201, 53-6-113, 53-21-703, MCA
IMP: 53-1-601, 53-1-602, 53-1-603, 53-2-201, 53-6-101, 53-6-113, 53-21-201, 53-21-202, 53-21-701, 53-21-702, MCA

37.88.606 LICENSED PSYCHOLOGIST SERVICES, REIMBURSEMENT

(1) remains the same.

(2) Subject to the requirements of this rule, the Montana Medicaid program pays the following for licensed psychologist services:

(a) For patients who are eligible for Medicaid, the lower of:

(i) remains the same.

(ii) ~~62% of the reimbursement provided in accordance with the methodologies described in ARM 37.85.212.~~ the amount specified in the department's Medicaid Mental Health Fee Schedule.

(3) remains the same.

AUTH: 53-2-201, 53-6-113, 53-21-703, MCA
IMP: 53-1-601, 53-1-602, 53-1-603, 53-6-101, 53-6-113, 53-21-202, 53-21-701, 53-21-702, MCA

37.89.103 MENTAL HEALTH SERVICES PLAN, DEFINITIONS As used in this subchapter, unless expressly provided otherwise, the following definitions apply:

(1) and (2) remain the same.

(3) "Correctional or detention facility" means:

(a) and (b) remain the same.

~~(c) the Pine Hills youth correctional facility;~~

~~(d) the Riverside youth correctional facility;~~

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

~~(f) a juvenile detention center;~~

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

(4) "Covered diagnosis" means a diagnosis for which the M~~m~~ental H~~h~~ealth S~~s~~ervices P~~p~~lan provides covered services to members who have a severe disabling mental illness, as specified in ARM ~~37.89.114~~ 37.86.3501.

~~(a) A "covered diagnosis" means one of the ICD-9-CM diagnosis codes numbered 290, 293, 293.0 through 302, 302.2, 302.4, 302.6, 302.84 through 302.89, 306, 306.0 through 307, 307.1 through 307.3, 307.46, 307.5 through 307.80, 307.82 through 312.30, 312.32 through 314.9 and 316.~~

(5) and (6) remain the same.

(7) "Federal poverty level" or "FPL" means the ~~2000~~ poverty guidelines for the 48 contiguous states and the District of Columbia as published under the "Annual Update of the HHS Poverty Guidelines" in the Federal Register each year on or about February 15~~, 2000 and subsequent annual updates~~.

(8) through (14) remain the same.

~~(15) "Serious emotional disturbance (SED)" is defined in ARM 37.86.3702(2).~~

~~(16)~~ (15) "Severe disabling mental illness" is defined in ARM 37.86.3501. ~~means with respect to a person who is 18 or more years of age that the person meets the requirements of (16)(a), (b), or (c). The person must also meet the requirements of (16)(d). The person:~~

~~(a) has been involuntarily hospitalized at least 30 consecutive days because of a mental disorder at Montana State Hospital (Warm Springs campus) at least once;~~

~~(b) has a DSM-IV diagnosis with a severity specifier of moderate or severe of:~~

~~(i) schizophrenic disorder (295);~~

~~(ii) other psychotic disorder (295.40, 295.70, 297.1, 297.3, 298.9, 293.81, 293.82);~~

~~(iii) mood disorder (293.83, 296.2x, 296.3x, 296.40, 296.4x, 296.5x, 296.6x, 296.7, 296.80, 296.89);~~

~~(iv) amnestic disorder (294.0, 294.8);~~

~~(v) disorder due to a general medical condition (310.1);~~

~~(vi) pervasive developmental disorder not otherwise specified (299.80) when not accompanied by mental retardation;~~

~~(vii) anxiety disorder (300.01, 300.21, 300.3); or~~

~~(c) has a DSM-IV diagnosis with a severity specifier of moderate or severe of personality disorder (301.00, 301.20, 301.22, 301.4, 301.50, 301.6, 301.81, 301.82, 301.83, or 301.90) which causes the person to be unable to work competitively on a full-time basis or to be unable to maintain a residence without assistance and support by family or a public agency for a period of at least six months or for an obviously predictable period over six months; and~~

~~(d) has ongoing functioning difficulties because of the mental illness for a period of at least six months or for an obviously predictable period over six months, as indicated by at least two of the following:~~

~~(i) a medical professional with prescriptive authority has determined that medication is necessary to control the symptoms of mental illness;~~

~~(ii) the person is unable to work in a full-time competitive situation because of mental illness;~~

~~(iii) the person has been determined to be disabled due to mental illness by the Social Security Administration;~~

~~(iv) the person maintains a living arrangement only with ongoing supervision, is homeless or is at imminent risk of homelessness due to mental illness; or~~

~~(v) the person has had or will predictably have repeated episodes of decompensation. An episode of decompensation includes increased symptoms of psychosis, self-injury, suicidal or homicidal intent or psychiatric hospitalization.~~

(17) through (17)(a)(ii) remain the same but are renumbered (16) through (16)(a)(ii).

~~(18) "Youth" means a person 17 years of age and younger or a person who is under 20 years of age and is enrolled in secondary school.~~

~~(19)~~ (17) The department adopts and incorporates by reference the ICD-9-CM diagnosis codes with meanings found in the Ingenix ICD-9-CM Code Book (2006) ~~valid October 1, 2006 through September 30, 2007~~, published by Ingenix. The department also adopts and incorporates by reference the DSM-IV diagnosis codes with meanings found in the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition Text Revision (2000), published by the American Psychiatric Association of Washington, D.C. These systems of coding provide the codes and meanings of the diagnostic terms commonly used by treating professionals and are incorporated ~~herein~~ in order to provide common references for purposes of the provision of services through the Mmental Hhealth Sservices Pplan. Copies of applicable portions of the ICD-9-CM and the DSM-IV may be obtained from the Department of Public Health and Human Services, Addictive and Mental Disorders Division, Mental Health Services Bureau, 555 Fuller, P.O. Box 202905, Helena, MT

59620-2905 ~~(for adult services) or the Health Resource Division, Children's Mental Health Bureau, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951 (for youth services)~~.

AUTH: 41-3-1103, 52-1-103, 53-2-201, 53-6-113, 53-6-131, 53-6-701, 53-21-703, MCA
IMP: 41-3-1103, 52-1-103, 53-1-601, 53-1-602, 53-1-603, 53-2-201, 53-6-101, 53-6-113, 53-6-116, 53-6-117, 53-6-131, 53-6-701, 53-6-705, 53-21-139, 53-21-201, 53-21-202, 53-21-701, 53-21-702, MCA

37.89.106 MENTAL HEALTH SERVICES PLAN, MEMBER ELIGIBILITY

(1) An individual is eligible for covered services under the plan if:

(a) the individual is ~~a youth with a serious emotional disturbance or~~ an adult with a severe disabling mental illness; and the family of which the individual is a member has a total family income, without regard to other family resources, at or below 150% of the most recently published federal poverty level (FPL);

(b) remains the same.

~~(c) the individual is under the age of 19 years and the individual has been denied enrollment in Montana Children's Health Insurance Program (CHIP), as established in ARM Title 37, chapter 79;~~

~~(d) the individual is an adolescent who has met the eligibility requirements of the plan as a youth with serious emotional disturbance, but who will not meet the eligibility requirements of the plan as an adult with severe and disabling mental illness. The individual may continue to be eligible as an adolescent for the purpose of transition to independent living until the age of 21, provided the individual continues to meet income requirements;~~

~~(e)~~ (c) the total number of ~~children and the total number of~~ adults who can be eligible for MHSP at any time is within the limits set by the department as provided in (6); and

~~(f)~~ (d) the individual is eligible for Medicare, is enrolled in a Medicare prescription drug plan or Medicare Advantage Plan, and has applied for subsidy extra help from the Social Security Administration and, if necessary, premium assistance from Big Sky Rx.

(2) through (5)(a)(ii) remain the same.

(6) If the department determines that the average per-case cost of the M~~m~~ental H~~h~~ealth S~~s~~ervices P~~p~~lan expenditures times the number of enrollees will exceed total appropriations, it will suspend enrollment of new recipients.

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

(c) no person enrolled in the MHSP on September ~~4, 2000~~ 1, 2008, shall be determined ineligible solely as a result of the determination by the department provided for in (6)(a).

(d) notwithstanding the provisions of (6)(a) through (c) ~~of this rule~~, the department may enroll a qualified applicant if the applicant is:

(i) remains the same.

(ii) ~~in imminent physical danger due to a life-threatening mental health emergency~~ a person with recurrent thoughts of death, recurrent suicidal ideation or suicide attempt, or a specific plan for committing suicide.

AUTH: 41-3-1103, 52-2-603, 53-2-201, 53-6-113, 53-6-131, 53-6-701, 53-6-706, 53-21-703, MCA
IMP: 41-3-1103, 52-2-603, 53-1-601, 53-1-602, 53-1-603, 53-2-201, 53-6-101, 53-6-113, 53-6-116, 53-6-117, 53-6-131, 53-6-701, 53-6-705, 53-6-706, 53-21-139, 53-21-201, 53-21-202, 53-21-701, 53-21-702, MCA

37.89.114 MENTAL HEALTH SERVICES PLAN, COVERED SERVICES

(1) Authorized medically necessary mental health services for a covered diagnosis are covered under the plan for members, except as provided in this subchapter~~.~~:

~~(2) Covered services for youth~~ include:

(a) evaluation and assessment of psychiatric conditions by licensed and enrolled mental health ~~providers~~ professionals as defined in ARM 37.106.1902 or licensed and enrolled health care professionals as defined in ARM 37.106.1902;

(b) primary care providers, as defined in ARM 37.86.5001~~(25)~~, for screening and identifying psychiatric conditions and for medication management;

(c) a psychotropic drug formulary, as specified in ~~(7)~~(5);

(d) medication management, including lab services necessary for management of prescribed medications medically necessary with respect to a covered diagnosis; and

~~(e) psychological assessments, treatment planning, individual, group and family therapy, and consultations performed by licensed psychologists, licensed clinical social workers, and licensed professional counselors for treatment of covered diagnoses in private practice or in mental health centers; and~~

~~(f)~~ (e) mental health center services.

~~(3) Covered services for adults include:~~

~~(a) services provided by a licensed mental health center contracted with the department for services to adults enrolled in the plan;~~

~~(b) primary care providers, as defined in ARM 37.86.5001(25), for screening and identifying psychiatric conditions and for medication management;~~

~~(c) a psychotropic drug formulary, as specified in (7);~~

~~(d) medication management, including lab services necessary for management of prescribed medications medically necessary with respect to a covered diagnosis.~~

(4) through (7) remain the same but are renumbered (2) through (5).

~~(8)~~ (6) Except as provided in ~~(8)(a)~~ (6)(a), the plan covers medically necessary mental health services for covered diagnoses for members who are residents of nursing facilities, regardless of whether the services are provided in the nursing facility.

(a) The plan does not cover services defined as "nursing facility services" in ARM 37.40.302 or otherwise required by law to be provided by the nursing facility and does not cover or reimburse the nursing facility for services provided by the nursing facility.

(9) remains the same but is renumbered (7).

~~(10)~~ (8) The plan does not cover:

(a) inpatient or emergency hospital services;

~~(a)~~ (b) any form of transportation services; and

(c) drug or alcohol detoxification.

~~(b) detoxification, drug or alcohol evaluation, treatment or rehabilitation, regardless of the member's diagnosis; and~~

~~(c) services provided to a nonmember who is eligible on an emergency basis during a hospital emergency room visit.~~

~~(11)~~ (9) A member who is an inmate in or incarcerated in a correctional or detention facility is not entitled to services under the plan, except as specifically provided in these rules.

(a) The plan covers discharge planning services in relation to a covered diagnosis prior to release from a correctional or detention facility for a member who is:

(i) within 60 days of release;

~~(ii) a youth under the custody of the department's division of child and family services or the department of corrections and who is in a correctional or detention facility;~~

~~(iii)~~ (ii) a prisoner in a correctional or detention facility; or

~~(iv)~~ (iii) a forensic patient, as specified in ~~(8)(a)~~ (6)(a), admitted to the Montana state hospital~~; or~~.

~~(v) being held in a juvenile correction facility.~~

(b) A member incarcerated in a local government criminal detention facility who has not been adjudicated may receive medically necessary mental health services for covered diagnosis during incarceration, except that the plan does not cover the member's security or detention needs.

(c) A member may receive medically necessary mental health services for covered diagnoses after leaving the correctional or detention facility, except that the plan does not cover the individual's security or detention needs.

(12) through (12)(a)(ii) remain the same but are renumbered (10) through (10)(a)(ii).

AUTH: 41-3-1103, 52-1-103, 52-2-603, 53-2-201, 53-6-113, 53-6-131, 53-6-706, 53-21-703, MCA

IMP: 41-3-1103, 52-1-103, 52-2-603, 53-1-405, 53-1-601, 53-1-602, 53-1-603, 53-2-201, 53-6-101, 53-6-113, 53-6-116, 53-6-701, 53-6-705, 53-6-706, 53-21-139, 53-21-202, 53-21-701, 53-21-702, MCA

37.89.115 MENTAL HEALTH SERVICES PLAN, PROVIDER PARTICIPATION (1) through (1)(b) remain the same.

(2) Providers in the following categories may request enrollment in the plan:

(a) licensed mental health centers;

(b) and (c) remain the same.

(d) licensed psychologists employed by a mental health center;

(e) licensed clinical social workers employed by a mental health center;

(f) licensed professional counselors employed by a mental health center; ~~and~~

(g) outpatient pharmacies~~.~~;

(h) labs; and

(i) rural health clinics and federally qualified clinics as defined in 42 CFR 491.

(3) through (7) remain the same.

AUTH: 2-4-201, 41-3-1103, 53-2-201, 53-6-113, 53-21-703, MCA
IMP: 2-4-201, 41-3-1103, 53-1-601, 53-1-602, 53-1-603, 53-2-201, 53-6-113, 53-6-116, 53-6-701, 53-6-705, 53-21-202, 53-21-701, 53-21-702, MCA

37.89.118 MENTAL HEALTH SERVICES PLAN, AUTHORIZATION REQUIREMENTS (1) The prior authorization, notification, and other provisions of ARM 37.88.101 apply to the Mmental Hhealth Sservices Pplan provided in this subchapter.

~~(a)~~ For purposes of applying the provisions of ARM 37.88.101 to the Mmental Hhealth Sservices Pplan, references in ARM 37.88.101 to "Medicaid recipient" and "recipients" shall be deemed references to the Mmental Hhealth Sservices Pplan members, and references to the "Montana Medicaid Program" shall be deemed references to the ~~m~~Mental ~~h~~Health ~~s~~Services ~~p~~Plan.

~~(b) Services provided to adult members of the mental health services plan are exempt from the prior authorization provisions of ARM 37.88.101.~~

AUTH: 53-2-201, 53-21-703, MCA
IMP: 53-2-201, 53-21-202, 53-21-701, 53-21-702, MCA

37.89.119 MENTAL HEALTH SERVICES PLAN, PREMIUM PAYMENTS, AND MEMBER COPAYMENTS (1) A member of the plan must pay to the provider the following copayment not to exceed the cost of the service:

(a) for each outpatient visit or service, other than pharmacy services, $10 or a lesser amount designated by the department; and

(b) for each filling of a prescription, the lesser of the cost of that particular filling or $25, or a lesser amount designated by the department~~; and~~.

~~(c) for each out-of-home admission, $50 or a lesser amount designated by the department.~~

(2) remains the same.

AUTH: 53-2-201, 53-6-113, 53-6-131, 53-21-703, MCA
IMP: 53-1-405, 53-1-601, 53-2-201, 53-6-101, 53-6-113, 53-6-116, 53-6-131, 53-21-701, 53-21-702, MCA

37.89.131 MENTAL HEALTH SERVICES PLAN, MEMBER NOTICE, GRIEVANCE AND RECONSIDERATION, AND RIGHTS (1) through (2) remain the same.

(3) A member has the right to any applicable grievance processes provided by the department's review designee referred to in ARM 37.89.118 and, following exhaustion of such grievance processes, an informal reconsideration as provided in ARM 37.5.318(5)(a) regarding a denial or termination of plan eligibility, a denial of authorization or coverage of services, a determination that a member is liable to the department as provided in ARM 37.89.106 based upon a misrepresentation, or failure to provide notification of changes in income or family~~ composition, or a determination that a member is liable to the provider as provided in ARM 37.89.106~~

~~based upon failure to apply for plan eligibility within 60 days following completion of emergency treatment~~.

(4) through (10) remain the same.

AUTH: 2-4-201, 53-2-201, 53-6-113, 53-6-706, 53-21-703, MCA
IMP: 2-4-201, 53-1-601, 53-2-201, 53-6-101, 53-6-113, 53-6-116, 53-6-706, 53-21-202, 53-21-701, 53-21-703, MCA

5. The rules as proposed to be repealed provide as follows:

37.86.112 MENTAL HEALTH SERVICES PLAN, OUTPATIENT DRUGS FOR BENEFICIARIES ELIGIBLE FOR MEDICARE, is found on page 37-22187 of the Administrative Rules of Montana.

AUTH: 53-2-201, MCA
IMP: 53-21-701, MCA

37.89.135 MENTAL HEALTH SERVICES PLAN, TRANSITION FROM RULES IN EFFECT PRIOR TO JULY 1, 1999, is found on page 37-22231 of the Administrative Rules of Montana.

AUTH: 53-2-201, MCA
IMP: 53-1-601, 53-1-612, 53-2-201, 53-21-202, MCA

6. The Department of Public Health and Human Services (the department) is proposing the adoption of new Rules I through XI, the amendment of ARM 37.88.206, 37.88.306, 37.88.606, 37.89.103, 37.89.106, 37.89.114, 37.89.115, 37.89.118, 37.89.119, and 37.89.131, and the repeal of ARM 37.86.112 and 37.89.135 pertaining to the Mental Health Services Plan (MHSP). The proposed changes include increased Medicaid reimbursement rates for providers of mental health services to MHSP enrollees, revised enrollment standards for adults, and technical changes to the rules for enrollees and providers of MHSP services to persons 17 and younger. The department is taking this opportunity to reorganize the MHSP rules so the provisions governing youths will appear in a separate chapter of the Administrative Rules of Montana (ARM).

The changes are necessary to enable the department to transition the Mental Health Services Plan to a fee-for-service program as mandated by the 2007 Montana Legislature. Although the current rule allows the department to limit services, rates, eligibility, or the number of persons determined eligible under the plan based upon such factors as availability of funding, degree of financial need, or other factors, the rules need to be updated to clearly identify the services and providers to be included in the plan.

If the department did not amend these rules, administration of the plan would be complicated by ambiguous sections related to covered services and provider types.

RULE I

Proposed new Rule I would include definitions generally applicable to the youth mental health services. The definitions are substantially the same as definitions currently found at ARM 37.88.1102 and 37.89.103. In addition, the Children's System of Care Account definition refers to the department's ability to fund the administration and delivery of services to high risk children. The Children's System of Care Account was created pursuant to 52-2-309, MCA.

The proposed new Rule I is part of the reorganization of the mental health rules for youth with serious emotional disturbance (SED). The department's alternative to the proposed changes was to leave these various definitions located throughout the many rules for the department. The department did not choose this alternative because it would be difficult for consumers and providers to locate rules for youth with SED. Departmental staff will more readily be able to maintain the rule set and maintain federal and state compliance should requirements change.

The proposed rule does not increase or decrease fees, costs, or benefits. No fiscal or benefit effects are expected as a result of this proposed rule.

RULE II

Proposed new Rule II would contain the criteria for designating a youth "seriously emotionally disturbed". No substantive change to the established criteria is intended. Under this proposal, the SED definitions would be removed from the rules for targeted case management services to youth.

There was some reformatting included in the proposed new rule. Previous (3) was changed to (d) to more accurately reflect the criteria. (2) adopts and incorporates by reference the ICD-9-CM diagnosis codes with meanings found in the Ingenix ICD-9-CM Code Book (2006), published by Ingenix. The department also adopts and incorporates by reference the DSM-IV diagnosis codes with meanings found in the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition Text Revision (2000), published by the American Psychiatric Association of Washington, D.C. These systems of coding provide the codes and meanings of the diagnostic terms commonly used by treating professionals and are incorporated in order to provide common references for purposes of the provision of services to youth through the Mental Health Services Plan. Copies of applicable portions of the ICD-9-CM and the DSM-IV may be obtained from the Department of Public Health and Human Services, Health Resource Division, Children's Mental Health Bureau, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

The proposed new Rule II is part of the reorganization of the mental health rules for youth with serious emotional disturbance. The department's alternative to the proposed new rule is to leave the definitions located throughout the department's many rules. The department did not choose this alternative because it would be difficult for consumers and providers to locate rules for youth with SED. Department

staff will more readily be able to maintain the rule set and maintain federal and state compliance should requirements change.

The proposed rule does not increase or decrease fees, costs, or benefits. No fiscal or benefit effects are expected as a result of this proposed rule.

NEW RULES III THROUGH XI

Proposed new Rules III through XI reflect the reorganization of the MHSP rules for youth with SED into its own subchapter. There are some changes within the rules as discussed below:

Proposed new Rule III specifies MHSP eligibility criteria. It limits youth eligibility for covered services under the MHSP to youths 17 years of age or younger with a serious emotional disturbance. A youth may not be eligible for MHSP if the youth is eligible for Medicaid or the Children's Health Insurance Plan (CHIP).

CHIP bureau staff compute the financial eligibility for youth with SED applying for the MHSP. The proposed rule references the criteria outlined in the CHIP rules because those are the criteria used for computing eligibility for youth with SED with the following exceptions:

Annual family income without regard to other family resources must be at or below 160% of the FPL, the maximum amount allowable under 53-21-702, MCA. CHIP eligibility standards allow income to be as great as 175% of the FPL. None of the applicant's family members may be employed by the state of Montana. The applicant's family does not have to meet the CHIP requirement of having no creditable health insurance coverage prior to the date of application.

Proposed new Rule III is intended to cover youth with SED through age 17 and younger. Adult MHSP starts at age 18 for applicants with severe disabling mental illness (SDMI) and provides a benefit package more beneficial to MHSP enrollees. Therefore, the CHIP eligibility rules are referenced with the exceptions listed above.

The department considered and rejected discontinuation of the MHSP for youth with SED. After discussion with adult mental health services staff, the department chose the proposed new rules as the most appropriate option.

The department cannot determine if there will be an increase or decrease in benefits for individuals seeking mental health treatment services. In state fiscal year (SFY) 2007, there were 80 youth receiving MHSP services. Total cost of services for those youths were $17,562.86.

Proposed new Rule IV limitations are part of the reorganization and is identical to the current language in the MHSP rules for adults. Rather than repeat this language throughout the MHSP rules, it has been reorganized to its own chapter for clarity.

The department's alternative to proposed new Rule IV regarding limitations was to follow the existing MHSP rules as amended and repeat the limitations throughout the various rules for MHSP for youth with SED. The department chose to list these requirements in one subchapter to enable consumers and providers easier access to the information.

The proposed rules will not increase or decrease monetary benefit amounts. In SFY 2007, there were 80 youth receiving MHSP services for a total of $17,562.86.

The department's alternative was to keep MHSP rules for adults and youth in one rule set. The department chose to separate youth MHSP rules into its own subchapter for clarity and accessibility.

Proposed new Rule VI is part of the reorganization from Title 37, chapter 89 to a new chapter except that mental health centers may not provide services under the MHSP plan. Licensed providers employed by a mental health center may enroll as a Medicaid provider and provide services to youth with SED who are covered under the MHSP plan. This proposal is the same for adults and youth.

The proposed new rule will not increase or decrease monetary amounts.

MHSP services provided to youth with SED do not require authorization. The proposed new Rule VII would state the current policy in a new subchapter of the rules.

The proposed new rule will neither increase or decrease benefits nor expenditures.

Proposed new Rule VIII provides that MHSP services to youth with SED are not subject to premium payments and copayments. This is current policy and the new rule is part of the reorganization. No substantive change is intended.

Proposed new Rule IX contains notice, grievance, reconsideration, and rights in the event of an adverse action by the department. The new rule is a reorganization of ARM 37.89.131, the existing rule for adults and youth who are aggrieved by an adverse action. The department is proposing these procedural "due process rights" appear in rule sets for adults and for youth.

Proposed new Rule X contains the provider reimbursement regulations for MHSP services to individuals 17 and younger. It is similar to ARM 37.89.125. No substantive change is intended. This is part of the reorganization of the rules.

RULE XI

The proposed new rule for the system of care account implements 52-3-309, MCA. The proposal provides for the use of funds from the account to reimburse in state or community based services providers for high risk youth with multiagency services needs. Services should be provided in the least restrictive and most appropriate

setting.

The department was directed by the 2007 Montana Legislature, through 2007 Laws of Montana, Chapter 123 to establish administrative rules for the Children's System of Care Account. Therefore, no alternative was considered.

The proposed new rule would increase opportunities for high risk youth with SED and multiagency service needs to access funding. The fiscal effect of the rule is limited to $500,000. An unknown number of individuals 18 and younger will be affected because the cost of the services will determine the number of youth served.

ARM 37.88.206

The department is proposing an amendment to this rule providing for reimbursement of licensed clinical social worker services that would refer to the department's Medicaid Mental Health Fee Schedule. This amendment is proposed for the purposes of bringing the rule into conformity with current department rulemaking practices. No changes to the methodology are intended. The department considered and rejected the option of leaving the rule unchanged because it would adversely result in lower than intended reimbursement amounts for these services.

ARM 37.88.306

The department is proposing an amendment to this rule providing for reimbursement of licensed clinical social worker services that would refer to the department's Medicaid Mental Health Fee Schedule. This amendment is proposed for the purposes of bringing the rule into conformity with current department rulemaking practices. No changes to the methodology are intended. The department considered and rejected the option of leaving the rule unchanged because it would adversely result in lower than intended reimbursement amounts for these services.

ARM 37.88.606

The department is proposing an amendment to this rule providing for reimbursement of licensed clinical social worker services that would refer to the department's Medicaid Mental Health Fee Schedule. This amendment is proposed for the purposes of bringing the rule into conformity with current department rulemaking practices. No changes to the methodology are intended. The department considered and rejected the option of leaving the rule unchanged because it would adversely result in lower than intended reimbursement amounts for these services.

ARM 37.89.103

The department is proposing amendments to this rule as part of the reorganization explained in the discussion of proposed new Rules I through XI above. This rule would retain only the definitions applicable to the adult MHSP. Also, the department is proposing to refer to ARM 37.86.3401 rather than duplicating the definition of

"severe disabling mental illness" in this rule. No substantive changes to the definitions are intended.

ARM 37.89.106

The department is proposing amendments to this rule as part of the reorganization explained in the discussion of proposed new Rules I through XI above. This rule would retain only the eligibility standards applicable to the adult MHSP. Also, the department is proposing to amend the provision that an individual at risk of suicide is in a priority group that would be enrolled without consideration of enrollment caps. The amendment is intended to state the existing department policy more clearly.

ARM 37.89.114

The department is proposing amendments to this rule as part of the reorganization explained in the discussion of proposed new Rules I through XI above. This rule would retain only the covered services applicable to the adult MHSP. The department is also proposing an amendment to specifically refer to the rules defining "mental health professionals" and "licensed and enrolled health care professionals" to clearly identify the services and providers included in the plan.

ARM 37.89.115

The department is proposing amendments to this rule to more specifically identify the providers included in the MHSP.

ARM 37.89.118

The department will require that some services require prior authorization by department staff to assure the clinical appropriateness of the service.

ARM 37.89.119

The department does not intend to require a copay for out-of-home admissions under the Mental Health Services Plan. Reference to a copay has been removed.

ARM 37.89.131

The Mental Health Services Plan does not reimburse for emergency treatment and the reference to such treatment has been removed.

ARM 37.86.112

The department is proposing repeal of the rule pertaining to enrollee liability after emergency mental health services have been provided. The rule is outdated.

ARM 37.89.135

Reference to transition to Mental Health Services Plan prior to July 1, 1999 has been removed as dated information.

Estimated Budget Effects

The department estimates the cumulative fiscal effect of these proposed amendments would be $7,719,834, the appropriation for the Mental Health Services Plan for services provided to eligible adult beneficiaries.

Persons and Entities Affected

There are 5000 individuals over 18 years of age with mental health diagnoses who could be affected. There are seven licensed mental health centers who provide mental health services to individuals over 18 years of age that could be affected. There are an estimated 75 additional providers including physicians, psychiatrists, mid-level practitioners, federally qualified health clinics, rural health clinics, and labs.

There are approximately 9000 youth receiving mental health services each year. There are approximately 100 providers of mental health services to individuals 17 years of age and younger that could be affected.

7. Interested persons may submit comments orally or in writing at the hearing. Written comments may also be submitted to Rhonda Lesofski, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena MT 59604-4210, no later than 5:00 p.m. on August 14, 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/ Joan Miles
Director, Public Health and Human Services

Certified to the Secretary of State July 7, 2008.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the proposed adoption of New Rule I and II and amendment of ARM 42.13.107, 42.13.109, 42.13.222, 42.13.601, and 42.13.701 relating to liquor licensing rules	)))))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION AND AMENDMENT

TO: All Concerned Persons

1. On August 7, 2008, at 1:30 p.m., a public hearing will be held in the Director's Office (Fourth Floor) Conference Room of the Sam W. Mitchell Building, at Helena, Montana, to consider the proposed adoption and amendment of the above-stated rules.

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

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Revenue no later than 5:00 p.m., July 31, 2008, to advise us of the nature of the accommodation that you need. Please contact Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-5828; fax (406) 444-3696; or e-mail canderson@mt.gov.

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

NEW RULE I BEER REPORTING REQUIREMENTS (1) Each brewery located outside of Montana shall file with the department monthly reports, provided by the department, with the following information:

(a) A brewery that sells beer directly to a retailer located in Montana must pay the tax due, pursuant to 16-1-406, MCA, on or before the 15th of each month for beer sold in the previous month and complete Montana Form BET;

(b) A brewery that sells beer directly to a retailer shall report on or before the 15th of each month the amount of beer sold directly to retailers in the previous month on Form BET-3; or

(c) Each retailer that purchases beer from an out-of-state brewery shall report the amount of beer purchased on Form BET-2.

(2) Each brewery located in Montana selling directly to consumers or retailers must pay tax for beer sold in the previous month pursuant to 16-1-406, MCA, and complete Montana Form BET.

AUTH: 16-1-303, MCA

IMP: 16-1-406, 16-3-213, 16-4-401, MCA

REASONABLE NECESSITY: The department is proposing to adopt New Rule I because the 2007 Legislature enacted SB 524, which allows out-of-state breweries to ship beer directly to retailers. To ensure equitable collection of tax, all brewers engaging in self-distribution act as a distributor and take on the tax collection and reporting responsibilities.

NEW RULE II WINE REPORTING REQUIREMENTS (1) Each winery located outside of Montana shall file with the department monthly reports, provided by the department, with the following information:

(a) A winery that sells wine directly to a retailer located in Montana must pay the tax due, pursuant to 16-3-411, MCA, on or before the 15th of each month for wine sold in the previous month and complete Montana Form WIT;

(b) A winery that sells wine directly to a retailer shall report on or before the 15th of each month the amount of wine sold directly to retailers in the previous month on Form WIT-3; or

(c) Each retailer that purchases wine from an out-of-state winery shall report the amount of wine purchased on Form WIT-2.

(2) Each winery located in Montana that is licensed to do business in the state shall, each quarter, report to the department the quantity of wine sold to distributors and the name and address of distributors on or before the 15th of the following month.

(3) Any winery located in Montana selling directly to the consumer or the retailer must pay tax on or before the 15th of each month for wine sold in the previous month pursuant to 16-1-411, MCA, and complete Montana Form WIT.

AUTH: 16-1-303, MCA
IMP: 16-3-411, 16-4-107, MCA

REASONABLE NECESSITY: The department is proposing to adopt New Rule II because the 2007 Legislature enacted SB 127, which allows out-of-state wineries to ship wine directly to retailers. The winery shipping the product is responsible for the tax due on the wine sold to a retailer. To ensure equitable collection of tax, all wineries engaging in self-distribution act as a distributor and take on the tax collection and reporting responsibilities.

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

42.13.107 EXTENSION OF TIME FOR NONUSE (1) remains the same.

(2) The department may grant up to three extensions of nonuse status in increments not exceeding 90 days. If the license is not put into use within one year, the department ~~must~~ will consider ~~quota limitations when~~ whether extenuating circumstances exist when determining whether further extensions of nonuse status may be granted. If the quota area is full, extreme and unforeseen hardship must be justified.

~~(a) If the department determines the extensions are justified, the licensee may be granted an extension of nonuse status in excess of one year.~~

~~(b)~~(3) The licensee shall be required to attend an informal conference conducted by the department in Helena to afford the licensee or person(s) holding a security interest in the license the opportunity to present evidence establishing justification for any further extension of nonuse status. If the department determines additional nonuse time is justified, a letter granting nonuse status will be issued. If the department determines continued nonuse status is not justified, the department will issue a notice to lapse the license.

~~(c) If the license issued has no quota limitations on the type of license issued nonuse status, 90-day extensions may be granted each time a written statement is received from the licensee, the licensee's representative, or the secured party that includes an explanation of the need for nonuse which is determined to be justified by the department.~~

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

AUTH: 16-1-303, MCA
IMP: 16-3-310, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.13.107 to clarify when nonuse status will be approved to eliminate subjectivity in approving nonuse status.

42.13.109 SEVEN-DAY CREDIT LIMITATION (1) A ~~Montana~~ brewery license, a beer wholesaler license, a ~~Montana~~ winery ~~registration~~ license, or a table wine distributor license will be suspended or revoked or otherwise sanctioned under 16-4-406, MCA, if credible evidence demonstrates that a ~~brewer, a winery, a wholesaler, or distributor~~ licensee extended credit to a retail licensee for more than seven days.

(2) through (6) remain the same.

AUTH: 16-1-303, MCA
IMP: 16-3-243, 16-3-406, 16-4-404, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.13.109 to remove the word "Montana" because the law was changed which allows licensees to ship beer or wine directly to retailers.

42.13.222 BEER WHOLESALER AND TABLE WINE DISTRIBUTOR RECORDKEEPING REQUIREMENTS (1) through (3) remain the same.

(4) A beer wholesaler or a table wine distributor may use a common carrier to deliver beer or wine to a retail license in limited quantities. The department may inspect the books and records of the common carrier regarding the conveyance of alcoholic beverages within the state.

(a) Quantity is limited to three cases a day for each licensed retailer.

AUTH: 16-1-303, MCA

IMP: 16-3-220, 16-3-243, 16-3-404, 16-3-406, MCA

REASONABLE NECESSITY: The department needs to clarify that a common carrier may be used to deliver beer or wine to retailers in limited quantities and that the records of such shipments are subject to inspection.

42.13.601 SMALL BREWERY RESTRICTIONS (1) through (3) remain the same.

(4) Product samples may not be sold, offered for sale, given away, consumed, or allowed to be consumed before 10 a.m. or after 8 p.m.

(5) A small brewery may sell growlers. A growler is a container of 1/2 gallon or more that a brewer fills on the brewery premises for off-premises consumption.

AUTH: 16-1-303, MCA
IMP: 16-3-213, 16-3-214, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.13.601 to clarify the restrictions for small brewery licensees of the limitations on sale and service of brewery samples. This rule relies on historical practices and treats small brewers in the same manner as all-beverage licensees, which allows no consumption after closing time. The division has received repeated complaints from on-premises licensees about breweries remaining open after 8 p.m. These breweries reportedly sell product up to 8 p.m. and then allow customers to remain on the premises and consume whatever they have purchased before 8 p.m. The division staff has observed this practice in Billings, Montana.

42.13.701 PRODUCTION THRESHOLD (1) through (4) remain the same.

(5) A brewery that sells directly to a retailer is responsible for the payment of the tax.

AUTH: 16-1-303, MCA
IMP: 16-1-406, MCA

REASONABLE NECESSITY: The department is amending ARM 42.13.701 because SB 524 passed in the 2007 legislative session allows out-of-state breweries to sell beer directly to retailers and the department wants to clarify who is responsible for paying the tax due.

5. 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: Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-5828; fax (406) 444-3696; or e-mail canderson@mt.gov and must be received no later than August 15, 2008.

6. Cleo Anderson, Department of Revenue, Director's Office, has been designated to preside over and conduct the hearing.

7. An electronic copy of this Notice of Public Hearing is available through the department's site on the World Wide Web at www.mt.gov/revenue, under "for your reference"; "DOR administrative rules"; and "upcoming events and proposed rule changes." The department strives to make the electronic copy of this Notice of Public Hearing conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

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

9. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor for 2007 Senate Bill 127 and 524, David Wanzenried, was notified on June 9, 2008, by electronic mail.

/s/ Cleo Anderson	/s/ Dan R. Bucks
CLEO ANDERSON	DAN R. BUCKS
Rule Reviewer	Director of Revenue

Certified to Secretary of State July 7, 2008

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

In the matter of the amendment of ARM 6.6.4201, 6.6.4202, 6.6.4203, 6.6.4204, 6.6.4205, and 6.6.4206 pertaining to Continuing Education Program for Insurance Producers, Adjusters, and Consultants	))))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On May 8, 2008, the State Auditor and Commissioner of Insurance published MAR Notice No. 6-173 regarding the public hearing on the proposed amendment of the above-stated rules at page 868 of the 2008 Montana Administrative Register, issue number 9.

2. On May 29, 2008, the State Auditor and Commissioner of Insurance held a public hearing to consider the proposed amendment of the above-stated rules. No comments were heard at the hearing, and no written comments were received before the comment deadline.

3. The State Auditor and Commissioner of Insurance has amended the above-stated rules exactly as proposed.

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

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

Certified to the Secretary of State July 7, 2008.

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

In the matter of the adoption of a temporary emergency rule closing the Yellowstone River from Carters Bridge to Highway 89 North Bridge	))))	NOTICE OF ADOPTION OF A TEMPORARY EMERGENCY RULE

TO: All Concerned Persons

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

(a) The 9th Street Island Bridge in Livingston, Montana is in danger of collapsing.

(b) Persons recreating on the river in these conditions would be subjected to:

(i) collapse of the bridge;

(ii) collision with dangerous debris due to the collapse of the bridge; or

(iii) current debris built up behind the bridge that is a hazard to anyone recreating on the river.

(c) Therefore, as this situation constitutes an imminent peril to public health, safety, and welfare, and this threat cannot be averted or remedied by any other administrative act, the commission adopts the following temporary emergency rule. The Park County Sheriff's Office has requested this closure. The emergency rule will be sent as a press release to newspapers throughout the state. Also, signs informing the public of the closure will be posted at access points. The rule will be sent to interested parties, and published as a temporary emergency rule in Issue No. 13 of the 2008 Montana Administrative Register.

2. The commission will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of the notice. If you require an accommodation, contact the department no later than 5:00 p.m. on July 24, 2008, to advise us of the nature of the accommodation that you need. Please contact Jessica Snyder, Fish, Wildlife and Parks, 1420 East Sixth Avenue, P.O. Box 200701, Helena, MT 59620-0701; telephone (406) 444-4594; fax (406) 444-7456; or e-mail jesnyder@mt.gov.

3. The temporary emergency rule is effective June 20, 2008 when this rule notice is filed with the Secretary of State.

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

<u>RULE I YELLOWSTONE RIVER TEMPORARY EMERGENCY CLOSURE</u>

(1) The closed portion of the Yellowstone River is located in Park County.

(2) The Yellowstone River is closed to all recreational use of the river between Carters Bridge and Highway 89 North Bridge.

(3) This rule is effective as long as the 9th Street Island Bridge is in danger of collapsing or until such time as debris from such collapse does not pose any danger. The commission delegates its authority to the Department of Fish, Wildlife and Parks (department), in consultation with the commissioner in the region, to determine when this portion of the river is again safe for boating, floating, fishing, and swimming and any other occupation of the water and to rescind the temporary emergency closure.

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

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

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

7. Concerned persons are encouraged to submit their comments to the department. They should submit their comments along with their names and addresses to Jessica Snyder, Legal Unit, Department of Fish, Wildlife and Parks, 1420 East Sixth Avenue, P.O. Box 200701, Helena, MT 59620-0701; telephone (406) 444-4594; fax (406) 444-7456; or e-mail jesnyder@mt.gov. Any comments must be received no later than August 18, 2008.

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

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

/s/ Susan W. Daly
Susan W. Daly,
Acting Secretary
Fish, Wildlife and Parks Commission

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

Certified to the Secretary of State June 20, 2008.

BEFORE THE TRANSPORTATION COMMISSION
OF THE STATE OF MONTANA

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

TO: All Concerned Persons

1. On March 27, 2008 the Transportation Commission published MAR Notice No. 18-118 pertaining to the public hearings on the proposed amendment of the above-stated rules at page 523 of the 2008 Montana Administrative Register, Issue Number 6.

2. On April 21, 22, and 28, 2008, the commission held public hearings to consider the proposed amendment of the above-stated rules. Comments were received at the hearing, and written comments were received before the comment deadline.

3. The commission has amended the above-stated rules as proposed.

4. The commission considered the comments at its regularly scheduled meeting on June 26, 2008. During the meeting the following statement was adopted by the commission:

The issue at hand is the amendment of ARM 18.6.202 and 18.6.232.

At the time of this hearing there is no law against LED or EBBs in the Montana Statutes because the technology was so new it was not addressed in the current laws. However, an amendment to the rules was proposed by the commission to include EBBs.

At issue is whether these signs "promote safety and aesthetics" on the highways in accordance with 75-15-102, MCA. The commission recognizes that "beauty is in the eye of the beholder" and that we cannot legislate on the basis of whether these signs will ruin the night sky or the beauty of the Montana countryside. We also recognize that no definitive studies have been done on the safety of these signs on either side of the argument. A complete study is scheduled to be done by the FHWA in 2009, and that until that study is completed, NO SIGNIFICANT STUDY HAS BEEN DONE. Current studies show that while the driver may only be distracted for two seconds by a variable imaging sign or "EBB" it takes a minimum of five seconds to comprehend the message according to the billboard industry itself (Scenic America). This seems to negate the safety standards of the Federal Highway Administration. Since there have been no truly conducted studies on the safety issues of these signs we should amend these rules until further studies can be completed to ensure the safety of our highways.

The overall message of the hearings was that some compromise should be reached between complete denial of these signs and complete accordance for permitting them. People felt that their voices had not been heard, that hearings were not held throughout the state, and that the issue should be decided by referendum and/or legislative procedure. The commission does not disagree with the latter. The commission has felt all along that in the absence of the proof of harm, and in the absence of a law prohibiting these signs, the state and the advertising companies would be locked in a prolonged and expensive battle.

There are some issues worth reviewing once it is proved that safety is not an issue:

1. Duration of message or "dwell time".
2. Transition time not to segue, but a complete black out time.
3. Brightness.
4. Spacing.
5. Location. Particularly not in animal crossings, narrow shoulders, difficult weather areas, entrances to public parks, forests, or monuments.
6. Reasonable and safe standards to regulate these signs are in place for the protection of the motoring public.
7. The efficient and effective enforcement is in place to keep these signs in compliance with the above legal considerations.
8. Signs be designated to zoned and unzoned commercial or industrial areas.
9. Messages must be static without movement, sound, animation, flashing, scrolling, or full motion video.

The preceding elements need study and policy.

Small businesses were concerned about not being allowed ANY off premise advertising. This is another issue and is already accorded by law. The discussion here is for variable messaging or EBB signs. It is not the commission's recommendation that EBB signs be placed in noncommercial settings on the highway.

The commission does not know how often Montana issues an Amber Alert.

The Department of Transportation already provides information on safety conditions on the road, weather conditions, places to rest, eat, lodge, refuel, and how far the next stop is for all of the above.

We should not proceed with this technology because "it has a clean look," or "it's cool," or "it's a good looking system," or "it communicates that we are a state that appreciates technology," or "it's the wave of the future." These are ridiculous.

These are the commission's reasons for overruling considerations urged against the adoption of these amendments. It is the commission's decision to

amend ARM 18.6.202 and 18.6.232 until at least complete studies are done on safety as regards electronic billboards in 2009 by the Federal Highways Administration and policy can be set on the nine issues stated above. The commission is sure the use of electronic billboards will continue as on-site advertising in the future, but does not think they have a place on Montana's highways.

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

COMMENT NO. 1: Twenty-six comments were received expressing general support for prohibition of electronic billboards (EBBs) on state roads.

RESPONSE: The commission appreciates the comments. It should be noted that the commission's authority to control outdoor advertising only extends to the interstate highways and primary highways. The proposed amendments do not apply to all "state roads" nor do the proposed amendments apply on the Indian reservations. The department should make an effort to work with the tribes on outdoor advertising regulation on the reservations.

COMMENT NO. 2: Seventy-five comments were received stating EBBs would be a distraction for drivers and may cause accidents, therefore EBBs are a safety issue. Studies have shown that crashes are caused by distractions to drivers, and EBBs are designed to take a driver's attention from the road.

RESPONSE: The commission recognizes that there are numerous studies that have been directed at the issue of safety related to the possible driver distractions caused by EBBs. However, the commission also recognizes that there is no consensus in the studies as to whether there is a cause and effect relationship between EBBs and crashes. Certainly, there is nothing that approaches a scientific certainty on this issue.

COMMENT NO. 3: Forty-one comments were received stating EBBs are a blight on the environment, mar the landscape, and would not be aesthetically pleasing. Montana's scenery needs to be protected.

RESPONSE: The commission recognizes that there are differences of opinion on the environmental impacts of EBBs and some find them offensive. As can be seen from subsequent comments, certain individuals expressed the opinion that the EBBs have a pleasing or "clean look."

COMMENT NO. 4: Twenty-three comments were received stating EBBs will cause visual and light pollution and blemish the night skies.

RESPONSE: See Response to Comment No. 3.

COMMENT NO. 5: Five comments were received stating EBBs will devalue surrounding property.

RESPONSE: The commission does not have any information that would either support or refute this assertion.

COMMENT NO. 6: Eleven comments were received stating EBBs are ugly, garish, and intrusive.

RESPONSE: See Response to Comment No. 3.

COMMENT NO. 7: Three comments were received stating some small businesses who advertise on EBBs may experience revenue growth, but it is at the expense of other small businesses that are not advertising on an EBB. All affected businesses will end up engaged in an advertising war, which will result in the same number of customers for each, but at a higher private advertising cost. Small businesses claiming EBBs are necessary to prevent them going out of business will have difficulty proving this cause and effect relationship.

RESPONSE: The commission recognizes that advertising is a legitimate business concern, but the commission has not been provided any hard data which support or refute the assertion. The commission notes all advertisers are free to put their advertising dollar wherever they want.

COMMENT NO. 8: Ten comments were received stating tourism will suffer if EBBs are allowed because Montana's scenery will be seriously affected in a negative way by EBBs.

RESPONSE: See Response to Comment No. 3.

COMMENT NO. 9: Five comments were received stating any rule authorizing EBBs throughout the state usurps local control, as even if town and county ordinances prohibit EBBs, they could still be erected on government and school property.

RESPONSE: The commission agrees that local control must be an integral part of any decision making process and believes the proper forum for establishing or allowing EBBs is the Legislature.

COMMENT NO. 10: One comment was received stating modern technology has provided more effective ways to provide product information than EBBs without being so intrusive to the general public and the environment.

RESPONSE: The commission is not in a position to comment on whether there are other "more effective ways" to provide information than EBBs and takes no position in that regard. Also, see Response to Comment No. 3.

COMMENT NO. 11: Thirteen comments were received stating current federal law

(Highway Beautification Act) bans flashing, moving, or intermittent lights, and EBBs could possibly allow an electronic application which flashed, moved, or change the message intermittently.

RESPONSE: The commission recognizes that a guidance letter from FHWA dated September 25, 2007, specifically states that digital or LED billboards, in the federal view, do not violate the laws referred to in the comment.

COMMENT NO. 12: Three comments were received stating the Federal Highway Administration (FHWA) Memo allowing EBBs was issued without public input in violation of their own rulemaking requirements.

RESPONSE: The commission has no way of knowing whether or not the comment is accurate. It really makes no difference, given that the amendments prohibit EBBs.

COMMENT NO. 13: Two comments were received stating FHWA is conducting its own research into safety issues associated with EBBs. Montana should wait until the study is complete in 2009, before considering allowing EBBs.

RESPONSE: See Response to Comment No. 2. In addition, the commission recognizes that currently, FHWA's interpretation of the law does not prohibit LED or digital billboards.

COMMENT NO. 14: Four comments were received stating two studies showing EBBs are not more likely to cause accidents are flawed.

RESPONSE: See Response to Comment No. 2.

COMMENT NO. 15: Three comments were received stating other states such as Vermont do not allow any type of billboards, yet their local businesses thrive because people like to visit these scenic places. Montana should not allow EBBs, which would send the wrong message about our natural beauty.

RESPONSE: The commission acknowledges that Vermont, by law, does not allow billboards of any type. Whether or not there is any adverse economic impact in Vermont, however, is not supported or refuted by any evidence before the commission.

COMMENT NO. 16: One comment was received stating a ban on EBBs would attract more business to Montana, especially from those who yearn for nature and visual quietness.

RESPONSE: There is no evidence available to the commission to support or refute this comment.

COMMENT NO. 17: Twenty-one comments were received stating Montana should not waste energy resources on advertising on the roadside. Banning EBBs would

set a "green" example for other states. EBBs are huge energy consumers, over 15 times that of a regular static billboard with lighting.

RESPONSE: The commission acknowledges that there may be energy consumption associated with the use of EBBs, but has no evidence to support or refute the assertion. Also, see Response to Comment No. 3.

COMMENT NO. 18: Five comments were received stating EBBs will clash with other historic or established architectural elements—even at a great distance.

RESPONSE: The commission agrees with the comment and sees the validity in the comment.

COMMENT NO. 19: Nine comments were received stating if highways need to be widened or an EBB taken down for normal road improvements, the costs to communities will be huge because of required compensation to the sign owners.

RESPONSE: The commission agrees that sign owners are generally entitled to compensation for taking related to highway expansion, and notes that the interstate and primary highways are under the control of the commission and not local government. The commission and department are always faced with the cost of acquiring improvements. There is no evidence that EBBs would be cumulatively more expensive.

COMMENT NO. 20: One comment was received stating the proposed prohibition on EBBs will aid local communities in keeping the highway entrances to the city clear of bright, obtrusive billboard signs.

RESPONSE: See Response to Comment No. 3.

COMMENT NO. 21: One comment was received stating entities and special interest groups have argued the EBBs should be allowed as freedom of speech, but their freedom should not be imposed on the rest of the public in such a dramatic and imposing way.

RESPONSE: Issues of freedom of speech are not at stake in this proposal. The limitation in these amendments does not prohibit existing advertising methods but restricts one alternative method not yet in place.

COMMENT NO. 22: Two comments were received stating it would be a major change in Montana to allow EBBs, and that subject should perhaps not fall under an administrative rule change, but should perhaps be considered by the Legislature because there is such broad interest in this across the state.

RESPONSE: The commission agrees. The overall comments received by the commission, both for and against the proposed amendments, recognize that the issue of EBBs on state highways under commission jurisdiction has divided public

opinion. As such, the commission believes the final arbiter of this modern technological change ought to be the Legislature.

COMMENT NO. 23: Three comments were received stating EBBs are not a mass medium; there are much better ways to put out Amber Alerts that are already being taken advantage of such as radio and TV.

RESPONSE: The commission acknowledges that there are several existing means of posting alerts related to missing children and does not believe that the ability of using EBBs is, in itself, sufficient justification to alter the existing advertising practices.

COMMENT NO. 24: There were 115 comments received, which related to the issue of the alleged impacts upon business or the economy, if the proposed action were taken. Essentially, the comments were to the effect that businesses (especially small businesses) need advertising in order to stay competitive, and that the proposed amendment would eliminate a possible medium for such advertising. Because of this, according to the comments, businesses could be put at an economic disadvantage.

RESPONSE: The commission recognizes that advertising is an important business practice. However, the commission also notes that there are existing media that provide advertising options other than allowing EBBs. Also, see Response to Comment No. 22.

COMMENT NO. 25: There were 32 comments received to the effect that roadside signs are an aid to travelers, especially those travelers seeking accommodations, such as lodging, restaurants, and service stations. The comments stated that EBBs would increase the number of messages that could be displayed to the public, and thereby help the public find the type of services they were seeking.

RESPONSE: The commission acknowledges the benefits to travelers of roadside signage. The existing TODS and LOGO sign programs, as well as other existing opportunities including OAC, provide this service now and have provided service for nearly 20 years. The commission also notes these advertising media were legislatively enacted, and believes that if EBB advertising is to be introduced, it should be legislatively enacted as well.

COMMENT NO. 26: There were ten comments received which pointed out that the allowed number of billboards has decreased in recent years, largely due to local controls. As a result, the possibility of using EBBs was attractive to the sign industry, because they could put more messages on fewer sign locations, thereby allowing fewer signs along the roads. Also, as a subset of this comment, a few comments stated that, because EBBs did not involve the necessity of physically changing the paper or vinyl every time the message was changed, there was less waste material when EBBs were used.

RESPONSE: The commission recognizes that the technology of EBBs may result in some savings, but believes the issue has statewide implications requiring a legislative opportunity for industry, commerce, and local government to present their views in a forum which can enact statutory decisions.

COMMENT NO. 27: There were 87 comments which stressed the need to take advantage of the new technology afforded by the EBBs. Some of these comments also reiterated, as did the comments discussed in the previous paragraph, that the new technology would discourage the generation of waste material.

RESPONSE: See Response to Comment No. 26.

COMMENT NO. 28: There were 26 comments received which pointed out that EBBs were an efficient way to provide public service announcements such as Amber Alerts.

RESPONSE: See Response to Comment No. 23. The commission acknowledges that there may be opportunities for public service announcements, but the commission concludes that there are numerous existing media for that service now.

COMMENT NO. 29: There were 25 comments received wherein it was stated that EBBs did not create a distraction or safety hazard.

RESPONSE: See Response to Comment No. 2.

COMMENT NO. 30: There were twenty comments received wherein it was stated that any proposal regarding EBBs should seek to regulate the EBBs rather than simply banning them.

RESPONSE: The commission believes that the change in OAC to allow EBBs is a significant alteration of the current practice and has significant impacts on industry, commerce, local government, and the environment, and should be addressed by the Legislature in the same manner as the TODS and LOGO sign programs were.

COMMENT NO. 31: There were four comments received to the effect that the notice of hearings did not comply with the Montana Administrative Procedure Act or that the proposal should be enacted through legislation rather than through rulemaking.

RESPONSE: The commission disagrees that MAPA was violated in any manner. The commission agrees that the Legislature should consider the issue.

COMMENT NO. 32: There were thirty-two comments received which expressed general opposition to the proposal without stating a specific reason.

RESPONSE: The commission recognizes that a number of individuals and entities oppose these amendments. Again, it is deemed the best course of action to allow

the Legislature to enact controlling law.

COMMENT NO. 33: There were nineteen comments received which asserted that the EBBs do not display intermittent, moving, or scrolling messages, but are static, and simply change a message every eight seconds or so. Many of these comments asserted that the EBBs have a "clean look."

RESPONSE: The commission acknowledges that FHWA does not consider EBBs as violating the prohibition on intermittent, moving, or scrolling as set forth in federal regulations, but believes the technological differences of EBBs establish an entirely new medium that should be addressed by legislation in the same manner as the TODS and LOGO sign programs. It is acknowledged that different people have different opinions as to what is aesthetically pleasing.

/s/ Lyle Manley
Lyle Manley
Rule Reviewer

/s/ Nancy Espy
Nancy Espy
Chair
Transportation Commission

Certified to the Secretary of State July 7, 2008.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the transfer of Title 23, chapter 7, pertaining to fire prevention and investigation	)))	NOTICE OF TRANSFER

TO: All Concerned Persons

1. The Department of Justice has determined that the transfer of the above rules is necessary in order to keep topical items together. They will be numbered as follows:

OLD	NEW	
23.7.101A	23.12.401	Definitions
23.7.102	23.12.402	Enforcement of Fire Prevention and Investigation Program Rules
23.7.103	23.12.403	Notice of Violation
23.7.104	23.12.404	Interpretation
23.7.106	23.12.405	Appointment of Special Fire Inspectors
23.7.108	23.12.406	Smoke Detectors in Rental Units
23.7.109	23.12.407	Certificate of Approval for Day Care Centers for 13 or More Children
23.7.110	23.12.408	Certificate of Approval for Community Homes
23.7.112	23.12.409	Threat of Explosives in State Buildings
23.7.143	23.12.420	Approval of Equipment
23.7.154	23.12.430	Service Tags
23.7.160	23.12.431	Rules Relating to the Building Code
23.7.201	23.12.501	Retail Fireworks Sale
23.7.202	23.12.502	Fireworks Repackaging, Storage, and Shipping
23.7.203	23.12.503	Outdoor Display of Fireworks
23.7.204	23.12.504	General Liability Insurance Required for Public Display of Fireworks
23.7.301	23.12.601	Adoption of NFPA 1 Uniform Fire Code
23.7.302	23.12.602	Administration
23.7.303	23.12.603	Additional Definitions
23.7.304	23.12.604	General
23.7.306	23.12.605	Processes
23.7.308	23.12.606	Hazardous Materials

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

/s/ J. Stuart Segrest
J. STUART SEGREST
Rule Reviewer

Certified to the Secretary of State on July 7, 2008.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the transfer of Title 23, chapter 10, pertaining to controlled substances and the regulation of ephedrine and pseudoephedrine	))))	NOTICE OF TRANSFER

TO: All Concerned Persons

1. The Department of Justice has determined that the transfer of the above rules is necessary in order to keep topical items together. They will be numbered as follows:

OLD	NEW	
23.10.101	23.12.701	Precursors to Dangerous Drugs
23.10.201	23.12.801	Definitions
23.10.202	23.12.802	Retail Establishments Eligible to Apply for Certification
23.10.203	23.12.803	Requirements for Certification
23.10.204	23.12.804	Record Keeping Requirements
23.10.205	23.12.805	Training Requirements
23.10.206	23.12.806	Audit Compliance
23.10.207	23.12.807	Failure to Comply

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

/s/ J. Stuart Segrest
J. STUART SEGREST
Rule Reviewer

Certified to the Secretary of State on July 7, 2008.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the transfer of ARM 23.12.102 through 23.12.204, relating to criminal history and criminal justice information	))))	NOTICE OF TRANSFER

TO: All Concerned Persons

1. The Department of Justice has determined that the transfer of the above rules is necessary in order to keep topical items together. They will be numbered as follows:

OLD	NEW	
23.12.102	23.8.101	Definitions
23.12.103	23.8.102	Montana Arrest Numbering System Number to be Assigned – CJIN
23.12.104	23.8.103	Fingerprint Card
23.12.105	23.8.104	Criminal Case History and Final Disposition Report
23.12.106	23.8.105	Custodial Fingerprints
23.12.201	23.8.201	Definitions
23.12.202	23.8.202	Public Criminal Justice Information
23.12.203	23.8.203	Initial Offense Reports
23.12.204	23.8.204	Juvenile Records

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

/s/ J. Stuart Segrest
J. STUART SEGREST
Rule Reviewer

Certified to the Secretary of State on July 7, 2008.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the transfer of ARM 23.17.101 through 23.17.316, relating to the Law Enforcement Academy Bureau	)))	NOTICE OF TRANSFER

TO: All Concerned Persons

1. The Department of Justice has determined that the transfer of the above rules is necessary in order to keep topical items together. They will be numbered as follows:

OLD	NEW	
23.17.101	23.12.1201	Requirements for Peace Officers and Public Safety Officers to Attend Basic Programs
23.17.103	23.12.1203	Basic Course Attendance Requirements for Preservice Applicants
23.17.104	23.12.1204	Minimum Qualifications for Testing and Pretest Screening
23.17.105	23.12.1205	Testing Procedures
23.17.106	23.12.1206	POST Test Screening Procedures
23.17.107	23.12.1207	Ranking of Preservice Applicants for Eligibility to Attend the Basic Course
23.17.108	23.12.1208	Procedures for Registration, Attendance, and Fees for Preservice Applicants
23.17.201	23.12.1301	Rules of Conduct for Students Attending Basic Programs
23.17.311	23.12.1411	Student Academic Performance Requirements for the Basic Course
23.17.312	23.12.1412	Other Student Performance Measures
23.17.313	23.12.1413	MLEA Firearms Performance Requirements for the Law Enforcement Officer Basic Course
23.17.314	23.12.1414	Physical Performance Requirements for the Law Enforcement Officer Basic Course
23.17.315	23.12.1415	Student's Final Ranking in the Basic Course Class
23.17.316	23.12.1416	Basic Course Achievement Awards

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

/s/ J. Stuart Segrest
J. STUART SEGREST
Rule Reviewer

Certified to the Secretary of State on July 7, 2008.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of ARM 24.17.127, relating to prevailing wage rates for public works projects using building construction services, heavy construction services, and highway construction services	) NOTICE OF AMENDMENT))))))

TO: All Concerned Persons

1. On April 24, 2008, the Department of Labor and Industry published MAR Notice No. 24-17-229 regarding the public hearing on the proposed amendment of the above-stated rule on page 765 of the 2008 Montana Administrative Register, issue no. 8.

2. On May 16, 2008, a public hearing was held at which time members of the public made oral and written comments and submitted documents. Additional comments were received during the comment period.

3. The department has thoroughly considered the comments and testimony received from the public. The following is a summary of the public comments received and the department's response to those comments:

Comment 1: Rion Miles, International Union of Operating Engineers Local 400, noted that a petition is circulating to increase the highway construction rates for Construction Equipment Operators and has asked the department to allow time for the petition to circulate and then adopt the new federal highway construction rates. Jay Reardon, Laborers International Union of North America Local No. 1686, echoed the comment.

Response 1: As with the building construction rates, those for heavy and highway construction are set annually by the commissioner pursuant to ARM Title 24, chapter 17, subchapter 2. Although there may be a petition for revised federal rates circulating, there is no fixed date for the submission of that petition, nor is there a fixed date for a federal response to the petition. In light of the uncertainty of the timing of federal agency response, the department concludes that the better course of action is to adopt the heavy and highway construction services rates at this time, rather than delay adoption until a later date.

Comment 2: Rion Miles noted that new federal rates for heavy construction, general decision MT080001, were implemented on May 16, 2008. The commenter asked that this revision take the place of the current proposed rates for heavy construction. Jay Reardon also made the same request.

Response 2: The department notes that the May 16, 2008, federal rate changes were not available at the time the department submitted the proposed rates to the Montana Secretary of State's office for publication in the Montana Administrative Register. Pursuant to 2-4-307, MCA, the department cannot incorporate by reference documents or rates not yet in existence at the time the notice of proposed action was published. Adoption of the rates contained in general decision MT080001 would require the department renoticing and publishing the heavy and highway construction services rates. Rather than delay by 90 or so days the adoption of heavy and highway construction rates at this time, the department concludes that it should adopt the heavy and highway rates as proposed.

Comment 3: Rion Miles noted that nonunion companies are either not reporting all benefits, travel, and per diem paid to employees or not reporting them correctly, thereby skewing the results of the survey. Specifically the commenter mentioned that safety pay is not being reported as benefits.

Response 3: Initially, the department notes that an employer's submission of data is voluntary. The department also notes that by signing the survey response form the employer is making the representation that all information being provided in the response is true and correct.

Section 18-2-412(2), MCA states that "The fringe benefit fund, plan, or program . . . must provide benefits to workers or employees for health care, pensions on retirement or death, life insurance, disability and sickness insurance, or bona fide programs that meet the requirements of the Employee Retirement Income Security Act of 1974 or that are approved by the United States department of labor", and be a "irrevocable contribution". The department concludes that so-called "safety pay" should not be counted as it does not fit the definition of a benefit outlined in ERISA because it may or may not be paid out, depending on the safety record of the employee (or of the work unit) and is therefore not guaranteed or irrevocable.

Comment 4: Rion Miles states construction of "major structures" should have more weight in the survey than the construction of residential buildings.

Response 4: State law does not appear to allow the department to more heavily weight survey responses based upon the size of the structure or project. However, as noted in the survey information, residential work is not to be reported in the survey.

Comment 5: Rion Miles questioned the rates set for Construction Equipment Operators Group 2 for wages and fringe benefits in districts 3, 4, and 8; the fringe benefits in districts 5 and 6; the rates set for Construction Equipment Operators Group 3 for wages and fringe benefits in districts 1, 6, and 8; and the rates set for Construction Equipment Operators Group 6 for fringe benefits in district 8.

Response 5: The department has reviewed the wages and benefits set for Operating Engineers, and revised certain rates as noted in paragraph 4.

Comment 6: Rion Miles stated that all tower crane operators have been moved from Construction Equipment Operators Group 5 to Construction Equipment Operators Group 7.

Response 6: The department has taken note of the change and will update the final publication to reflect the move of all tower crane operators from Group 5 to Group 7.

Comment 7: Rion Miles noted that the Operating Engineers no longer use certain locations for dispatch points, but these locations are still listed in the prevailing wage publications. Mr. Miles asked if the publications could be revised to reflect this change.

Response 7: For building construction purposes, the Commissioner of Labor has determined the ten prevailing wage districts in accordance with 18-2-411, MCA. Each district has a designated city for computing travel pay within that district. For heavy construction and highway construction purposes the department adopts federal Davis-Bacon determinations; therefore, the towns listed in those determinations for computing travel pay are the ones used by the state of Montana.

Comment 8: Keith Allen, International Brotherhood of Electrical Workers Local 233, questioned the wages, fringe benefits, and travel pay for electricians in all districts.

Response 8: The department has reviewed the wages, benefits, and travel rates set for the Electricians classification. Based upon the review of the data submitted the department has revised certain rates as noted in paragraph 4.

Comment 9: Keith Allen questioned why the union rates in Districts 2, 6, 8, and 10 for the Telecommunications Equipment Installers and Repairers, Except Line Installers, did not prevail.

Response 9: The department has reviewed the wages and benefits set for Telecommunication Equipment Installers and Repairers in all districts. Based upon that review, the department has revised certain rates as shown in paragraph 4. The department notes that a wage or benefit rate set by a collective bargaining agreement (CBA) does not necessarily establish the prevailing rate in a district.

Comment 10: Keith Allen suggested that the individual survey results be part of public record.

Response 10: The department has modified its survey response forms to remove language that stated the response was confidential. Accordingly, the department believes that survey response forms are open to inspection by the public (subject to claims of privacy or other legally protected interests that may outweigh the public right to know).

Comment 11: Rick Toland, Road Sprinkler Fitters Local 669, stated that the rates reflect last year's CBA and a new CBA came into effect in April 1, 2008.

Response 11: The department concludes that the CBA from 2007 is the correct CBA to reference for the survey year of 2007.

Comment 12: Jim Ryan, Sheet Metal Workers International Association Local 103, questioned the rates set for the Sheet Metal Workers in all districts.

Response 12: The department has reviewed the wage and benefit rates set for Sheet Metal Workers and has revised certain rates as shown in paragraph 4.

Comment 13: Jay Reardon, Laborers International Union of North America Local 1686, stated that the fringe benefit in the CBA for Laborers in all groups and districts is $6.36. The department received multiple comments requesting that the department review rates for the Laborers classifications.

Response 13: The department reviewed the wage and benefits information for the Laborers classifications, and has revised the rates as shown in paragraph 4. The department notes that a wage or benefit rate set by a CBA does not necessarily establish the prevailing rate in a district.

Comment 14: Dave Warner, Pacific Northwest Regional Council of Carpenters, questioned the wage and fringe benefit rates in all districts within the Carpenter occupations.

Response 14: The department has reviewed the wages and benefits set for Carpenters. Based upon the review, the department has revised certain rates as shown in paragraph 4. The department also notes that wages and fringes for all districts for Millwright, Pilebuck, and Drywall Applicators are different than the Carpenter rates and will change to reflect the wages and fringes for their respective occupations as contained within the carpenters CBA, and will be shown as such in the final rate publication.

Comment 15: Gary Phillips, Heat and Frost Insulators and Allied Workers Local 11, questioned the rates in all districts for the Insulation Workers – Mechanical – Heat and Frost.

Response15: The department has reviewed the wages and benefits set for Heat and Frost Insulators and revised certain rates as shown in paragraph 4.

Comment 16: Marlin Overton, Bricklayers and Allied Craft Workers Local 3, asked the department to look at the rates for Brick, Block, and Stone Masons and Tile and Marble Setters.

Response 16: The department has reviewed the wages and benefits set for Bricklayers and Allied Craft Workers and has revised certain rates as shown in paragraph 4.

Comment 17: Shaun Sullivan, Operative Plasterers and Cement Masons International Association, questioned wage and fringe benefit rates in all districts for the Plasterers occupation. Mr. Sullivan believes the Cement Masons occupation should be covered by the Plasterers collective bargaining agreement instead of the Bricklayers CBA.

Response 17: The department has reviewed the collective bargaining agreements for Bricklayers Local 3 and the Plasterers Union. The department has determined that the Cement Mason occupation is covered under the Plasterers collective bargaining agreement. The department has also reviewed the wages and benefits set for Plasterers and Cement Masons. The department has revised certain rates as shown in paragraph 4.

Comment 18: The department received a CBA from the Boilermakers Union Local #11.

Response 18: The department has reviewed the information provided and has revised certain rates as shown in paragraph 4.

4. The department has amended the rule as proposed. Changes to the building construction services rates are as follows, matter to be stricken interlined, new matter underlined:

Brick, Block, and Stone Masons

District	Wage	Benefit
1	$24.50	~~$8.12~~ $9.16
2	~~$24.12~~ $24.50	~~$8.12~~ $9.16
3	$24.50	~~$8.12~~ $9.16
4	$23.03	~~$8.12~~ $9.16
5	$23.03	~~$8.12~~ $9.16
6	$23.03	~~$8.12~~ $9.16
7	$23.03	~~$8.12~~ $9.16
8	$23.03	~~$8.12~~ $9.16
9	$23.03	~~$8.12~~ $9.16
10	$23.03	~~$8.12~~ $9.16

Boilermakers

District	Wage	Benefit
1	~~$24.81~~ $28.41	~~$16.51~~ $17.97
2	~~$24.81~~ $28.41	$16.51
3	~~$24.81~~ $28.41	$17.97
4	~~$24.81~~ $28.41	$17.97
5	~~$24.81~~ $28.41	$17.97

6	~~$24.81~~	$28.41	$17.97
7	~~$24.81~~	$28.41	$17.97
8	~~$24.81~~	$28.41	$17.97
9	$25.77		$17.97
10	~~$24.81~~	$28.41	$17.97

Carpenters

District	Wage		Benefit	
1	~~$17.04~~	$18.09	~~$5.35~~	$5.76
2	~~$18.70~~	$18.46	~~$8.20~~	$6.64
3	~~$19.55~~	$17.49	~~$7.90~~	$6.97
4	~~$15.56~~	$17.49	~~$7.60~~	$7.90
5	~~$15.45~~	$17.49	~~$5.64~~	$7.73
6	~~$17.52~~	$16.87	~~$4.89~~	$5.82
7	~~$17.49~~	$17.44	$7.90	
8	$17.49		~~$7.90~~	$5.04
9	~~$16.70~~	$16.48	~~$2.31~~	$7.90
10	~~$15.47~~	$17.49	$7.90	

Cement Masons

District	Wage		Benefit	
1	~~$13.75~~	$15.47	~~$4.95~~	$3.66
2	$17.17		~~$9.65~~	$6.50
3	~~$24.50~~	$19.40	~~$8.12~~	$6.80
4	~~$13.75~~	$18.29	~~$4.95~~	$6.80
5	~~$13.75~~	$18.29	~~$4.95~~	$6.80
6	~~$13.75~~	$18.29	~~$4.95~~	$2.00
7	~~$13.75~~	$18.29	~~$4.95~~	$6.80
8	~~$23.03~~	$18.29	~~$8.12~~	$6.80
9	~~$23.03~~	$18.29	~~$8.12~~	$6.80
10	~~$23.03~~	$18.29	~~$8.12~~	$6.80

Electricians

District	Wage		Benefit	
1	~~$25.14~~	$26.11	$7.05	
2	$25.74		$8.44	
3	~~$25.74~~	$25.50	~~$9.20~~	$10.14
4	~~$25.10~~	$25.06	~~$8.34~~	$8.27
5	$26.06		~~$8.55~~	$9.18
6	$25.14		~~$8.40~~	$9.46
7	~~$24.96~~	$26.06	~~$8.55~~	$9.66
8	$26.83		~~$9.15~~	$10.43
9	~~$26.06~~	$26.83	~~$8.55~~	$10.43
10	~~$23.48~~	$26.83	~~$9.15~~	$10.43

travel pay

District 3	
0-10 miles	free zone
11-55 miles	federal mileage reimbursement rate ~~per mile~~
Over 55 miles	$50/day ~~in lieu of any other travel time or travel allowance~~ plus federal mileage reimbursement rate to jobsite and return

District 6	
0- ~~17~~ 8 miles	free zone
~~18~~ 9-60 miles	federal mileage reimbursement rate ~~per mile~~
over 60 miles	$55/day ~~in lieu of any other travel time or travel allowance~~ plus federal mileage reimbursement rate to jobsite and return

Districts 4, 5, and 7	
0-8 miles	free zone
8-50 miles	federal mileage reimbursement rate
over 50 miles	$50/day ~~subsistence in lieu of travel allowance per day worked~~ plus federal mileage reimbursement rate to jobsite and return

District 8, 9, and 10	
0-17 miles	free zone
18-60 miles	~~$0.485 per mile~~ federal mileage reimbursement rate
over 60 miles	$55/day ~~per diem in lieu of any other travel time or allowance~~ plus federal mileage reimbursement rate to jobsite and return

Heat and Frost Insulators

District	Wage	Benefit
1	~~$22.74~~ $23.74	~~$10.98~~ $12.78
2	~~$22.74~~ $23.74	~~$10.98~~ $12.78
3	~~$22.74~~ $23.74	~~$10.98~~ $12.78
4	~~$22.74~~ $23.74	~~$10.98~~ $12.78
5	~~$22.74~~ $19.00	~~$10.98~~ $12.78
6	~~$22.74~~ $23.74	~~$10.98~~ $12.78
7	~~$22.74~~ $23.74	~~$10.98~~ $12.78
8	~~$22.74~~ $23.74	~~$10.98~~ $12.78
9	~~$22.74~~ $23.74	~~$10.98~~ $12.78
10	~~$22.74~~ $23.74	~~$10.98~~ $12.78

Laborers Group 1

District	Wage	Benefit
1	$15.15	~~$7.45~~ $6.00
2	~~$15.41~~ $17.95	$6.10
3	~~$16.40~~ $12.87	$6.00

Laborers Group 2

District	Wage	Benefit

1	~~$15.42~~	$16.84	~~$4.95~~	$6.75
2	~~$15.92~~	$16.30	~~$5.18~~	$5.45
3	~~$16.20~~	$15.65	~~$5.90~~	$6.00
4	$16.05		~~$5.49~~	$5.73
5	~~$14.68~~	$15.80	~~$4.95~~	$5.02
6	~~$14.32~~	$16.04	~~$4.45~~	$4.80
7	~~$13.25~~	$19.62	~~$4.95~~	$6.01
8	~~$15.14~~	$15.41	~~$4.43~~	$4.53
9	~~$18.13~~	$18.84	$5.56	
10	~~$16.33~~	$16.53	$4.45	

Laborers Group 3

District	Wage		Benefit	
1	~~$17.39~~	$18.04	~~$2.61~~	$4.31
2	~~$18.33~~	$18.35	$6.10	
3	~~$16.54~~	$15.79	~~$6.00~~	$6.00
5	~~$17.17~~	$19.39	~~$4.94~~	$5.19
6	~~$21.33~~	$21.34	~~$6.12~~	$6.13
10	~~$19.30~~	$19.09	~~$5.50~~	$5.58

Laborers Group 4

District	Wage		Benefit	
1	$17.32		~~$4.45~~	$4.46
3	~~$17.26~~	$16.51	~~$5.90~~	$6.00
4	~~$17.39~~	$16.15	$6.00	
7	~~$18.12~~	$18.37	$5.83	
8	$19.29		~~$6.02~~	$6.10
9	~~$16.42~~	$16.81	$5.61	

Operating Engineers, group 2

District	Wage		Benefit	
3	~~$26.61~~	$21.99	~~$5.96~~	$8.12
4	~~$24.11~~	$21.44	$8.05	
8	~~$21.53~~	$21.33	$6.65	

Operating Engineers, group 3

District	Wage		Benefit	
1	$19.12		~~$5.05~~	$5.50

Plasterers

District	Wage		Benefit
1	~~$15.50~~	$18.29	$6.80
2	~~$16.12~~	$18.29	$6.80
3	~~$17.28~~	$19.40	$6.80
4	~~$15.50~~	$18.29	$6.80
5	~~$16.38~~	$18.29	$6.80
6	~~$15.50~~	$18.29	$6.80

7	~~$15.50~~ $18.29	$6.80
8	~~$15.50~~ $18.29	$6.80
9	~~$15.50~~ $18.29	$6.80
10	~~$15.50~~ $18.29	$6.80

Sheet Metal Workers

District	Wage	Benefit
1	$24.49	~~$10.22~~ $10.56
2	$24.49	~~$10.22~~ $10.56
3	$24.49	~~$10.22~~ $10.56
4	$24.49	~~$10.22~~ $10.56
5	$24.49	~~$10.22~~ $10.56
6	~~$20.76~~ $24.49	$9.99
7	$24.49	~~$10.22~~ $10.56
8	$22.96	$9.67
9	$24.49	~~$10.22~~ $10.56
10	$24.49	~~$10.22~~ $10.56

Telecommunication Equipment Installers and Repairers

District	Wage	Benefit
1	$20.93	~~$5.90~~ $6.79
2	$20.52	~~$5.90~~ $5.34
3	$20.93	~~$5.90~~ $6.79
4	$20.93	~~$5.90~~ $6.79
5	$20.93	~~$5.90~~ $6.79
6	$20.83	~~$5.90~~ $6.88
7	$20.93	~~$5.90~~ $6.79
8	$20.83	~~$5.90~~ $6.88
9	$20.93	~~$5.90~~ $6.79
10	$20.83	~~$5.90~~ $6.88

Tile and Marble Setters

District	Wage	Benefit
1	$17.00	~~$8.75~~ $2.00
2	$17.00	~~$8.75~~ $8.80
3	$17.00	~~$8.75~~ $8.80
4	$17.00	~~$8.75~~ $8.80
5	$17.00	~~$8.75~~ $8.80
6	$17.00	~~$8.75~~ $8.80
7	$17.00	~~$8.75~~ $8.80
8	$17.00	~~$8.75~~ $8.80
9	$17.00	~~$8.75~~ $8.80
10	$17.00	~~$8.75~~ $8.80

5. The new rates are effective July 18, 2008.

/s/ MARK CADWALLADER
Mark Cadwallader
Alternate Rule Reviewer

/s/ DORE SCHWINDEN
Dore Schwinden, Deputy Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified by the Secretary of State July 7, 2008

BEFORE THE BOARD OF ARCHITECTS AND LANDSCAPE ARCHITECTS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of ARM 24.114.401 fee schedule and 24.114.501 examination	)))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On January 17, 2008, the Board of Architects and Landscape Architects (board) published MAR Notice No. 24-114-28 regarding the amendment of the above-stated rules, at page 11 of the 2008 Montana Administrative Register, issue no. 1.

2. On February 11, 2008, a public hearing was held on the proposed amendment of the above-stated rules in Helena. No public comments were received by the February 19, 2008, deadline.

3. The board has amended ARM 24.114.401 and 24.114.501 exactly as proposed.

BOARD OF ARCHITECTS AND
LANDSCAPE ARCHITECTS
BAYLISS WARD, 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 July 7, 2008

BEFORE THE BOARD OF CLINICAL LABORATORY SCIENCE PRACTITIONERS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of ARM 24.129.401 pertaining to fees	) CORRECTED NOTICE OF) AMENDMENT)

TO: All Concerned Persons

1. On October 25, 2007, the Board of Clinical Laboratory Science Practitioners (board) published MAR Notice No. 24-129-13 regarding the proposed amendment of the above-stated rule at page 1584 of the 2007 Montana Administrative Register, issue no. 20. On April 10, 2008, the board published the notice of amendment of MAR Notice No. 24-129-13 at page 629 of the 2008 Montana Administrative Register, issue no. 7.

2. In preparing replacement pages for the second quarter of 2008, it was discovered that a word was inadvertently omitted from the original proposal and should have been included at that time. The rule, as amended, reads as follows, deleted matter interlined, new matter underlined:

24.129.401 FEES (1) through (2)(e) remain as amended.
(f) reactivation of license fee 35
(g) remains as amended.

AUTH: 37-1-131, 37-1-134, 37-1-319, 37-34-201, MCA
IMP: 37-1-134, 37-1-141, 37-34-201, MCA

3. The corrected replacement page was submitted to the Secretary of State's office on June 30, 2008.

BOARD OF CLINICAL LABORATORY
SCIENCE PRACTITIONERS
ROSEMARY SHIVELY, 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 July 7, 2008

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

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

TO: All Concerned Persons

1. On March 27, 2008, the Board of Dentistry (board) published MAR Notice No. 24-138-65 regarding the proposed amendment of the above-stated rules, at page 527 of the 2008 Montana Administrative Register, issue no. 6.

2. On April 21, 2008, a public hearing was held on the proposed amendment of the above-stated rules in Helena. One comment was received by the April 29, 2008, deadline.

3. The board has thoroughly considered the comment received. A summary of the comment received and the board's response are as follows:

COMMENT 1: One commenter was concerned that requiring Limited Access Permit applicants to provide the name and location of the facility where they plan to provide services may deter dental hygienists from applying if they do not have a primary site secured.

RESPONSE 1: While acknowledging the commenter's concerns, the board notes that LAP holders are specifically limited in statute as to where they can practice under an LAP. The board concluded that it is necessary to at least request the practice locale from the LAP applicants to comport with the statutory requirements.

4. The board has amended ARM 24.138.502, 24.138.503, 24.138.505, 24.138.506, 24.138.507, 24.138.509, 24.138.511, and 24.138.530 exactly as proposed.

BOARD OF DENTISTRY
DR. PAUL SIMS, DDS

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

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

Certified to the Secretary of State July 7, 2008

BEFORE THE BOARD OF LAND COMMISSIONERS AND
THE DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION OF THE STATE OF MONTANA

In the matter of the amendment of ARM 36.25.301, 36.25.303, 36.25.304, 36.25.310, 36.25.315, and 36.25.321 regarding coal leasing rules	)))))	CORRECTED NOTICE OF AMENDMENT

To: All Concerned Persons

1. On May 8, 2008, the Department of Natural Resources and Conservation published MAR Notice No. 36-22-127 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 900 of the 2008 Montana Administrative Register, Issue Number 9. On June 26, 2008, the department published the notice of amendment at page 1319 of the 2008 Montana Administrative Register, Issue Number 12.

2. This corrected notice of amendment is being published to correct the typographical error in which the words "county" and "countries" were inadvertently used in the proposal notice instead of the correct "county" and "counties". The versions of the amendments that went before the Board of Land Commissioners for preliminary and final approval, respectively, on April 11, 2008, and June 16, 2008, contained the correct text. The rule, as amended in corrected form, reads as follows, deleted matter interlined, new matter underlined:

36.25.304 PROCEDURES FOR ISSUE OF LEASE

(1) through (5) remain as amended.

(6) When sufficient applications have been received to warrant a sale, or at the director's discretion, a lease sale will be announced.

(a) Notice of a lease sale shall be posted on the department's web site and published in a trade journal of general circulation in the coal mining industry or in the major newspapers of general circulation within Montana each week for four weeks preceding the date of sale. The notice shall identify the ~~country~~ county or ~~countries~~ counties within which tracts are being offered for lease, state the date of the lease sale, provide instructions on how to obtain detailed information from the department on the specific tracts to be offered, and the bidding requirements and procedures.

(6)(b) through (12) remain as amended.

AUTH: 77-3-303, MCA
IMP: 77-3-303, 77-3-312, MCA

3. The replacement pages for this corrected notice were submitted to the Secretary of State on June 30, 2008.

/s/ Mary Sexton
MARY SEXTON
Director
Natural Resources and Conservation

/s/ Tommy H. Butler
TOMMY H. BUTLER
Rule Reviewer

Certified to the Secretary of State July 7, 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 AMENDMENT

TO: All Interested Persons

1. On May 22, 2008, the Department of Public Health and Human Services published MAR Notice No. 37-443 pertaining to the proposed amendment of the above-stated rule, at page 1000 of the 2008 Montana Administrative Register, issue number 10.

2. The department has amended ARM 37.12.401 as proposed.

3. No comments or testimony were received.

/s/ Shannon McDonald
Rule Reviewer

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

Certified to the Secretary of State July 7, 2008.

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

In the matter of the adoption of New Rules I through IV and the amendment of ARM 37.82.101 pertaining to Medicaid eligibility	))))	CORRECTED NOTICE OF ADOPTION

TO: All Interested Persons

1. On May 8, 2008, the Department of Public Health and Human Services published MAR Notice No. 37-442 pertaining to the proposed adoption and amendment of the above-stated rules at page 915 of the 2008 Montana Administrative Register, issue number 9, and on June 26, 2008 published notice of the adoption and amendment on page 1325 of the 2008 Montana Administrative Register, issue number 12.

2. This corrected notice is being filed to correct an error in the proposed location and numbering of adopted New Rule IV in Title 37. The new location and numbering of the rule is outlined in paragraph 3 of this notice.

3. The rule is corrected as follows:

RULE #:	ADOPTED #:	CORRECTED #:	
IV	37.82.1320	37.82.1322	Resource Exclusions: Family Medicaid and Aged, Blind, and Disabled Medicaid for Institutionalized Categorically Needy and Medically Needy Individuals, Couples, and Families

4. All other rule changes adopted and amended remain the same.

5. The replacement pages for this corrected notice were submitted to the Secretary of State for the June 30, 2008 deadline.

/s/ Barbara Hoffmann
Rule Reviewer

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

Certified to the Secretary of State July 7, 2008.

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

In the matter of the amendment of ARM 37.86.2207 pertaining to Medicaid reimbursement for the therapeutic portion of therapeutic youth group home treatment services	)))))	CORRECTED NOTICE OF AMENDMENT

TO: All Interested Persons

1. On January 17, 2008, the Department of Public Health and Human Services published MAR Notice No. 37-427 pertaining to the proposed amendment of the above-stated rule at page 31 of the 2008 Montana Administrative Register, issue number 1, and on April 10, 2008 published notice of the amendment at page 634 of the 2008 Montana Administrative Register, issue number 7.

2. This corrected notice is being filed to correct an error in the application date of the proposed amendments. The rule amendments were proposed to be applied retroactively to October 1, 2007 in the proposal notice but the application date paragraph was inadvertently left out of the notice of adoption. The department intends the rule changes to be applied retroactively to October 1, 2007.

3. All other rule changes remain as amended.

4. Replacement pages for the corrected notice were submitted to the Secretary of State on June 30, 2008.

/s/ John Koch
Rule Reviewer

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

Certified to the Secretary of State July 7, 2008.

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

In the matter of the adoption of New Rules I through X pertaining to 72-hour presumptive eligibility for adult crisis stabilization services	))))	CORRECTED NOTICE OF ADOPTION

TO: All Interested Persons

1. On February 14, 2008, the Department of Public Health and Human Services published MAR Notice No. 37-429 pertaining to the proposed adoption of the above-stated rules at page 307 of the 2008 Montana Administrative Register, issue number 3, and on April 10, 2008 published notice of the adoption at page 641 of the 2008 Montana Administrative Register, issue number 7.

2. This corrected notice is being filed to correct an error in the application date of the proposed rules. The rules were proposed to be applied retroactively to March 1, 2008 in the proposal notice but the application date paragraph was inadvertently left out of the notice of adoption. The department intends the rule changes to be applied retroactively to March 1, 2008.

3. All other rule changes remain as adopted.

4. Replacement pages for the corrected notice were submitted to the Secretary of State on June 30, 2008.

/s/ John Koch
Rule Reviewer

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

Certified to the Secretary of State July 7, 2008.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption of New Rules I (42.19.1401); II (42.19.1402); III (42.19.1403); IV (42.19.1404); V (42.19.1405); VI (42.19.1406); VII (42.19.1407); VIII (42.19.1408); IX (42.19.1409); X (42.19.1410); XI (42.19.1411); and XII (42.19.1412) relating to local government tax increment financing districts (TIFD)	)	NOTICE OF ADOPTION

TO: All Concerned Persons

1. On March 27, 2008, the department published MAR Notice No. 42-2-793 regarding the proposed adoption of the above-stated rules at page 548 of the 2008 Montana Administrative Register, issue no. 6.

2. A public hearing was held on April 23, 2008, to consider the proposed adoption. Oral and written testimony received at the hearing and subsequent to the hearing is summarized as follows along with the response of the department:

COMMENT NO. 1: Mr. Brent Brooks, representing the City of Billings stated the City of Billings has one basic difficulty with the rules, which is the rules assume that there is overall supervisory authority of the Department of Revenue over the creation of tax increment finance districts both at the county and the city level. He has not seen any case or any statute that says the Department of Revenue will have other than its own required statutory responsibilities in the tax increment finance districts. These are very limited and very specific statutes. It is the position of the City of Billings that without the specific direction of the Legislature, the Department of Revenue is proceeding with unauthorized and therefore, unlawful rulemaking.

Mr. Brooks further stated that there is at least some attempt to exercise some control over zoning that may have occurred at the city or the county level. This is something that is appropriate only for the Legislature to determine the extent of the Department of Revenue's supervision over tax increment finance districts. The City of Billings' position is that the Department of Revenue should hold in abeyance any final rulemaking that it may engage in pending the termination and final resolution of the Fallon County litigation.

RESPONSE NO. 1: These rules are the result of a cooperative effort between the state and local governments and represent the general consensus reached by that cooperative effort. The rules were drafted with the separate and distinct rights and duties of both the state and local governments in mind. The rules have been reviewed by the Legislative Services Division and they have been found to conform with the department's authority as defined by the Legislature.

The department's authority to adopt these rules is based upon Montana's

Constitution and 15-1-201, MCA. The rules conform with the constitutional mandate of Article VIII, Section 12 to "insure strict accountability of all revenue received and money spent by the state and counties, cities, towns and all other local governmental entities." The rules allow the department to exercise the Legislature's grant of "general supervision over the administration of the assessment and tax laws of the state;" the department's duty to "confer with, advise, and direct officers of municipal corporations concerning their duties, with respect to taxation, under the laws of the state," and "the duty of all public officers to fill out properly and return promptly to the department all forms and to aid the department in its work," all of which are provided for in 15-1-201, MCA.

The annual certification of property values within each taxing jurisdiction is an important function of the department. If the department fails to adopt rules relating to its certification of tax increment financing district values, the validity of its decisions relating to those districts may be challenged (see Minnesota Power and Light Company v. Department of Revenue). It is in the interest of local governments and their bond holders that a formally adopted set of rules relating to the department's certification of tax increment financing district values exist and that the department's decisions regarding such certification be consistently made based upon those formally adopted rules.

The rules do not, and are not intended to, provide the department with any control over a local government's exercise of the local government's statutorily granted authority. The rules are designed to create a check-list of the statutorily prescribed steps a local government must take in order to create a valid tax increment financing district and to redirect state revenues that would otherwise be directed to the general fund and school equalization. These rules simply require local governments to provide the department with documentary proof that a valid tax increment financing district has been created before the department may allow state and other property tax revenues to be redirected.

The department does not believe it is in the best interest of the parties involved with and affected by the proposed tax increment financing rules to hold the rulemaking process in abeyance pending the outcome of the Fallon County litigation. On the contrary, these rules facilitate the consistent and effective use of tax increment financing by compiling the statutory requirements into one comprehensive list. The rules constitute a helpful guide to allow all local governments the ability to properly utilize tax increment financing as an effective economic development tool.

COMMENT NO. 2: Ms. Linda Stoll, representing Missoula County stated the County strongly objects to the proposed rules requiring copies of growth policies and zoning ordinances as part of the submittal requirements for the department's taxable value certification. The implication of having local governments submit zoning and growth policy documents after those governments have certified compliance with zoning and growth policy suggests that the Department of Revenue will be assuming a position of judgment over a purely local matter of policy. We suggest that the statutory requirements for such certification (from governing bodies and planning boards) are sufficient for the purpose of determining compliance.

RESPONSE NO. 2: Current tax increment financing law establishes specific

zoning requirements. By law, a local government is required to have adopted a growth policy in order to legally exercise its zoning authority. Current tax increment financing law further requires a local government's tax increment financing plan conform with the local government's growth policy. Proper zoning and the adoption of a growth policy are both prerequisites to the establishment of a valid tax increment financing district and, therefore, documentary evidence of both should be provided to the department before the department is required to redirect tax revenues that would otherwise be directed to the general fund and school equalization.

The department has become aware of at least one instance where a local government has asserted, as part of its request for certification of tax increment financing district values, that it had properly zoned the land within the district when, in fact, it had not. The Legislature has established specific requirements that a local government must meet in order to establish a valid tax increment financing district. These rules allow the department to ensure that those requirements have been met before state tax revenues are redirected to the tax increment financing district for use by the local government.

With regard to the comment concerning the implications of local governments submitting zoning and growth documents to the department, please see paragraph 3 in Response No. 7.

COMMENT NO. 3: Linda Stoll provided comments pertaining to the definitions of "secondary value-adding industry" and "value added". She stated those two definitions narrow the uses available in industrial districts. Current law requires the use to be tied to the underlying zoning of industrial or light industrial property. Such limitations may restrict economic development opportunities for local governments. Missoula County is curious if the department has had any experience related to the property tax administration and function of the TIFD that requires defining those two terms? If the answer to that is yes, they would like to know more about that.

RESPONSE NO. 3: Section 7-15-4299, MCA, requires that an industrial tax increment financing district "has as its purpose the development of infrastructure to encourage the growth and retention of secondary, value-adding industries." The definitions of "secondary value-added industry" and "value added" are consistent with other current statutorily established definitions of those terms.

The department is aware of at least one situation in which a local government attempted to create an industrial tax increment finance district, the intent of which was to develop infrastructure for service related and general commercial development rather than the statutorily mandated secondary-value added industrial development.

COMMENT NO. 4: Linda Stoll offered an amendment to New Rule VII (42.19.1407), which relates to the determination of the base year taxable value for a newly created TIFD. She stated Missoula County appreciates the department's desire to clarify the timing of this calculation and would suggest inserting the word "calendar" to the definition so it would read: "If the notice or supporting documentation, or both, required by New Rule III through New Rule VI is received by the department on or

before February 1 of the calendar year following the creation of a valid TIFD, the department will determine the base year taxable value of the district as of January 1 of the calendar year in which the valid TIFD was created".

RESPONSE NO. 4: The department agrees with Ms. Stoll and that adding the word "calendar" to the definition would aid in the clarification. The rule has been amended below.

COMMENT NO. 5: Linda Stoll offered testimony and a suggested amendment regarding New Rule XI (42.19.1411), determination of base year taxable values of an amended TIFD. She stated the proposed language under (2) could lead to calculations of negative incremental value when property is removed from the district because the base value is not going to be changed. For example, let's say a local government creates an industrial TIFD from undeveloped land, zoned light industrial, with a total value of $100,000. Then the zoning changes to commercial on half the land, while it is still undeveloped, and the newly zoned commercial half needs to be removed from the TIFD. Under the proposed rules, the base value remains $100,000, but the market value will be $50,000 if half of the property is removed. This would create a "negative increment" which does not make sense in this context. Missoula County suggests the language be changed to say that the base value of the TIFD is amended when property is removed. Or perhaps at the least, a statement could be inserted that the incremental value could not be negative due to boundary amendments.

RESPONSE NO. 5: Section 7-15-4283, MCA states "incremental taxable value means the amount, if any, by which the actual taxable value at any time *exceeds* the base taxable value." Based on this definition, a "negative incremental value" cannot exist, therefore, the department does not calculate "negative incremental values." If the current taxable value of the property located within a tax increment financing district is less than or equal to the base value, the incremental value is simply zero.

The rules relating to the calculation of base values following boundary changes simply reflect what the department is actually capable of calculating. The department can determine what the total value of all property within a tax increment financing district was at the time the district was created. However, it is generally not possible in most instances for the department to look back and determine what the value of a given parcel, building, or improvement was when a tax increment financing district was created. Additionally, the department cannot determine what centrally assessed property existed at any specific point within a district at the time the district was created. Centrally assessed property often times comprises a significant portion of the property value within a TIFD. For these reasons, it is impossible for the department to determine with any certainty the base value attributable to property a local government may wish to amend out of a tax increment financing district. Because the department cannot calculate this value with any certainty, the department cannot adjust the base value of a district that has been amended to remove property.

COMMENT NO. 6: Mr. Mike Uda, Attorney, representing Fallon County stated they believe that these rules fly in the face of the statutes, violate principles regarding separation of powers between, for example the legislative branch and administrative branch, invade the whole rule authority of literally dozens, if not hundreds of municipalities and county governments. In fact, this is nothing more than a naked, blatant attempt to accrete power to the Department of Revenue without any statutory authority.

First, the department is attempting to adopt rules concerning economic development by local governments when its authority is expressly limited to adopting rules relating to revenue laws. Local governments appear in Title 7, the department's authority appears in Title 15. Why does the department even think it has any authority to tell local governments what to do?

Second, the department is also attempting to implement statutes in Title 7 which have nothing at all to do with the department.

Third, the department is attempting to implement statutes which involve the creation, administration, and regulation of tax increment financing districts when its only involvement with the TIFD is a property tax operation function. Mr. Uda stated that they have characterized it in their brief as a "purely and ministerial function".

Fourth, the department is attempting to adopt administrative rules in direct contravention of the finding of rulemaking authority in a legal memo issued by the Revenue and Transportation Interim Committee on February 7, 2008.

Fifth, the department is attempting to supervise the activities of local governments with no statutory authority to do so. If the Department of Revenue puts itself between the people and their elected officials on that local level, number one it removes responsibility for those local officials to do a good job because they can always blame the Department of Revenue.

RESPONSE NO. 6: Please refer to Response No. 1.

COMMENT NO. 7: Mr. Alec Hanson, Executive Director of the Montana League of Cities and Towns testified on behalf of that organization. He stated he has been in his current position for 26 years and he has been involved in a lot of the history of tax increment finance districts in the state of Montana. He said he sees no reason in the world to monkey around with tax increment financing as it applies to urban renewal. We have a track record, it is very effective, there have been very few problems and it has produced results. He stated the validity of these rules depends on a very careful separation of the administrative functions of local government, which the Department of Revenue has no jurisdiction over, and the department's authority to administer the tax laws of the state of Montana. He further stated he would argue that some of the proposed rules directly interfere with the administrative functions of local government. He stated he does not see any reason in the world why the Department of Revenue should be reviewing and passing judgment on local government zoning policy and growth policies. There has to be a very careful separation of the administrative responsibilities of local government and whatever tax authority the department asserts in regard to tax increment financing. He said that he would agree that if the boundary of a district is changed, the base year value ought to be adjusted to account for that change. The reason that is so important is because a lot of times when these districts

are put together the financing and bonds are issued to pay for the improvements, there is a contract obligation in which the bond holders interest has to be protected.

He said the rules have to be looked at in light of the failure of HB 832 in the last session of the Legislature. Possibly that bill could be revisited in the 2009 session.

RESPONSE NO. 7: The department agrees that tax increment financing as it relates to urban renewal is generally well established and has operated relatively smoothly in the past. However, the use of tax increment financing as an economic development tool for urban renewal as well as industrial and technological infrastructure development is increasing rapidly.

It has come to the department's attention that, with the increased use of tax increment financing, avoidable errors in the creation and documentation of tax increment financing districts are also increasing. These rules set-out in a very straightforward manner the statutorily established steps that must be taken in order to create a valid tax increment financing district. For this reason these rules support the effective and expanded application of TIFD by local governments in Montana.

As noted in Response No. 1, these rules have been drafted to maintain the separation between the department's administration of state tax laws and a local government's exercise of its statutorily prescribed authority. The department does not intend to pass judgment with regard to a local government's policies governing growth, zoning, or any other matter. Nothing in these rules allows the department to exercise control over a local government's statutorily granted authority – they simply provide a method by which the department can ensure that the statutory tax increment financing requirements have been met and a valid tax increment financing district has been legally established.

The rules relating to boundary changes have been drafted to acknowledge a local government's need to ensure that its bond holder's contractual interests are protected.

The department is aware of HB832 and participated in the research and drafting of that bill. The department expects to participate cooperatively in any future attempts to pass legislation relating to tax increment financing. However, these rules reflect the current state of tax increment financing law. A proposed bill not enacted, such as HB832, does not affect the administration of current law.

COMMENT NO. 8: David Nielsen, City Attorney, City of Helena, submitted an electronic mail that was read into the record which states: He stated he had reviewed the rules on the TIFD and noticed that New Rule IX apparently gives authority to local governments to change boundaries on TIFDs. He stated that he believes the rule is too broad in its language because he doesn't think some boundary changes are permissible. For urban renewal the city has to define an urban renewal area. The city then, after hearing, establishes an urban renewal project that is only for the benefit of the urban renewal area. He further stated that he couldn't imagine that the urban renewal area would be defined as an area larger than what the TIFD would be established for. So enlarging boundaries is not as simple as voting to make it larger. He stated that he believes the process of defining an urban renewal area starts over again. He stated that he agrees that the statute doesn't address enlarging boundaries but with a strict method of defining the urban renewal area and the urban

renewal project that can only be done in an urban renewal area or its enhancement. He stated that he thinks New Rule IX may mislead cities into thinking they can easily enlarge the boundaries. If the TIFD is larger than the urban renewal areas then the taxpayers in the fringe are carrying the increment for the projects that can't benefit their property.

RESPONSE NO. 8: The department agrees with Mr. Nielsen that in order for a local government to amend a tax increment financing district's boundary, the local government must follow the same procedures set-out in law for the establishment of a new tax increment financing district. NEW RULE X (42.19.1410) describes the documentation necessary to prove that the statutory requirements have been met. In order to address the concerns raised in Comment No. 8, the department has amended NEW RULE IX (42.19.1409) to reference NEW RULE X (42.19.1410).

COMMENT NO. 9: Mr. Brent Brooks further stated he didn't think any of the opponents were trying to dictate to the Department of Revenue what its responsibilities generally are concerning property tax assessment. What they were saying is, let's work collaboratively together as teammates in this process rather than to usurp and override vital city and county government functions, including those like Billings that is a self-governing entity. The main reason everyone is having difficulty with these rules is they need more teamwork and collaboration on the rules so that they can be thought through first in order to identify what the real problem is and then fix it, if one exists.

RESPONSE NO. 9: Before drafting these rules, the department met several times with representatives of local government and other interested parties in informal meetings convened by the Governor's Office of Economic Development. During these meetings the parties defined the issues and problems relating to tax increment financing that needed to be addressed. As a result of the earliest meetings, the department drafted proposed rule language. This proposed language was shared with the local governments and interested parties and the department solicited comments and proposed amendments at later meetings. The comments and proposed amendments that the department received were incorporated and the resulting amended rules were those ultimately proposed in this rule adoption process. These rules are the result of an on-going cooperative effort between the state and local governments. The department agrees that this cooperative effort has been extremely beneficial and should continue into the future.

COMMENT NO. 10: Mr. Alec Hanson stated that they have worked cooperatively with the department in trying to figure out some of these issues and try to come to agreeable solutions. He stated many technical issues have been identified in the rules and he would hope that as the rules move forward there will be continued discussions, cooperation, and collaboration to make sure that if something is going to be imposed on local governments, they are practical, they will work, and from the department's side, they are defensible.

RESPONSE NO. 10: The department appreciates the comments made by Mr. Hanson and the League of Cities and Towns regarding the cooperative efforts of

everyone involved. We appreciate Mr. Hanson's efforts as well as those of all involved. The department believes that most of the issues that have been identified have been addressed. The department is committed to continued discussions, cooperation, and collaboration.

3. As a result of the comments received the department adopts New Rule II (42.19.1402); VII (42.19.1407); and IX (42.19.1409) with the following changes, new matter underlined, deleted matter interlined:

NEW RULE II (42.19.1402) NOTIFICATION OF THE CREATION OR AMENDMENT OF A TAX INCREMENT FINANCING DISTRICT - TIMING (1) A local government may establish a TIFD pursuant to the provisions of Title 7, chapter 15, parts 42 and 43, MCA.

(2) Pursuant to 15-10-202, MCA, the department is required to certify the taxable value of all property located within each taxing body.

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

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

AUTH: 15-1-201, MCA
IMP: 7-15-4282, 7-15-4284, 15-10-202, 15-10-420, MCA

NEW RULE VII (42.19.1407) DETERMINATION OF BASE YEAR TAXABLE VALUE OF A NEWLY CREATED TIFD (1) The base year taxable value for the tax increment financing district (TIFD) will be determined as follows:

(a) If the notice or supporting documentation, or both, required by ARM 42.19.1403 through 42.19.1406 is received by the department on or before February 1 of the calendar year following the creation of a valid TIFD, the department will determine the base year taxable value of the district as of January 1 of the calendar year in which the valid TIFD was created.

(b) If the notice or supporting documentation, or both, required by ARM 42.19.1403 through 42.19.1406 is received after February 1 of the calendar year following the creation of a valid TIFD, the department will calculate the base year taxable value of the district as of January 1 of the year in which the documentation was received. In these instances, the base year will be reported to the affected taxing jurisdictions by the first Monday in August of the calendar year following receipt of the notification.

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

AUTH: 15-1-201, MCA

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

NEW RULE IX (42.19.1409) NOTIFICATION OF AMENDMENT OF BOUNDARIES OR CHANGES WITHIN AN EXISTING TAX INCREMENT FINANCE DISTRICT - NEWLY TAXABLE PROPERTY (1) A local government that has amended the boundaries of or made changes within a valid TIFD pursuant to the provisions of Title 7, chapter 15, parts 42 and 43, MCA, shall ~~report the amendment~~ submit the information described in ARM 42.19.1410 to the department in the manner described in ARM 42.19.1402.

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

AUTH: 15-1-201, MCA
IMP: 7-15-4282, 7-15-4284, 15-10-420, MCA

4. Therefore, the department adopts New Rule II (42.19.1402); VII (42.19.1407); and IX (42.19.1409) with the amendments listed above and adopts I (42.19.1401); III (42.19.1403); IV (42.19.1404); V (42.19.1405); VI (42.19.1406); VIII (42.19.1408); X (42.19.1410); XI (42.19.1411); and XII (42.19.1412) as proposed.

5. An electronic copy of this Adoption Notice is available through the department's site on the World Wide Web at www.mt.gov/revenue, under "for your reference"; "DOR administrative rules"; and "upcoming events and proposed rule changes." The department strives to make the electronic copy of this Adoption Notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

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

Certified to Secretary of State July 7, 2008

VOLUME NO. 52 OPINION NO. 6

CITIES AND TOWNS - Interplay between county and city residents concerning citizen initiatives;
COUNTIES - Interplay between county and city residents concerning citizen initiatives;
COUNTY GOVERNMENT - Interplay between county and city residents concerning citizen initiatives;
ELECTIONS - Scope of "qualified voters" for county zoning regulation initiatives affecting all unincorporated areas of the county;
INITIATIVE AND REFERENDUM - Scope of "qualified voters" for county zoning regulation initiatives affecting all unincorporated areas of the county;
LAND USE - Scope of "qualified voters" for county zoning regulation initiatives affecting all unincorporated areas of the county;
LOCAL GOVERNMENT - Interplay between county and city residents concerning citizen initiatives;
MUNICIPAL GOVERNMENT - Interplay between county and city residents concerning citizen initiatives;
ZONING AND PLANNING - Scope of "qualified voters" for county zoning regulation initiatives affecting all unincorporated areas of the county;
MONTANA CODE ANNOTATED - Sections 1-1-215, 1-2-101, 7-1-2104, 7-3-111, -421(3), 7-5-131, (1), (2), -132 through -137, -132(3)(d), -134(1), -2101, 7-14-2507, 76-1-601, -604(4), 76-2-101, (5), -201, -202(1)(a), -205, (6), -206, -310, 76-15-207, 85-7-1710;
MONTANA CONSTITUTION - Article IV, section 2; article XI, sections 1, 8;
OPINIONS OF THE ATTORNEY GENERAL - 49 Op. Att'y Gen. No. 11 (2001).

HELD: The "qualified voters" for Ravalli County zoning regulation initiatives, effective in all unincorporated areas of Ravalli County, are all residents of the County, including those residing within incorporated areas such as the City of Hamilton.

June 23, 2008

Mr. Kenneth S. Bell
Hamilton City Attorney
P.O. Box 210
Hamilton, MT 59840-0210

Dear Mr. Bell:

You have requested my opinion as to the following question [which I have rephrased as]:

> Which body of "electors" constitutes the "qualified voters" for Ravalli County zoning regulation [initiatives effective in all unincorporated

areas of Ravalli County]--the residents of the unincorporated areas only, or all of the residents of the County, including those residing within incorporated areas such as the City of Hamilton?

The Ravalli County Board of County Commissioners (the board), in April of 2006, enacted Resolution 1844 which limited the size of "large scale retail sales and retail services establishments to no more than 60,000 square feet." The zoned area included "all of the unincorporated area of Ravalli County, Montana." The resolution was an "interim zoning resolution" passed by the board on an emergency basis pursuant to Mont. Code Ann. § 76-2-206.

Later that year, two citizen-sponsored zoning initiatives were proposed by residents of Ravalli County. The first initiative sought to repeal Resolution 1844. The second initiative sought adoption of an interim zoning regulation limiting subdivision density to one residence per two acres for all unincorporated areas of Ravalli County. During the signature gathering process for these initiatives, the county attorney was asked whether the only acceptable signatures for the petition to put the zoning initiatives on the ballot were those of voters residing in unincorporated areas of the county. The county attorney agreed that the only acceptable signatures were those of voters in the unincorporated areas.

The proponents gathered sufficient signatures and the initiatives were put on the ballot for the November 2006 election. Only voters residing in unincorporated areas of Ravalli County were allowed to vote on the initiatives. After the election, several voters, including many in the City of Hamilton, questioned why city residents (i.e., incorporated voters) were not allowed to vote on the county initiatives. The county attorney then provided you, Mr. Bell, as Hamilton City Attorney, with a copy of his previous opinion and supporting research.

The City of Hamilton disagreed with the county attorney's opinion, instead concluding that all county residents have a right to vote on county zoning initiatives, including voters residing in incorporated areas. You have now requested my opinion regarding which body of "electors" constitute "qualified voters" for county zoning initiatives.

The Montana Constitution directs the Legislature to "extend the initiative and referendum powers reserved to the people by the constitution to the qualified electors of each local government unit." Mont. Const. art. XI, § 8. "Qualified elector" is defined in the constitution as "Any citizen of the United States 18 years of age or older who meets the registration and residence requirements provided by law . . . ." Mont. Const. art. IV, § 2. "Local government unit" is also defined in the constitution as including, but not limited to, "counties and incorporated cities and towns." Mont. Const. art. XI, § 1.

The Legislature, following the language of the constitution, has provided this initiative and referendum power to the "electors of each local government" via Mont. Code Ann. § 7-5-131, et seq. Citizen initiatives are limited to actions within the

legislative power of the local government, as stated in Mont. Code Ann. § 7-5-131(1):

> Resolutions and ordinances within the legislative jurisdiction and power of the governing body of the local government, except those set out in subsection (2), may be proposed or amended and prior resolutions and ordinances may be repealed in the manner provided in 7-5-132 through 7-5-137.

The initiative petition must "contain the signatures of 15% of the registered electors of the local government." Mont. Code Ann. § 7-5-132(3)(d) (emphasis added). The number of "electors" from which this percentage is calculated "shall be the number of individuals registered to vote at the preceding general election for the local government." Mont. Code Ann. § 7-5-134(1) (emphasis added).

Together, these provisions lead to the conclusion that the "qualified voters" for county-wide zoning initiatives include all county residents otherwise eligible to vote, including those residing in incorporated areas. The applicable local government unit here is Ravalli County. Counties are specifically denominated under the constitutional definition of "local government unit." Mont. Const. art. XI, § 1. The applicable "qualified elector" or "qualified voter" then, is "any citizen . . . who meets the registration and [county] residence requirements." Mont. Const. art. IV, § 2. A "county resident" is one who lives within the borders of the county, regardless of whether he is in an incorporated or unincorporated area of the county. See Mont. Code Ann. § 1-1-215 (defining "residence" as a person's permanent home). The citizen initiative power is thus reserved for voters in both incorporated and unincorporated areas of the county.

This conclusion--that all county residents constitute "qualified voters" for county initiatives--is further supported by the fact that the number of petition signatures necessary to place an initiative on the ballot is calculated from the "individuals registered to vote at the preceding general election for the local government." Mont. Code Ann. § 7-5-134(1). The "local government" or "governing body" (see Mont. Code Ann. § 7-5-131(1)) of a county is the board of county commissioners. Mont. Code Ann. §§ 7-1-2104, 7-5-2101 (stating that a county's power "can only be exercised by the board of county commissioners" and that the board represents and manages the county). In Montana counties, all residents who are qualified to vote elect the board, including those residing in incorporated areas. Because the valid signatures for an initiative petition are those of all county residents, the "qualified voters" for the subsequent vote on the initiative are logically also all county residents. In general, then, all county residents may vote on county initiatives and these initiatives may address anything "within the legislative jurisdiction and power" of the board of county commissioners.

Ravalli County, however, argues that, at least for an initiative proposing or repealing zoning regulations, "qualified voters" are limited to residents of those areas covered by the zoning. The county notes that citizen initiatives are limited to actions "within

the legislative jurisdiction and power of the governing body of the local government." Mont. Code Ann. § 7-5-131(1). The county's authority to enact zoning regulation is generally limited to unincorporated areas of the county. Mont. Code Ann. § 76-2-202(1)(a). Similarly, a city's authority to zone is generally limited to its incorporated area. Mont. Code Ann. § 76-2-310. The county thus concludes that, because a city cannot regulate outside its boundaries, "voters in [cities] likewise cannot regulate zoning in those areas through the power of initiative and referendum."

The Montana Supreme Court has considered the validity of a citizen initiative seeking to overturn a city zoning regulation. The court held that a zoning regulation, unlike a special improvement district (SID), is subject to citizen initiative. The Greens at Fort Missoula v. City of Missoula, 271 Mont. 398, 405, 897 P.2d 1078, 1082 (1995). The court specifically distinguished City of Shelby v. Sandholm, 208 Mont. 77, 676 P.2d 178, where the court determined that the voters of an entire city "could not vote on the propriety of one SID because the entire city was not physically and financially affected by that SID." The Greens, 271 Mont. at 404-05, 897 P.2d at 1081-82. The city zoning regulation, in contrast, could affect "the entire community" by way of additional "financial, social, and environmental" pressures. Id. Thus, the community as a whole was affected, even though most city residences did not abut the property in question. Id. Because the zoning ordinance was within the "legislative jurisdiction and power" of the city government, the entire city electorate was entitled to subject the ordinance to "a referendum vote in order to repeal the ordinance."

While specifically addressing city zoning, not county zoning, the reasoning of The Greens is applicable to the issue at hand. Here, the entire "electorate of Ravalli County," including incorporated voters, is entitled to vote on county zoning initiatives because such regulation is within the "legislative jurisdiction and power" of the county government, i.e., the board. Even though the zoning regulations only directly affect unincorporated areas, the entire county could be affected by way of additional "financial, social, and environmental" pressures. In fact, these very pressures were cited by both the board and the citizens as part of the reason that "emergency" zoning regulations were needed. Thus, even though the incorporated voters of Ravalli County could not effectuate zoning regulations in unincorporated areas via their city government, they are entitled to vote on zoning initiatives within the power of the county government because they elect the board and because they could be affected by the zoning regulations.

Ravalli County also points out that the "qualified voters" for citizen initiatives seeking to adopt, revise, or reject a "growth policy," within the meaning of Mont. Code Ann. § 76-1-601, et seq., are limited to "qualified electors of the area covered by the growth policy." Specifically, the growth policy statutes limit the applicable petition signatures necessary to place a growth policy initiative on the ballot to "the qualified electors of the area covered by the growth policy." Mont. Code Ann. § 76-1-604(4).

Ravalli County is correct that, in contrast to the inclusive nature of the general initiative provisions, the Legislature has chosen to limit the "qualified electors" for

purposes of a citizen initiative seeking to change a "growth policy" to those voters within the area of the growth policy. However, the provision authorizing and explaining county zoning is in a different part of the code, Mont. Code Ann. § 76-2-201, et seq., from the part dealing with growth policies. The part dealing with county zoning does not have a parallel section limiting "qualified electors" to those voters living in the area affected by the zoning regulation. In fact, the section does not even mention citizen initiatives.

"In the construction of a statute, the office of the judge is simply to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted or omit what has been inserted." Mont. Code Ann. § 1-2-101 (emphasis added). Here, the Legislature has not limited the initiative process for county zoning regulations in the way it has for growth policies. And, the existence of other instances in which the Legislature has specifically limited the voting privilege on geographic grounds would suggest that the Legislature was well aware of how to craft language creating such limitation, and chose not to in this instance. See, e.g., 49 Op. Att'y Gen. No. 11 (2001) (discussing geographic limits on eligibility of voters with respect to extra-territorial application of city building codes). Therefore, the general, inclusive provisions of Mont. Code Ann. § 7-5-131, et seq., control. The "qualified electors," or "qualified voters," for purposes of citizen initiatives seeking to repeal, amend, or propose county zoning regulation are all county citizens, including voters in incorporated cities and towns.

Nevertheless, Ravalli County and the Montana Association of Counties (MACo) contend this construction contradicts a clear legislative scheme. They point out that those who may "protest" the establishment of a specified zoning "district" is limited to those who own property ("freeholders") in the proposed "district." See Mont. Code Ann. §§ 76-2-101(5) and -205(6). This opinion, however, does not address the qualified voters for a citizen initiative affecting a "zoning district" as defined in Mont. Code Ann. §§ 76-2-101 and -205. Instead, this opinion is limited to considering the qualified voters for two interim zoning regulation initiatives effective in all unincorporated areas of the county.

Ravalli County also points out that, in addition to the "growth policy" initiative limitation already mentioned**,** the Legislature has expressly limited the "qualified electors" for several other land use regulations. See, e.g., Mont. Code Ann. § 7-14-2507 (qualified electors for a vote to exceed levy authority must reside or own property in the district); Mont. Code Ann. § 76-15-207 ("qualified electors" for conservation district referenda are electors within the boundaries of the territory); Mont. Code Ann. § 85-7-1710 (irrigation district electors are those residing in the irrigation district). Ravalli County concludes these specific limitations evidence a "legislative pattern" limiting those who may vote on land use regulations to persons residing in the affected area. However, these specific limitations also show that the Legislature is capable of limiting qualified voters when it sees fit. As noted above, it has not limited the qualified voters for county-wide zoning regulation initiatives in the way it has limited qualified voters for these other specific areas. Whether the

Legislature should limit qualified voters for county-wide zoning initiatives in a similar manner is, of course, a question more properly directed to the Legislature.

Finally, Ravalli County claims that this construction will eliminate the jurisdictional distinctions between municipal and county zoning and give city residents a "double vote." This opinion in no way alters the jurisdiction of city or county zoning. A county zoning initiative, like any other initiative, is limited to the "jurisdiction and power of the local government," here the board of county commissioners. Ravalli County does not contend that the zoning regulations at issue are beyond the jurisdiction of the board. The system of local government set up by the Legislature and the constitution dictates this result. Residents of an incorporated area are residents of, and pay taxes in, the particular city as well as the county. Just as county citizens in unincorporated areas are also entitled to vote in state and federal elections, county voters within incorporated areas are entitled to vote in city, county, state, and federal elections.

THEREFORE, IT IS MY OPINION:

> The "qualified voters" for Ravalli County zoning regulation initiatives, effective in all unincorporated areas of Ravalli County, are all residents of the County, including those residing within incorporated areas such as the City of Hamilton.

Very truly yours,

/s/ Mike McGrath
MIKE MCGRATH
Attorney General

mm/jss/jym

NOTICE OF FUNCTION OF ADMINISTRATIVE RULE REVIEW COMMITTEE

Interim Committees and the Environmental Quality Council

Administrative rule review is a function of interim committees and the Environmental Quality Council (EQC). These interim committees and the EQC have administrative rule review, program evaluation, and monitoring functions for the following executive branch agencies and the entities attached to agencies for administrative purposes.

Economic Affairs Interim Committee:

- Department of Agriculture;
- Department of Commerce;
- Department of Labor and Industry;
- Department of Livestock;
- Office of the State Auditor and Insurance Commissioner; and
- Office of Economic Development.

Education and Local Government Interim Committee:

- State Board of Education;
- Board of Public Education;
- Board of Regents of Higher Education; and
- Office of Public Instruction.

Children, Families, Health, and Human Services Interim Committee:

- Department of Public Health and Human Services.

Law and Justice Interim Committee:

- Department of Corrections; and
- Department of Justice.

Energy and Telecommunications Interim Committee:

- Department of Public Service Regulation.

Revenue and Transportation Interim Committee:

- Department of Revenue; and
- Department of Transportation.

State Administration and Veterans' Affairs Interim Committee:

- Department of Administration;
- Department of Military Affairs; and
- Office of the Secretary of State.

Environmental Quality Council:

- Department of Environmental Quality;
- Department of Fish, Wildlife, and Parks; and
- Department of Natural Resources and Conservation.

These interim committees and the EQC have the authority to make recommendations to an agency regarding the adoption, amendment, or repeal of a rule or to request that the agency prepare a statement of the estimated economic impact of a proposal. They also may poll the members of the Legislature to determine if a proposed rule is consistent with the intent of the Legislature or, during a legislative session, introduce a bill repealing a rule, or directing an agency to adopt or amend a rule, or a Joint Resolution recommending that an agency adopt, amend, or repeal a rule.

The interim committees and the EQC welcome comments and invite members of the public to appear before them or to send written statements in order to bring to their attention any difficulties with the existing or proposed rules. The mailing address is P.O. Box 201706, Helena, MT 59620-1706.

HOW TO USE THE ADMINISTRATIVE RULES OF MONTANA AND THE MONTANA ADMINISTRATIVE REGISTER

Definitions:

Administrative Rules of Montana (ARM) is a looseleaf compilation by department of all rules of state departments and attached boards presently in effect, except rules adopted up to three months previously.

Montana Administrative Register (MAR or Register) is a soft back, bound publication, issued twice-monthly, containing notices of rules proposed by agencies, notices of rules adopted by agencies, and interpretations of statutes and rules by the Attorney General (Attorney General's Opinions) and agencies (Declaratory Rulings) issued since publication of the preceding register.

Use of the Administrative Rules of Montana (ARM):

Known Subject

1. Consult ARM Topical Index.
   Update the rule by checking the accumulative table and the table of contents in the last Montana Administrative Register issued.

Statute

2. Go to cross reference table at end of each number and title which lists MCA section numbers and department corresponding ARM rule numbers.

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through March 31, 2008. This table includes those rules adopted during the period April 1, 2008, through June 30, 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 March 31, 2008, this table, and the table of contents of this issue of the MAR.

This table indicates the department name, title number, rule numbers in ascending order, catchphrase or the subject matter of the rule, and the page number at which the action is published in the 2007 and 2008 Montana Administrative Register.

To aid the user, the Accumulative Table includes rulemaking actions of such entities as boards and commissions listed separately under their appropriate title number.

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