

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 17

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 The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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

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BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the adoption of New Rules I)	NOTICE OF PUBLIC HEARING ON
through V pertaining to underground)	PROPOSED ADOPTION
storage tank operator training)	
)	(UNDERGROUND STORAGE
)	TANKS)

TO: All Concerned Persons

1. On October 7, 2009, at 10:30 a.m., a public hearing will be held in Room 136/137 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed adoption of the above-stated rules.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, please contact Elois Johnson, Paralegal, no later than 5:00 p.m., September 21, 2009, 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 proposed new rules provide as follows:

NEW RULE I OPERATOR TRAINING DEFINITIONS For purposes of [New Rules II through V], the following definitions apply:

(1) "Class A operator" means an owner, operator, or employee of an UST facility whose primary responsibility is to operate and maintain the UST system. A Class A operator's responsibilities also include managing resources and personnel to achieve and maintain compliance with regulatory requirements.

(2) "Class B operator" means an owner, operator, or employee of an UST facility whose primary responsibility is to implement the applicable underground storage tank regulatory requirements and standards in the field. A Class B operator implements day-to-day aspects of operating, maintaining, and recordkeeping for underground storage tanks at one or more facilities.

(3) "Class C operator" means a person who is responsible for responding to alarms or other indications of emergencies caused by spills or releases from UST systems. A Class C operator notifies the Class B or Class A operator and appropriate emergency responders when necessary.

(4) "Operator" has the meaning provided in 75-11-203, MCA.

AUTH: 75-11-505, MCA

IMP: 75-11-505, MCA

NEW RULE II OPERATOR TRAINING (1) By August 8, 2010, the owner or operator of an UST system that has a valid operating permit or that is required to

have an operating permit under ARM 17.56.308 shall have trained Class A, B, and C operators for the system. The operators must be trained in accordance with [New Rule III]. Each Class A, B, or C operator shall be responsible for his or her applicable operation, maintenance, and emergency response activities, even when the operator is not present at the facility.

(2) After August 8, 2010, a trained Class A or B operator of an UST system may be replaced by an untrained operator if, within 30 days after assuming operation responsibilities, the new operator receives training in accordance with [New Rule III]. Class C operators must be trained before assuming their responsibilities.

(3) One person may hold all or any combination of the Class A, B, or C operator positions simultaneously, if he or she has the appropriate training.

(4) An UST owner or operator shall notify the department within 30 days after a new Class A, B, or C operator replaces an existing Class A, B, or C operator.

(5) If the department determines that an UST system does not meet EPA's significant operational compliance (SOC) requirements for release prevention and release detection measures identified at <http://www.epa.gov/oust/cmplastc/soc.htm>, the appropriate operators, as determined by the department, must be retrained. Retraining must include the subjects in which the UST system was found to be not in significant compliance. Retraining must occur within a reasonable time frame established by the department. For purposes of this chapter, the department adopts and incorporates by reference the EPA SOC requirements identified at <http://www.epa.gov/oust/cmplastc/soc.htm>. Copies of the documents incorporated by reference may be obtained from the Department of Environmental Quality, P.O. Box 200901, Helena, MT 59620-0901.

AUTH: 75-11-505, MCA

IMP: 75-11-505, MCA

NEW RULE III OPERATOR TRAINING: AUTHORIZED PROVIDERS; REQUIRED SUBJECTS (1) Training of UST system operators must be performed by the department or by a third-party trainer approved by the department pursuant to [New Rule IV], except that a trained Class A or B operator may train a Class C operator.

(2) Class A operators must be trained in the following:

(a) general knowledge of underground storage tank system requirements so that the operator can make informed decisions regarding compliance and can ensure that appropriate persons are meeting the operation, maintenance, and recordkeeping requirements provided in ARM Title 17, chapter 56. The general knowledge must include, but is not limited to, the following:

- (i) spill prevention;
- (ii) overfill prevention;
- (iii) release detection;
- (iv) corrosion protection;
- (v) emergency response;
- (vi) product compatibility; and
- (vii) reporting and recordkeeping requirements;

- (b) financial responsibility documentation requirements;
 - (c) notification requirements;
 - (d) release and suspected release reporting;
 - (e) temporary and permanent closure requirements;
 - (f) operator training requirements; and
 - (g) all the requirements applicable to Class B and C operators.
- (3) Class B operators must be trained in the following aspects of the UST system that is under their responsibility:
- (a) components of UST systems;
 - (b) materials used in UST system components;
 - (c) methods of release detection and release prevention applied to UST components;
 - (d) operation, maintenance, and recordkeeping requirements provided in ARM Title 17, chapter 56 including, but not limited to:
 - (i) spill prevention;
 - (ii) overfill prevention;
 - (iii) release detection;
 - (iv) corrosion protection;
 - (v) emergency response;
 - (vi) product compatibility; and
 - (vii) reporting and recordkeeping requirements; and
 - (e) all the requirements applicable to Class C operators.
- (4) Class C operators must be trained in the following aspects of the UST system that is under their responsibility:
- (a) emergency shut-down procedures;
 - (b) how to respond to a surface spill; and
 - (c) who to contact in the event of a surface spill, suspected release, equipment alarm or equipment malfunction, and how to contact them.

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

NEW RULE IV OPERATOR TRAINING: RECORDKEEPING (1) Owners or operators shall maintain records documenting the training received for all of their UST system operators. Records must be maintained either:

- (a) at the UST system site and must be immediately available for inspection by the department; or
- (b) at a readily available alternative site and must be available for inspection by the department upon request.

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

NEW RULE V OPERATOR TRAINING: THIRD-PARTY TRAINING COURSE APPROVAL (1) Operator training by a third-party provider does not satisfy the training requirements of [New Rule II] unless the department has approved the provider's instructors and courses pursuant to this rule.

(2) To apply for department approval of a training program under this rule, a third-party training provider shall submit to the department, at least 60 days before the requested approval date:

(a) a detailed description of course content and the amount of time allotted to each major topic;

(b) a description of the evaluation method; and

(c) when requested by the department, copies of all materials proposed for use.

(3) The department may attend a third-party training program as an observer to verify whether the provider conducts the training in accordance with the requirements of [New Rule III] and in accordance with the program as approved by the department.

(4) The department may approve a third-party training program if the program meets the requirements of [New Rule III].

(5) If a Class A or B operator has completed operator training in another state, the department may approve the training if the training requirements of the other state are at least as stringent as the training requirements under this subchapter.

(6) The department may suspend its approval if it finds that the program fails to meet the requirements of [New Rule III] or is not in accordance with the program as approved by the department.

AUTH: 75-11-505, MCA

IMP: 75-11-505, MCA

REASON: The department is proposing to adopt New Rules I through V to implement federal requirements that underground storage tank (UST) systems have trained operators. The federal requirements are found in Section 9010(a) of the Solid Waste Disposal Act, enacted by the Underground Storage Tank Compliance Act, part of the Energy Policy Act of 2005. The proposed new rules are necessary to comply with the federal requirements and to provide training to UST operators to assist them in the prevention and correction of leakage from underground storage tanks.

As required by Section 9010, the United States Environmental Protection Agency (EPA) has published Grant Guidelines to States for Implementing the Operator Training Provision of The Energy Policy Act of 2005 (August 2007). The EPA Guidelines specify training requirements for three classes of operators: (a) persons having primary responsibility for on-site operation and maintenance of underground storage tank systems (Class A operators); (b) persons having daily on-site responsibility for the operation and maintenance of underground storage tank systems (Class B operators); and (c) daily, on-site employees having primary responsibility for addressing emergencies presented by a spill or release from an underground storage tank system (Class C operators).

Proposed New Rule I contains definitions of the different classes of operators who must be trained. Proposed New Rule II requires that UST system owners and operators have trained Class A, B, and C operators by August 8, 2010. The trained operator requirements apply to all UST systems subject to ARM Title 17, chapter 56,

subchapter 3, as provided in ARM 17.56.102, which have a valid operating permit or are required to have an operating permit under ARM 17.56.308. These rules are necessary to meet the federal guidelines to establish the training requirement and to identify the systems and operators to which the requirement is applicable.

Proposed New Rule III requires that operator training be done through a department training course or by a third-party trainer whose course is approved by the department. New Rule III also sets out the minimum requirements for training course content, based on the EPA Guidelines. This rule is necessary to meet the federal guidelines, to identify appropriate training providers, and to identify the specific subjects on which training is required.

Proposed New Rule IV requires UST system owners or operators to maintain records documenting the training received by their operators. The records must be maintained at the UST site or at a readily available alternative site. This rule is necessary to meet the federal guidelines, and to provide a method to verify that operators have appropriate training.

Proposed New Rule V sets out procedures for department approval of third-party training providers and for approval of training provided by other states. This rule is necessary to provide a procedure to ensure that UST operator training by entities other than the department meets the federal guidelines.

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 October 15, 2009. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

5. James Madden, attorney, has been designated to preside over and conduct the hearing.

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

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

Reviewed by:

DEPARTMENT OF ENVIRONMENTAL
QUALITY

/s/ James M. Madden

JAMES M. MADDEN

Rule Reviewer

BY: /s/ Richard H. Opper

Richard H. Opper, Director

Certified to the Secretary of State, August 31, 2009.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the repeal of)
23.12.602, 23.12.604, and 23.12.606,)
concerning the Uniform Fire Code; the)
amendment of ARM 23.12.401 through)
23.12.405, 23.12.407, 23.12.408, and)
23.12.430, concerning fire safety;)
23.12.501, 23.12.502, and 23.12.504,)
concerning fireworks; and 23.12.601,)
23.12.603, and 23.12.605, concerning)
the Uniform Fire Code)

NOTICE OF PUBLIC HEARING ON
PROPOSED REPEAL AND
AMENDMENT

TO: All Concerned Persons

1. On September 30, 2009, at 1:00 p.m., the Montana Department of Justice will hold a public hearing in the auditorium of the Scott Hart Building, 303 North Roberts, Helena, Montana, to consider the proposed repeal and amendment of the above-stated rules.

2. The Department of Justice will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m. on September 16, 2009, to advise us of the nature of the accommodation that you need. Please contact Kathy Stelling, Department of Justice, 215 North Sanders, P.O. Box 201401, Helena, MT 59620-1401; telephone (406) 444-2026; Montana Relay Service 711; fax (406) 444-3549; or e-mail kstelling@mt.gov.

3. The department proposes to repeal the following rules:

23.12.602 ADMINISTRATION, found at page 23-438 of the Administrative Rules of Montana.

AUTH: 50-3-102, MCA
IMP: 50-3-103, MCA

23.12.604 GENERAL, found at page 23-439 of the Administrative Rules of Montana.

AUTH: 50-3-102, MCA
IMP: 50-3-103, MCA

23.12.606 HAZARDOUS MATERIALS, found at page 23-444 of the Administrative Rules of Montana.

AUTH: 50-3-102, MCA
IMP: 50-3-102, MCA

RATIONALE AND JUSTIFICATION: New national fire codes are published every three years. Additionally, the department is now adopting the International Fire Code instead of the Uniform Fire Code. These rules therefore need to be repealed because they are no longer necessary.

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

23.12.401 DEFINITIONS (1) and (2) remain the same.

(3) "Certificate of approval" means a letter of approval issued by the Fire Prevention and Investigation Program Section (FPIS), or its representative.

(4) through (7) remain the same.

(8) "Fire alarm system" means a system or portion of a combination of approved compatible devices with the necessary electrical interconnection and energy to produce an alarm signaling the event of fire or system activation but system of components and circuits arranged to monitor and annunciate the status of a fire alarm or supervisory signal-initiating devices and to initiate the appropriate response to those signals. This definition does not include single station smoke or heat detectors.

(9) "Fire code" means the edition of the ~~National Fire Protection Association 1 Uniform Fire Code, (NFPA 1/UFC)~~ International Code Council, International Fire Code (IFC), 2009 edition, currently adopted by the fire prevention and investigation program (FPIP) FPIS, and any additions thereto currently adopted by the FPIP FPIS.

(10) "Fire department" and "bureau of fire prevention" are treated as referring to the ~~fire prevention and investigation program FPIS~~ of the Department of Justice or, when made applicable by statute or rule or the context thereof, to the appropriate local jurisdiction.

(11) "Fire extinguisher" means a portable device, carried or on wheels and operated by hand, containing an extinguishing agent that can be expelled under pressure for the purpose of suppressing or extinguishing a fire.

(12) remains the same.

(13) "Fire Prevention and Investigation Program ~~or FPIP~~ Section (FPIS)" is the Fire Prevention and Investigation Program Section in the state fire marshal's office of the Department of Justice.

(14) through (17) remain the same.

(18) "License" means the document issued by the Department of ~~Commerce~~ Labor and Industry which authorizes a person or entity to engage in the business of servicing fire extinguishers, fire alarms, fire sprinkler systems, and special agent suppression systems.

(19) remains the same.

(20) "Mechanical code" means the latest edition of the International Mechanical Code (IMC) adopted by the Department of Labor and Industry. Whenever a provision of the mechanical code is incorporated within the ~~NFPA-1 Uniform Fire Code, (NFPA 1/UFC)~~ International Fire Code by reference, such

provision is hereby adopted for application to all buildings within the jurisdiction of the ~~FPIP~~ FPIS, unless the state fire marshal determines otherwise. Copies of the mechanical code may be obtained from the Building Codes Bureau of the Department of Labor and Industry, 301 South Park, Room 430, P.O. Box 200517, Helena, MT 59620-0517.

(21) remains the same.

(22) "Ordinance" means state law, city or county ordinance, or rule adopted by the ~~Fire Prevention and Investigation Program~~ FPIS.

(23) through (24) remain the same.

(25) "Single family private house" means a dwelling unit as the term dwelling unit is defined by ~~NFPA 1/UFC section 3.3.66~~ IFC section 202, no part of which is rented to another person.

(26) remains the same.

AUTH: 50-3-102, MCA

IMP: 50-3-102, MCA

23.12.402 ENFORCEMENT OF FIRE PREVENTION AND INVESTIGATION PROGRAM SECTION RULES (1) The ~~Fire Prevention and Investigation Program (FPiP)~~ FPIS shall administer and enforce in every area of the state of Montana all the provisions of the fire code and rules adopted pursuant thereto. The chief fire officials of each municipality, fire service area, or organized fire district shall have responsibility for enforcement of applicable fire codes within the limits of their jurisdiction, and shall assist the ~~FPIP~~ FPIS in the enforcement of laws and rules pertaining to fire safety in public buildings.

(2) Each local authority responsible for fire prevention inspections shall maintain reports of inspections performed. Fire prevention inspection reports shall be accessible to and provided to the ~~FPIP~~ FPIS when deemed necessary by the state fire marshal.

(3) Each official responsible for investigating fires shall file with the state fire marshal a fire incident report on each and every fire occurring within the official's jurisdiction. Fire incident reports must be submitted on forms ~~obtained~~ downloaded from the ~~FPIP~~ National Fire Incident Reporting System (NFIRS) at www.nfirs.fema.gov. The state fire marshal may ~~return~~ notify a fire department of incomplete or invalid reports for resubmission with complete information.

AUTH: 50-3-102(2), MCA

IMP: 50-3-102, 50-61-102, 50-63-203(1), MCA

23.12.403 NOTICE OF VIOLATION (1) Upon determination by an officer of the ~~Fire Prevention and Investigation Program (FPiP)~~ FPIS that any person or entity is in violation of any provision of the fire code or any rule adopted pursuant thereto, the ~~FPIP~~ FPIS shall serve upon the person or a designated representative of the entity a notice of violation, as provided in 50-61-115, MCA. Additionally, if the violation constitutes a fire hazard, the ~~FPIP~~ FPIS may proceed in accordance with 50-62-102 and 50-62-103, MCA.

AUTH: 50-3-102(2), MCA
IMP: 50-3-102(4), 50-3-103, MCA

23.12.404 INTERPRETATION (1) Interpretations of rules adopted by the ~~Fire Prevention and Investigation Program~~ FPIS shall be made by the state fire marshal.

AUTH: 50-3-102, MCA
IMP: 50-3-102, 50-61-102, MCA

23.12.405 APPOINTMENT OF SPECIAL FIRE INSPECTORS (1) through (3) remain the same.

(a) Any person appointed special deputy state fire marshal, except for a qualified inspector employed by another state agency, must have a degree in fire protection engineering or related field from a recognized institution of higher education, two years' experience in fire protection, or be ~~UFG IFC~~ certified, ~~and must complete a training course administered or approved by the Fire Prevention and Investigation Program (FPIP).~~

(b) An employee of another agency of the state of Montana may be appointed special fire inspector for the purpose of conducting inspections or investigations authorized by the ~~FPIP~~ FPIS, if such employee is qualified by the employing agency as an inspector or investigator and is approved to conduct inspections or investigations by the Department of Justice.

(4) A special fire inspector may perform any duty with which the ~~FPIP~~ FPIS is charged by state law or rule, subject to the direction of the state fire marshal.

AUTH: 50-3-106, MCA
IMP: 50-3-106, MCA

23.12.407 CERTIFICATE OF APPROVAL FOR DAY CARE CENTERS FOR 13 OR MORE CHILDREN (1) remains the same.

(2) To obtain a certificate of approval, the applicant shall ~~submit a written application to~~ contact the state fire marshal setting forth the following information:

(a) through (4) remain the same.

~~(5) Day care centers shall comply with the following provisions of the building code which are hereby incorporated by reference: 1997 UBC 305.2.3, 305.3, 305.8, 305.9, chapter 8, chapter 10, 904.2.4.2, and 904.2.4.3. Copies of the building code may be obtained from the Building Codes Division, Department of Commerce, 1218 East Sixth Avenue, P.O. Box 200517, Helena, MT 59620-0517.~~

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

(i) Portable fire extinguishers shall be installed and maintained in accordance with ~~NFPA 1/UFG~~ IFC Section 906.

(j) and (k) remain the same.

(l) Space under stairwells shall not be used for storage of any kind except as permitted by ~~NFPA 1/UFG~~ the IFC.

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

AUTH: 50-3-102, 52-2-734, MCA
IMP: 50-3-102, 52-2-733, 52-2-734, MCA

23.12.408 CERTIFICATE OF APPROVAL FOR COMMUNITY HOMES

(1) through (4) remain the same.

(5) For purposes of determining compliance with the fire code, all community homes shall comply with the ~~1997 Uniform Fire Code~~ 2009 IFC as adopted, and with all other rules promulgated by the ~~Fire Prevention and Investigation Program~~ FPIS.

(6) and (7) remain the same.

AUTH: 50-3-102, MCA
IMP: 53-20-307, 52-4-204, MCA

23.12.430 SERVICE TAGS (1) remains the same.

(2) A service tag shall be of a size and of a durable material approved by the department but not less than 4 1/2 inches by 2 1/2 inches. ~~It must not be red.~~

(3) through (5) remain the same.

(6) Stored pressure extinguisher tags must follow the guidelines listed in the ~~Uniform Fire Code Standard 10-4~~ National Fire Protection Association (NFPA) 10, and include the information listed in (3).

(7) remains the same.

AUTH: 50-3-102, MCA
IMP: 50-3-102, MCA

23.12.501 RETAIL FIREWORKS SALE (1) remains the same.

(2) The retail sale of permissible fireworks may occur only from approved retail business establishments or approved fireworks stands as defined in ARM 23.12.401. Fireworks shall not be sold from or stored in any tent, canopy, or temporary membrane structure. ~~(1997 UFC 3215.2),~~ Fireworks may be sold from a mobile trailer which is designed for the transportation of goods, or sold from a fireworks stand, or mobile trailer which permits entry of the public. but the public is not permitted inside any mobile structure for the purchase of fireworks.

(3) through (5) remain the same.

(6) Except as provided in (12), retail sale of fireworks shall be conducted from fireworks stands located at least 300 feet from a church or hospital, 50 feet from any flammable liquid dispensing device or installation, 50 feet from other inhabited areas, and 30 feet from any public roadway. There shall be 5 feet between stands, and 20 feet apart when stands are over 800 square feet aggregate.

(7) remains the same.

(8) Fireworks stands shall be equipped inside with at least one pressurized water extinguisher with a current tag and a minimum rating of 2A or one garden hose connected to and turned on to an available water supply.

(9) through (12)(b)(i) remain the same.

(ii) It is protected by a fire suppression sprinkler system approved by the ~~fire prevention and investigation program~~ FPIS or by a fire marshal of the local

jurisdiction; or

(iii) remains the same.

(13) All fireworks stands shall be subject to inspection by the chief, or the chief's representative, in accordance with ~~1997 UFC 103.2.1.1~~ 2009 IFC. Violations shall be handled in accordance with 50-61-115, MCA. If immediate action is necessary to safeguard life and property, the chief may issue an order to remedy in accordance with 50-62-102, MCA.

AUTH: 50-3-102(3), MCA

IMP: 50-3-102(3), MCA

23.12.502 FIREWORKS REPACKAGING, STORAGE, AND SHIPPING

(1) All buildings where fireworks are stored, opened for repacking, repackaged, or prepared for shipping shall conform to the provisions of the ~~1997 building code and the 1997 fire code~~ 2009 International Building Code and the 2009 IFC. Where those codes are silent, NFPA pamphlet 1124 ~~(1998)~~ (2006 edition) shall be applied.

(2) NFPA pamphlet 1124 ~~(1998)~~ (2006 edition), which is the code governing the manufacture, transportation, and storage of fireworks, and which can be found in the National Fire Code (NFC), is hereby incorporated by reference. Copies may be obtained from the ~~Fire Prevention and Investigation Program, 1310 East Lockey, Helena, Montana 59620~~ National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02169.

AUTH: 50-3-102(3), MCA

IMP: 50-3-102(3), MCA

23.12.504 GENERAL LIABILITY INSURANCE REQUIRED FOR PUBLIC DISPLAY OF FIREWORKS

(1) Any organization or group of individuals planning a public display of fireworks must provide proof to either the ~~fire prevention and investigation program~~ FPIS or the governing body of a city, town, or county, that the group has a general liability insurance policy in the amount of not less than \$1,000,000 per occurrence.

(2) through (5) remain the same.

AUTH: 50-3-102, 50-3-103, MCA

IMP: 50-37-108, MCA

23.12.601 ADOPTION OF NFPA 1 UNIFORM FIRE CODE THE INTERNATIONAL FIRE CODE (2009 EDITION) (1) The ~~Fire Prevention and Investigation Program (FPIP)~~ FPIS adopts and incorporates by reference the ~~NFPA 1 Uniform Fire Code, 2003 edition (2003 NFPA 1/UFC)~~ International Fire Code 2009 Edition (2009 IFC) with the additions, ~~and~~ amendments, ~~and~~ deletions enumerated in this subchapter. Copies of the ~~2003 NFPA 1/UFC~~ 2009 IFC and related materials may be obtained from the ~~National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02169~~ International Code Council, 4051 West Flossmoor Road, Country Club Hills, IL 60478-5795. ~~This document is available for free online access at~~

~~www.nfpa.org. Copies of the 2003 NFPA 1/UFC and Montana's amendments thereto may be obtained from the State Fire Marshal's Office, 303 North Roberts, P.O. Box 201415 2225 Eleventh Avenue, P.O. Box 201417, Helena, MT 59620, (406) 444-2050.~~

(2) If there is any conflict between the NFPA 1/UFC IFC and the Montana Code Annotated, the provisions of the Montana Code Annotated control.

(3) This rule establishes a minimum fire protection code to be used in conjunction with the building code. Nothing in this rule prohibits any local government unit from adopting those portions of the NFPA 1/UFC IFC that are not adopted by the FPIP FPIS or standards which are more restrictive than the NFPA 1/UFC 2009 IFC.

(4) The design and construction requirements in NFPA 1/UFC IFC that apply to public buildings or places of employment are not included in this adoption. The building code adopted by the Building Codes Bureau of the Department of Labor and Industry controls design and construction in Montana. If there is any conflict between the construction standards in the NFPA 1/UFC IFC and construction standards set forth in the building code, the provisions of the building code control. NFPA 1/UFC IFC construction standards only apply if no comparable building code construction standard exists.

(a) This code shall apply to new construction as required in the building code and existing conditions. Existing buildings shall be maintained in accordance with the building code in effect at the time of construction. However, where existing conditions or buildings pose an imminent hazard or risk to public health and safety and are not, therefore, within the purview of the building code, the FPIP may take corrective action pursuant to the provisions of 50-61-101, et seq., MCA, and 50-62-101, et seq., MCA.

(5) The following NFPA 1/UFC IFC sections are modified as shown to be in accordance with the building code regarding design and construction requirements:

~~(a) Section 1.3.3 102.5 Application of residential code is not adopted. This code shall apply to: New construction as required in the building code, and existing conditions. Existing buildings shall be maintained in accordance with the building code in effect at the time of construction. However, where existing conditions or buildings pose an imminent hazard or risk to public health and safety and are not, therefore, within the purview of the building code, the FPIP may take corrective action pursuant to the provisions of 50-61-101, MCA, et seq. and 50-62-101, MCA, et seq.~~

~~(b) Section 1.3.8 Repairs, renovations, alterations, reconstruction, change of occupancy, and additions to buildings shall conform with the fire code and the building code. 104.2 Application and permits is not adopted.~~

~~(c) Section 2.1 General. The documents or portions thereof listed in this chapter are referenced within this code and shall be considered part of the requirements of this document. 105 Permits is not adopted.~~

~~(d) Section 2.2 NFPA Publications, except for NFPA 101, Life Safety Code, 2003 edition and NFPA 5000, Building Construction and Safety Code, 2003 edition, is adopted. The Permit sections of the following chapters are not adopted: 3, 5, 6, 9, 11-13, and 15-44.~~

~~(e) Section 10.1.1. Every existing building or structure shall be arranged,~~

~~equipped, maintained, and operated in accordance with this code so as to provide a reasonable level of life safety, property protection, and public welfare from the actual and potential hazards created by fire, explosion, and other hazardous conditions.~~

108 Board of Appeals is not adopted.

(f) Section 10.1.2 113 Fees is not adopted.

(g) Section 10.1.3 Building Code. All new construction shall comply with the building code.

(h) (g) Section 14.1 Application. Means of egress in new and existing buildings shall comply with the building code in effect at the time of construction.

202 General Definitions. Insert GOVERNMENTAL FIRE AGENCIES. Any fire department organized under Montana law under the jurisdiction of a city, county, state, fire district, or fire service area.

(h) 308.1.6 Open-flame devices is adopted, but deleting "except by a permit in accordance with Section 105.6 secured from the fire code official."

(i) 308.2 Permits required - is not adopted.

(j) 603.4 Portable unvented heaters is adopted, but the "Exceptions" are not adopted.

(k) 603.4.1 Prohibited locations - is not adopted.

(l) 1008.1.9 Door operations. Adopted adding the sentence "Exit doors shall not be locked, chained, bolted, barred, latched, or otherwise rendered unusable. All locking devices shall be of an approved type."

(m) 2206.7.9 Vapor-recovery and vapor-processing systems - including all subsections, are not adopted.

(n) 2403.2 Approval required. Adopted, but deleting "a permit and."

(o) 3301.1.3 Fireworks - is not adopted.

(p) 3301.2.2 through 3301.2.4.2 are not adopted.

(q) 3306.5.2.3 Small arms primers - is not adopted.

(r) Insert "3306.6. The maximum quantities, storage conditions, and fire-protection requirements for gunpowder and ammunition stored in a building shall be as follows: Smokeless powder and small arms primers or percussion caps shall be in accordance with 50-61-120 and 50-61-121, MCA."

(s) 3308 Fireworks Display - is not adopted. See Title 50, chapter 37, MCA.

(t) 3406.1 General - In paragraph numbered 1. delete "farms and."

(u) 3406.2 Delete "farms and" from the heading, and "private use on farms and rural areas and" from the paragraph.

(v) 3406.2.5.1(2) is not adopted.

(w) Appendix A Board of Appeals - is not adopted.

(x) Appendix D Fire Apparatus Access Roads - is adopted, but Sections D106, D107, and D108 are not adopted.

(y) Appendix E Hazard Categories - is not adopted.

(z) Appendix F Hazard Ranking - is not adopted.

(aa) Appendix G Cryogenic Fluids - Weight and Volume Equivalent - is not adopted.

(ab) Appendix J Fire Protection Systems - Noncompliant Conditions - is not adopted.

AUTH: 50-3-102, MCA

IMP: 50-3-103, MCA

23.12.603 ADDITIONAL DEFINITIONS (1) ~~Chapter 3 Definitions~~ IFC SECTION 302 DEFINITIONS is adopted with the following additions:

(a) remains the same.

(b) "Nationally recognized standards" as used in the ~~2003 NFPA 1/UFC~~ IFC 2009 edition, includes, but is not limited to, means any of the following standards referenced in: 2003 NFPA 1/UFC IFC 2009 edition; standards; Underwriters Laboratories Inc. (UL); standards; American Petroleum Institute (API); standards; American Society for Testing and Materials (ASTM); standards; and American National Standards Institute (ANSI) standards.

(c) and (d) remain the same.

AUTH: 50-3-102, 50-61-102, MCA

IMP: 50-3-102, 50-61-102, MCA

23.12.605 PROCESSES (1) ~~Chapters 40 through 42 of 2003 NFPA 1/UFC 22, 33, and 34 of the IFC~~ are adopted with the following exceptions and amendments:

(a) ~~Insert Section 42.2.1 Applicability is amended by adding the following statement at the end of the section: " 2204.5 Fuel Dispensing in Rural Areas. For public automotive motor vehicle fuel-dispensing stations located in rural areas; see Chapter 42 of the 2003 NFPA 1/UFC";~~

(b) ~~Section 42.2.1.2 2204.5.1. General. When performed in the operation of a farm or ranch, or when approved by the chief, liquids used as fuels may be transferred from tank vehicles into the tanks of motor vehicles or special equipment, provided:~~

1. through 8. remain the same.

~~(c) Section 42.2.2 Applicability is amended by referencing "Chapter 42 of the 2003 NFPA 1/UFC" at the end of the first exception;~~

~~(d) Section 42.2.2.1 Permits is not adopted;~~

~~(e) Section 42.2.3.2 General Requirements is amended by adding at the end of the section: "See 42.6";~~

~~(f) (c) Section 42.2.3.2.2 is amended as follows: 42.2.3.2.2 Bulk plants. 2204.5.2. Motor Vehicle Fuel Dispensing Stations. 4. Motor vehicle fuel dispensing stations are not permitted at bulk plants which are not located in a rural area with the following exceptions:~~

~~(i) Existing bulk plants which are not located in rural areas if the motor vehicle fuel-dispensing dispensers were installed prior to February 9, 1996, and if the dispensers are in compliance with 2003 NFPA 1/UFC Section 42.2.2.5.~~

~~(ii) Storage tanks which are located at bulk plants in rural areas and which are constructed and installed in accordance 2003 NFPA 1/UFC Chapter 66 and Section 42.6 compliance.~~

~~2. (d) 2204.5.3. Bulk plants located inside the districts defined as "rural" are permitted to incorporate motor vehicle fuel-dispensing stations. The motor vehicle fuel-dispensing stations shall be separated by a fence or similar barrier from the area in which bulk operations are conducted, and in accordance with Section 42.6;~~

~~(g) Section 42.2.5.1 Scope is amended by adding the following statement at the end of the section: "For public automotive motor vehicle fuel-dispensing stations located in rural areas, see section 42.6";~~

~~(h) Section 42.2.5.8 Vapor Recovery is not adopted;~~

~~(e) Insert 2204.6 Rural Motor Vehicle Fuel-Dispensing Stations.~~

(f) Insert 2204.6.1 Plans submittal. Plans shall be submitted in accordance with these rules for public automotive motor vehicle fuel-dispensing stations located in rural areas.

(g) Insert 2204.6.2 Plans and specifications submittal. Plans and specifications shall be submitted for review and approval prior to the installation or construction of a public automotive motor vehicle fuel-dispensing station located in a rural area. A site plan shall be submitted which illustrates the location of flammable liquid, LP-gas, or CNG storage vessels, and their spatial relation to each other, property lines, and building openings. Both aboveground and underground storage vessels shall be shown on plans. For each type of station, plans and specifications shall include, but not be limited to, the following:

1. Plans, blueprints, or drawings for the renovation or construction of a public automotive motor vehicle fuel-dispensing station located in a rural area that utilizes aboveground storage of flammable or combustible liquids, or both, must be submitted to the FPIS by registered receipt mail for approval before beginning construction. The FPIS shall approve or deny the plans within 50 calendar days or they are automatically considered approved.

(h) 2204.6.3 Prior to the proposed renovation or construction of a public automotive motor vehicle fuel-dispensing station located in a rural area, an applicant shall obtain a letter of approval from the local fire official responsible for fire protection. This letter and two sets of plans, blueprints, or drawings shall be submitted to the FPIS for examination and approval.

(i) Insert 2204.7 Locations of aboveground tanks. Aboveground storage tanks are not prohibited on farms and ranches. EXCEPTION: Pursuant to 50-3-103(6), MCA, there are no requirements regarding diked areas or heat-actuated or other shut-off devices for storage tanks containing Class I or Class II liquids intended only for private use.

(j) Insert 2204.7.1 Disposal of Tanks. Tanks shall be disposed of in accordance with the following:

1. Underground tanks shall be disposed of in accordance with American Petroleum Institute (API) 1604, Third Edition, March 1996, and the Department of Environmental Quality's underground storage tank requirements;

2. All "unlisted" aboveground tanks which are no longer fit for continued service or which cannot be internally lined in accordance with nationally-recognized standards, shall be disposed of in accordance with API 2202, Third Edition, January 1991; and

3. API documents can be obtained from the American Petroleum Institute, 1220 "L" Street, N.W., Washington, D.C. 20005.

~~(k) Section 42.2.7.2.4 2206.2.1.1 Inventory Control is amended by adding the following exceptions to the existing section (which is unchanged): EXCEPTION: Other leak detection methods as approved by the Montana Department of Environmental Quality UST program are acceptable; and Unsupervised Dispensing~~

requires a sign to provide an "EMERGENCY" telephone number.

~~(j) Section 42.2.7.11 Unsupervised Dispensing is amended by requiring the sign to provide an "EMERGENCY" telephone number rather than a "Fire Department" telephone number;~~

(l) Insert 3306.6 Hazardous Materials. The maximum quantities, storage conditions, and fire-protection requirements for gunpowder and ammunition stored in a building shall be as follows:

1. Smokeless powder shall be stored in accordance with 50-61-120 and 50-61-121, MCA.

2. Small arms primers or percussion caps shall be stored in accordance with 50-61-120 and 50-61-121, MCA.

~~(k) Section 42.6 is added to the 2003 fire code:~~

~~Section 42.6 Rural Motor Vehicle Fuel - Dispensing Stations~~

~~SECTION 42.6 GENERAL~~

~~42.6.1 Scope. Public automotive motor vehicle fuel-dispensing stations located in rural areas, including publicly accessible operations but excluding farms and ranches, shall be in accordance with 2003 NFPA 1/UFC Chapters 42 and 66. Private operations, other than farms and ranches, shall comply with Chapter 42. Flammable and combustible liquids and LP-gas shall also be in accordance with Chapters 66 and 69.~~

~~42.6.2 Definitions. For definitions of BULK PLANT or TERMINAL, CNG, COMBUSTIBLE LIQUID, FLAMMABLE LIQUID and MOTOR VEHICLE FUEL-DISPENSING STATION, see Chapter 3. For the definition of RURAL AREA, see ARM 23.12.603.~~

~~42.6.3 Plans.~~

~~42.6.3.1 Plans submittal. Plans shall be submitted in accordance with Section 42.2.2.2 for public automotive motor vehicle fuel-dispensing stations located in rural areas.~~

~~42.6.3.2 Plans and specifications submittal. Plans and specifications shall be submitted for review and approval prior to the installation or construction of a public automotive motor vehicle fuel-dispensing station located in a rural area. A site plan shall be submitted which illustrates the location of flammable liquid, LP-gas, or CNG storage vessels, and their spatial relation to each other, property lines, and building openings. Both aboveground and underground storage vessels shall be shown on plans. For each type of station, plans and specifications shall include, but not be limited to, the following:~~

~~1. Plans, blueprints, or drawings for the renovation or construction of a public automotive motor vehicle fuel-dispensing station located in a rural area that utilizes aboveground storage of flammable or combustible liquids, or both, must be submitted to the Fire Prevention and Investigation Program (FPIP) by registered receipt mail for approval before beginning construction. The FPIP shall approve or deny the plans within 50 calendar days or they are automatically considered approved.~~

~~42.6.3.3 Prior to the proposed renovation or construction of a public automotive motor vehicle fuel-dispensing station located in a rural area, an applicant shall obtain a letter of approval from the local fire official responsible for fire protection. This letter and two sets of plans, blueprints, or drawings shall be~~

~~submitted to the Fire Prevention and Investigation Program for examination and approval.~~

~~42.6.4 Liquefied Petroleum Gas (LPG). See Section 42.5.2.~~

~~42.6.5 Compressed Natural Gas (CNG). See Section 42.5.1.~~

~~42.6.6 Dispensing operations shall comply with the provisions of Section 42.2.5 and 42.2.6.~~

~~42.6.7 Spill Control, Drainage Control, and Secondary Containment. Spill control and secondary containment shall be provided in accordance with Section 42.2.3.3.2.8.~~

~~42.6.7.1 Leaking Aboveground Storage Tanks. A leaking tank shall be reported to the local fire official and the department and may be replaced with an approved tank of the same volume without prior written approval as required in 42.6.3.3. Subsequent inspection and approval shall be made by the local fire official.~~

AUTH: 50-3-102, MCA

IMP: 50-3-102, 50-3-103, MCA

RATIONALE AND JUSTIFICATION: New national fire codes are published every three years. Additionally, the department is now adopting the International Fire Code instead of the Uniform Fire Code. The several changes, additions, and modifications proposed to these rules are therefore necessary to conform these rules to the adopted sections of the current version of the IFC and to add additional sections dealing with Montana specific rules. Further, what was referred to as the Fire Prevention and Investigation Program is now referred to as the Fire Prevention and Investigation Section.

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 J. Stuart Segrest, Department of Justice, 215 North Sanders, P.O. Box 201401, Helena, MT 59620-1401; telephone (406) 444-2026; Montana Relay Service 711; fax (406) 444-3549; or e-mail ssegrest@mt.gov, and must be received no later than October 9, 2009.

6. An electronic copy of this Notice of Proposed Adoption and 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.

7. 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 Division of Criminal Investigation, the Central Services Division, the Forensic Sciences Division, the Gambling Control Division, the Highway Patrol Division, 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 Kathy Stelling, Department of Justice, 215 North Sanders, P.O. Box 201401, Helena, MT 59620-1401; or e-mail kstelling@mt.gov, or may be made by completing a request form at any rules hearing held by the Department of Justice.

8. J. Stuart Segrest, Assistant Attorney General, has been designated to preside over and conduct the hearing.

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

By: /s/ Steve Bullock
STEVE BULLOCK
Attorney General
Department of Justice

/s/ J. Stuart Segrest
J. STUART SEGREST
Rule Reviewer

Certified to the Secretary of State August 31, 2009.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM) NOTICE OF PROPOSED
23.12.1411, concerning student) AMENDMENT
academic performance requirements at)
Law Enforcement Academy) NO PUBLIC HEARING
) CONTEMPLATED

TO: All Concerned Persons

1. On October 10, 2009, the Department of Justice proposes to amend the above-stated rule.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m. on September 18, 2009, to advise us of the nature of the accommodation that you need. Please contact Kathy Stelling, Department of Justice, 215 North Sanders, P.O. Box 201401, Helena, MT 59620-1401; telephone (406) 444-2026; Montana Relay Service 711; fax (406) 444-3549; or e-mail kstelling@mt.gov.

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

23.12.1411 STUDENT ACADEMIC PERFORMANCE REQUIREMENTS FOR THE BASIC COURSE (1) remains the same.

(2) The total accumulative points possible for each basic course shall be filed with the POST advisory council in conjunction with the annual review of the curriculums as prescribed in ARM ~~23.14.416(3)~~ 23.13.304.

AUTH: 44-10-202, MCA
IMP: 44-10-202, MCA

REASON: This change is required to correct the ARM cited in (2), because it now refers to a repealed rule.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Stuart Segrest, Department of Justice, 215 North Sanders, P.O. Box 201401, Helena, MT 59620-1401; telephone (406) 444-2026; Montana Relay Service 711; fax (406) 444-3549; or e-mail ssegrest@mt.gov, and must be received no later than 5:00 p.m. on October 8, 2009.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written

comments they have to Stuart Segrest at the above address no later than October 8, 2009.

6. If the agency receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. The number of persons affected is at least 25.

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 4 above, or may be made by completing a request form at any rules hearing held by the department. A copy of the interested persons request form may be printed from the Department of Justice's web site at <http://doj.mt.gov/resources/administrativerules.asp>, and mailed to the rule reviewer.

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

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

By: /s/ Steve Bullock
STEVE BULLOCK
Attorney General
Department of Justice

/s/ J. Stuart Segrest
J. STUART SEGREST
Rule Reviewer

Certified to the Secretary of State August 31, 2009.

BEFORE THE ALTERNATIVE HEALTH CARE BOARD
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 24.111.401 fees, and the) PROPOSED AMENDMENT AND
adoption of NEW RULE I pertaining) ADOPTION
to licenses)

TO: All Concerned Persons

1. On October 1, 2009, at 9:30 a.m., a public hearing will be held in room 439, 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 Alternative Health Care Board (board) no later than 5:00 p.m., on September 25, 2009, to advise us of the nature of the accommodation that you need. Please contact Cheryl Brandt, Alternative Health Care Board, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2394; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail dlibsdahc@mt.gov.

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

24.111.401 FEES (1) and (2) remain the same.

(3) Inactive status fees are as follows:

- | | |
|-------------------------------|------------|
| <u>(a) naturopath</u> | <u>275</u> |
| <u>(b) midwife</u> | <u>275</u> |
| <u>(c) midwife apprentice</u> | <u>100</u> |

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

AUTH: 37-1-134, 37-26-201, 37-27-105, MCA

IMP: 37-1-134, 37-1-141, 37-26-201, 37-26-403, 37-27-203, 37-27-205, 37-27-210, MCA

REASON: The board determined it is reasonably necessary to amend this rule to set the fees for renewing a license on inactive status. The board is proposing New Rule I in this notice to set forth the requirements and restrictions for inactive status licensure of naturopathic physicians, midwives, and midwife apprentices. The board expects approximately five individuals a year to go to inactive status and result in a \$1,200 reduction in annual revenue.

4. The proposed new rule provides as follows:

NEW RULE I INACTIVE STATUS (1) While on inactive status, a licensee is prohibited from practicing under that license.

(2) To place a license on inactive status, a licensee shall, during the renewal period:

(a) submit a written request to the board;
(b) return the licensee's wall certificate and current license to the board office; and

(c) pay the appropriate inactive status fee.

(3) A licensee on inactive status shall:

(a) renew according to renewal dates specified in ARM 24.101.413;

(b) pay the appropriate inactive status fee; and

(c) meet all other conditions of licensure, except that licensees on inactive status:

(i) are not required to maintain CPR or neonatal resuscitation credentials while on inactive status; and

(ii) are exempt from CE requirements.

(4) No license may remain on inactive status for more than 26 consecutive months, excluding any time required for board review of a request to return to active status.

(5) Requests to return to active status must include the following:

(a) a completed request on a form prescribed by the department;

(b) verification of the licensee's good standing from every jurisdiction in which the licensee was licensed during the inactive status period;

(c) an official report on the licensee from the National Practitioner Databank;

(d) if the request is not submitted with a renewal application, a license fee equal to the difference between the inactive status fee and the active status fee;

(e) if the request is submitted with a renewal application, the request must also include all requirements and fees required for renewal of an active license; and

(f) any other proof or information as reasonably required by the board.

(6) Department staff may process requests to return to active status without further board review upon proof of the following:

(a) licensee is not subject to legal or disciplinary action in this or any other jurisdiction;

(b) all fees are paid in full;

(c) all CPR and neonatal resuscitation credentials required for licensure are current; and

(d) one year's continuing education requirements are met and verified by certificates.

AUTH: 37-1-131, 37-1-319, 37-26-201, 37-27-105, MCA

IMP: 37-1-131, 37-1-319, MCA

REASON: The board determined that it is reasonably necessary to adopt New Rule I to address licensee requests and set forth the requirements for inactive status licensure. The board concluded that licensees periodically encounter various life circumstances that justify placement on inactive status. To ensure adequate

protection of the public, the board is limiting the length of time licensees may remain on inactive status and establishing minimum competency standards to shift from inactive back to active status licensure.

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 Alternative Health Care Board, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to dlibsdahc@mt.gov, and must be received no later than 5:00 p.m., October 9, 2009.

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

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

9. Tyler Moss, attorney, has been designated to preside over and conduct this hearing.

ALTERNATIVE HEALTH CARE BOARD
MAGGI BEESON, ND, 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 August 31, 2009

BEFORE THE BOARD OF PROFESSIONAL ENGINEERS
AND PROFESSIONAL LAND SURVEYORS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of)
ARM 24.183.408 authorization,)
24.183.502 applications, 24.183.509)
examination procedures, 24.183.2105)
continuing education, and)
24.183.2401 screening panel)

NOTICE OF PUBLIC HEARING ON
PROPOSED AMENDMENT

TO: All Concerned Persons

1. On October 1, 2009, at 1:00 p.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 Professional Engineers and Professional Land Surveyors (board) no later than 5:00 p.m., on September 25, 2009, to advise us of the nature of the accommodation that you need. Please contact Brooke Jasmin, Board of Professional Engineers and Professional Land Surveyors, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2351; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2309; e-mail dlibsdpels@mt.gov.

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

24.183.408 CERTIFICATE OF AUTHORIZATION (1) Applications received by the department must be on a board approved form and accompanied by the appropriate fees. An application not accompanied by the appropriate fees or not completed in its entirety with all required information shall be returned to the applicant with instructions.

(a) The application must:

(i) designate the Montana licensed professional engineer or the Montana licensed professional land surveyor in responsible charge; and

(ii) include proof that the sole proprietorship, firm, partnership, or corporation is registered with the Montana Secretary of State's office.

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

AUTH: 37-1-131, ~~37-67-201~~, 37-67-202, MCA

IMP: 37-1-131, 37-67-320, MCA

REASON: The board determined it is reasonably necessary to amend this rule to clarify the certificate of authorization (COA) application requirements in accordance with 37-67-320, MCA. The COA initial licensure requirements are not new, but were not previously set forth in rule. The board is now adding these requirements to the renewal provisions already in rule.

The board is also amending this rule to require that entities applying for a Montana COA are registered with the Montana Secretary of State's office and are authorized to provide business services within the state. Authority and implementation cites are being amended to accurately reflect all statutes implemented through the rule, delete reference to an erroneous cite, and provide the complete sources of the board's rulemaking authority.

24.183.502 APPLICATIONS (1) Applications received by the department must be on a board approved form and accompanied by appropriate fees. An application not accompanied by the appropriate fees or not completed in its entirety with all required information shall be returned to the applicant with instructions. Fees will be deposited as received.

(2) Professional engineer and professional land surveyor applicants must complete and submit the board's law and rule questionnaire as part of the application process. Incomplete questionnaires will be returned.

(3) Applications for foreign-educated professional engineer applicants must include a foreign degree evaluation. The applicant must arrange for the evaluation and shall be solely responsible for its cost.

(a) The evaluation must:

(i) be performed by a board-approved foreign degree evaluator;

(ii) be sent directly to the board by the evaluator; and

(iii) indicate whether the foreign degree is equivalent to an engineering or engineering technology program accredited by the Accreditation Board for Engineering and Technology (ABET).

(b) The board maintains a list of approved foreign degree evaluators.

(2) through (6) remain the same but are renumbered (4) through (8).

AUTH: 37-1-131, 37-67-202, MCA

IMP: 37-67-303, 37-67-306, MCA

REASON: The board is amending this rule to require all professional engineer and professional land surveyor applicants to complete the law and rule questionnaire. The board concluded that this amendment will ensure that applicants are adequately familiar with the board statutes and administrative rules prior to licensure.

The board is adding (3) to set forth the requirements for the evaluation of education obtained outside the United States in response to an increasing number of foreign educated applicants. Because the board lacks the expertise to compare foreign programs to ABET accredited ones, the board is amending this rule to allow the board to select qualified evaluators to determine the equivalency.

Implementation cites are being amended to accurately reflect all statutes implemented through the rule.

24.183.509 EXAMINATION PROCEDURES (1) and (2) remain the same.

(3) An applicant who is approved by the board must take the examination at a location in Montana.

~~(3) (4) A passing grade of 70 percent in each part of the examination set by the National Council of Examiners for Engineering and Surveying (NCEES) will be required.~~

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

AUTH: 37-1-131, 37-67-202, MCA

IMP: 37-1-131, 37-1-134, 37-67-311, MCA

REASON: The board has noticed a substantial increase in the number of applicants with no connection to Montana, but who apply in the state because they are prohibited from taking the examination in another state. These applicants can evade such prohibitions and still take the examination in their home state by applying in Montana and requesting an out-of-state proctor. This practice creates an additional burden for the board and staff to review and process applications of individuals who have no intention to practice in Montana. Following amendment, no out-of-state proctor requests will be granted.

The board is also amending this rule to eliminate the 70 percent passing grade because NCEES no longer scores numerically, but on a pass/fail basis.

24.183.2105 CONTINUING PROFESSIONAL COMPETENCY - CONTINUING EDUCATION (1) Every licensee shall meet the continuing professional competency (continuing education) requirements of these regulations for professional development as a condition for licensure renewal. The board will accept continuing professional competency education courses that are preapproved by one or more of the associations on the list maintained by the board.

(2) remains the same.

(a) "Professional development hour (PDH)" means a contact hour (nominal) of instruction ~~or presentation~~;

(b) remains the same.

~~(c) "College/unit semester/quarter hour" means credit for courses in ABET approved programs or other related college courses approved in accordance with (5), below;~~

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

(3) Every licensee is required to obtain 30 PDH units during the two-year renewal period. If a licensee exceeds the annual requirement in any renewal period, a maximum of ~~15~~ five PDH units may be carried forward into the subsequent renewal period. ~~PDH units may be earned as follows:~~

~~(a) successful completion of college courses;~~

~~(b) successful completion of continuing education courses;~~

~~(c) successful completion of correspondence, televised, videotaped and other short courses/tutorials;~~

~~(d) presenting or attending qualifying seminars, in-house courses, workshops or professional or technical presentations made at meetings, conventions or conferences;~~

- ~~(e) teaching or instruction in (a) through (d), above;~~
- ~~(f) authoring published papers, articles or books;~~
- ~~(g) active participation in professional or technical societies;~~
- ~~(h) patents.~~

~~(4) The conversion of other units of credit to PDH units is as follows:~~

- ~~(a) one college or unit semester hour 45 PDH~~
- ~~(b) one college or unit quarter hour 30 PDH~~
- ~~(c) one continuing education unit 10 PDH~~
- ~~(d) one hour of professional development in course work, seminars or~~

~~professional or technical presentations made at meetings, conventions or conferences 1 PDH~~

~~(e) each published paper, article or book 10 PDH~~

~~(f) active participation in professional and technical society (each organization) 2 PDH~~

~~(g) each patent 10 PDH~~

~~(h) for teaching apply multiple of two. (Teaching credit is valid for teaching a course or seminar for the first time only. Teaching credit does not apply to full-time faculty.)~~

~~(i) self study 10 PDH~~

~~(A maximum of 10 PDH will be allowed per renewal cycle for self study. Self study is considered a formatted review of new subject matter or technical information such as video tapes series, Internet courses that do not include a final examination, etc.)~~

~~(5) remains the same but is renumbered (4).~~

~~(a) Credit for college or community college approved courses will be based upon course credit established by the college.~~

~~(b) remains the same but is renumbered (a).~~

~~(c) Credit determination for each published paper, article or book and each patent is the responsibility of the licensee (subject to review as required by the board).~~

~~(d) Credit for active participation in professional and technical societies (limited to two PDH per organization) requires that a licensee serve as an officer and/or actively participate in a committee of the organization. PDH credits are not earned until the end of each year of service is completed.~~

~~(6) remains the same but is renumbered (5).~~

~~(a) a log showing the type of activity claimed, sponsoring organization, location, duration, instructor's or speaker's name and PDH credits earned;~~

~~(b) remains the same but is renumbered (a).~~

~~(c) (b) records as maintained by the professional development registry for engineers and surveyors (PDRES) or other similar repositories. These records must be maintained for a period of ~~three~~ four years and copies may be requested by the board for audit verification purposes.~~

~~(7) remains the same but is renumbered (6).~~

~~(a) New licensees by way of examination or comity shall be exempt from accruing PDHs for the first renewal cycle ~~12 months~~ following licensure, after which ~~7.5~~ PDHs are required for each six-month period of licensure until the first renewal period that occurs on or after June 30, 2008;~~

~~(b) and (c) remain the same.~~

(d) Licensees who list their occupation as "retired" on the request emeritus status on a board-approved renewal form and who further certify that they are no longer receiving any remuneration from providing professional engineering or land surveying services shall be exempt from the professional development hours required. In the event such a person elects to return to active practice of professional engineering or land surveying, professional development hours must be earned before returning to active practice for each year exempted not to exceed the annual requirement for two years.

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

AUTH: 37-1-319, MCA

IMP: 37-1-306, 37-1-319, MCA

REASON: The board determined it is reasonably necessary to amend this rule to specify that acceptable continuing education (CE) courses are those that are preapproved by board approved affiliations and associations. The board concluded that requiring CE courses from board approved entities will further the public's protection because the acceptable courses will relate directly to the professional engineering and professional land surveying practices.

The board is amending this rule throughout to clarify continuing education requirements and streamline the random audit process. Noting that the current rule is burdensome and confusing for staff and licensees, the board is simplifying the rule to comply with the change in (1) to CE courses from board approved entities.

The board is reducing the number of allowable carryover PDH units from 15 to five per CE period because with online renewals, licensees no longer submit actual hard copy proof of meeting the CE requirements. The board determined that allowing only five carryover PDH units is more reasonable and manageable for staff to track during random CE audits.

The board is increasing the time that licensees must maintain CE records from three to four years. The board concluded that because the CE reporting periods are two years in length, it is reasonable to require records to be kept for a full two reporting periods.

The board is amending the provision for new licensees' CE requirements as the current provision is confusing and difficult to administer. Following amendment, new licensees will be exempt from any CE requirements for the first renewal cycle.

24.183.2401 SCREENING PANEL (1) The board screening panel shall consist of ~~one~~ three professional engineer board member ~~members~~; one land surveyor board member; and one public board member, as chosen by the presiding officer. The presiding officer may reappoint screening panel members, or replace screening panel members as necessary at the presiding officer's discretion.

AUTH: 37-67-202, MCA

IMP: 37-1-307, MCA

REASON: The board is amending this rule by adding two members to the board's screening panel. Noting an increase in complaints filed, the board is amending this

rule to ensure the presence of a quorum when more than two members cannot attend a scheduled meeting.

4. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Professional Engineers and Professional Land Surveyors, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2309, or by e-mail to dlibsdpels@mt.gov, and must be received no later than 5:00 p.m., October 9, 2009.

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

6. The board 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 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 Professional Engineers and Professional Land Surveyors, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2309, e-mailed to dlibsdpels@mt.gov, or made by completing a request form at any rules hearing held by the agency.

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

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

BOARD OF PROFESSIONAL ENGINEERS
AND PROFESSIONAL LAND SURVEYORS
DAVID ELIAS, 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 August 31, 2009

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

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 24.225.401 fee schedule,) PROPOSED AMENDMENT AND
24.225.501, 24.225.503, 24.225.504,) ADOPTION
24.225.507, and 24.225.511)
pertaining to veterinarian licensure,)
24.225.704 and 24.225.709)
pertaining to embryo transfer,)
24.225.904, 24.225.910, 24.225.920,)
and 24.225.930 pertaining to)
euthanasia technicians and agencies,)
and the adoption of NEW RULE I)
pertaining to continuing education)
providers)

TO: All Concerned Persons

1. On October 1, 2009, at 10:30 a.m., a public hearing will be held in room 439, 301 South Park Avenue, Helena, Montana to consider the proposed amendment and adoption of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Veterinary Medicine (board) no later than 5:00 p.m., on September 25, 2009, to advise us of the nature of the accommodation that you need. Please contact Cheryl Brandt, Board of Veterinary Medicine, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2394; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail dlibsdrvvet@mt.gov.

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

24.225.401 FEE SCHEDULE
(1) through (4) remain the same.
(5) All fees are nonrefundable.

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

REASON: The board determined it is reasonably necessary to amend this rule and clarify the department policy that fees are not refundable in response to numerous

requests to withdraw applications and receive fee refunds. This amendment will reduce the number of these requests and staff time needed to field the requests.

24.225.501 TEMPORARY PERMITS (1) and (2) remain the same.

(3) The responsibility for the standard of care provided by a temporary licensee ~~employee~~ remains with the supervising veterinarian.

(4) remains the same.

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

IMP: 37-1-305, MCA

REASON: The board is amending this rule to eliminate redundancy and confusion caused by the terminology. Applicants may only be issued a temporary permit if the veterinarian is working under the supervision of a Montana licensed veterinarian, but a temporary permit holder may or may not be an employee for federal tax or other purposes.

24.225.503 EXAMINATION APPLICATION REQUIREMENTS

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

(a) and (b) remain the same.

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

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

(e) good moral character attestations from three veterinarians.

(2) remains the same.

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

~~(b) have passed the National Board Examination and the Clinical Competency Test within 62 months with a converted score of 70 or greater and have their scores reported to the board office through the official score reporting agency; and~~

~~(c)~~ (b) pass the board's jurisprudence exam with a score of ~~70~~ 90 percent or greater. If the candidate fails the jurisprudence exam twice, the candidate must appear before the board prior to taking it a third time.

(3) Foreign veterinary school graduates from a school not accredited by the AVMA Council on Education shall either have completed the requirements of the American Veterinary Medical Association's Education Commission for Foreign

Veterinary Graduates (ECFVG) as evidenced by a copy of the ECFVG certificate, or must have completed the requirements of the Program for the Assessment of Veterinary Education Equivalence (PAVE) as evidenced by a copy of the PAVE certificate before an application will be accepted.

(a) and (4) remain the same.

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

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

REASON: The board is amending this rule to specify that applicants must submit licensure verifications for licenses held in any profession, not just veterinary medicine. The board believes that it is essential for public protection to know of all discipline taken against any license held by an applicant. This amendment aligns board licensure information with the department's standardized renewal application that requires disclosure of all professional licenses.

During an analysis of the board's business processes, it was discovered that 37-18-302, MCA, requires satisfactory evidence of an applicant's good moral character, but no rule outlined the requirement. The board is amending this rule to require attestations from three veterinarians to implement the statutory requirement.

The board is striking the provision that allowed applicants to pass the National Board Examination and the Clinical Competency Test in lieu of the NAVLE exam. The board is amending the rule to reflect that these examinations have not been offered since 2000 and are no longer available.

The board is amending this rule to increase the minimum passing score on the board's jurisprudence exam from 70 to 90 percent. This exam is now an online exam done in open book format and the board determined it is reasonable to require a higher passing score to test an applicant's knowledge of the laws and rules.

The AVMA Council on Education has now begun to accredit foreign schools. The board is amending (3) to clarify that an education equivalency evaluation is required only for graduates of any non-AVMA accredited schools.

24.225.504 EXAMINATION FOR LICENSURE (1) ~~The~~ After 2000, the examination for licensure as a veterinarian shall consist of:

~~(a) the National Board Examination and the Clinical Competency Test pursuant to the requirements set forth in ARM 24.225.503, which must have been passed with a converted score of 70 or greater. The scores must be received by the board from the official score reporting agency; or~~

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

~~(c) (b)~~ a jurisprudence examination as composed ~~and corrected~~ by the board, which measures the competence of the applicant regarding the statutes and rules governing the practice of veterinary medicine in Montana. The jurisprudence examination must be passed with a score of ~~70~~ 90 percent or greater.

(2) A candidate may not sit for the NAVLE more than five times and may not sit for the examination at a date that is later than five years after a candidate's initial attempt. Each of the final two attempts must be at least one year from the previous attempt. Any previous attempts by a candidate to pass the NAVLE, prior to the fall 2007 administration of the examination, will not count towards the five attempt limit.

~~(2)~~ (3) Any applicant who has failed the jurisprudence examination may apply to be reexamined at a subsequent examination ~~but may not retake the examination for six months.~~

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

IMP: 37-1-131, 37-18-302, 37-18-303, MCA

REASON: The board is striking the provision that allowed applicants to pass the National Board Examination and the Clinical Competency Test in lieu of the NAVLE exam. The board is amending the rule to reflect that these examinations have not been offered since 2000 and are no longer available.

It is reasonable and necessary to amend this rule to clarify that since the jurisprudence exams are taken online, they are corrected by staff and not by the board itself.

The board is amending this rule to increase the minimum passing score on the board's jurisprudence exam from 70 to 90 percent. This exam is now an online exam done in open book format and the board determined it is reasonable to require a higher passing score to test an applicant's knowledge of the laws and rules.

The board is also amending this rule to comply with NAVLE's national effort to better protect the NAVLE examination from compromise and to help assure the exam's integrity by limiting candidates to sitting for the exam five times.

Authority and implementation cites are being amended to accurately reflect all statutes implemented through the rule, provide the complete sources of the board's rulemaking authority, and delete reference to a repealed statute.

24.225.507 LICENSURE ENDORSEMENT OF OUT-OF-STATE

APPLICANTS (1) remains the same.

(a) The candidate has graduated from and holds a degree from a school of veterinary medicine accredited or approved by the American Veterinary Medical Association Council on Education as evidenced by a certified copy of the transcript sent directly from the veterinary school. Graduates of foreign veterinary schools not approved by the AVMA Council on Education shall have completed the requirements of the American Veterinary Medical Association's Education Commission for Foreign Veterinary Graduates (ECFVG) or the Program for the Assessment of Veterinary Education Equivalence (PAVE).

(b) through (d) remain the same.

(e) The candidate provides three good moral character attestations from veterinarians.

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

(f) (g) The candidate has passed a jurisprudence examination prepared to measure the competence of the applicant regarding the statutes and rules governing the practice of veterinary medicine in Montana with a score of ~~70~~ 90 percent or greater. If the candidate fails the jurisprudence examination twice, the candidate must appear before the board prior to taking it a third time.

(2) remains the same.

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

IMP: 37-1-304, 37-18-302, MCA

REASON: The AVMA Council on Education has now begun to accredit foreign schools. The board is amending this rule to clarify that an education equivalency evaluation is required only for graduates of any non-AVMA accredited schools.

During an analysis of the board's business processes, it was discovered that 37-18-302, MCA, requires satisfactory evidence of an applicant's good moral character, but no rule outlined the requirement. The board is amending this rule to require attestations from three veterinarians to implement the statutory requirement.

The board is amending this rule to increase the minimum passing score on the board's jurisprudence exam from 70 to 90 percent. This exam is now an online exam done in open book format and the board determined it is reasonable to require a higher passing score to test an applicant's knowledge of the laws and rules.

Implementation cites are being amended to accurately reflect all statutes implemented through the rule.

24.225.511 CONTINUING EDUCATION (1) through (1)(a)(i)(F) remain the same.

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

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

(2) through (6) remain the same.

AUTH: 37-1-131, 37-1-319, 37-18-202, MCA

IMP: 37-1-131, 37-1-141, 37-1-306, MCA

REASON: The board is amending this rule to specify that a veterinarian granted a continuing education (CE) grace period must submit proof of CE compliance. The board determined that requiring proof of CE prior to issuance of the full license helps ensure that CE is completed and recorded timely, and not used in the next reporting period.

The board is amending (1)(c) to clarify that CE programs attended during a grace period are to be used solely for that reporting period. It is the board's intent that licensees obtain CE on a continual, ongoing basis, and this amendment helps achieve that goal.

24.225.704 APPLICATION REQUIREMENTS AND QUALIFICATIONS FOR CERTIFICATION (1) through (4) remain the same.

(5) An application shall remain active for two years from the date the application is received at the board office. An applicant who, for any reason, fails or

neglects to complete the licensing process within two years shall be required to file another application and submit another application fee.

AUTH: 37-18-202, MCA

IMP: 37-18-104, MCA

REASON: Following an analysis of the boards' business processes, the department recommended that all boards set end dates in rule for the retention of pending application materials. Noting that the department does not maintain incomplete application materials perpetually, and because some materials need updating after a period of time, the board is setting a two year end date for embryo transfer technician applications.

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

(5) A certificate holder may be granted a grace period of three months after the renewal date set by ARM 24.101.413 in which to fulfill continuing education requirements. This grace period will be granted only upon written request to the board, payment of the renewal fee, and payment of the late penalty fee. A certificate valid for the duration of the grace period will be issued only to a person granted a grace period. At the conclusion of the grace period, verification of CE compliance shall be submitted to the board, prior to the issuance of a full license.

(6) It is the responsibility of the certificate holder to maintain proof of the certificate holder's continuing education attendance. The board will randomly audit two percent of the renewed licensees and all licensees requesting a grace period.

(7) Continuing education ~~credits obtained~~ programs attended during a license year or grace period cannot be used for the next year.

(8) and (9) remain the same.

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

IMP: 37-1-131, 37-1-141, 37-1-306, 37-18-104, MCA

REASON: The board is amending this rule to specify that embryo transfer technicians granted a continuing education (CE) grace period must submit proof of CE compliance. The board determined that requiring proof of CE prior to issuance of the full license helps ensure that CE is completed and recorded timely and not used in the next reporting period.

The board is amending this rule to specify the random audit standards. These provisions are already in place for veterinarians, but were not previously set forth in rule for embryo transfer technicians.

The board is amending (7) to clarify that CE programs attended during a grace period are to be used solely for that reporting period. It is the board's intent that licensees obtain CE on a continual, ongoing basis, and this amendment helps achieve that goal.

24.225.904 APPLICATION REQUIREMENTS AND QUALIFICATIONS FOR CERTIFICATION AND ENDORSEMENT AS A CERTIFIED EUTHANASIA TECHNICIAN (1) through (3) remain the same.

(4) An application shall remain active for one year from the date it is received at the board office. An applicant who, for any reason, fails or neglects to complete the licensing process within one year shall be required to file another application and submit another application fee.

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

REASON: Following an analysis of the boards' business processes, the department recommended that all boards set end dates in rule for the retention of pending application materials. Noting that the department does not maintain incomplete application materials perpetually, and because some materials need updating after a period of time, the board is setting a one year end date for certified euthanasia technician applications.

24.225.910 CERTIFIED EUTHANASIA TECHNICIAN TEST CRITERIA

(1) and (2) remain the same.

(3) A passing score on the practical test will be determined by the successful completion of hands-on demonstrations which indicate that the applicant has been properly trained in procedures which enable the applicant safely and effectively to perform humane euthanasia with sodium pentobarbital. The practical examination will be graded on a pass/fail basis. The practical test shall be administered by the board approved course provider.

(4) remains the same.

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

REASON: The board is amending this rule to specify that only board approved course providers can administer practical tests. It is the board's intent that the instructors also provide the tests in an examination setting, not in a work setting. This amendment will ensure proper test administration.

24.225.920 APPLICATION FOR CERTIFIED EUTHANASIA AGENCIES

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

(d) indication of which CET is responsible for all aspects of euthanasia at the agency; and

(e) completed power of attorney form as required by the DEA; and

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

(3) An application will remain active for one year from the date it is received at the board office. An applicant who fails or neglects to complete the licensing process within one year shall be required to file a new application and submit another application fee.

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

REASON: The board is amending this rule to align its licensing requirements with the federal Drug Enforcement Administration's (DEA) requirement for a completed power of attorney. This amendment is necessary since controlled substances are used in euthanasia facilities and require DEA oversight.

Following an analysis of the boards' business processes, the department recommended that all boards set end dates in rule for the retention of pending application materials. Noting that the department does not maintain incomplete application materials perpetually, and because some materials need updating after a period of time, the board is setting a one year end date for certified euthanasia agency applications.

24.225.930 APPROVED EUTHANASIA DRUGS (1) remains the same.
(2) The following drugs are approved euthanasia restraint drugs:
(a) ace-promazine; and
(b) xylazine.

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

REASON: In response to several requests to use restraint drugs to enhance the comfort of animals during euthanasia, the board is amending this rule by adding two restraint drugs. The board determined it is reasonably necessary to allow use of these drugs to make the euthanasia process more humane and after determining that the addition of these drugs will not encourage off-label use or drug diversion.

Authority cites are being amended to accurately reflect the statutory sources of the board's rulemaking authority.

4. The proposed new rule provides as follows:

NEW RULE I CONTINUING EDUCATION PROVIDERS (1) A veterinarian licensed in another jurisdiction, a faculty member of a school of veterinary medicine, or the holder of a doctor of philosophy in a field of science applicable in any manner to the practice of veterinary medicine who presents a continuing education course approved by the board in Montana, is not considered to be practicing veterinary medicine within the meaning of 37-18-102(d) or (g).

AUTH: 37-1-319, 37-18-202, MCA
IMP: 37-1-131, 37-18-102, MCA

REASON: The board is proposing this new rule to clarify that appropriately trained individuals are competent and able to provide continuing education training to Montana licensed veterinarians in board approved courses. The new rule sets forth the specific individuals that are either licensed elsewhere or adequately trained to provide the CE training without needing a Montana veterinarian license.

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 Veterinary Medicine, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to dlibsdrv@mt.gov, and must be received no later than 5:00 p.m., October 9, 2009.

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

7. The board 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 administrative rulemaking proceedings or other administrative proceedings. The request must indicate whether e-mail or standard mail is preferred. Such written request may be sent or delivered to the Board of Veterinary Medicine, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2305, e-mailed to dlibsdrv@mt.gov, or made by completing a request form at any rules hearing held by the agency.

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

9. Anne O'Leary, attorney, has been designated to preside over and conduct this hearing.

BOARD OF VETERINARY MEDICINE
BRUCE SORENSON, DVM, PRESIDENT

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

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

Certified to the Secretary of State August 31, 2009

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

In the matter of the amendment of)	NOTICE OF PUBLIC HEARING ON
ARM 37.81.1002, 37.81.1018,)	PROPOSED AMENDMENT
37.86.805, 37.86.1105, 37.86.1506,)	
37.86.2105, 37.86.2207, 37.86.2405,)	
37.86.2505, 37.86.2605, and)	
37.86.2907 pertaining to Montana)	
PharmAssist Program and Medicaid)	
reimbursement rates for some)	
services with rates not set under)	
resource based relative value scale)	
(RBRVS))	

TO: All Concerned Persons

1. On October 2, 2009, at 1:30 p.m., the Department of Public Health and Human Services will hold a public hearing in the auditorium of the Department of Public Health and Human Services Building, 111 North Sanders, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Public Health and Human Services no later than 5:00 p.m. on September 23, 2009, to advise us of the nature of the accommodation that you need. Please contact Rhonda Lesofski, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

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

37.81.1002 RULE DEFINITIONS In addition to the definitions in 53-6-1001, MCA, the following definitions apply to this chapter:

(1) through (4) remain the same.

~~(5) "Continuing education (CE)" means an initial six-hour and annual two-hour CE program meeting the requirements of ARM 37.81.1018, created and instructed by the University of Montana, Skaggs School of Pharmacy, Department of Pharmacy and accredited by the American Council on Pharmaceutical Education (ACPE).~~

(5) "Credentialed pharmacist" means a Montana licensed pharmacist in good standing who has completed the required continuing education initial training for the PharmAssist Program and has a current personal service contract with the

department.

(7) through (13) remain the same but are renumbered (6) through (12).

AUTH: 53-2-201, 53-6-1006, MCA

IMP: 53-2-201, 53-6-1006, MCA

37.81.1018 MONTANA PHARMASSIST, CONTINUING EDUCATION

(1) ~~The CE program will consist of an overview of the Montana PharmAssist Program and completion of program paperwork, instruction on documentation and communication of the patient care plan, and review of treatment guidelines and drug interactions for four therapeutic topics (cardiovascular diseases, chronic respiratory diseases, diabetes mellitus, and geriatric issues). In addition, the CE program will provide hands-on experience in reviewing patient medication profiles. To participate in the PharmAssist Program a pharmacist must be licensed by the state of Montana and complete initial training, which consists of a self-guided educational packet prepared by the department.~~

AUTH: 53-2-201, 53-6-1006, MCA

IMP: 53-2-201, 53-6-1006, MCA

37.86.805 HEARING AID SERVICES, REIMBURSEMENT (1) The department will pay the lower of the following for covered hearing aid services and items:

(a) remains the same.

(b) the amount specified for the particular service or item in the department's fee schedule. The department adopts and incorporates by reference the department's fee schedule dated July ~~2008~~ 2009. A copy of the department's fee schedule is posted at <http://medicaidprovider.hhs.mt.gov>. A copy of the department's fee schedule may be obtained from the Department of Public Health and Human Services, Health Resources Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

(2) remains the same.

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

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

37.86.1105 OUTPATIENT DRUGS, REIMBURSEMENT (1) remains the same.

(2) The dispensing fee for filling prescriptions shall be determined for each pharmacy provider annually.

(a) remains the same.

(b) The dispensing fees assigned shall range between a minimum of \$2.00 and a maximum of ~~\$4.94~~ \$5.04.

(c) and (d) remain the same.

(3) In-state pharmacy providers that are new to the Montana Medicaid program will be assigned an interim ~~\$3.50~~ \$5.04 dispensing fee until a dispensing fee questionnaire, as provided in (2), can be completed for six months of operation.

At that time, a new dispensing fee will be assigned which will be the lower of the dispensing fee calculated in accordance with (2) for the pharmacy or the ~~\$4.70~~ \$5.04 dispensing fee. Failure to comply with the six months dispensing fee questionnaire requirement will result in assignment of a dispensing fee of \$2.00.

(4) through (7) remain the same.

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

IMP: 53-2-201, 53-6-101, 53-6-113, 53-6-141, MCA

37.86.1506 HOME INFUSION THERAPY SERVICES, REIMBURSEMENT

(1) Subject to the requirements of these rules, the Montana Medicaid program will pay for home infusion therapy services on a fee basis, as specified in the department's home infusion therapy services fee schedule. The department adopts and incorporates by reference the Home Infusion Therapy Services Fee Schedule dated July ~~2008~~ 2009. A copy of the department's fee schedule is posted at the Montana Medicaid provider web site at <http://medicaidprovider.hhs.mt.gov>. A copy of the Home Infusion Therapy Services Fee Schedule may also be obtained from the Department of Public Health and Human Services, Health Resources Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951. The specified fees are on a per day or a per dose basis as specified in the fee schedule. The fees are bundled fees which cover all home infusion therapy services as defined in ARM 37.86.1501.

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

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

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

37.86.2105 EYEGLASSES, REIMBURSEMENT (1) through (2)(a)(ii) remain the same.

(3) The department adopts and incorporates by reference the department's Eyeglasses Fee Schedule effective July ~~2007~~ 2009. A copy of the department's fee schedule is posted at ~~the~~ the Montana Medicaid provider web site at <http://medicaidprovider.hhs.mt.gov>. A copy of the department's 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: 53-6-113, MCA

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

37.86.2207 EARLY AND PERIODIC SCREENING, DIAGNOSTIC, AND TREATMENT SERVICES (EPSDT) SERVICES, 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 July ~~2008~~ 2009 and the nutrition EPSDT Fee Schedule dated

July 2008 2009. 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 nutrition and private duty nursing services fee schedules 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) ~~Except as provided in (4), the reimbursement rate~~ Reimbursement for the therapeutic portion of therapeutic youth group home treatment services ~~provided on or after October 1, 2007~~ is the lesser of:

(a) the amount specified in the department's Medicaid Mental Health Fee Schedule. The department adopts and incorporates by reference the department's Medicaid Mental Health and Mental Health Services Plan, Individuals Under 18 Years of Age Fee Schedule dated July 4, 2008 2009. 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; or

(b) remains the same.

(4) ~~If a provider does not comply with the cost reporting requirements in (5), the final reimbursement rate for the therapeutic portion of therapeutic youth group home treatment services provided during state fiscal year (SFY) 2008, July 1, 2007 through June 30, 2008 will be determined by adjusting the interim rate adopted in (3)(a) for the provider so that the total amount received for SFY 2008 equals the lesser of:~~

~~(a) the amounts specified in the department's Medicaid Mental Health and Mental Health Services Plan, Individual Under 18 Years of Age Fee Schedule dated July 15, 2005 which is adopted and incorporated by reference, if a provider does not comply with the cost reporting requirements set forth in (5). A copy of the fee schedule may be obtained from the Department of Public Health and Human Services, Health Resources Division, Children's Mental Health Bureau, 1400 Broadway, P.O. Box 202951, Helena MT 59620-2951; or~~

~~(b) the provider's usual and customary charges (billed charges).~~

~~(5) Each provider of therapeutic youth group home services will report allowable costs for SFY 2008 that starts July 1, 2007 using auditable data, standardized forms, instructions, definitions, and timelines supplied by the department.~~

~~(a) The cost study will be performed on an individually licensed therapeutic youth group home basis; and~~

~~(b) Reports of allowable costs for SFY 2008 must be received by the department before October 20, 2008.~~

~~(6) through (10) remain the same but are renumbered (4) through (8).~~

~~(11) (9)~~ Reimbursements for school-based health related services are specified in the School-Based Health Service Fee Schedule dated October 2008 2009, 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 adjusted to reimburse these services at the federal matching assistance percentage (FMAP) rate.

~~(12) and (13) remain the same but are renumbered (10) and (11).~~

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

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

37.86.2405 TRANSPORTATION AND PER DIEM, REIMBURSEMENT

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

(2) The department adopts and incorporates by reference the department's Montana Medicaid Fee Schedule, Personal and Commercial Transportation dated ~~October 2008~~ July 2009 that sets forth the reimbursement rates for transportation, per diem, and other Medicaid services. A copy of the department's fee schedule is posted at the Montana Medicaid provider web site at <http://medicaidprovider.hhs.mt.gov>. A copy of the fee schedule may also be obtained from the Department of Public Health and Human Services, Health Resources Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

(3) through (5) remain the same.

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

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

37.86.2505 SPECIALIZED NONEMERGENCY MEDICAL TRANSPORTATION, REIMBURSEMENT (1) through (1)(b) remain the same.

(2) The department adopts and incorporates by reference the department's fee schedule dated ~~October 2008~~ July 2009 which sets forth the reimbursement rates for specialized nonemergency medical transportation services and other Medicaid services. A copy of the fee schedule is posted at the Montana Medicaid provider web site at <http://medicaidprovider.hhs.mt.gov>. A copy of the department's fee schedule may be obtained from the Department of Public Health and Human Services, Health Resources Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

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

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

37.86.2605 AMBULANCE SERVICES, REIMBURSEMENT (1) through (1)(b) remain the same.

(2) The department adopts and incorporates by reference the Montana Medicaid Fee Schedule, Ambulance dated ~~October 2008~~ July 2009. A copy of the fee schedule is posted at the Montana Medicaid provider web site at <http://medicaidprovider.hhs.mt.gov>. A copy of the department's fee schedule may be obtained from the Department of Public Health and Human Services, Health Resources Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

(3) through (4) remain the same.

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

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

37.86.2907 INPATIENT HOSPITAL PROSPECTIVE REIMBURSEMENT, APR-DRG PAYMENT RATE DETERMINATION (1) The department's APR-DRG

prospective payment rate for inpatient hospital services is based on the classification of inpatient hospital discharges to APR-DRGs. The procedure for determining the APR-DRG prospective payment rate is as follows:

(a) through (b) remain the same.

(c) The department computes a Montana average base price per case. Effective ~~October 1, 2008~~ July 1, 2009 the average base price, including capital expenses, is ~~\$4,129~~ \$4,209. Disproportionate share payments are not included in this price.

(i) The average base price for Center of Excellence hospitals, including capital expenses, is ~~\$6,890~~ \$7,024. Disproportionate share payments are not included in this price.

(ii) through (2) remain the same.

AUTH: 2-4-201, 53-2-201, 53-6-113, MCA

IMP: 2-4-201, 53-2-201, 53-6-101, 53-6-111, 53-6-113, MCA

4. The Department of Public Health and Human Services (department) is proposing amendments to the following rules implementing the Montana Medicaid statutes: ARM 37.81.1002, 37.81.1018, 37.86.805, 37.86.1105, 37.86.1506, 37.86.2105, 37.86.2207, 37.86.2405, 37.86.2505, 37.86.2605, and 37.86.2907. Montana Medicaid is a program administered by the department that is jointly funded by the state and federal government. Montana Medicaid pays providers for covered health care service delivered to eligible low income and disabled Montana residents enrolled in Medicaid.

The changes to ARM 37.81.1002 and 37.81.1018 are necessary to eliminate an annual two-hour training requirement for licensed pharmacists who participate in the PharmAssist Program. The changes to the remaining rules are necessary to change the reimbursement rates for some providers whose rates are not set based on the Resource Based Relative Value Scale (RBRVS) rate system.

ARM 37.81.1002 and 37.81.1018

The proposed amendments to ARM 37.81.1002 and 37.81.1018 remove the requirement that pharmacists annually complete two hours of continuing education to participate in the PharmAssist Program. The requirement is not needed because a pharmacist must complete 15 hours of continuing education to maintain his or her state license through the State Board of Pharmacy. The additional two-hour requirement was not productive and removing it may encourage more pharmacists to participate in the program. The requirement that a pharmacist must complete initial training about the PharmAssist Program to participate remains but that training will be a self-guided education packet. Reference to training by the University of Montana is being removed from the rules.

ARM 37.86.805

The proposed amendment to ARM 37.86.805 changes the reference date of the

current fee schedule for hearing aid services to July 2009. The fee schedule was amended to increase provider rates by 2% based on the appropriation in House Bill 2 (HB 2) of the 2009 Montana Legislative Session. The estimated fiscal impact of the amendments to this rule is an increase of \$2,551 federal expenditures and \$793 state expenditures.

ARM 37.86.1105

The proposed amendment to ARM 37.86.1105 increases the maximum dispensing fee for filling prescriptions from \$4.94 to \$5.04 to increase provider rates by 2% based on the appropriation in HB 2 of the 2009 Montana Legislative Session. The amendment to this rule also increases the interim dispensing fee for in-state providers new to the Montana Medicaid program from \$3.50 to \$5.04 for the first six months of operation. This change is necessary to fairly reflect the cost of dispensing during the initial startup phase. The estimated fiscal impact of the amendments to this rule is an increase of \$104,212 federal expenditures and \$32,388 state expenditures for state fiscal year (SFY) 2010.

ARM 37.86.1506

The proposed amendment to ARM 37.86.1506 changes the reference date of the current fee schedule for home infusion therapy services from July 2008 to July 2009. The fee schedule is being amended to increase provider rates by 2% based on the appropriation in HB 2 of the 2009 Montana Legislative Session. The estimated fiscal impact of this change is an increase of \$9,896 federal expenditures and \$3,075 of state expenditures for SFY 2010.

ARM 37.86.2105

The proposed amendment to ARM 37.86.2105 changes the reference date of the current fee schedule for eyeglasses from July 2007 to July 2009. The fee schedule was amended to reflect the current year of reimbursement, there are no rate changes in this fee schedule. No fiscal impact is expected from this change because eyeglasses are reimbursed through a bulk purchasing contract.

ARM 37.86.2207

ARM 37.86.2207 Early and Periodic Screening, Diagnostic, and Treatment (EPSDT) Services, Reimbursement refers to services provided through Medicaid to individuals under the age of 21. The proposed amendments to ARM 37.86.2207(2) and (3) of this rule change the reference date of the current fee schedule for EPSDT nutrition and private duty nursing services from July 2008 to July 2009. The fee schedules are being amended to increase provider rates by 2% based on the appropriation in HB 2 of the 2009 Montana Legislative Session. The estimated fiscal impact of the change to the private duty nursing fee schedule is an increase of \$49,105 federal expenditures and \$15,261 of state expenditures. The estimated fiscal impact of the change for the nutrition fee schedule is an increase of \$134 federal expenditures

and \$41 state expenditures.

ARM 37.86.2207(3) through (6) of this rule implement the reimbursement rate for the therapeutic services delivered through therapeutic youth group homes. The reimbursement rate is stated in the department's Medicaid Mental Health and Mental Health Services Plan, Individuals Under 18 Years of Age Fee Schedule which is updated to July 2009. The fee schedule was amended to increase provider rates by 2% based on the appropriation in HB 2 of the 2009 Montana Legislative Session. The estimated fiscal impact of the change to the fee schedule is an increase of \$721,982 federal expenditures and \$224,383 state expenditures. ARM 37.86.2207(4) and (5) of the rule applied to 2008 only so are being deleted.

The proposed amendment to ARM 37.86.2207(11), which will be ARM 37.86.2207(9) change the reference date of the current fee schedule for EPSDT school based services from October 2008 to October 2009. Rates are adjusted to reimburse these services at the federal matching assistance percentage (FMAP) rate. The state participation in this program is certified match from schools. There is no state general fund appropriation.

ARM 37.86.2405

The proposed amendment to ARM 37.86.2405 changes the reference date of the current fee schedule for transportation and per diem reimbursement from October 2008 to July 2009. The fee schedule was amended to increase provider rates by 2% based on the appropriation in HB 2 of the 2009 Montana Legislative Session. The estimated fiscal impact of this change is an increase of \$6,669 federal expenditures and \$2,072 of state expenditures.

ARM 37.86.2505

The proposed amendment to ARM 37.86.2505 changes the reference date of the current fee schedule for specialized nonemergency medical transportation, reimbursement from October 2008 to July 2009. The fee schedule is updated to reflect the current year of reimbursement, there are no rate changes in this fee schedule because mileage rates were not included in the provider rate increase. No fiscal impact is expected from this change.

ARM 37.86.2605

The proposed amendment to ARM 37.86.2605 changes the reference date of the current fee schedule for ambulance services from October 2008 to July 2009. The fee schedule was amended to increase provider rates by 2% based on the appropriation in HB 2 of the 2009 Montana Legislative Session. The estimated fiscal impact of this change is an increase of \$45,850 federal expenditures and \$14,249 of state expenditures.

ARM 37.86.2907

The proposed amendment to ARM 37.86.2907 changes the patient hospital prospective reimbursement rate. The average base price, including capital expenses, is increased from \$4,129 to \$4,209. The average base price for center of excellence hospitals, including capital expenses, is increased from \$6,890 to \$7,024. These changes increase rates by 2% based on the appropriation in HB 2 of the 2009 Montana Legislative Session. The estimated fiscal impact of this change is an increase of \$1,127,812 and \$350,510 of state expenditures.

The proposed rule changes effect approximately 81,920 Medicaid recipients and the following number of providers listed by program: 48 hearing aid providers; 265 pharmacy providers; 11 home infusion therapy providers; 169 optometric providers; 12 private duty nursing providers; 7 nutrition providers; 19 EPSDT mental health providers; 229 school-based services providers; 17 transportation providers; 107 ambulance providers; and 262 inpatient hospital providers.

5. The department intends to apply ARM 37.81.1002, 37.81.1018, 37.86.805, 37.86.1105, 37.86.1506, 37.86.2105, 37.86.2405, 37.86.2505, 37.86.2605, and 37.86.2907 retroactively to July 1, 2009. The department intends to apply ARM 37.86.2207(9) retroactively to October 1, 2009. A retroactive application of the proposed rules does not result in a negative impact to any affected party.

6. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Rhonda Lesofski, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail dphhslegal@mt.gov, and must be received no later than 5:00 p.m., October 8, 2009.

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

8. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 6 above or may be made by completing a request form at any rules hearing held by the department.

9. An electronic copy of this Proposal Notice is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of State strives to make the electronic copy of the Notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text

will be considered. In addition, although the Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

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

/s/ Geralyn Driscoll
Rule Reviewer

/s/ Mary E. Dalton for
Anna Whiting Sorrell, Director
Public Health and Human Services

Certified to the Secretary of State August 31, 2009.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 44.15.101 through 44.15.105) PROPOSED AMENDMENT AND
and adoption of New Rules I , II, III,) ADOPTION
and IV pertaining to notaries public)

TO: All Concerned Persons

1. On October 5, 2009, at 11:00 a.m., the Secretary of State will hold a public hearing in the Secretary of State's Conference Room, Room 206, State Capitol Building, at Helena, Montana, to consider the proposed amendment and adoption of the above-stated rules.

2. The Secretary of State 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 Secretary of State no later than 5:00 p.m. on September 28, 2009, to advise us of the nature of the accommodation that you need. Please contact Jorge Quintana, Secretary of State's Office, P.O. Box 202801, Helena, Montana, 59620-2801; telephone (406) 444-5375; fax (406) 444-4240; TDD/Montana Relay Service (406) 444-9068; or e-mail jquintana@mt.gov.

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

44.15.101 APPLICATION PROCESS FOR A COMMISSION APPOINTMENT OR REAPPOINTMENT AS A NOTARY PUBLIC (1) Requests for appointment or reappointment as a notary public are not considered submitted if any of the requested documentation is missing, deficient, or if the correct fee has not been paid.

(1) (2) A person seeking an ~~commission~~ appointment or reappointment as a notary public shall make an application on a form prescribed by the Secretary of State which ~~contains the following information~~ requests the information required by 1-5-409(1), MCA, and such other information as shall be deemed relevant to identifying and contacting the person during or after the term of office and shall affirm under oath that the person:

- ~~(a) name of the applicant;~~
- ~~(b) applicant's address, e-mail address, and phone number;~~
- ~~(c) name of employer;~~
- ~~(d) employer's address, e-mail address, and phone number;~~
- ~~(e) date of birth;~~
- ~~(f) the date of expiration of the applicant's current notary commission (if applicable); and~~

~~(g) name under which the previous commission was issued if different than the name used on the application.~~

~~(2) The application must state if the applicant:~~
~~(a) has been a resident of the state of Montana for over one year;~~
~~(b) (a) is at least 18 years old;~~
~~(c) (b) has never been convicted of a felony; and~~
~~(d) (c) has never had a notary commission or bond denied, revoked, or restricted in any state; and~~
(d) is a resident of Montana prior to appointment and for the duration of the commission pursuant to 1-5-402(3), MCA.

~~(3) The applicant must affirm under oath that the information on the application is true and correct. The person seeking appointment as a notary shall submit the required application, bond, and fees within 30 days before or after the effective date of the bond and provide proof that they have satisfactorily completed a training program certified by the Secretary of State.~~

(4) A person seeking reappointment as a notary shall submit the required application form, bond, and fees within 30 days before or after the effective date of the bond and provide proof that they have satisfactorily completed a training program certified by the Secretary of State if the person has been notified that such training is required pursuant to 1-5-402(2), MCA.

AUTH: 2-4-201, MCA
IMP: 1-5-405, MCA

REASON: The amendment is necessary due to the passage of SB 299 by the 2009 Legislature which created the categories of "appointment" and "reappointment" for notaries public. The rule is amended to incorporate these terms. Sections (3) and (4) are added to include in rule the 30-day filing period that is set forth in section 1-5-405(3), MCA.

44.15.102 APPLICATION FEES (1) The An applicant for appointment or reappointment as a notary shall submit a \$25 nonrefundable application fee.
(2) Application documents that have been returned twice for correction must be accompanied by an additional \$10 fee if submitted a third or subsequent time.

AUTH: ~~1-5-408~~ 2-15-405, MCA
IMP: 1-5-408, MCA

REASON: The amendment is necessary to clarify that the \$25 nonrefundable application fee applies to both appointment and reappointment applications. The new fee in (2) reflects the additional costs incurred for multiple processing of the same documents. The new fee will affect less than 100 applicants per year and will result in less than \$1,000 in additional annual revenue.

44.15.103 NOTARY BOND (1) The applicant for appointment or reappointment as a notary shall submit with the application and fee, a bond from an approved bonding company in the amount of \$10,000 for the duration of the period of the notary commission. The bond form must specify the effective date of the bond, the name of the principal, and the principal's city of residence, and contain the

principal's signature. The bonding company shall notify the Secretary of State's office if the bond is canceled or otherwise not honored.

(2) A rider or other such endorsement issued by the bonding agency must be submitted with all requests for changes to the effective date, the principal's name, or city of residence.

AUTH: 2-4-201, MCA
IMP: 1-5-405, MCA

REASON: The amendment is necessary to specify the required information for the bond form and to clarify that the required information must be submitted on the bond form.

44.15.104 CANCELLATION OF COMMISSION (1) If the Secretary of State receives information or has reason to believe a notary public has engaged in activities that constitute just cause to revoke a commission of a notarial officer, then the Secretary of State may revoke the commission of a notary public. If the notary believes that the commission should not be revoked, the notary may request a hearing following the formal or informal hearing procedures for contested cases found in MAPA.

(a) and (2) remain the same.

AUTH: 2-4-201, MCA
IMP: 1-5-404, 1-5-405, 2-4-604, MCA

REASON: The rule is reasonably necessary to clarify that a notary has the option of requesting a hearing prior to the Secretary of State revoking a commission, but that a hearing is not required.

44.15.105 FOREIGN NOTARY, APOSTILLE FEES AND FEDERAL AUTHORITY CERTIFICATES OF APOSTILLE OR AUTHENTICATION (1) The applicant shall submit a \$10 nonrefundable fee for each document for which a certificate is to be affixed.

(2) A priority fee of \$20 will apply to requests for document certification when an appointment has not been previously scheduled and the customer requires immediate service.

AUTH: ~~1-5-408~~ 2-15-405, MCA
IMP: 1-5-408, 1-5-607, 1-5-608, MCA

REASON: The amendment is necessary to clarify that the \$10 fee applies to each document. The new fee in (2) reflects the additional costs incurred in processing a priority request, and it is in line with the priority fees charges in other sections of the Secretary of State's office. The new fee will affect less than 100 individuals and will result in less than \$2,000 in additional annual revenue.

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

NEW RULE I DEFINITIONS (1) As used in this subchapter, the following definitions apply:

(1) "Appointment" means that a person is eligible to receive a commission as a notary public because:

(a) they have never held a notary commission in the state of Montana; or
(b) they have held a previous notary commission, but were not reappointed within the statutorily allowed period.

(2) "Reappointment" means that a person is eligible to receive a commission as a notary public because:

(i) they hold a current notary commission; or
(ii) their notary commission expired within 30 days.

AUTH: 2-4-201, MCA

IMP: 1-5-401, 1-5-402, MCA

REASON: The rule is necessary due to the passage of SB 299 by the 2009 Legislature which created the categories of "appointment" and "reappointment" for notaries public. The rule defines terms that pertain to the commissioning of notaries public that are not defined in statute.

NEW RULE II CERTIFICATION OF TRAINING PROGRAMS AND INSTRUCTORS (1) The Secretary of State will certify individuals or entities and courses for live and on-line training programs that will assure consistency and completeness of the information provided to students regardless of the methodology, format, or entity providing the training.

(2) An entity or individual wishing to provide the notary training required under 1-5-402, MCA, must submit to the Secretary of State all materials to be used in or distributed as a part of the course in order to receive authorization to conduct a certified course.

(3) Changes or modifications to any course or course material must be submitted to the Secretary of State's office prior to presenting the material.

(4) Within two business days after conducting a live or on-line course, the instructor or course administrator shall submit to the Secretary of State's office a list of those who satisfactorily completed the course.

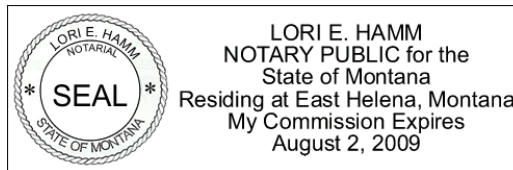
AUTH: 2-4-201, MCA

IMP: 1-5-402, MCA

REASON: The rule is necessary due to the passage of SB 299 by the 2009 Legislature which put in place requirements for notary training. The rule establishes the certification standards for notary training programs and instructors.

NEW RULE III NOTARY SEAL AND STAMP (1) All persons appointed or reappointed as a notary public for the state of Montana on or after October 1, 2009, shall provide a blue or black ink stamp which will contain the notarial seal as well as the notary's printed name, title, city or town of residence, and commission expiration

date as required by 1-5-416(e) and (f), MCA. The stamp shall be rectangular in shape, and approximately 1" x 2 ½" in size. An illustration of the required format is below:



(2) If any information contained in the seal and stamp changes during the term of the notary's commission, the notary must obtain a new stamp.

(3) The seal and stamp are the property of the notary. The notary is responsible for destroying the seal and stamp when it is replaced or upon termination of office.

AUTH: 2-4-201, MCA
IMP: 1-5-416, 1-5-419, MCA

REASON: The rule is necessary due to the passage of SB 299 by the 2009 Legislature which directed the use of blue or black ink for a notary's original signature and revised the requirements for the notarial seal and stamp. The rule provides specifications for the seal and stamp and provides guidance as to their replacement or destruction.

NEW RULE IV OFFICIAL NOTARY JOURNAL (1) An official notary journal shall be a bound book designed specifically for that purpose. It shall record:

(a) the name, address, and commission information of the notary, including but not limited to, the dates of commission, and the volume number if more than one journal was used;

(b) the details of each notarial act performed, including the signature of individuals, as required by 1-5-416(g), MCA; and

(c) other information of a nonprivate nature which may be relevant to proving the identity of the signer and the circumstances of the event.

(2) The notary journal is considered a public document and any private information which identifies a signer's identity such as a social security number or driver's license number shall not be recorded in the journal.

(3) The notary journal is the property and responsibility of the notary and shall remain in the possession or under the control of the notary at all times.

(4) Upon resignation, revocation, or death, the notary or the notary's legal representative shall transfer the notary's journals to the clerk and recorder's office in the county in which the notary resided.

AUTH: 2-4-201, MCA
IMP: 1-5-416, 1-5-419, MCA

REASON: The rule is reasonably necessary due to the passage of SB 299 by the 2009 Legislature which mandated that a notary public keep and maintain an official notary journal. The rule provides detailed specifications and requirements for the notary journal and affirms that the notary journal is a public document.

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: Jorge Quintana, Secretary of State's Office, P.O. Box 202801, Helena, Montana 59620-2801; telephone (406) 444-5375; fax (406) 444-4240; or e-mail jquintana@mt.gov, and must be received no later than 5:00 p.m., October 8, 2009.

6. Jorge Quintana, Secretary of State's office, has been designated to preside over and conduct this hearing.

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

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

9. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted by letter on July 28, 2009, and by telephone call the week of August 10, 2009.

/s/ Jorge Quintana
JORGE QUINTANA
Rule Reviewer

/s/ Linda McCulloch
LINDA MCCULLOCH
Secretary of State

Dated this 31st day of August, 2009.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM) NOTICE OF PUBLIC HEARING ON
1.2.419 regarding the scheduled dates) PROPOSED AMENDMENT
for the 2010 Montana Administrative)
Register)

TO: All Concerned Persons

1. On October 5, 2009, a public hearing will be held at 10:00 a.m. in the Secretary of State's Office Conference Room, Room 260, State Capitol Building, Helena, Montana, to consider the proposed amendment of the above-stated rule.

2. The Secretary of State will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Secretary of State no later than 5:00 p.m. on September 28, 2009, to advise us of the nature of the accommodation that you need. Please contact Jorge Quintana, Secretary of State's Office, P.O. Box 202801, Helena, MT 59620-2801; telephone (406) 444-5375; fax (406) 444-4249; TDD/Montana Relay Service (406) 444-9068; or e-mail jquintana@mt.gov.

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

1.2.419 FILING AND PUBLICATION SCHEDULE FOR THE MONTANA ADMINISTRATIVE REGISTER (1) The scheduled filing dates, time deadline, and publication dates for material to be published in the Montana Administrative Register are listed below:

~~2009~~ Schedule

Filing	Publication
January 5	January 15
January 20	January 29
February 2	February 12
February 17	February 26
March 2	March 12
March 16	March 26
April 6	April 16
April 20	April 30
May 4	May 14
May 18	May 28
June 1	June 11
June 15	June 25

July 6	July 16
July 20	July 30
August 3	August 13
August 17	August 27
August 31	September 10
September 14	September 24
October 5	October 15
October 19	October 29
November 2	November 12
November 16	November 25
November 30	December 10
December 14	December 24

2010 Schedule

<u>Filing</u>	<u>Publication</u>
<u>January 4</u>	<u>January 14</u>
<u>January 19</u>	<u>January 28</u>
<u>February 1</u>	<u>February 11</u>
<u>February 16</u>	<u>February 25</u>
<u>March 1</u>	<u>March 11</u>
<u>March 15</u>	<u>March 25</u>
<u>April 5</u>	<u>April 15</u>
<u>April 19</u>	<u>April 29</u>
<u>May 3</u>	<u>May 13</u>
<u>May 17</u>	<u>May 27</u>
<u>June 1</u>	<u>June 10</u>
<u>June 14</u>	<u>June 24</u>
<u>July 6</u>	<u>July 15</u>
<u>July 19</u>	<u>July 29</u>
<u>August 2</u>	<u>August 12</u>
<u>August 16</u>	<u>August 26</u>
<u>August 30</u>	<u>September 9</u>
<u>September 13</u>	<u>September 23</u>
<u>October 4</u>	<u>October 14</u>
<u>October 18</u>	<u>October 28</u>
<u>November 1</u>	<u>November 12</u>
<u>November 15</u>	<u>November 26</u>
<u>November 29</u>	<u>December 9</u>
<u>December 13</u>	<u>December 23</u>

(2) remains the same.

AUTH: 2-4-312, MCA
IMP: 2-4-312, MCA

4. ARM 1.2.419 is proposed to be amended to set dates pertinent to the publication of the Montana Administrative Register during 2010. The schedule is proposed during the month of September in order that it may be adopted during October to allow state agencies the opportunity to plan their rulemaking schedule to meet program needs for the upcoming year.

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 Jorge Quintana, Secretary of State's Office, P.O. Box 202801, Helena, Montana 59620-2801, or by e-mailing jquintana@mt.gov, and must be received no later than 5:00 p.m., October 8, 2009.

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

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

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

/s/ Jorge Quintana
JORGE QUINTANA
Rule Reviewer

/s/ Linda McCulloch
LINDA MCCULLOCH
Secretary of State

Dated this 27th day of August, 2009.

BEFORE THE BOARD OF HOUSING
DEPARTMENT OF COMMERCE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 8.111.602 pertaining to the low)
income housing tax credit program)

TO: All Concerned Persons

1. On June 25, 2009, the Department of Commerce published MAR Notice No. 8-111-74 pertaining to the proposed amendment of the above-stated rule at page 952 of the 2009 Montana Administrative Register, Issue Number 12.

2. The department has amended the above-stated rule as proposed.

3. No comments or testimony were received.

/s/ KELLY A. CASILLAS
KELLY A. CASILLAS
Rule Reviewer

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

Certified to the Secretary of State August 31, 2009.

BEFORE THE DEPARTMENT OF COMMERCE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 8.119.101 pertaining to the)
Tourism Advisory Council)

TO: All Concerned Persons

1. On July 16, 2009, the Department of Commerce published MAR Notice No. 8-119-75 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 1066 of the 2009 Montana Administrative Register, Issue Number 13.

2. The department has amended the above-stated rule as proposed.

3. No comments or testimony were received.

/s/ KELLY A. CASILLAS
KELLY A. CASILLAS
Rule Reviewer

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

Certified to the Secretary of State August 31, 2009.

BEFORE THE DEPARTMENT OF LIVESTOCK
STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 32.6.712, pertaining to food)
safety and inspection service (meat,)
poultry))

TO: All Concerned Persons

1. On July 16, 2009, the Department of Livestock published MAR Notice No. 32-9-196 regarding the proposed amendment of the above-stated rules at page 1096 of the 2009 Montana Administrative Register, issue number 13.
2. The Department of Livestock has amended ARM 32.6.712 exactly as proposed.
3. No comments or testimony were received.

DEPARTMENT OF LIVESTOCK

/s/ Christian Mackay
Christian Mackay
Executive Officer
Department of Livestock

/s/ George H. Harris
George H. Harris
Rule Reviewer

Certified to the Secretary of State August 31, 2009.

BEFORE THE BOARD OF HORSE RACING
DEPARTMENT OF LIVESTOCK
STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 32.28.202 and 32.28.801,)
pertaining to uncoupling horses for)
wagering purposes)

TO: All Concerned Persons

1. On July 16, 2009, the Department of Livestock published MAR Notice No. 32-9-197 regarding the proposed amendment of the above-stated rules at page 1098 of the 2009 Montana Administrative Register, issue number 13.
2. The Department of Livestock has amended ARM 32.28.202 and 32.28.801 exactly as proposed.
3. No comments or testimony were received.

DEPARTMENT OF LIVESTOCK

/s/ Christian Mackay
Christian Mackay
Executive Officer
Department of Livestock

/s/ Sherry K. Meador
Sherry K. Meador
Rule Reviewer

Certified to the Secretary of State August 31, 2009.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER of the Petition of)	
James C. Wangerin, CPA, seeking a)	
Declaratory Ruling Proposing)	
Amendments to ARM 1.3.216, 1.3.231)	Docket No. DO-09-04
and 42.2.618 to Enable Mr. Wangerin)	
the Right to Receive a Definite and)	
Detailed Statement, Mediation, and)	
Submission on Record)	DECLARATORY RULING

TO: All Interested Persons

INTRODUCTION

1. The Montana Department of Revenue ("Department"), received a Petition for Declaratory Ruling, pursuant to ARM 42.2.102, from James C. Wangerin, CPA, ("Petitioner"), whose principal place of business is in Deer Lodge, Montana. The mailing address of the Petitioner is 301 1/2 Main Street, Deer Lodge, Montana 59722.

2. The facts upon which this declaratory ruling is made are as follows:

(a) Petitioner requests the department amend ARM 1.3.216, Contested cases, Application for More Definite and Detailed Statement, to allow CPAs and Enrolled Agents representing taxpayers to request a definite and detailed statement from the Department of Revenue.

3. Petitioner further requests the department amend ARM 1.3.231, General Provisions, Representation, to strike subsection (2) and replace it with a provision that states "taxpayers including corporations may be represented by non-attorneys at informal proceedings, mediation, and in submission of case upon the record before the Department of Revenue and any tax appeal board (including the State Tax Appeal Board)".

4. Petitioner further requests the department amend ARM 42.2.618, Mediation Procedures, to allow CPAs and Enrolled Agents representing taxpayers to have the right to mediation by adding language to the rule which states: "if requested by the taxpayer, CPA, or enrolled agent representing the taxpayer, the Department of Revenue must agree to participate in mediation".

ANALYSIS

5. There is no question of law regarding this petition. The petition is simply a request to amend administrative rules of the Attorney General and the Department of Revenue.

6. The first two administrative rules addressed in this petition are not within the authority of the Department of Revenue to address. Those administrative rules are governed by the Montana Attorney General's Office.

7. ARM 42.2.618, which addresses the mediation practice of the agency is governed by 15-1-211, MCA, and ARM 42.2.618 conforms to the statutory requirements for offering mediation to taxpayers.

DECLARATORY RULING

8. Based on the foregoing reasons and analysis, it is hereby ruled that the Petition sought by James C. Wangerin, CPA may not be granted.

DATED this 27th day of August, 2009.

MONTANA DEPARTMENT OF REVENUE

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

NOTICE: Petitioner has the right to appeal the decision of this agency by filing a petition for judicial review in district court within 30 days after service of this decision. Judicial review is conducted pursuant to § 16-4-411, MCA.

CERTIFICATE OF MAILING

The undersigned hereby certifies that on the 27th day of August , 2009 a true and correct copy of the foregoing has been served by placing same in the United States Mail, postage prepaid, addressed as follows:

James C. Wangerin, CPA
301 1/2 Main
Deer Lodge, Montana 59722

/s/ Cleo Anderson
CLEO ANDERSON
Program Manager

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 June 30, 2009. This table includes those rules adopted during the period July 1, 2009, through September 30, 2009, and any proposed rule action that was pending during the past six-month period. (A notice of adoption must be published within six months of the published notice of the proposed rule.) This table does not include the contents of this issue of the Montana Administrative Register (MAR or Register).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through June 30, 2009, 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 2009 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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2.43.3502 and other rule - (Public Employees' Retirement Board) Investment Policy Statement for the Defined Contribution Retirement Plan - Investment Policy Statement for the 457 Deferred Compensation Plan, p. 394, 1010

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- I Determination of Incentives and Bonuses as Part of a Series of Annual Payments and Included in Earned Compensation, p. 1183

(Board of County Printing)

- 2.67.201 and other rules - Board of County Printing, p. 1187

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- 4.9.401 Raising the Wheat and Barley Assessment, p. 2574, 264
- 4.12.1320 and other rules - Quarantines - Pest Management Standards, p. 118, 343
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STATE AUDITOR, Title 6

- 6.6.504 and other rules - Medicare Supplements, p. 506, 1107
- 6.6.2801 and other rules - Surplus Lines Insurance Transactions, p. 1191

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- I Administration of the 2009-2010 Federal Community Development Block Grant (CDBG) Program, p. 2408, 410
- 8.119.101 Tourism Advisory Council, p. 398, 862
- 8.119.101 Tourism Advisory Council, p. 1066

(Montana Coal Board)

- 8.101.201 and other rules - Policies of the Montana Coal Board - Applications for Montana Coal Board Grant Assistance, p. 2220, 344

(Board of Housing)

- 8.111.602 Low Income Housing Tax Credit Program, p. 952

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(Board of Public Education)

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- 10.54.4010 and other rules - Math Content Standards and Performance Descriptors, p. 767, 1201
- 10.57.102 and other rules - Educator Licensure, p. 30, 345
- 10.57.412 and other rule - Mentor Teachers, p. 789, 1259

FISH, WILDLIFE AND PARKS, Department of, Title 12

(Fish, Wildlife and Parks Commission)

- 12.6.1101 and other rules - Falconry Regulation in Montana, p. 792, 1470
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- 12.11.6601 and other rules - Emergency Closures of Department Lands and Public Waters, p. 1208
- 12.14.101 and other rules - Commercial Use Rules in Montana, p. 1436

ENVIRONMENTAL QUALITY, Department of, Title 17

- 17.50.403 and other rules - Solid Waste - Licensing and Operation of Solid Waste Landfill Facilities, p. 164, 1326

(Board of Environmental Review)

- 17.4.101 and the Department - Model Rules, p. 129, 1011
- 17.8.102 Air Quality - Incorporation by Reference, p. 1, 411
- 17.8.102 and other rules - Incorporation by Reference of Current Federal Regulations and Other Materials into Air Quality Rules, p. 954
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- 17.30.201 Water Quality - Permit Fees, p. 1335
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