

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 5

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 The Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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

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BEFORE THE PUBLIC EMPLOYEES' RETIREMENT BOARD
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 2.43.304 pertaining to actuarial) PROPOSED AMENDMENT
rates and assumptions)

TO: All Concerned Persons

1. On April 9, 2008, at 9:00 a.m., the Montana Public Employee Retirement Administration will hold a public hearing in the board room at 100 North Park Avenue, Suite 200, at Helena, Montana, to consider the proposed amendment of the above-stated rule.

2. The Montana Public Employee Retirement Administration 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 MPERA no later than 12:00 p.m. on April 1, 2008, to advise us of the nature of the accommodation that you need. Please contact Angela Salvitti, Montana Public Employee Retirement Administration, 100 North Park Avenue, P.O. Box 200131, Suite 200, Helena, Montana, 59620-0131; telephone (406) 444-2578; fax (406) 444-5428; TDD (406) 444-1421; or e-mail asalvitti@mt.gov.

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

2.43.304 ACTUARIAL RATES AND ASSUMPTIONS (1) The actuary will present the actuarial data and recommend the board adopt specific rates and assumptions. The board in its discretion will adopt rates and assumptions and publish them in a board policy. The board adopts and incorporates by reference board policies BOARD Admin 09 and BOARD Admin 10, providing actuarial rates, assumptions, and methods for valuation purposes and actuarial equivalence purposes, respectively, that were approved by the board on February 14, 2008.

(2) ~~The division~~ MPERA shall maintain a historical file of all rates or assumptions, including the current version. The file shall be open and readily available to the public. Copies of the assumptions and board policies BOARD Admin 09 and BOARD Admin 10 may be obtained from MPERA, 100 North Park Avenue, Suite 200, P.O. Box 200131, Helena, MT 59620-0131, phone 1 (877) 275-7372, e-mail mpera@mt.gov.

~~(3) This rule includes at least the following actuarial rates and assumptions:~~

- ~~(a) investment earnings assumption;~~
- ~~(b) salary increase assumptions;~~
- ~~(c) required contribution rates;~~
- ~~(d) asset valuation assumption;~~
- ~~(e) administrative expense assumption;~~
- ~~(f) mortality rates;~~

- ~~(g) disability rates;~~
- ~~(h) retirement rates;~~
- ~~(i) withdrawal rates; and~~
- ~~(j) service purchase rates.~~

~~(4) The board will provide effective dates when adopting the rates and assumptions.~~

AUTH: ~~19-2-403, 19-3-304, 19-5-201, 19-6-201, 19-7-201, 19-8-201, 19-9-201, 19-13-202, MCA~~

IMP: ~~19-3-305, 19-5-201, 19-6-202, 19-7-201, 19-8-202, 19-9-504, 19-13-504, 19-2-405, 19-17-107, MCA~~

STATEMENT OF REASONABLE NECESSITY: The Internal Revenue Service has begun requiring public pension systems to adopt actuarial assumptions, rates, and methods in a manner that gives them the force and effect of law. The IRS requirement is an issue that may affect the qualified status of public pension retirement systems. Adopting the applicable actuarial assumptions, rates, and methods into rule by reference gives them the force and effect of law. This rule amendment is therefore necessary to ensure compliance with the IRS requirements and section 19-2-1010, MCA, which requires the board to administer the various plans in the manner required to maintain their qualified status.

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: Roxanne M. Minnehan, Montana Public Employee Retirement Administration, 100 North Park Avenue, Suite 200, P.O. Box 200131, Helena, Montana, 59620-0131; fax (406) 444-5428; or e-mail rminnehan@mt.gov, and must be received no later than 5:00 p.m., April 10, 2008.

5. Angela Salvitti, Paralegal for the Montana Public Employee Retirement Administration, has been designated to preside over and conduct this hearing.

6. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Such written request may be mailed or delivered to the contact person in paragraph 2 above or may be made by completing a request form at any rules hearing held by the board.

7. An electronic copy of this Notice of Proposed Amendment is available through the Montana Public Employee Retirement Administration web site at <http://www.mpera.mt.gov/rules.asp>. The Montana Public Employee Retirement Administration 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 Montana Public Employee Retirement Administration works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

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

/s/ Melanie Symons
Melanie Symons, Legal Counsel and
Rule Reviewer

/s/ Jay Klawon
Jay Klawon, President
Public Employees' Retirement Board

/s/ Denise Pizzini
Denise Pizzini
Chief Rule Legal Counsel and
Rule Reviewer

Certified to the Secretary of State March 3, 2008.

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the proposed)
amendment of ARM 4.2.101 and 4.2.102)
relating to model procedural rules,)
4.9.201 relating to the wheat and barley)
procedural rule, 4.12.1502 relating to the)
public participation rule in the mint)
program, and adoption of New Rule I)
relating to hail insurance program public)
participation)

NOTICE OF PUBLIC HEARING ON
PROPOSED AMENDMENT AND
ADOPTION

TO: All Concerned Persons

1. On April 14, 2008, at 3:00 p.m., the Montana Department of Agriculture will hold a public hearing in Room 225 of the Scott Hart Building, 303 N. Roberts at Helena, Montana, to consider the proposed amendment and adoption of the above-stated rules.

2. The Department of Agriculture will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Agriculture no later than 5:00 p.m. on March 27, 2008, to advise us of the nature of the accommodation that you need. Please contact Cort Jensen at the Montana Department of Agriculture, 303 North Roberts, P.O. Box 200201, Helena, MT 59620-0201; Phone: (406) 444-3144; Fax: (406) 444-5409; or e-mail: agr@mt.gov.

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

4.2.101 MODEL PROCEDURAL RULES (1) The Department of Agriculture hereby adopts and incorporates the Attorney General's model rules as stated in ARM ~~4.3.204~~ 1.3.101 through ARM ~~4.3.234~~ 1.3.233 together with the exceptions and additions set forth in ARM 4.2.102 and ARM 4.2.103 below.

AUTH: 2-4-202, MCA
IMP: 2-4-202, MCA

4.2.102 EXCEPTIONS AND ADDITIONS FOR AGRICULTURAL SCIENCES DIVISION (1) ARM ~~4.3.201(1)(a)~~ 1.3.204 requirements are modified by ~~Section 80-8-105(1), MCA.~~

AUTH: 2-4-202, MCA
IMP: 2-4-202, MCA

REASON: To correct incorrect cites.

4.9.201 PROCEDURAL RULES (1) The ~~committee~~ department herein adopts and incorporates the Attorney General's model rules as stated in ARM 1.3.101 through ~~4.3.234~~ 1.3.233, with any applicable deletions, modifications, and changes as set forth in ~~Chapter 9, Sub-Title 3 of Title 4~~ ARM Title 4, chapter 9, subchapter 4, and the department's public participation rules in ARM 4.2.201 through 4.2.204.

AUTH: ~~2-15-121~~ 80-11-205, MCA
IMP: ~~2-15-121~~ 2-4-202, MCA

REASON: The Administrative Rules of Montana need to be corrected to reflect current rule numbers. The Montana Code Annotated references were corrected to better reflect the authority to implement the rules. The public participation rules are being added because they were adopted by the department in 1980 after the committee's rules were adopted.

4.12.1502 COMMITTEE PROCEDURE (1) The ~~Montana mint committee~~ department herein adopts and incorporates the model procedural rules set out in ARM 1.3.101 through 1.3.233 and the department public participation rules set out in ARM 4.2.201 through 4.2.204 with any exceptions, modifications, and additions thereto, as the committee may from time to time adopt.

AUTH: ~~2-4-201~~, 80-11-403, MCA
IMP: ~~2-4-201~~, 80-11-403, MCA

REASON: The public participation rules were adopted by the department in 1980, after the board's rules were adopted, and need to be added.

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

NEW RULE I PUBLIC PARTICIPATION (1) The department adopts and incorporates by reference the public participation rules of the Department of Agriculture as set forth in ARM 4.2.201 through 4.2.204. A copy of these rules may be obtained from the Montana Department of Agriculture, 303 N. Roberts, P.O. Box 200201, Helena, MT 59620-0201.

AUTH: 2-15-121, 80-2-201, MCA
IMP: 2-3-103, MCA

REASON: The public participation rules are being added because they were adopted by the department in 1980 after the board's rules were adopted.

5. Concerned persons may submit their data, views, or arguments concerning the proposed actions orally or in writing to Cort Jensen at the Montana Department of Agriculture, 303 North Roberts, P.O. Box 200201, Helena, MT 59620-

0201; Fax: (406) 444-5409; or e-mail: agr@mt.gov. Any comments must be received no later than 5:00 p.m. on April 10, 2008.

6. The Department of Agriculture maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name, e-mail, and mailing address of the person and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to Montana Department of Agriculture, 303 North Roberts, P.O. Box 200201, Helena, MT 59620-0201; Fax: (406) 444-5409; or e-mail: agr@mt.gov or may be made by completing a request form at any rules hearing held by the Department of Agriculture.

7. An electronic copy of this Notice of Public Hearing on Proposed Amendment and Adoption is available through the department's web site at www.agr.mt.gov, under the Administrative Rules section. The department strives to make the electronic copy of the Notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

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

DEPARTMENT OF AGRICULTURE

/s/ Ron de Yong
Ron de Yong, Director

/s/ Cort Jensen
Cort Jensen
Rule Reviewer

Certified to the Secretary of State, March 3, 2008.

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

In the matter of the proposed	)	NOTICE OF PROPOSED
amendment of ARM 6.6.5221	)	AMENDMENT
regarding Small Business Health)	
Insurance Purchasing Pool and Tax	)	NO PUBLIC HEARING
Credits	)	CONTEMPLATED

TO: All Concerned Persons

1. On April 12, 2008, the department proposes to amend the above-stated rule.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the department not later than 5:00 p.m., April 10, 2008, to advise us of the nature of the accommodation that you need. Please contact Darla Sautter, State Auditor's Office, Helena, Montana, 59601; telephone (406) 444-2726; fax (406) 444-3497; or e-mail dsautter@mt.gov.

3. The rule as proposed to be amended provides as follows:

6.6.5221 WAITING LIST (1) Eligible small employers assigned to the waiting list must reapply on an annual basis, during the month of ~~October~~ May, in order to remain on the waiting list.

(2) remains the same.

AUTH: 33-22-2005, MCA

IMP: 33-22-2004, 33-22-2005, 33-22-2006, 33-22-2007, 33-22-2008, MCA

4. STATEMENT OF REASONABLE NECESSITY: The department is proposing this change in ARM 6.6.5221 because registrations for all renewals of purchasing pool participants are due during the month of October. Because of the volume of work, it is not possible to process waiting list "renewals" at that time also. During the month of May, Insure Montana staff will have adequate time to complete the task of processing eligibility forms for persons who wish to remain on the waiting list for the purchasing pool. In order to maintain an accurate waiting list, it is necessary to re-establish interest in and eligibility for the purchasing pool waiting list at least once a year.

5. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Christina L. Goe, State Auditor's Office, 840 Helena Avenue, Helena, Montana, 59601, no later than April 10, 2008.

6. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Darla Sautter at the above address no later than April 10, 2008.

7. 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. Ten percent of those directly affected has been determined to be 28 based on 280 individuals on the interested persons list.

8. All parties interested in receiving notification of any change in rules pertaining to this subject should contact the Rule Reviewer in writing at the address shown above.

9. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled. The bill sponsor, David Wanzenreid, was notified by regular mail on March 3, 2008.

/s/ Carol Roy
Carol Roy
Rule Reviewer

/s/ Christina L. Goe
Christina L. Goe
Chief Legal Counsel
State Auditor's Office

Certified to Secretary of State March 3, 2008.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of ARM)	NOTICE OF EXTENSION OF
17.30.617 and 17.30.638 pertaining to)	COMMENT PERIOD ON
outstanding resource water designation)	PROPOSED AMENDMENT
for the Gallatin River)	
)	(WATER QUALITY)

TO: All Concerned Persons

1. On October 5, 2006, the Board of Environmental Review published MAR Notice No. 17-254 regarding a notice of public hearing on the proposed amendment of the above-stated rules at page 2294, 2006 Montana Administrative Register, issue number 19. On March 22, 2007, the board published MAR Notice No. 17-257 regarding a notice of extension of comment period on the proposed amendment of the above-stated rules at page 328, 2007 Montana Administrative Register, issue number 6. On September 20, 2007, the board published MAR Notice No. 17-263 regarding a notice of extension of comment period on the proposed amendment of the above-stated rules at page 1398, 2007 Montana Administrative Register, issue number 18.

2. During the initial comment period, the board received a number of comments opposing adoption of the proposed rule amendments on grounds that the amended rules would render a number of properties in the Big Sky area undevelopable. The draft environmental impact statement on the proposed rule amendments indicates that the rule amendments would not preclude full development in the Big Sky area if certain mechanisms, such as central sewers and advanced treatment, are implemented. However, the record did not indicate whether regulatory or other means to require or facilitate implementation of these mechanisms are feasible. At the close of the initial comment period, the board was notified that the original petitioners for this rulemaking and developers were discussing means of accomplishing this goal. For that reason, the board extended the comment period to July 2, 2007. During the second comment period, the board received comments indicating that the discussions had been continuing, that progress was being made, and that an engineering feasibility study was underway. The commentors requested further extension of the comment period. The board granted their request and extended the comment period to January 4, 2008. On January 4, 2008, the board received a comment indicating that the feasibility study will be completed in May of 2008 and requesting that the comment period be further extended. The board has granted this request and is extending the comment period to July 18, 2008.

3. Written data, views, or arguments may be submitted to the board secretary at Board of Environmental Review, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana 59620-0901; faxed to (406) 444-4386; or e-mailed to ber@mt.gov, no later

than July 18, 2008. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

4. The board will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking action or need an alternative accessible format of this notice. If you require an accommodation, contact the board no later than 5:00 p.m., March 26, 2008, to advise us of the nature of the accommodation that you need. Please contact the board secretary at P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2544; fax (406) 444-4386; or e-mail ber@mt.gov.

Reviewed by:

BOARD OF ENVIRONMENTAL REVIEW

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

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

Certified to the Secretary of State, March 3, 2008.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the proposed adoption of) NOTICE OF PUBLIC HEARING
NEW RULE I procedure for providing) ON PROPOSED ADOPTION
notice to multi-game machine owners and)
lessees to connect to an approved)
accounting and reporting system)

TO: All Concerned Persons

1. On April 2, 2008, at 9:30 a.m., the Montana Department of Justice will hold a public hearing in the conference room at the Gambling Control Division, 2550 Prospect Avenue, Helena, Montana, to consider the proposed adoption of the above-stated rule.

2. The Department of Justice will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m. on March 27, 2008, to advise us of the nature of the accommodation that you need. Please contact Rick Ask, Gambling Control Division, 2550 Prospect Avenue, P.O. Box 201424, Helena, MT 59620-1424; telephone (406) 444-1971; fax (406) 444-9157; Montana Relay Service 711; or e-mail rask@mt.gov.

3. The proposed new rule provides as follows:

NEW RULE I PROCEDURE FOR PROVIDING NOTICE TO MULTI-GAME
MACHINE OWNERS AND LESSEES TO CONNECT TO AN APPROVED
ACCOUNTING AND REPORTING SYSTEM

(1) The department shall provide notification for connection to an approved system, as required by ARM 23.16.2101(3) and (4), according to the multi-county districts established by Executive Order 2-71 and Executive Order 7-73. The department shall give priority to those multi-county districts, or combination of districts where, as of March 1, 2008, the greatest number of video gambling machines committed by agreement to connect to an approved reporting system, but not yet connected, are located.

(2) The notification and begin-reporting schedule shall be as follows:

<u>District(s)</u>	<u>Notice Date</u>	<u>Begin-Reporting Date</u>
7	May 1, 2008	October 1, 2008
11	August 1, 2008	January 1, 2009
10	November 1, 2008	April 1, 2009
8, 12	February 1, 2009	July 1, 2009
5, 4	May 1, 2009	October 1, 2009
1, 2, 3	August 1, 2009	January 1, 2010
6, 9	November 1, 2009	April 1, 2010

(a) District 7 includes: Big Horn, Carbon, Stillwater, Sweet Grass, and Yellowstone counties. District 11 includes: Mineral, Missoula, and Ravalli counties. District 10 includes: Flathead, Lake, Lincoln, and Sanders counties. District 8 includes: Broadwater, Jefferson, and Lewis and Clark counties. District 12 includes: Beaverhead, Deer Lodge, Granite, Madison, Powell, and Silver Bow counties. District 5 includes: Cascade, Chouteau, Glacier, Pondera, Teton, and Toole counties. District 4 includes: Blaine, Hill, and Liberty counties. District 1 includes: Daniels, Phillips, Roosevelt, Sheridan, and Valley counties. District 2 includes: Dawson, Garfield, McCone, Prairie, Richland, and Wibaux counties. District 3 includes: Carter, Custer, Fallon, Powder River, Rosebud, and Treasure counties. District 6 includes: Fergus, Golden Valley, Judith Basin, Musselshell, Petroleum, and Wheatland counties. District 9 includes: Gallatin, Meagher, and Park counties.

(3) A machine owner who has received a notice to connect may request, in writing, one 90-day postponement of the begin-reporting date upon a demonstration, in writing, of hardship.

(4) A machine owner or lessee who chooses to not connect to an approved reporting system, as provided by these rules, must remove the multi-game software from the video gambling machines, and provide written notice to the department as required by ARM 23.16.1822, at least 30 days prior to the applicable begin-reporting date established in (2).

AUTH: 23-5-115, 23-5-621, MCA
IMP: 23-5-637, MCA

RATIONALE AND JUSTIFICATION: The proposed new rule is reasonable because it sets out a process by which video gambling machine owners and operators will be given notice to connect to, and begin reporting under, an approved reporting system as required by ARM 23.16.2101(3). The notification procedure established in the rule utilizes the state's multi-county districts which were specifically established to facilitate planning and program coordination, administration, and delivery of government services within the state. The rule will serve to give advance notice to machine owners and lessees, by multi-county district, of the times they will be called upon to connect to, and begin reporting under, an approved reporting system.

To implement the orderly and efficient notification process required by ARM 23.16.2101(3) and (4), the department examined, as of March 1, 2008, the number of video gambling machines within each of the multi-county districts which were committed by agreement to connect to an approved reporting system, but which had not yet connected. Because machine owners or lessees may voluntarily connect to an approved reporting system prior to receiving formal notification to do so, the rule establishes a schedule based upon the machine numbers identified on March 1, 2008. The schedule begins the notification process in the multi-county district where the greatest number of machines still obligated to connect to an approved reporting system are located. The schedule generally proceeds in descending order to the multi-county district or districts where the next highest number of machines still obligated to connect to an approved reporting system are located.

The division recognizes that circumstances may exist whereby the requirement to connect to an approved accounting system may pose a hardship. The rule, therefore, provides a means for machine owners or lessees to receive a 90 day postponement of the requirement to connect to, and begin reporting under, an approved system.

Finally, the rule recognizes some machine owners or lessees may choose to not connect to an approved system, and the rule provides procedures the machine owner or lessee must take to avoid their connection and reporting responsibilities under an approved accounting system.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Rick Ask, Gambling Control Division, 2550 Prospect Avenue, P.O. Box 201424, Helena, MT 59620-1424; fax (406) 444-9157; or e-mail rask@mt.gov, and must be received no later than April 10, 2008.

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

6. The Department of Justice maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices of rules regarding the Crime Control Division, the Central Services Division, the Forensic Sciences Division, the Gambling Control Division, the Highway Patrol Division, the Law Enforcement Academy, the Division of Criminal Investigation, the Legal Services Division, the Consumer Protection Division, the Motor Vehicle Division, the Justice Information Systems Division, or any combination thereof. 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 Rick Ask, 2550 Prospect Avenue, P.O. Box 201424, Helena, MT 59620-1424; fax (406) 444-9157; or e-mail rask@mt.gov, or may be made by completing a request form at any rules hearing held by the Department of Justice.

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

By: /s/ Mike McGrath
MIKE McGRATH
Attorney General, Department of Justice

/s/ Ali Bovingdon
ALI BOVINGDON
Rule Reviewer

Certified to the Secretary of State March 3, 2008.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the proposed amendment) NOTICE OF PUBLIC HEARING
of ARM 24.101.413 renewals and) ON PROPOSED AMENDMENT
24.154.401 fees)
) (Licensed Addiction Counselors)

TO: All Concerned Persons

1. On April 3, 2008, 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 Licensed Addiction Counselors Program (program) no later than 5:00 p.m., on March 28, 2008, to advise us of the nature of the accommodation that you need. Please contact Cyndi Breen, Licensed Addiction Counselors Program, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2392; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail dlibsdlac@mt.gov.

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

24.101.413 RENEWAL DATES AND REQUIREMENTS (1) through (5)(p) remain the same.

	BOARD OR PROGRAM JURISDICTION	LICENSE CATEGORY	FREQUENCY	RENEWAL DATE
(q)	Licensed Addiction Counselors	Licensed Addiction Counselor	Biennially <u>Annually</u>	June 30

(r) through (7) remain the same.

AUTH: 37-1-101, 37-1-141, MCA
IMP: 37-1-101, 37-1-141, MCA

REASON: The department determined that reasonable necessity exists to amend this rule changing the renewal frequency from biennially to annually to make the budgeting process more straightforward. Annual collection of license revenue complies with the Department of Administration's fiscal guidelines regarding recording revenue. Entities that renew on a biennial schedule and receive their entire renewal revenue in one year must hold half of the revenue and record it in the

second year of the renewal cycle in order to avoid budget shortfalls. Annual renewal will eliminate the need to defer half the revenue until the following year, thereby simplifying the accounting process.

<u>24.154.401 FEE SCHEDULE</u> (1) remains the same.	
(a) <u>Original Examination Application</u>	\$200
(b) <u>Renewal</u>	135
(b) <u>Original Endorsement Application</u>	200
(c) <u>Oral examination/reexamination</u>	200
(c) <u>Original License</u>	50
(d) <u>Active Renewal</u>	150
(e) <u>Inactive Renewal</u>	65
(2) and (3) remain the same.	

AUTH: 37-1-131, 37-1-134, 37-35-103, MCA

IMP: 37-1-131, 37-1-134, 37-1-141, 37-35-103, 37-35-202, MCA

REASON: It is reasonably necessary to amend this rule to ensure the program's fees remain at a level commensurate with associated costs as required by 37-1-134, MCA, and to comply with recommendations of the Legislative Auditor. The department has not increased the program's fees since 2003 and currently collects license renewal fees on a biennial basis, which has not proven cost effective. In addition, the program had been partially funded by the Department of Public Health and Human Services' Addictive and Mental Disorders Division and this funding ceased at fiscal year (FY) end 2007. The proposed annual renewal fees will adequately cover program costs and allow the program to reach and maintain a stable financial position.

The department is eliminating the oral examination from the fee rule in response to a 2005 legislative amendment to 37-35-202, MCA. The 2005 Montana Legislature enacted Chapter 126, Laws of 2005 (House Bill 203), an act revising professional and occupational licensing laws. The bill was signed by the Governor on March 30, 2005, and became effective on July 1, 2005. The amended statute specifies that applicants must complete a competency examination "in writing only," and this rule is being amended accordingly.

In addition, the department is proposing a new fee for inactive status licensure renewal. Following requests from licensees, the department determined it is reasonably necessary to allow for inactive status renewal and is amending this rule accordingly.

It is estimated that the proposed fee changes will affect approximately 580 licensees and applicants and will result in a cumulative annual increase in program revenue of \$47,365.00.

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 Licensed Addiction Counselors Program, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or

by e-mail to dlibsdlac@mt.gov, and must be received no later than 5:00 p.m., April 11, 2008.

5. An electronic copy of this Notice of Public Hearing is available through the department and program's site on the World Wide Web at www.lac.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 Licensed Addiction Counselors Program maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this program. 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 Licensed Addiction Counselors Program 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 Licensed Addiction Counselors Program, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2305, e-mailed to dlibsdlac@mt.gov, or made by completing a request form at any rules hearing held by the agency.

7. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was notified on January 29, 2008, by regular mail.

8. Anjeanette Lindle, attorney, has been designated to preside over and conduct this hearing.

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

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

Certified to the Secretary of State March 3, 2008

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

In the matter of the proposed amendment) NOTICE OF PUBLIC HEARING
of ARM 24.174.301 definitions, 24.174.401) ON PROPOSED AMENDMENT
fee schedule, 24.174.1122 ambulatory)
surgical facilities, and 24.174.2104)
continuing education)

TO: All Concerned Persons

1. On April 3, 2008, at 9:00 a.m., a public hearing will be held in room 439, 301 South Park Avenue, Helena, Montana to consider the proposed amendment of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Pharmacy (board) no later than 5:00 p.m., on March 28, 2008, to advise us of the nature of the accommodation that you need. Please contact Ronald J. Klein, Board of Pharmacy, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2371; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail dlibsdp@mt.gov.

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

24.174.301 DEFINITIONS In addition to the terms defined in 37-7-101, MCA, the following definitions apply to the rules in this chapter.

~~(1) "Ambulatory surgical facility " means "outpatient center for surgical services" as defined at 50-5-101, MCA.~~

(2) through (25) remain the same but are renumbered (1) through (24).

(25) "Outpatient center for surgical services" is as defined at 50-5-101, MCA.

(26) through (36) remain the same.

AUTH: 37-1-131, 37-7-201, 50-32-314, MCA

IMP: 37-7-102, 37-7-201, 37-7-301, 37-7-321, 37-7-406, 37-7-603, 37-7-604, 37-7-605, 50-32-314, MCA

24.174.401 FEE SCHEDULE

(1) through (19) remain the same.

(20) ~~Ambulatory surgical facility~~ Outpatient center for surgical services
(original or renewal)

(21) remains the same.

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

24.174.1122 AMBULATORY SURGICAL FACILITIES OUTPATIENT CENTERS FOR SURGICAL SERVICES (1) The board shall annually register and inspect all ~~ambulatory surgical facilities~~ outpatient centers for surgical services in Montana, regardless of pharmacy status.

(2) In an ~~ambulatory surgical facility~~ outpatient center for surgical services without an on-site pharmacy, drug distribution must be directed by a physician or consulting pharmacist licensed to practice in Montana and who is responsible for the security, storage, and distribution of drugs within the facility.

(3) and (4) remain the same.

AUTH: 50-32-314, MCA
IMP: 50-32-314, MCA

REASON: The board determined it is reasonably necessary to amend ARM 24.174.301, 24.174.401, and 24.174.1122 to match terminology used in statute. The 2007 Montana Legislature enacted Chapter 502, Laws of 2007 (Senate Bill 153), an act revising professional and occupational licensing laws. The bill was signed by the Governor on May 16, 2007, and became effective on October 1, 2007. This legislation changed the term "ambulatory surgical facility" to "outpatient center for surgical services." The rules are being amended to reflect current terminology.

24.174.2104 REGISTERED PHARMACIST CONTINUING EDUCATION - REQUIREMENTS (1) remains the same.

(2) The board will require 1.5 CEU for each fiscal year, July 1 to June 30.

(a) This requirement will not pertain to a pharmacist who is applying for his or her the first license renewal after initial licensure in Montana.

(i) Pharmacists previously licensed in another state are not exempt from this requirement.

(b) ~~Only an additional 1.5 CEU may be accumulated and applied to the following year.~~ Each pharmacist licensed in Montana shall complete 1.5 CEU during each fiscal year period. No CEU credit may be carried over from a preceding fiscal year.

(c) and (3) remain the same.

(4) Every pharmacist is responsible for maintaining in their personal files certificates or records of credit from acceptable continuing education activities attended and/or completed. Such records shall be maintained for the preceding two fiscal years.

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

REASON: It is reasonable and necessary to amend this rule and modify the registered pharmacist continuing education (CE) requirements. The board is

amending this rule to clarify the time period for CE to be obtained for license renewal and eliminate the carryover of CE units to the next renewal period. The board is proposing these changes to ensure that each Montana licensed pharmacist obtains the required CE during each licensure period and reduce the possibility of fraud by licensees claiming the same CE for two consecutive licensure periods.

The board is also amending (2)(a) to clarify that the first-renewal CE exemption does not apply to pharmacists previously licensed in another state. It has always been the board's intent that only pharmacists receiving their initial licensure as a pharmacist in Montana be exempt from CE at the first renewal cycle. The board is amending (2)(a) to clarify the exemption and address questions and confusion from several licensees at each renewal.

The board is adding (4) to set forth individual pharmacist CE record keeping requirements. Following recent CE audit experiences, the board concluded that better record keeping standards are necessary to enable board staff to obtain the necessary documentation and adequately conduct CE compliance audits. The rule is further amended to substitute gender neutral terms for gender specific language.

4. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Pharmacy, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to dlibsdp@mt.gov, and must be received no later than 5:00 p.m., April 11, 2008.

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

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

7. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was notified on January 28, 2008, by regular mail.

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

BOARD OF PHARMACY
JAMES CLOUD, CPHT, PRESIDENT

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

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

Certified to the Secretary of State March 3, 2008

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
AND THE BOARD OF PRIVATE ALTERNATIVE ADOLESCENT
RESIDENTIAL OR OUTDOOR PROGRAMS
STATE OF MONTANA

In the matter of the proposed amendment) NOTICE OF PUBLIC HEARING
of ARM 24.101.413 renewal, 24.181.401) ON PROPOSED AMENDMENT
registration fee schedule, and adoption of) AND ADOPTION
NEW RULE I fee abatement, NEW RULE)
II licensing fee schedule, and NEW RULE)
III renewals)

TO: All Concerned Persons

1. On April 7, 2008, at 9:00 a.m., a public hearing will be held in room 439, 301 South Park Avenue, Helena, Montana to consider the proposed amendment 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 Private Alternative Adolescent Residential or Outdoor Programs (board) no later than 5:00 p.m., on April 2, 2008, to advise us of the nature of the accommodation that you need. Please contact Cyndi Breen, Board of Private Alternative Adolescent Residential or Outdoor Programs, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2392; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail dlibsdpap@mt.gov.

3. GENERAL STATEMENT OF REASONABLE NECESSITY: The 2005 Montana Legislature enacted Chapter 294, Laws of 2005 (House Bill 628). The purpose of the 2005 legislation was to examine the benefit of licensing private alternative adolescent residential or outdoor programs as a public service to monitor and maintain a high standard of care and to ensure the safety and well-being of the adolescents and parents using the programs. The board subsequently promulgated rules to implement the provisions of this legislation.

Following the completion of the registration process accomplished under 37-48-103, MCA, and the subsequent report written by the board, the 2007 Legislature concluded that the licensing and regulation of private alternative adolescent residential or outdoor programs is necessary as a public service to monitor and maintain a high standard of care and to ensure the safety and well-being of the adolescents and parents using the programs. The 2007 Montana Legislature enacted Chapter 178, Laws of 2007 (House Bill 769), an act requiring mandatory registration and licensure of these programs; allowing for provisional licensing; providing for background investigations of certain employees and managers and allowing for a waiver; directing the department to adopt rules regarding program criteria; requiring department inspection of the programs for licensure and every

three years; allowing inspections in response to complaints; providing penalties and notification procedures; revising definitions; establishing criteria for ensuring public health and safety for program participants; and requiring proof of insurance.

It is reasonable and necessary to amend and adopt the following rules to establish renewal dates and program licensure fees to comply with the provisions of 37-1-134, MCA, and to keep the board's fees commensurate with program costs. The proposed rule changes are necessary to establish sufficient licensure fees to enable the board to effectively operate and further implement the 2007 legislation. Additional rules will follow as acted upon by the board.

4. The department is proposing to amend the following rule. The rule proposed to be amended provides as follows, stricken matter interlined, new matter underlined:

24.101.413 RENEWAL DATES AND REQUIREMENTS (1) through (5)(z) remain the same.

	BOARD OR PROGRAM JURISDICTION	LICENSE CATEGORY	FREQUENCY	RENEWAL DATE
(aa)	<u>Private Alternative Adolescent Residential or Outdoor Programs</u>	<u>Program</u>	<u>Annually</u>	<u>June 30</u>

(aa) through (7) remain the same but are renumbered (ab) through (7).

AUTH: 37-1-101, 37-1-141, MCA
 IMP: 37-1-101, 37-1-141, MCA

REASON: It is reasonable and necessary to amend this rule to include the board's renewal requirements in the division renewal rule to comply with 37-1-141, MCA, which requires that license renewal dates be set by department rule.

5. The board is proposing to amend the following rule. The rule proposed to be amended provides as follows, stricken matter interlined, new matter underlined:

24.181.401 REGISTRATION FEE SCHEDULE (1) All programs must register prior to being licensed.

~~(4)~~(2) The registration fee covers a ~~two~~ one year period.

~~(2)~~(3) Registration fees are calculated according to the program's average daily census:

- | | |
|-------------------------------|------------------------------|
| (a) 0-10 participants | \$ 750 <u>500</u> |
| (b) 11-50 participants | 1,750 <u>3000</u> |
| (c) 51-100 participants | 2,000 <u>6000</u> |
| (d) 101 and more participants | 3,000 <u>9000</u> |

~~(3)~~(4) All existing programs must be registered within 30 days of the adoption of these rules. For any program previously registered under the 2005 legislation and which registers between [the effective date of these rules] and June 30, 2008, such program will have until June 30, 2009, in which to complete the registration requirements.

(5) All programs registering between [the effective date of these rules] and June 30, 2008, are required, at the same time they submit their registration application and registration fee, to submit their provisional licensing fee.

(6) For any program registering at any time between July 1, 2008, and June 30, 2009, such program shall pay both their registration fee and their provisional licensing fee at the same time. The provisional licensing fee shall cover the period up to and including June 30, 2009.

(7) Any program that is registered and/or licensed (provisional or otherwise) during the period between July 1, 2008, and June 30, 2009, will be required to renew the license on or before June 30, 2009.

~~(4)~~(8) All fees provided for in this rule are nonrefundable and are not prorated for portions of the registration period.

AUTH: 37-1-131, 37-48-103, MCA

IMP: 37-1-134, 37-48-103, 37-48-107, MCA

REASON: The board determined it is reasonable and necessary to amend this rule to ensure board fees remain commensurate with associated costs as required by 37-1-134, MCA, and to generate timely needed revenue. It is estimated that 24 programs will be affected by the proposed fee changes and result in additional annual board revenue of \$70,000. Authority and implementation cites are being amended to accurately reflect all statutes implemented through the rule and provide the complete sources of the board's rulemaking authority.

6. The proposed new rules provide as follows:

NEW RULE I FEE ABATEMENT (1) The Board of Private Alternative Adolescent Residential or Outdoor Programs adopts and incorporates by reference the fee abatement rule of the Department of Labor and Industry found at ARM 24.101.301.

AUTH: 37-1-131, 37-48-103, MCA

IMP: 17-2-302, 17-2-303, 37-1-134, MCA

REASON: It is reasonably necessary to adopt and incorporate by reference ARM 24.101.301 to allow the board to authorize the department to perform renewal licensure fee abatements as appropriate and when needed, without further vote or action by the board. The department previously adopted ARM 24.101.301 to implement a means for the prompt elimination of excess cash accumulations in the licensing programs operated by the department.

NEW RULE II LICENSING FEE SCHEDULE (1) Programs will be licensed annually. Beginning July 1, 2009, the annual period will run from July 1 to June 30 of the following year.

(2) Licensing fees are calculated according to the program's average daily census:

- | | |
|-------------------------------|--------|
| (a) 0-10 participants | \$ 260 |
| (b) 11-50 participants | 800 |
| (c) 51-100 participants | 1600 |
| (d) 101 and more participants | 2400 |

(4) All fees provided for in this rule are nonrefundable and are not prorated for portions of the licensing period.

AUTH: 37-1-131, 37-48-103, MCA

IMP: 37-1-134, 37-48-103, 37-48-106, MCA

REASON: The board determined it is reasonable and necessary to adopt this rule to establish licensure fees commensurate with associated costs as required by 37-1-134, MCA, and to generate timely needed and adequate revenue to enable the board and department to implement the 2007 legislation. It is estimated that 24 programs will be affected by the proposed new licensure fees and result in \$19,680 of additional annual revenue.

NEW RULE III RENEWALS (1) Beginning in calendar year 2009, renewal notices will be sent as specified in ARM 24.101.414.

(2) All licenses must be renewed pursuant to 37-1-141, MCA. The renewal date is set by ARM 24.101.413.

(3) The licensing renewal fees are calculated according to the program's average daily census:

- | | |
|-------------------------------|--------|
| (a) 0-10 participants | \$ 760 |
| (b) 11-50 participants | 3800 |
| (c) 51-100 participants | 7600 |
| (d) 101 and more participants | 11,400 |

(4) All fees provided for in this rule are nonrefundable and are not prorated for portions of the licensing period.

(5) Renewals that are in any manner incomplete on receipt by the department will be returned to the licensee for completion and resubmission. To be considered complete, the renewal must be accompanied by:

(a) the appropriate renewal fee. Checks returned to the department for any reason will be returned to the licensee for payment. The license will be considered not renewed until proper payment is received; and

(b) any other material or documentation the board may require for renewal as identified on the renewal notice.

(6) Completed renewals submitted to the board after the date specified in ARM 24.101.413 shall be considered late and subject to a late penalty fee as specified in ARM 24.101.403.

(7) The provisions of ARM 24.101.408 apply.

AUTH: 37-1-131, 37-48-103, MCA
IMP: 37-1-131, 37-1-134, 37-1-141, MCA

REASON: The board determined it is reasonable and necessary to adopt this rule to set forth program licensure renewal fees and requirements and generate timely needed revenue. Section 37-1-134, MCA, requires the board set licensure and renewal fees commensurate with associated costs. It is estimated that 24 programs will be affected by the new renewal fees and result in \$89,680 of additional annual revenue.

7. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Private Alternative Adolescent Residential or Outdoor Programs, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to dlibsdpap@mt.gov, and must be received no later than 5:00 p.m., April 15, 2008.

8. 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.paarp.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.

9. The Board of Private Alternative Adolescent Residential or Outdoor Programs maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies the person wishes to receive notices regarding all Board of Private Alternative Adolescent Residential or Outdoor Programs 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 Private Alternative Adolescent Residential or Outdoor Programs, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2305, e-mailed to dlibsdpap@mt.gov, or made by completing a request form at any rules hearing held by the agency.

10. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was notified on February 11, 2008, by regular mail.

11. Mike McCabe, attorney, has been designated to preside over and conduct this hearing.

BOARD OF PRIVATE ALTERNATIVE
ADOLESCENT RESIDENTIAL OR
OUTDOOR PROGRAMS
MICHELE MANNING, CHAIRPERSON

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

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

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

Certified to the Secretary of State March 3, 2008

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

In the matter of the adoption of New	)	NOTICE OF PUBLIC HEARING
Rules I through IX, the amendment of	)	ON PROPOSED ADOPTION,
ARM 37.81.104, 37.81.301, 37.81.304,	)	AMENDMENT, AND REPEAL
37.81.307, 37.81.310, 37.81.318,)	
37.81.322, 37.81.338, 37.81.346, and)	
the repeal of ARM 37.81.9004,)	
37.81.9005, 37.81.9006, 37.81.9009,)	
and 37.81.9010 pertaining to the)	
Pharmacy Access Prescription Drug)	
Benefit Program (Big Sky Rx))	

TO: All Interested Persons

1. On April 4, 2008 at 10:30 a.m., the Department of Public Health and Human Services will hold a public hearing in the Wilderness Room, 2401 Colonial Drive, Helena, Montana, to consider the proposed adoption, amendment, and repeal of the above-stated rules.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process (including reasonable accommodations at the hearing site) or who need an alternative accessible format of this notice. If you need an accommodation, contact the department no later than 5:00 p.m. on March 24, 2008. Please contact Rhonda Lesofski, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena MT 59604-4210; telephone (406)444-4094; fax (406)444-1970; e-mail dphhslegal@mt.gov.

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

RULE I MONTANA PHARMASSIST PROGRAM (1) The rules in this chapter implement the Prescription Drug Consumer Information and Technical Assistance Program established in 53-6-1006, MCA. This program is referred to in these rules as the Montana PharmAssist Program.

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

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

(1) "Application" means the form developed by the department to provide the program with client specific information.

(2) "Authorized client" means an applicant has met all the Montana PharmAssist authorization criteria stated in [RULE V].

(3) "Chronic disease" means cardiovascular disease, chronic respiratory disease, diabetes mellitus, and geriatric issues.

(4) "Client inventory form" means a form developed by the department to include pertinent client and health information.

(5) "Continuing education (CE)" means an initial six-hour and annual two-hour CE program meeting the requirements of [RULE IX], 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).

(6) "Credentialed pharmacist" means a Montana licensed pharmacist in good standing who has completed the required continuing education and has a current personal service contract with the department.

(7) "Department" means the Department of Public Health and Human Services.

(8) "Eligible client" means an applicant has met all the Montana PharmAssist eligibility criteria stated in [RULE V].

(9) "First in first served" means completed applications will be processed and eligible applicants will be referred to a pharmacist for services based upon the date received.

(10) "Personal service contract" means the contract between the department and the credentialed pharmacist.

(11) "PharmAssist patient packet" means an application, a signed Acknowledgement of Receipt of Notice of Privacy Practices, and a Client Inventory Form.

(12) "Qualified" means an applicant has met all the Montana PharmAssist qualification criteria stated in [RULE V].

(13) "Residing" means living in Montana voluntarily with the intention of making a home in the state and not for a temporary purpose.

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

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

RULE III MONTANA PHARMASSIST SCOPE AND PURPOSE

(1) Beginning July 15, 2007, Montana residents may request applications for referral to a credentialed pharmacist for review of their medication regimens to address medication cost and the proper and prudent use of their medications. Clients who have applied and whose personal circumstances warrant a referral will be referred to a pharmacist for a drug regimen review and face-to-face interactions to identify therapeutic duplications and possible cost saving alternatives. The pharmacist will schedule and perform a face-to-face consultation and provide recommendations for the client to discuss with their prescriber. Upon completion, the client, their prescribers, and department representatives will receive a letter prepared by the pharmacist outlining the face-to-face discussion. The letter will include the pharmacist's recommendations for the possible alternatives available for the client. Clients are encouraged to discuss the pharmacist's recommendations with their prescribers prior to making any changes.

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

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

RULE IV AMOUNT OF PHARMASSIST BENEFIT (1) If eligible for Montana PharmAssist, a client may receive up to \$200 of pharmacist services per 12 month period as outlined in the pharmacist's Personal Service Contract. Services will include an initial face-to-face consultation and may include follow-up services if warranted and approved by the department or its designee. All expenditures are contingent on available appropriations.

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

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

RULE V ELIGIBILITY FOR MONTANA PHARMASSIST (1) An applicant must be qualified, eligible, and authorized to receive pharmacist services.

(2) To qualify, an applicant must have a chronic disease and either:

(a) take four or more medications; or

(b) have a condition or health issue determined by the screening pharmacist that provides an opportunity for benefit.

(3) To be eligible, an applicant must be residing in the state of Montana.

(4) To be authorized, an applicant must submit a completed PharmAssist Patient Packet, to include:

(a) an application;

(b) a signed Acknowledgement of Receipt of Notice of Privacy Practices; and

(c) a Client Inventory Form.

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

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

RULE VI PROCESSING MONTANA PHARMASSIST APPLICATIONS

(1) The department or its designee will process PharmAssist Patient Packets on a first in first served basis using the date the complete package is received.

(2) Authorized clients will be referred to a pharmacist for services.

(3) Applicants failing to meet criteria defined in [RULE V] will be notified in writing.

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

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

RULE VII MAINTENANCE OF A WAITING LIST FOR THOSE DETERMINED ELIGIBLE FOR MONTANA PHARMASSIST (1) The department will process PharmAssist Patient Packets and notify eligible individuals in writing if no available program slot exists, either due to lack of appropriations or credentialed pharmacists in their region.

(2) Eligible individuals will have their names maintained on a waiting list until program slots become available.

(3) When program slots become available, clients will be referred to a credentialed pharmacist for services on a first in first served basis.

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

RULE VIII MONTANA PHARMASSIST GRIEVANCE AND APPEAL PROCEDURES (1) All decisions of the department related to the administration of the Montana PharmAssist are reviewable using the procedures in ARM 37.5.101, 37.5.304, 37.5.307, 37.5.313, 37.5.318, 37.5.322, 37.5.325, 37.5.328, 37.5.331, and 37.5.334.

(2) An aggrieved applicant may request a fair hearing in writing within 90 days. The request must be mailed to the Department of Public Health and Human Services, Quality Assurance Division, Office of Fair Hearings, P.O. Box 202953, Helena, MT 59620-2953.

(3) If a written request for hearing is received by the department more than 90 days after the mailing date of a notice of denial, the hearing officer must deny a hearing as provided in ARM 37.5.313.

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

RULE IX 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.

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

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

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

(1) through (8) remain the same.

(9) "Eligibility threshold" means Big Sky Rx ~~p~~Program income up to 200% of FPL.

(10) through (26) remain the same.

(27) "Program" means the Big Sky Rx ~~p~~Program administered by the department.

(28) through (31) remain the same.

(32) "Temporary enrollment" means the three month enrollment allowed for those applicants that are only missing Social Security Extra Help determination.

~~(32)~~ (33) "Unearned income" means any income other than salary, wages, and earnings from self-employment.

~~(33)~~ (34) "Waiting list" means the list compiled by the department of applicants who are eligible for premium assistance but who are not enrolled in the Big Sky Rx ~~p~~Program because funds are not available to pay their program benefits.

AUTH: 53-2-201, 53-6-1004, MCA

IMP: 53-2-201, 53-6-1001, 53-6-1004, 53-6-1005, MCA

37.81.301 BIG SKY RX SCOPE AND PURPOSE (1) ~~Beginning On~~ January 1, 2006, Medicare Prescription Drug Plans (PDPs) ~~will be~~ became available to people with Medicare. This is a voluntary federal program created by the Medicare Prescription Drug Improvement and Modernization Act of 2003 (MMA) 42 USC 1302, 1395w-101 through 1395w-152, and 1395hh. It is referred to as "Medicare Part D" in these rules and implemented in 42 CFR ~~P~~part 423.

(2) remains the same.

(3) The purpose of Montana's Big Sky Rx ~~p~~Program is to pay a portion or all of the cost of the PDP premium for eligible Montana residents.

(4) and (5) remain the same.

AUTH: 53-2-201, 53-6-1004, MCA

IMP: 53-2-201, 53-6-1001, 53-6-1004, 53-6-1005, MCA

37.81.304 AMOUNT OF THE BIG SKY RX BENEFIT (1) remains the same.

(a) If a portion of the applicant's PDP premium is paid through the Extra Help ~~p~~Program, the Big Sky Rx ~~p~~Program will pay the applicant's portion of the PDP premium up to \$33.11 per month.

(b) Big Sky Rx does not pay for the cost of an enrollee's drugs or the cost of an enrollee's deductible, coinsurance, or copayments.

(c) All expenditures are contingent on legislative appropriation. The amount of the monthly benefit, \$33.11, ~~is determined based on the maximum Extra Help benefit. This amount~~ extends the Social Security Extra Help benefit amount to Montana residents with income up to 200% FPL. The department's total expenditure for the program will be based on appropriation and the number of enrolled applicants.

AUTH: 53-2-201, 53-6-1004, MCA

IMP: 53-2-201, 53-6-1001, 53-6-1004, 53-6-1005, MCA

37.81.307 ELIGIBILITY FOR BIG SKY RX (1) through (2)(b) remain the same.

~~(3) If a qualified applicant's income is at or below 150% of FPL and the applicant has assets of less than \$11,500 for a single person and \$23,000 if married and living together, then the applicant must provide a determination from Social Security Extra Help. An applicant who meets the eligibility requirements for Social Security Extra Help as outlined in 42 CFR 423.773 (2007), which is adopted and incorporated by reference, must provide a determination from Social Security Extra Help.~~

(4) An individual who is receiving benefits for Medicaid is not eligible for the

Big Sky Rx pProgram.

- (5) through (7) remain the same.
- (8) Program enrollment and eligibility terminates will terminate at the end of the month in which for any of the following events occur:
 - (a) the enrollee becomes Medicaid eligible;
 - (b) by eligibility income verification, the enrollee's income is found to exceed 200% of the FPL;
 - (c) remains the same.
 - (d) the enrollee did not provide an eExtra hHelp determination, if appropriate, or reapply for eExtra hHelp;
 - (e) through (g) remain the same.
- (9) Termination of the benefit amount will be effective at the end of the month ~~that~~ and a notice of termination is given will be mailed to the enrollee.
- (10) remains the same.

AUTH: 53-2-201, 53-6-1004, MCA

IMP: 53-2-201, 53-6-1001, 53-6-1004, 53-6-1005, MCA

37.81.310 INCOME AND FAMILY SIZE CRITERIA FOR BIG SKY RX

- (1) and (2) remain the same.
- (3) Unearned income includes Social Security benefits, veterans benefits, railroad benefits, public and private pensions, annuities, workers' compensation, alimony, child support, unemployment, income from a trust, net rental income, dividends, interest, and inheritances.
- (4) through (7) remain the same.

AUTH: 53-2-201, 53-6-1004, MCA

IMP: 53-2-201, 53-6-1001, 53-6-1004, 53-6-1005, MCA

37.81.318 PROCESSING BIG SKY RX PARTICIPANT APPLICATIONS

- (1) through (1)(b) remain the same.
- (2) Applications will be processed by the department and individuals will be notified in writing of their eligibility status as:
 - (a) through (d) remain the same.
 - (e) eligible and on the waiting list for the Big Sky Rx pProgram.
- (3) A completed application consists of:
 - (a) a signed Big Sky Rx application form with the following information:
 - (i) through (vi) remain the same.
 - ~~(vii)~~ street address;
 - ~~(viii)~~ (vii) mailing address;
 - ~~(ix)~~ (viii) family size;
 - ~~(x)~~ (ix) family income;
 - ~~(xi)~~ (x) gross wages;
 - ~~(xii)~~ (xi) family assets;
 - ~~(xiii)~~ (xii) in-kind support;
 - ~~(xiv)~~ (xiii) disability or blind related work expense;
 - ~~(xv)~~ (xiv) name of applicants' PDP; and

~~(xvi)~~ (xv) payment option of direct deposit or mail if applicant wishes to be paid directly.

(4) and (5) remain the same.

(6) An applicant who meets the eligibility requirements for Social Security Extra Help and is missing no other program requirement will receive a three month temporary enrollment. Within three months a temporary enrollee must provide documentation of a Social Security Extra Help determination, if the applicant has family income at or below 150% FPL and assets of less than \$11,500 if single or \$23,000 if married and living together. If no documentation is provided, the temporary enrollee will be disenrolled.

(7) and (8) remain the same.

(9) Qualified but incomplete applications will be marked "pending" until the applicant provides the PDP information and, if appropriate, ~~the Social Security Extra Help determination~~ and any missing application material.

(a) The applicant will be ~~notified~~ mailed a notice that the application is pending. The application will be held for 60 ~~business~~ days from the ~~date of the notice application date~~. Following the 61st ~~business~~ day, a notice will be ~~sent~~ mailed to the applicant as a reminder of the missing information.

(b) The application will remain "pended" until the information can be processed. If the information is still missing on the 91st ~~business~~ day following the ~~original notice application date~~, the department will consider the applicant ineligible and the individual will be ~~notified~~ mailed a notice. The department will take no further action.

(10) Incomplete applications that are not otherwise qualified are considered "pending" by the department. These individuals will be ~~notified~~ mailed a notice of the missing information.

(a) A pended application will be held for 30 ~~business~~ days waiting for missing information. If the missing information is received within the 30 ~~business~~ days from the ~~date of the notice application date~~, the application will be processed.

(b) Following the 31st ~~business~~ day the department will consider the application incomplete. The applicant becomes ineligible, and will be ~~notified~~ mailed a notice. The department will take no further action.

(11) remains the same.

(12) Program enrollment starts the first day of the following month. Enrollees will be ~~sent~~ mailed an enrolled notice, including the approved premium benefit amount. The premium benefit amount will be paid to the PDP or the individual for the following month.

(13) If no premium assistance is available because of funding, eligible individuals will be placed on the department's waiting list. If funds become available, a notice will be ~~sent~~ mailed and the applicant will be enrolled.

AUTH: 53-2-201, 53-6-1004, MCA

IMP: 53-2-201, 53-6-1001, 53-6-1004, 53-6-1005, MCA

37.81.322 BIG SKY RX APPLICATION RENEWAL (1) Sixty days prior to the end of the 12-month eligibility period, a prepopulated notice will automatically be generated and ~~sent~~ mailed to the client. This notice is generated based on the

eligibility enrollment determination date.

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

AUTH: 53-2-201, 53-6-1004, MCA

IMP: 53-2-201, 53-6-1001, 53-6-1004, 53-6-1005, MCA

37.81.338 VERIFICATION OF ELIGIBILITY FOR BIG SKY RX (1) remains the same.

(2) An individual will have ~~20 business~~ 30 days from the date of the written request by the department to submit the required income documentation. The client will remain enrolled during the verification process.

(a) If the required documentation is not received by the department after ~~20~~ 30 days, the enrolled individual will be disenrolled from the program the following month.

(b) An individual who provides income verification documentation after ~~21 business~~ 30 days will have the application reprocessed as if it is a new application.

(3) through (4)(h) remain the same.

AUTH: 53-2-201, 53-6-1004, MCA

IMP: 53-2-201, 53-6-1001, 53-6-1004, 53-6-1005, MCA

37.81.346 BIG SKY RX PDP CONTRACTS MEMORANDUM OF UNDERSTANDING (MOU) AND BUSINESS ASSOCIATES AGREEMENT (BAA)

(1) An insurer receiving direct payment of all or part of a PDP premium from the state on behalf of an enrollee must enter into a ~~contract~~ Memorandum of Understanding (MOU) and Business Associates Agreement (BAA) with the department.

AUTH: 53-2-201, 53-6-1004, MCA

IMP: 53-2-201, 53-6-1001, 53-6-1004, 53-6-1005, MCA

5. The rules as proposed to be repealed provide as follows:

37.81.9004 APPLICATION FOR MEDICARE PART D LOW INCOME PREMIUM AND COST SHARING SUBSIDIES (LIS), is found on page 37-18231 of the Administrative Rules of Montana.

AUTH: 53-2-201, MCA

IMP: 53-2-201, MCA

37.81.9005 PROCESSING OF APPLICATIONS FOR LIS, is found on page 37-1832 of the Administrative Rules of Montana.

AUTH: 53-2-201, MCA

IMP: 53-2-201, MCA

37.81.9006 EFFECTIVE DATE OF ELIGIBILITY FOR LIS, is found on page

37-18233 of the Administrative Rules of Montana.

AUTH: 53-2-201, MCA

IMP: 53-2-201, MCA

37.81.9009 REDETERMINATIONS OF ELIGIBILITY FOR LIS, is found on page 37-18237 of the Administrative Rules of Montana.

AUTH: 53-2-201, MCA

IMP: 53-2-201, MCA

37.81.9010 APPEAL PROCESS FOR LIS APPLICATIONS, is found on page 37-18238 of the Administrative Rules of Montana.

AUTH: 53-2-201, MCA

IMP: 53-2-201, MCA

6. The 2005 Montana Legislature enacted 2005 Laws of Montana Chapter 287 that provided a program to offer all Montana citizens an avenue to investigate ways of controlling medication costs and at the same time derive additional health benefits from proper and prudent use of medications. The department is proposing this program be called the "PharmAssist Program".

The PharmAssist Program will include a consultation by a licensed pharmacist with an individual on how to avoid dangerous drug interactions and provide for substitution of more cost-effective drugs with approval by the prescribing health care professional.

The department estimates the program will serve approximately 50 to 100 persons monthly. The program has budgeted \$317,000 annually for this service including development and delivery of continuing education requirements to pharmacists and delivery of services to eligible persons.

Since the program was mandated by statute, the department did not consider alternative means of achieving the same result.

RULE I

This rule is necessary to identify the program implemented in these new rules as outlined in 2005 Laws of Montana Chapter 287.

RULE II

This rule defines words and phrases that are not defined in statute but are used extensively in these rules.

RULE III

This rule is necessary to explain the scope and purpose of the PharmAssist Program. The purpose of the state program is to provide face-to-face consultations with a pharmacist to individuals who are taking multiple drugs so they may avoid dangerous drug interactions and to provide for substitution of more cost-effective drugs with approval by the prescribing health care professional.

RULE IV

This rule proposes that an eligible applicant may receive up to \$200 of pharmacist services per 12 month period. These services will include an initial face-to-face consultation and may include follow-up services, if warranted and approved by the department or its designee.

RULE V

This rule proposes the eligibility requirements for PharmAssist. To receive services an applicant must be qualified, eligible, and authorized. An applicant, to be qualified for services, must have a chronic disease and must be taking four or more medications or have a condition or health issue determined by the screening pharmacist that provides an opportunity for benefit. An applicant, to be eligible, must be residing in the state of Montana. An applicant to be authorized, must submit a completed PharmAssist Patient Packet including an application, a signed Acknowledgement of Receipt of Notice of Privacy Practices, a Client Inventory form, and then pass the department's screening criteria.

RULE VI

This rule is necessary to explain how the department will process PharmAssist Patient Packets. Each packet will be processed on a first in, first served basis using the date a complete package is received. Authorized clients will be referred to a pharmacist for services and unsuccessful applicants will be notified in writing.

RULE VII

This rule is necessary if the program receives applications from more qualified residents than there is funding available or if there are no credentialed pharmacists in their region. Successful applicants names would be placed on a waiting list until services became available.

RULE VIII

This rule is necessary to state the appeal process that will be available to applicants who are not satisfied with a program decision. The department will hear and resolve disputes using its fair hearing procedures, which conform to the requirements of the Montana Administrative Procedure Act.

RULE IX

This rule is necessary to identify and train Montana registered pharmacists, with licenses in good standing, about the Montana PharmAssist Program. Interested pharmacists are given an overview of the program, provided case studies for discussion, and introduced to the forms necessary for documentation of their consultation.

Big Sky Rx proposals

On January 1, 2006, Medicare Prescription Drug Plans (PDPs) became available to people with Medicare. This is a voluntary federal program created by the Medicare Prescription Drug Improvement and Modernization Act of 2003 (MMA) 42 USC 1302, 1395w-101 through 1395w-152, and 1395hh. It is referred to as "Medicare Part D" in these and implemented in 42 CFR part 423. An individual entitled to benefits under Medicare Part A or enrolled in Medicare Part B is eligible to enroll in a Medicare Part D PDP. There is also a federal premium subsidy called "Social Security Extra Help" (SSEH) for some individuals that assists in paying copayments, deductibles, and premiums.

Montana's Big Sky Rx Program pays a portion of all of the cost of the PDP premium for eligible Montana residents. These rule changes are necessary to continue to coordinate the state program with the federal program.

ARM 37.81.301

The proposed amendment to this rule is to improve readability. It is intended to have no substantive effect.

ARM 37.81.304

The current rule states the maximum monthly Big Sky Rx premium benefit amount for each enrollee is determined by the maximum Social Security Extra Help benefit (SSEH). The Big Sky Rx Program will no longer use the federal program as the measure of state benefits. The SSEH maximum benefit is determined by CMS's regional benchmark. The regional benchmark varies from year to year. If the department changed the maximum monthly premium benefit from year to year it would create problems with system programming, program policies, and generate confusion for the beneficiaries.

ARM 37.81.307

This rule states the eligibility requirements for the program. In the current eligibility requirements the department specified the exact dollar amount for a qualified applicant's income and asset limits to determine if the applicant must apply for the Social Security Extra Help Program (SSEHP). These amounts can change from year to year. The department is proposing to change the wording to reference the

CFR that governs SSEHP. The department will either update the CFR reference periodically to the current CFR or will use the 2007 standards.

Edits to improve readability are also being proposed. They are not intended to have a substantive effect.

ARM 37.81.310

This rule states the income and family size criteria for the program. Child support and unemployment benefits were added to the list of unearned income types that could be used in determining eligibility for the program. These income types are currently being used to determine eligibility but were not stated in the current rule. Child support and unemployment benefits are included in the determination of eligibility because the funds received are a source of support that may reduce the need for Big Sky Rx benefits.

ARM 37.81.318

This rule states how the department processes a Big Sky Rx application when received. The department no longer requires a street address on the application. This caused confusion to the applicants and is not necessary for the department to determine whether the applicant is qualified for the program.

The change of business days to calendar days is proposed for administrative efficiency because the Big Sky Rx's eligibility computer system uses calendar days and not business days to calculate time.

The department is proposing a new enrollment type, three month temporary enrollment, for those applicants who qualified for the program, but also met the requirements for the Social Security Extra Help (SSEHP). Before this proposed rule change, individuals are placed in a pending status until they received their determination from Social Security. The department has found in the first two years of the program that these people generally would not apply for this extra help, even though it would be beneficial to them. Therefore, they would become ineligible for the Big Sky Rx Program and end up not receiving any of the much needed help. The department believes this program would assist and encourage applicants who would benefit most from the BSRx Program to fill out the SSEH application.

ARM 37.81.322

The department is proposing to change the word "sent" to "mailed" in this rule to improve readability. It is not intended to have a substantive effect since the department's practice has been to mail all notices required by these rules.

ARM 37.81.338

This rule governs verification of eligibility for the program. The department is

proposing to change 20 business days for the return of the documentation for verification of eligibility to 30 calendar days. This is approximately the same amount of time and is compatible with the program's computer system.

ARM 37.81.346

This rule states any prescription drug plan (PDP) that receives direct payment of all or part of a premium from the state on behalf of an enrollee must enter into a contract with the department. The proposed amendment would change the requirement to a Memorandum of Understanding and a Business Associates Agreement. The service a PDP is providing the state is verification of enrollees in exchange for the benefit received by the PDP. No money is exchanged; therefore, the Memorandum of Understanding is the PDP's preferred memorialization of the agreement and it meets the department's needs. A Business Associates Agreement is necessary for the exchange of protected health information (PHI) under privacy laws.

ARM 37.81.9004 through 37.81.9010

These rules state how the department should create its own version of the application. These administrative rules were adopted before the Extra Help or BSRx Programs were up and running. Given how the SSEHP functions presently, it is unnecessary for the department to duplicate services by creating a state version of the Extra Help form and determining eligibility for the federal program. These rules are being repealed.

7. The department intends these rules to be applied retroactively to July 1, 2007. There is no negative impact if these rules are applied retroactively.

8. Interested persons may submit comments orally or in writing at the hearing. Written comments may also be submitted to Rhonda Lesofski, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena MT 59604-4210, no later than 5:00 p.m. on April 10, 2008. Comments may also be faxed to (406)444-1970 or e-mailed to dphhslegal@mt.gov. The department maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. To be included on such a list, please notify this same person or complete a request form at the hearing.

9. An electronic copy of this proposal notice is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of State strives to make the electronic copy of this notice conform to the official version of the notice as printed in the Montana Administrative Register, but advises all concerned persons that, in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. The web site may be unavailable at times, due to system maintenance or technical problems.

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

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

/s/ John Koch
Rule Reviewer

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

Certified to the Secretary of State March 3, 2008.

BEFORE THE COMMISSIONER OF POLITICAL PRACTICES
OF THE STATE OF MONTANA

In the matter of the adoption of	)	NOTICE OF PROPOSED
New Rule I pertaining to limitations on	)	ADOPTION
individual and political party)	
contributions	)	NO PUBLIC HEARING
	)	CONTEMPLATED

TO: All Concerned Persons

1. On April 12, 2008, the Commissioner of Political Practices proposes to adopt the above-stated rule.

2. The Commissioner of Political Practices 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 us no later than 5:00 p.m., April 7, 2008, to advise us of the nature of the accommodation that you need. Contact Dennis Unsworth, 1205 8th Avenue, Helena, Montana 59620; telephone (406) 444-2942; fax (406) 444-1643; or e-mail dunsworth@mt.gov.

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

NEW RULE I LIMITATIONS ON INDIVIDUAL AND POLITICAL PARTY CONTRIBUTIONS

- (1) Pursuant to the operation specified in 13-37-216, MCA, limits on total combined contributions from individuals to candidates are as follows:
- (a) a candidate for governor may receive no more than \$630;
 - (b) a candidate for other statewide office may receive no more than \$310;
 - (c) a candidate for all other public offices may receive no more than \$160.
- (2) Pursuant to the operation specified in 13-37-216, MCA, limits on total combined contributions from political party committees to candidates are as follows:
- (a) a candidate for governor may receive no more than \$22,500;
 - (b) a candidate for other statewide offices may receive no more than \$8,150;
 - (c) a candidate for Public Service Commission may receive no more than \$3,250;
 - (d) a candidate for senate may receive no more than \$1,300;
 - (e) a candidate for all other public offices may receive no more than \$800.
- (3) Pursuant to 13-37-218, MCA, in-kind contributions must be included in computing these limitation totals.

AUTH: 13-37-216, MCA
IMP: 13-37-218, 15-30-101(8), MCA

REASON: Section 13-37-216, MCA, requires the commissioner to periodically adjust the limitations established in statute, and to publish the revised limitations as a rule.

The Bureau of Labor Statistics supplied the Consumer Price Index information. The information is used to determine the inflation factor to be applied to the contribution limits for candidates. This information is required by 13-37-216, MCA. It must be revised after January of each election year.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Dennis Unsworth, Commissioner of Political Practices, P.O. Box 202401, 1205 8th Avenue, Helena, Montana 59620; telephone (406) 444-2942; fax (406) 444-1643; or e-mail dunsworth@mt.gov and comments must be received no later than 5:00 p.m., April 10, 2008.

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 to the above address no later than 5:00 p.m., April 10, 2008.

6. If the agency receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of those directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 132 based on the number of registered candidates and political committees in the 2004 election cycle.

7. The agency 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 agency.

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

9. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was notified by e-mail on February 28, 2008.

/s/ Jim Scheier
Jim Scheier
Rule Reviewer

/s/ Dennis Unsworth
Dennis Unsworth
Commissioner of
Political Practices

Certified to the Secretary of State March 3, 2008.

BEFORE THE COMMISSIONER OF POLITICAL PRACTICES
OF THE STATE OF MONTANA

In the matter of the proposed)	
amendment of ARM 44.10.335 and	)	NOTICE OF PUBLIC HEARING ON
44.10.336, and the proposed adoption	)	PROPOSED AMENDMENT AND
of New Rules I through IX, all related to	)	ADOPTION
constituent services accounts)	

TO: All Concerned Persons

1. On April 21, 2008, at 1:30 p.m., a public hearing will be held in the Old Supreme Court Chambers, Room 303 of the State Capitol, Helena, Montana, to consider the proposed amendment and adoption of the above-stated rules.

2. The Commissioner of Political Practices 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 Commissioner of Political Practices no later than 5:00 p.m. on April 7, 2008, to advise us of the nature of the accommodation that you need. Please contact Mary Baker, Program Supervisor, Office of the Commissioner of Political Practices, P.O. Box 202401, 1205 Eighth Avenue, Helena, Montana 59620-2401; telephone (406) 444-2942; fax (406) 444-1643; e-mail mabaker@mt.gov.

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

44.10.335 DISPOSAL OF SURPLUS CAMPAIGN FUNDS (1) through (5) remain the same.

(6) A candidate or eligible elected official shall abide by the prohibitions on the use of surplus campaign funds specified in 13-37-240, and 13-37-402, MCA, ARM 44.10.336, the provisions of this rule, and the rules in this chapter.

(a) For purposes of the restrictions on the disposal of surplus campaign funds set forth in 13-37-240, MCA, "personal benefit" is defined in 13-37-240(2), MCA. For the purposes of this definition, a candidate's or an eligible elected official's "immediate family" includes ~~the candidate's spouse and minor children only~~ any individual related or connected to a candidate or an eligible elected official as specified in 2-2-303(1), MCA.

(b) For purposes of the restrictions on the disposal of surplus campaign funds set forth in 13-37-240, MCA, "campaign" means any ~~organized~~ organized effort to ~~secure support~~ secure support or ~~prevent oppose~~ prevent oppose the nomination or election of a candidate for public office, or ~~secure support~~ secure support or ~~prevent oppose~~ prevent oppose passage of a ballot issue.

(c) ~~The following are examples of permissible uses of surplus~~ Surplus campaign funds, including surplus campaign funds deposited in a constituent services account and any interest accrued as provided in [NEW RULE VIII], may only be disbursed as follows:

(i) ~~Return the funds to the contributor~~ contributors, so long as the funds ~~refund to contributors will not result in violate the~~ personal benefit or ~~a contribution to a campaign contribution provisions of 13-37-240 and 13-37-402, MCA, ARM 44.10.336, or the rules in this chapter;~~

(ii) ~~Donation of Donate~~ the funds to any organization or entity, so long as the use of the funds will not ~~result in violate the~~ personal benefit or ~~a contribution to a campaign contribution provisions of 13-37-240 and 13-37-402, MCA, ARM 44.10.336, or the rules in this chapter;~~

(iii) ~~Upon election, use of An elected official other than an eligible elected official may transfer~~ the funds to ~~establish~~ an account to serve a public purpose related to the officeholder's public duties, so long as the funds will not result in personal benefit or a contribution to a campaign;

(iv) An eligible elected official may transfer the funds to a constituent services account provided for in Title 13, chapter 37, part 4, MCA, and the rules in this chapter.

(7) A candidate or an eligible elected official shall not contribute surplus campaign funds to a political committee, including a leadership political committee maintained by a political officeholder. However, nothing in this subsection shall be construed as prohibiting the contribution of surplus campaign funds to a political party or a political party committee, so long as the funds are not earmarked for a specific campaign.

(8) remains the same.

AUTH: 13-37-114, MCA

IMP: 13-37-240, MCA

44.10.336 PERSONAL BENEFIT (1) Pursuant to 13-37-240, MCA, the term "direct or indirect benefit" means the distribution of all or any portion of surplus campaign funds, including surplus campaign funds deposited in a constituent services account, that benefit only the a candidate, an eligible elected official, or a member of the a candidate's or an eligible elected official's immediate family, except as specifically authorized by this rule or the rules in this chapter.

(2) ~~Nothing in this rule prohibits the distribution of surplus~~ Surplus campaign funds or constituent services account funds may be donated to a group of individuals or an organization to which the candidate or an eligible elected official, or a member of the candidate's or an eligible elected official's immediate family belongs or is a member, as long as:

(a) ~~the~~ The candidate, an eligible elected official, or a member of the a candidate's or an eligible elected official's immediate family do not control how the group or organization spends the surplus campaign funds or constituent services account funds received by the group or organization;

(b) The candidate, an eligible elected official, or a member of the candidate's or the eligible elected official's immediate family abstains from voting on or taking any action to approve or disapprove a decision by the group or organization to spend the surplus campaign funds or constituent services account funds received by the organization; and

(c) the The candidate, an eligible elected official, or a member of the candidate's or an eligible elected official's immediate family receive a benefit that is only incidental to their membership or participation within the group or organization. A benefit is "incidental" if a benefit bestowed on or available to a candidate, an eligible elected official, or a member of a candidate's or an eligible elected official's immediate family is the same as a benefit bestowed on or available to the public or other members of the group or organization.

(3) Surplus campaign funds or constituent services account funds may be donated to a government entity under ARM 44.10.335(6)(c)(ii), even if the candidate, an eligible elected official, or a member of the candidate's or an eligible elected official's immediate family is an employee of the government entity or serves on the government entity's policy making or advisory board, as long as:

(a) The candidate, an eligible elected official, or a member of a candidate's or an eligible elected official's immediate family does not control how the government entity spends the surplus campaign funds or constituent services account funds received;

(b) The candidate, an eligible elected official, or a member of the candidate's or the eligible elected official's immediate family abstains from voting on or taking any action to approve or disapprove a decision by the government entity to spend the surplus campaign funds or constituent services account funds received; and

(c) The candidate, an eligible elected official, or a member of the candidate's or an eligible elected official's immediate family receives a benefit that is only incidental to their employment by or participation as a board member. A benefit is "incidental" if a benefit bestowed on or available to a candidate, an eligible elected official, or a member of a candidate's or an eligible elected official's immediate family is the same as a benefit bestowed on or available to the government entity's other employees or board members.

AUTH: 13-37-114, MCA

IMP: 13-37-240, MCA

REASONABLE NECESSITY: The amendments to ARM 44.10.335 and 44.10.336 are necessary to ensure that these existing rules are consistent with the 2007 legislation enacting 13-37-401 and 13-37-402, MCA, the prohibitions governing the use of surplus campaign funds under 13-37-240, MCA, and New Rules I through IX regarding constituent services accounts. These rules clarify and clearly delineate appropriate uses and disposition of surplus campaign funds.

Section 13-37-240, MCA, was approved by the voters as part of I-118 and contains two unequivocal prohibitions: (1) surplus campaign funds cannot be contributed to "another campaign, including the candidate's own future campaign" or (2) used for "personal benefit." The term "personal benefit" is broadly defined in 13-37-240(2), MCA, to mean "a direct or indirect benefit of any kind to the candidate or any member of the candidate's immediate family." The 2007 Legislature reaffirmed the 1994 electorate's commitment to 13-37-240, MCA, and expressly limited the use of constituent services account funds to providing constituent services. See 13-37-401(2) and 13-37-402, MCA. Consistent with the personal benefit prohibitions of 13-

37-240 and 13-37-402, MCA, two major amendments are proposed to ARM 44.10.335:

Amendments to subsection (6)(a) broaden the definition of immediate family to include the same family members who cannot be hired by an elected official under Montana's nepotism statute, 2-2-301, MCA. The current rule definition of "immediate family" was adopted in 1994 and based on a statutory definition of the same term that has since been repealed. See 5-7-213, MCA (1993), and the current language of 2-2-106, MCA. The immediate family amendments prohibit an eligible elected official from using surplus campaign funds to benefit the same family members who could not be hired to work in the eligible elected official's public office. These amendments are necessary because constituent services accounts can only be created to provide services to constituents as part of an elected official's public duties and such funds cannot be used to circumvent the personal benefit prohibitions of 13-37-240, MCA, and Montana's nepotism laws.

Amendments to ARM 44.10.336 further define permissible circumstances under which surplus campaign funds can be donated to a group or organization of which a candidate, an eligible elected official, or a member of a candidate's or eligible elected official's immediate family is a member. The amendments are necessary to clarify conduct that is acceptable under 13-37-240 and 13-37-402, MCA.

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

NEW RULE I DEFINITIONS For the purposes of Title 13, chapter 37, part 4, MCA, 13-37-240, MCA, and this chapter:

(1) "Compensation" includes all direct or indirect payments of salaries, fees, wages, and benefits to an individual or a person to provide constituent services. The term includes all payments made to an individual or a person to provide constituent services on behalf of an eligible elected official, including but not limited to, payments for overtime, compensatory time, retirement, health insurance, membership fees for social, civic, and professional organizations, life insurance, professional liability insurance, unemployment or worker's compensation insurance, personal use of a vehicle, rental car payments, disability insurance, travel, meal, and lodging reimbursement, and other benefits.

(2) "Constituent" means an individual who resides in, is employed in, provides goods or services in, attends school in, or has an ownership interest in property or a business in the district or geographic area represented by an eligible elected official.

(3) "Constituent services" has the meaning generally defined in 13-37-401(1), MCA, and more specifically defined in [NEW RULE V].

(4) "Constituent services account" means an account established under Title 13, chapter 37, part 4, MCA, 13-37-240, MCA, and the rules in this chapter.

(5) "Eligible elected official" means an individual elected or appointed to a statewide office, the Public Service Commission, or the Legislature.

(6) "In-kind donation" means the furnishing of services, property, equipment, supplies, rights, or anything of value without charge or at a charge which is less than

fair market value to an eligible elected official for the purpose of providing constituent services.

(7) "Leaves public office" means that an eligible elected official ceases to occupy the public office for which a constituent services account has been established. The term does not include an eligible elected official who is re-elected to the same public office.

(8) "Pre-existing account" means an account related to a public official's office that existed before May 14, 2007 (the effective date of 13-37-401 and 13-37-402, MCA).

AUTH: 13-37-114, MCA
IMP: 13-37-401, 13-37-402, MCA

NEW RULE II APPLICABILITY OF RULES (1) All of the rules in this chapter apply to a constituent services account established by an eligible elected official under Title 13, chapter 37, part 4, MCA, and 13-37-240, MCA, on or after May 14, 2007.

(2) Only the personal benefit and campaign contribution prohibitions in 13-37-240 and 13-37-402, MCA, and [NEW RULE IV(1)(b), (1)(d), (1)(f)], ARM 44.10.335, and 44.10.336 apply to:

(a) a pre-existing account in which surplus campaign funds have been deposited;

(b) an account related to an elected official's office if the elected official has been elected to any public office other than the public offices listed in [NEW RULE III] and surplus campaign funds have been deposited in the account; or

(c) the expenditure of surplus campaign funds by a candidate or an elected official.

(3) The following provisions of Montana law may also apply to the use or expenditure of surplus campaign funds, constituent account funds, or other funds deposited in or expended from accounts related to an elected official's public office:

(a) the Montana Code of Ethics, 2-2-101, et seq., MCA, including the provisions governing the receipt of gifts of substantial value and the receipt of fees or compensation other than the official compensation provided by law;

(b) the provisions of Title 13, chapter 35, part 2, MCA, concerning the improper influence of voters before and after an election and the prohibition against corporate contributions to candidates;

(c) the provisions of Title 13, chapter 37, part 2, MCA; and

(d) the provisions of Title 5, chapter 7, MCA.

AUTH: 13-37-114, MCA
IMP: 13-37-401, 13-37-402, MCA

NEW RULE III ELIGIBLE ELECTED OFFICIALS (1) An individual elected to any of the following public offices may transfer surplus campaign funds to a constituent services account created under Title 13, chapter 37, part 4, MCA, 13-37-240, MCA, and the rules in this chapter:

(a) Governor;

- (b) Lieutenant Governor;
- (c) Attorney General;
- (d) Secretary of State;
- (e) State Auditor;
- (f) Superintendent of Public Instruction;
- (g) Chief Justice or Justice of the Supreme Court;
- (h) Clerk of the Supreme Court;
- (i) Public Service Commission; or
- (j) The Montana House of Representatives or Senate.

AUTH: 13-37-114, MCA
IMP: 13-37-401, 13-37-402, MCA

NEW RULE IV PROHIBITIONS (1) The following prohibitions apply to a constituent services account established under Title 13, chapter 37, part 4, MCA, 13-37-240, MCA, ARM 44.10.335 and 44.10.336, and the rules in this chapter:

(a) An eligible elected official may not establish any other account related to the eligible elected official's public office after May 14, 2007, except for a campaign account.

(b) Only surplus campaign funds as defined in ARM 44.10.335(2) may be deposited in a constituent services account established under Title 13, chapter 37, part 4, MCA, and the rules in this chapter, except for the payment of interest as provided in [NEW RULE VIII]. An eligible elected official may not:

(i) deposit funds from a pre-existing account or any other account related to the eligible elected official's public office, including funds in a leadership political committee account, into a constituent services account established under Title 13, chapter 37, part 4, MCA;

(ii) solicit or receive cash or anything of monetary value for deposit in a constituent services account or to provide constituent services; or

(iii) solicit or receive an in-kind donation to provide constituent services.

(c) A constituent services account established under Title 13, chapter 37, part 4, MCA, may only be used to provide constituent services.

(d) Constituent services account funds may not be used for personal benefit as specified in 13-37-240 and 13-37-402, MCA, ARM 44.10.335, ARM 44.10.336, and the rules in this chapter. Constituent services account funds may not be used to pay compensation to an eligible elected official or a member of an eligible elected official's immediate family except as expressly provided in the rules in this chapter.

(e) Expenditures cannot be made from a constituent services account if the eligible elected official has an open campaign account for any elective office, including an elective office other than the office currently held. However, constituent services account funds may be used to pay for constituent services provided or expenses incurred to provide constituent services before the date upon which a campaign account was opened if payments for such services or expenses are supported by written documentation as provided in [NEW RULE VII].

(f) Constituent services account funds may not be contributed to another ballot issue or candidate campaign, including the eligible elected official's own future campaign.

- (2) Subsections (1)(d) and (1)(f) apply to:
- (a) a pre-existing account in which surplus campaign funds have been deposited; or
 - (b) the expenditure of surplus campaign funds by any elected official described in [NEW RULE II(2)(b)].

AUTH: 13-37-114, MCA
IMP: 13-37-401, 13-37-402, MCA

NEW RULE V AUTHORIZED EXPENDITURES (1) A constituent services account established under Title 13, chapter 37, part 4, MCA, 13-37-240, MCA, and the rules in this chapter, may be used to pay for the following expenses incurred to provide constituent services:

- (a) communications with constituents or on behalf of constituents, including but not limited to, printing, postage, paper, internet, facsimile, delivery, or other costs incurred to communicate with or on behalf of constituents. Communication costs do not include payment for public advertisements or public announcements of any kind unless such public advertisements or announcements are limited to publicly announcing the date, time, place, and general purpose of a meeting in an eligible elected official's district at which the public will be allowed to participate in a public discussion of matters of interest to an eligible elected official's constituents;
- (b) travel, meal, and lodging expenses as provided in (2);
- (c) equipment and supplies as provided in (3) and (4);
- (d) office expenses related to the lease or purchase of office space as provided in (3) and (4);
- (e) utility costs associated with the use of equipment, supplies, and office space to provide constituent services;
- (f) compensation paid to an individual, other than an eligible elected official or a member of an eligible elected official's immediate family; and
- (g) any other expenses incurred to provide constituent services subject to the requirements and prohibitions of the rules in this chapter.

(2) Constituent services account funds may be used to pay travel, meal, and lodging expenses subject to the following:

- (a) An eligible elected official may be reimbursed for travel, meal, and lodging expenses incurred to provide constituent services at the rates and reimbursement levels specified in Title 2, chapter 18, part 5, MCA, and applicable rules adopted by the Department of Administration.
- (b) An individual, other than a member of an eligible elected official's immediate family, may be reimbursed for travel, meal, and lodging expenses incurred under a written agreement with an eligible elected official to provide constituent services if such reimbursement does not exceed the rates and reimbursement levels specified in Title 2, chapter 18, part 5, MCA, and applicable rules adopted by the Department of Administration.
- (c) A member of an eligible elected official's immediate family may not be reimbursed for travel, meal, and lodging expenses incurred to provide constituent services.

(3) If constituent services account funds are used to purchase office space, equipment, or supplies, the office space, equipment, or supplies purchased with constituent account funds must be used exclusively to provide constituent services. When an eligible elected official leaves public office, any office space, equipment, or unused supplies purchased with constituent account funds must be disbursed as provided in ARM 44.10.335(6)(c).

(4) If constituent services account funds are used to reimburse an eligible elected official or a person, other than a member of an eligible elected official's immediate family, for office space, equipment, or supplies used, in whole or in part, to provide constituent services, all reimbursement payments and the basis for such payments must be documented in writing as provided in [NEW RULE VII]. Any reimbursement for office space, equipment, or supplies must be based on the fair market value of the office space, equipment, and supplies used to provide constituent services.

(5) Nothing in this rule authorizes constituent services account funds to be used or expended in violation of the prohibitions in [NEW RULE IV], ARM 44.10.335 and 44.10.336, 13-37-240, MCA, or Title 13, chapter 37, part 4, MCA.

(6) Constituent services account funds may not be used to pay:

(a) compensation to an eligible elected official for time spent or services rendered to provide constituent services, except as expressly provided in the rules in this chapter;

(b) compensation or any other payment to a member of an eligible elected official's immediate family for time spent or services rendered to provide constituent services;

(c) the cost of polls or public opinion surveys designed or intended to determine the attitudes and opinions of constituents or the public. However, nothing in this subsection prohibits an eligible elected official from encouraging a constituent to express an opinion about matters of interest to the constituent or matters that may be the subject of official action by the eligible elected official;

(d) the cost of all or any portion of an event, meeting, fundraiser, or gathering at which contributions as defined in 13-1-101(7), MCA, will be solicited or received by any person, including but not limited to, a political party, political party committee, candidate, or person or political committee supporting or opposing a candidate or ballot issue;

(e) any direct or indirect travel, lodging, meals, entertainment, or other expenses related to the sponsorship of, attendance at, or participation in an event, meeting, fundraiser, or gathering at which contributions as defined in 13-1-101(7), MCA, will be solicited or received by any person, including but not limited to, a political party, political party committee, candidate, or a person or political committee supporting or opposing a candidate or ballot issue;

(f) any direct or indirect expenditure to support or oppose a candidate or ballot issue;

(g) the cost of entertaining constituents or any other individual or person. However, nothing in this subsection prohibits an eligible elected official from using constituent services account funds to pay for food or drink provided at a publicly announced or publicly advertised meeting held for the general purpose of allowing constituents to participate in a public discussion of matters of interest to the

constituents or an eligible elected official. The expenditures for food and drink at such a meeting must not be lavish or extravagant; and

(h) travel, meals, or lodging expenses incurred by a constituent or any individual other than an individual who has a written agreement to provide constituent services on behalf of an eligible elected official.

AUTH: 13-37-114, MCA
IMP: 13-37-401, 13-37-402, MCA

NEW RULE VI OPENING AN ACCOUNT (1) An eligible elected official may establish a constituent services account under Title 13, chapter 37, part 4, MCA, 13-37-240, MCA, and the rules in this chapter, by filing a completed constituent services account form provided by the commissioner. The form shall require an eligible elected official to disclose and provide, as a minimum, the following:

(a) the name and elective office held by the eligible elected official establishing the constituent services account;

(b) the district or geographic area represented by the eligible elected official;

(c) the full name, mailing address, and telephone number that appears on the constituent services account;

(d) the full name and mailing address of any individual other than the eligible elected official who is authorized to make expenditures from the account (the eligible elected official establishing the account must be one of the signatories on the account);

(e) the full name, mailing address, and telephone number that appears on the campaign account from which surplus campaign funds are being transferred for deposit in the constituent services account;

(f) the full name, mailing address, and telephone number of the financial institution at which the constituent services account has been established;

(g) a copy of the closing report for the campaign account from which surplus campaign funds are being transferred for deposit in the constituent services account;

(h) the amount of surplus campaign funds being deposited in the constituent services account;

(i) if all of the surplus campaign funds in the closed campaign account will not be deposited in the eligible elected official's constituent services account, the full name and mailing address of each contributor or entity receiving any portion of the surplus campaign funds pursuant to ARM 44.10.335(6)(c)(ii); and

(j) for each payment of surplus campaign funds to a contributor or entity under the preceding subsection, the date on which the payment was made.

(2) The form must be signed by the eligible elected official and verified as required by 13-37-231(1), MCA.

AUTH: 13-37-114, MCA
IMP: 13-37-401, 13-37-402, MCA

NEW RULE VII RECORDS AND REPORTING (1) An eligible elected official who establishes a constituent services account under Title 13, chapter 37, part 4, MCA, 13-37-240, MCA, and the rules in this chapter, must file quarterly

reports with the commissioner's office after an account is opened. Reports must be filed on or before March 15, June 15, September 15, and December 15 in each calendar year until the account is closed as provided in [NEW RULE IX]. A report must be filed even if no expenditures have been made during the reporting period. The reports must include all expenditures made and interest accrued within ten days of the date on which the quarterly report is due.

(2) Each report must contain, as a minimum, the following:

(a) the amount of money in the account at the beginning of the reporting period;

(b) the amount and rate of interest paid on money in the account during the reporting period pursuant to [NEW RULE VIII];

(c) the full name, mailing address, occupation, and principal place of business (if any) of each person to whom expenditures have been made during the reporting period, including the amount, date, and general statement describing the constituent services that were the basis for the expenditure, and the total amount of expenditures made to each person; and

(d) the amount of money in the account at the end of the reporting period.

(3) Each report must be signed by the eligible elected official and verified as required by 13-37-231(1), MCA.

(4) An eligible elected official must maintain the following additional written documentation for each expenditure from a constituent services account:

(a) The basis for any fair market value determination to be made under the rules in this chapter.

(b) A written log or other documents identifying the date on which constituent services were provided, the street address, city, and county at which the constituent services were provided, a statement describing the constituent services provided, and the full name and mailing address of at least one constituent on whose behalf the constituent services were provided.

(c) If the expenditure involves payments to a person other than the eligible elected official, a written receipt or invoice from the payee.

(d) If the expenditure involves reimbursement for travel, meal, or lodging expenses, such reimbursement must be based on receipts or other written documentation that satisfies applicable requirements of Title 2, chapter 18, part 5, MCA, and rules adopted by the Montana Department of Administration.

(e) If the expenditure involves costs incurred to communicate with constituents, such expenditures must be based on receipts or other written documentation itemizing the basis for the communication expenditure.

(5) An eligible elected official may establish only one constituent services account and no secondary depositories or subaccounts may be established.

(6) All records and reports that must be filed or maintained under the rules in this chapter must be retained by the eligible elected official for a period of four years after the constituent services account is closed.

AUTH: 13-37-114, MCA

IMP: 13-37-401, 13-37-402, MCA

NEW RULE VIII INTEREST PAID ON ACCOUNTS (1) Interest paid on a constituent services account established under Title 13, chapter 37, part 4, MCA, 13-37-240, MCA, and the rules in this chapter, may be received and used to provide constituent services if:

- (a) the interest is deposited directly into the constituent services account;
- (b) the interest is paid by a bank, savings and loan, credit union, brokerage firm, or other financial or investment entity subject to regulation by the state of Montana or an agency of the United States government; and
- (c) the interest paid is the entity's prevailing money market, savings, or certificate of deposit rate paid to other investors or depositors with similar interest bearing accounts.

AUTH: 13-37-114, MCA
IMP: 13-37-401, 13-37-402, MCA

NEW RULE IX CLOSING AN ACCOUNT – DISBURSEMENT OF SURPLUS ACCOUNT FUNDS (1) An eligible elected official must close a constituent services account within 120 days after leaving public office as defined in [NEW RULE I(7)]. The closing report must be filed on a form to be provided by the commissioner.

(2) A closing report must disclose the full name and mailing address of each contributor or entity receiving all or any portion of the funds in a constituent services account pursuant to ARM 44.10.335(6)(c)(ii). The closing report must also disclose the date on which the payment was made to each contributor or entity.

AUTH: 13-37-114, MCA
IMP: 13-37-401, 13-37-402, MCA

REASONABLE NECESSITY: New Rules I through IX are necessary to establish clear and consistent requirements for the creation and use of constituent services accounts and to implement the provisions of 13-37-401 and 13-37-402, MCA, enacted by the 2007 Montana Legislature. Montana's Code of Ethics declares that "holding public office ... is a public trust, created by the confidence that the electorate reposes in the integrity of public officers, legislators, and public employees" and that elected officials and public employees "shall carry out the individual's duties for the benefit of the people of the state." 2-2-103(1), MCA. The 2007 constituent services account legislation and 13-37-240, MCA, are consistent with the people's expectations in the Code of Ethics. However, new rules are necessary to provide guidance regarding the edicts in 13-37-240 and 13-37-402, MCA, including reporting requirements and policies governing the expenditures from constituent services accounts, the opening and closing of constituent services accounts, and the maintenance of necessary records.

5. Interested 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 Dennis Unsworth, Commissioner of Political Practices, P.O. Box 202401, 1205 Eighth Avenue, Helena, Montana 59620-2401, or be submitted

electronically to dunsworth@mt.gov, and must be received no later than May 5, 2008.

6. The Commissioner of Political Practices maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their names added to the list shall make a written request which includes the name and mailing address of the person to receive notice. Such written request may be mailed or delivered to the Commissioner of Political Practices at P.O. Box 202401, 1205 Eighth Avenue, Helena, MT 59620-2401, or faxed to (406) 444-1643, or may be made by completing a request form at any rules hearing held by the Commissioner of Political Practices.

7. Dennis Unsworth will preside over and conduct the hearing.

8. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled. Notice was sent to primary sponsor on February 28, 2008 via e-mail.

/s/ Jim Scheier
Jim Scheier
Rule Reviewer

/s/ Dennis Unsworth
Dennis Unsworth
Commissioner of
Political Practices

Certified to the Secretary of State March 3, 2008.

BEFORE THE DEPARTMENT OF COMMERCE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 8.99.401, 8.99.404, 8.99.501,)
8.99.502, 8.99.504, 8.99.505,)
8.99.509, and 8.99.511 pertaining to)
microbusinesses)

TO: All Concerned Persons

1. On November 8, 2007, the Department of Commerce published MAR Notice No. 8-99-59 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 1730 of the 2007 Montana Administrative Register, Issue Number 21.

2. A public hearing was held on November 29, 2007. No testimony was received; however, several written comments were received by the December 7, 2007, deadline.

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

8.99.401 DEFINITIONS

COMMENT 1: One comment was received regarding the deposit of development loan funds as a loan guarantee and whether this deposit arrangement would still be allowed with the proposed control agreement.

RESPONSE 1: The use of development loan funds for establishing a revolving loan fund from which loans made directly by banks to qualified microbusinesses are guaranteed is provided for under statute and the administrative rules. As amended ARM 8.99.505(6) includes: "The guarantee agreement between the bank and the MBDC must be approved by the department." Therefore, the "guarantee agreement" would include a deposit account control agreement that is satisfactory to the bank and the department, which the department believes could be developed. Therefore, the required control agreement would allow for this deposit arrangement.

8.99.504 DEVELOPMENT LOAN – TERMS

8.99.504(1)

COMMENT 2: One comment was received opposing the proposed eight-year term for the department's development loan, because it would cause a financial hardship. The commenter also stated that there is no explanation provided as to why the department would recall the development loan.

RESPONSE 2: The department agrees with the comment and the amendment to ARM 8.99.504(1) will be stricken. The provision for recalling the department development loan is provided in ARM 8.99.401(3) which states: "'Default' shall be defined in the development loan agreement between the department and MBDC."

8.99.504(5)

COMMENT 3: Several comments were received concerning the requirement that each MBDC provide a "fidelity bond" covering all MBDC employees having access to development loan funds.

RESPONSE 3: The department agrees with the comments and is amending ARM 8.99.504(5) accordingly.

8.99.504(6)

COMMENT 4: Many comments were received opposing the mandated development loan funds' loan out rate.

RESPONSE 4: The department agrees with the comments and is amending ARM 8.99.504(6) accordingly.

8.99.504(7)

COMMENT 5: A comment was received requesting a change in the calculation of the loan out rate to include subtracting the required cash loan loss reserves from the MBDC capital amount, if cash loan loss reserves are required.

RESPONSE 5: The rule amendment is only pertinent to department development loan funds; therefore, only department development loan funds are included in the calculation. In addition, the department will not require "cash loan loss reserves".

8.99.504(10)

COMMENT 6: Several comments were received that opposed requiring the MBDCs to submit a budget to the department which forecasts revolving loan fund income and expenses.

RESPONSE 6: 17-6-407, Section 7, MCA, states: "Development loan funds may not be: (b) used to: (ii) pay the operating costs of a certified microbusiness development corporation". 17-6-408, MCA, states: "The department may certify: (1) a microbusiness development corporation when it determines that the corporation: (c) has an adequate source of operating capital". Therefore, the required budget ensures MBDC statutory compliance.

8.99.504(11)

COMMENT 7: A comment was received opposing the department procuring the services of an independent certified public accountant to prepare annual audits of each MBDC.

RESPONSE 7: 17-6-407, Section 10, MCA, states: "Each certified microbusiness development corporation that receives a development loan under this part shall provide the department with an annual audit from an independent certified public accountant. The audit must cover all of the microbusiness development corporation's activities and must include verification of compliance with requirements specific to the microbusiness program." Therefore, the administrative rule ensures statutory compliance.

8.99.504(12)

COMMENT 8: Many comments were received opposing a separate demand deposit account.

RESPONSE 8: 17-6-407, Section 11, MCA, states: "A development loan is secured by a first lien on all funds and all receivables administered under the authority of the microbusiness development act by the corporation receiving the loan."

Security interests in deposit accounts as original collateral are within the scope of Article 9 of the Uniform Commercial Code. As provided for under Article 9, the most practical method for the department to perfect a "first lien on all funds", as directed by statute, is for the department to require a separate revolving loan fund deposit account and corresponding account control agreement. A separate account is needed so that the department does not gain control over other lender and/or investor funds.

8.99.504(14)

COMMENT 9: Several comments were received opposing the use of deposit account control agreements to secure the development loan.

RESPONSE 9: 17-6-407, Section 11, MCA, states: "A development loan is secured by a first lien on all funds and all receivables administered under the authority of the microbusiness development act by the corporation receiving the loan." As provided for under Article 9, the most practical method for the department to perfect a "first lien on all funds", as directed by statute, is for the department to require a separate deposit account and corresponding account control agreement.

8.99.511 MICROBUSINESS LOANS - ELIGIBILITY FOR AND TERMS AND CONDITIONS

8.99.511(3)

COMMENT 10: Many comments were received opposing a maximum loan term of eight years for microbusiness loans.

RESPONSE 10: The department agrees and the amendment to ARM 8.99.511(3) will be stricken.

8.99.511(6)

COMMENT 11: A comment was received requesting clarification that development loan funds may not be used to refinance a delinquent or nonperforming loan or a portion of a delinquent or nonperforming loan held by a bank.

RESPONSE 11: 17-6-407, Section 7, MCA, states: "Development loan funds may not be: (b) used to: (i) refinance a nonperforming loan held by a financial institution". The purpose of the rule amendment is to ensure statutory compliance. It is not the intent of the department to "preclude restructuring of an existing delinquent or nonperforming microbusiness loan" originated with development loan funds and which are held in the revolving loan fund.

8.99.511(7)

COMMENT 12: A comment was received regarding the eligible uses of the cash proceeds of a microbusiness loan.

RESPONSE 12: The department agrees with the comment and will amend ARM 8.99.511(7) accordingly.

4. The department has amended ARM 8.99.404, 8.99.501, 8.99.502, 8.99.505, and 8.99.509 as proposed.

5. The department has amended ARM 8.99.401, 8.99.504, and 8.99.511 as proposed, but with the following changes, stricken matter interlined, new matter underlined:

8.99.401 DEFINITIONS As used in this subchapter, the following definitions apply:

(1) through (3) remain as proposed.

(4) remains as proposed, but is renumbered (6).

(4) "Defaulted loan" means a loan that the borrower has failed to make three or more timely payments of principal and interest, or whose payments of principal and interest are greater than 90 days past due or has otherwise failed to comply with the terms and conditions of the loan agreement.

(5) remains as proposed, but is renumbered (7).

(5) "Delinquent loan" means a loan that the borrower has failed to make one or two timely payments of principal and interest, or whose payment of principal and interest are greater than one day and less than 90 days past due.

(6) through (18) remain as proposed, but are renumbered (8) through (20).

(19) through (21) remain as proposed, but are renumbered (22) through (24).

(21) "Performing loan" means a loan that the borrower is current in its compliance or satisfaction of all loan agreement terms and conditions. A performing loan is not a defaulted, delinquent, or restructured loan.

(22) remains as proposed, but is renumbered (25).

(23) through (26) remain as proposed, but are renumbered (27) through (30).

(26) "Restructured loan" means a defaulted or delinquent loan that has had its original loan agreement terms and conditions modified by the lender. The agreement to restructure may result from noncompliance or nonsatisfaction of all the loan agreement terms and conditions by the borrower or legal action against the borrower or may simply be an agreement to which both the lender and the borrower consent.

(27) through (29) remain as proposed, but are renumbered (31) through (33).

8.99.504 DEVELOPMENT LOAN - TERMS (1) Development loans shall be renewable at intervals of no more than four years. ~~If the department requires or agrees to restructure a development loan to expedite the repayment of the loan, the term of the restructured loan shall provide for the repayment of the restructured loan in an efficient and prudent manner and shall not exceed eight years.~~

(2) through (4) remain as proposed.

(5) The loan agreement will require fidelity bonding the MBDC to purchase and maintain insurance protection from the loss of development loan funds due to the dishonest or fraudulent activities of the employees of the MBDC. The insurance must provide coverage of all MBDC employees having access to development loan funds in an amount equal to or greater than the total outstanding indebtedness of the MBDC that has been issued by the department to the MBDC under the authority of the Microbusiness Development Act. as follows:

~~(a) a fidelity blanket position bond insuring the MBDC in an amount equal to or greater than the total outstanding indebtedness of the MBDC that has been issued by the department to the MBDC under the authority of the Microbusiness Development Act is acceptable to the department in meeting the fidelity bond requirement. "Fidelity blanket position bond" refers to a fidelity bond where blanket coverage is granted for all employees in the regular service of the MBDC during the term of the bond. The bond is issued for a fixed sum and each employee of the MBDC is covered up to the full amount of the bond.~~

(6) The initial department development loan to a certified MBDC shall not exceed the maximum amount the certified MBDC can reasonably be expected to lend to eligible microbusinesses, in an effective and sound manner, within two years after loan closing. After two years from the closing of the initial development loan, at least ~~70~~ 60 percent of the total principal balance of the certified MBDC's development loan shall be loaned out to eligible microbusinesses. The loan out rate shall be calculated as follows: total revolving loan fund microbusiness loan receivables multiplied by .86, divided by the total development loan principal balance outstanding.

(7) On a quarterly basis, all MBDCs shall report, in writing, the total revolving loan fund microbusiness loan receivables and the resulting loan out rate to the department. If the reported loan out rate falls below the ~~70~~ 60 percent loan out rate standard for a 12 month period, the MBDC shall return the excess funds to the

department by the fifth day following the end of the next calendar year quarter. The dollar amount of development loan funds equivalent to the difference between the actual percentage of development loan funds loaned out and the ~~70~~ 60 percent loan out rate standard is referred to as "excess funds". If excess funds are returned by the MBDC to the department, a certified MBDC may apply for additional development loan funds in the future, provided that the certified MBDC meets the requirements established in ARM 8.99.502.

(8) and (9) remain as proposed.

(10) The MBDC shall submit a budget to the department which forecasts revolving loan fund income and expenses. The amount ~~removed~~ withdrawn from the revolving loan fund bank account shall not exceed the amount in the MBDC's budget that is approved by the department. Revolving loan fund income may be used to create and maintain a funded loan loss reserve. ~~The MBDC shall create and maintain a funded loan loss reserve that is equal to six percent of the total outstanding microbusiness loan receivables. The funded loan loss reserve may be accumulated over the initial two years of the development loan. The funded loan loss reserve shall be maintained for as long as any part of a development loan to a MBDC remains unpaid. The department in consideration of, but not limited to, MBDC audits and loan loss and delinquency records may require additional revolving loan fund income be used for increasing the funded loan loss reserve.~~

(11) through (14) remain as proposed.

8.99.511 MICROBUSINESS LOANS - ELIGIBILITY FOR AND TERMS AND CONDITIONS (1) and (2) remain as proposed.

(3) The dollar value of all microbusiness loans having repayment terms of more than five years may not exceed 15% of the total dollar value of all microbusiness loans made by an MBDC. repayment term of any individual microbusiness loan receivable in the revolving loan fund shall not exceed eight years.

(4) through (6) remain as proposed.

(7) Eligible uses of the cash proceeds of a microbusiness loan by a microbusiness include:

(a) and (b) remain as proposed.

(c) purchase of equipment, leasehold improvements, machinery, or supplies; ~~and~~

(d) start-up operating costs and working capital; and

(e) consolidation and/or the paying off of a number of performing loans originated and held by banks, of which the microbusiness is the debtor.

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

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

Certified to the Secretary of State March 3, 2008.

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

In the matter of the transfer of ARM)
10.125.101, 10.125.102, 10.125.103,)
10.125.104, 10.125.105, 10.125.106,)
and 10.125.107 and the adoption of)
New Rules I through VII pertaining to)
the sale of real and personal property)
by the Montana Heritage)
Preservation and Development)
Commission)

NOTICE OF TRANSFER AND
ADOPTION

TO: All Concerned Persons

1. On December 20, 2007, the Department of Commerce and the Montana Heritage Preservation and Development Commission published MAR Notice No. 8-112-64 pertaining to the public hearing on the proposed transfer and adoption of the above-stated rules at page 2026 of the 2007 Montana Administrative Register, Issue Number 24.

2. The department and commission have transferred ARM 10.125.101, 10.125.102, 10.125.103, 10.125.104, 10.125.105, 10.125.106, and 10.125.107 as proposed, and have adopted New Rule II (8.112.202), New Rule III (8.112.205), New Rule V (8.112.209), New Rule VI (8.112.210), New Rule VII (8.112.213) as proposed.

3. The department and commission have adopted the following rules as proposed with the following changes from the original proposal, stricken matter interlined, new matter underlined:

NEW RULE I (8.112.201) DEFINITIONS The following definitions shall be used in these rules, unless context clearly indicates otherwise:

(1) and (2) remain as proposed.

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

(4) through (8) remain as proposed.

REASON: This change is made to accurately reflect the current composition of the commission's Executive Committee.

NEW RULE IV (8.112.206) SALE PROCEDURES – REAL PROPERTY

(1) through (1)(b) remain as proposed.

(c) The Real Property Sales Committee may make real property sale recommendations to the Executive Committee at any meeting properly noticed and with the discussion of sales included on the agenda. All recommendations will include a review of ~~how~~ the extent to which the proposed sale meets the criteria in ~~[NEW RULE II]~~ ARM 8.112.205. The Real Property Sales Committee shall prepare its recommendation to the Executive Committee in writing.

(d) through (3) remain as proposed.

REASON: This change is made to more accurately reflect the fact that the recommendation of proposed real property sales by the Executive Committee will involve a range in the extent to which the proposal meets the criteria in NEW RULE II (8.112.202), not that they simply meet the criteria or not.

4. 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 March 3, 2008.

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

In the matter of the adoption of) NOTICE OF ADOPTION
NEW RULES I – VIII pertaining to advance)
deposit account wagering on horse racing)
and greyhound racing)

TO: All Concerned Persons

1. On January 17, 2008, the Board of Horse Racing, Department of Livestock, published MAR Notice No. 32-8-190 pertaining to the adoption of the above-stated rules at page 18 of the 2008 Montana Administrative Register, Issue Number 1.

2. The board has adopted New Rule I (32.28.2001), New Rule II (32.28.2002), New Rule III (32.28.2005), New Rule IV (32.28.2007), New Rule V (32.28.2008), New Rule VI (32.28.2009), New Rule VII (32.28.2011), and New Rule VIII (32.28.2012) exactly as proposed.

3. The board has thoroughly considered the comment received. A summary of the comment received and the board's response is as follows:

COMMENT NO. 1: One comment was received from Surety Fidelity Association of America (SFAA) stating New Rule II(6)'s language requiring a licensed hub operator to provide a bond or alternative means of payment - such as bonds or letters of credit from other jurisdictions - will not provide the protection the board is seeking. The comment stated a surety bond from another jurisdiction is an indication of the hub operator's ability to meet the obligations of the other jurisdiction, not the obligations of the board. SFAA proposed that all licensed hub operators be required to post a bond or other security whether or not the operator posts a bond in another jurisdiction. SFAA suggests this bond should be in a reasonable amount and with reasonable terms and conditions as suggested by the comment.

RESPONSE: The board noted the current language in New Rule II is sufficient. The board may rely on bonding in another state, as well as any irrevocable letters of credit, or other forms of financial guarantees posted in other jurisdictions. The board is cognizant of the possibility that a hub operator may not want to negotiate a bond in this state, and might even decline to do business in this jurisdiction if unduly onerous bond requirement were imposed. The current rule language requirement is adequate and will accomplish the board's goal of ensuring financial responsibility for payments due to the board.

BOARD OF HORSE RACING
DEPARTMENT OF LIVESTOCK

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

/s/ Carol Grell Morris
Carol Grell Morris
Rule Reviewer

Certified to the Secretary of State March 3, 2008.

NOTICE OF FUNCTION OF ADMINISTRATIVE RULE REVIEW COMMITTEE

Interim Committees and the Environmental Quality Council

Administrative rule review is a function of interim committees and the Environmental Quality Council (EQC). These interim committees and the EQC have administrative rule review, program evaluation, and monitoring functions for the following executive branch agencies and the entities attached to agencies for administrative purposes.

Economic Affairs Interim Committee:

- Department of Agriculture;
- Department of Commerce;
- Department of Labor and Industry;
- Department of Livestock;
- Office of the State Auditor and Insurance Commissioner; and
- Office of Economic Development.

Education and Local Government Interim Committee:

- State Board of Education;
- Board of Public Education;
- Board of Regents of Higher Education; and
- Office of Public Instruction.

Children, Families, Health, and Human Services Interim Committee:

- Department of Public Health and Human Services.

Law and Justice Interim Committee:

- Department of Corrections; and
- Department of Justice.

Energy and Telecommunications Interim Committee:

- Department of Public Service Regulation.

Revenue and Transportation Interim Committee:

- Department of Revenue; and
- Department of Transportation.

State Administration and Veterans' Affairs Interim Committee:

- Department of Administration;
- Department of Military Affairs; and
- Office of the Secretary of State.

Environmental Quality Council:

- Department of Environmental Quality;
- Department of Fish, Wildlife, and Parks; and
- Department of Natural Resources and Conservation.

These interim committees and the EQC have the authority to make recommendations to an agency regarding the adoption, amendment, or repeal of a rule or to request that the agency prepare a statement of the estimated economic impact of a proposal. They also may poll the members of the Legislature to determine if a proposed rule is consistent with the intent of the Legislature or, during a legislative session, introduce a bill repealing a rule, or directing an agency to adopt or amend a rule, or a Joint Resolution recommending that an agency adopt, amend, or repeal a rule.

The interim committees and the EQC welcome comments and invite members of the public to appear before them or to send written statements in order to bring to their attention any difficulties with the existing or proposed rules. The mailing address is P.O. Box 201706, Helena, MT 59620-1706.

HOW TO USE THE ADMINISTRATIVE RULES OF MONTANA AND THE MONTANA ADMINISTRATIVE REGISTER

Definitions: Administrative Rules of Montana (ARM) is a looseleaf compilation by department of all rules of state departments and attached boards presently in effect, except rules adopted up to three months previously.

Montana Administrative Register (MAR or Register) is a soft back, bound publication, issued twice-monthly, containing notices of rules proposed by agencies, notices of rules adopted by agencies, and interpretations of statutes and rules by the Attorney General (Attorney General's Opinions) and agencies (Declaratory Rulings) issued since publication of the preceding register.

Use of the Administrative Rules of Montana (ARM):

- | | |
|---------------|---|
| Known Subject | 1. Consult ARM Topical Index.
Update the rule by checking the accumulative table and the table of contents in the last Montana Administrative Register issued. |
| Statute | 2. Go to cross reference table at end of each number and title which lists MCA section numbers and department corresponding ARM rule numbers. |

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through December 31, 2007. This table includes those rules adopted during the period January 1, 2008, through March 31, 2008, and any proposed rule action that was pending during the past six-month period. (A notice of adoption must be published within six months of the published notice of the proposed rule.) This table does not include the contents of this issue of the Montana Administrative Register (MAR or Register).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through December 31, 2007, this table, and the table of contents of this issue of the MAR.

This table indicates the department name, title number, rule numbers in ascending order, catchphrase or the subject matter of the rule, and the page number at which the action is published in the 2007 and 2008 Montana Administrative Register.

To aid the user, the Accumulative Table includes rulemaking actions of such entities as boards and commissions listed separately under their appropriate title number.

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