

# MONTANA ADMINISTRATIVE REGISTER

## ISSUE NO. 14

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 The Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

In the matter of the proposed )  
amendment of ARM 4.17.102 relating to ) NOTICE OF PUBLIC HEARING ON  
the organic program ) PROPOSED AMENDMENT

TO: All Concerned Persons

1. On August 21, 2008, at 10:00 a.m. the Montana Department of Agriculture will hold a public hearing in Room 225 of the Scott Hart Building, 303 N. Roberts at Helena, Montana, to consider the proposed amendment of the above-stated rule.

2. The Department of Agriculture will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Agriculture no later than 5:00 p.m. on August 14, 2008, to advise us of the nature of the accommodation that you need. Please contact Cort Jensen at the Montana Department of Agriculture, 303 North Roberts, P.O. Box 200201, Helena, MT 59620-0201; Phone: (406) 444-3144; Fax: (406) 444-5409; or e-mail: agr@mt.gov.

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

4.17.102 ADOPTION OF ORGANIC PROGRAM REGULATIONS (1) The department adopts and incorporates by reference the following parts of the United States Department of Agriculture (USDA) National Organic Program (NOP) final rule, Title 7, Part 205, Code of Federal Regulations (CFR) adopted December 21, 2000, ~~as amended at 68 FR 61987-61993, October 31, 2003; 68 FR 62215-62218, November 3, 2003; 70 FR 29579, May 24, 2005; 70 FR 61217-61219, October 21, 2005; 71 FR 32803-32807, June 7, 2006; and 71 FR 53299-53303, September 11, 2006;~~ Future editions will be specifically adopted as they become applicable.

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

(2) The department adopts and incorporates by reference the European Council Regulation (~~EEC or EC~~) Number ~~2092/91~~ 834/2007, as adopted June 24, 1991 ~~28, 2007.~~ and amended as follows: Future editions will be specifically adopted as they become applicable.

~~EEC 1535/92, June 15, 1992~~

~~EC 331/2000, December 17, 1999~~

~~EEC 2083/92, July 14, 1992~~

~~EC 1073/2000, May 19, 2000~~

~~EEC 207/93, January 29, 1993~~

~~EC 1437/2000, June 30, 2000~~

~~EEC 2608/93, September 23, 1993~~

~~EC 2020/2000, September 25, 2000~~

~~EC 468/94, March 2, 1994~~

~~EC 436/2001, March 2, 2001~~

~~EC 1468/94, June 20, 1994~~

~~EC 2491/2001, December 19, 2001~~

~~EC 2381/94, September 30, 1994~~

~~EC 473/2002, March 15, 2002~~

~~EC 1201/95, May 29, 1995~~

~~EC 223/2003, February 5, 2003~~

~~EC 1202/95, May 29, 1995~~

~~EC 599/2003, April 1, 2003~~

~~EC 1935/95, June 22, 1995~~

~~EC 418/96, March 7, 1996~~

~~EC 1488/97, July 29, 1997~~

~~EC 1900/98, September 4, 1998~~

~~EC 330/99, February 12, 1999~~

~~EC 1804/99, July 19, 1999~~

~~EC 806/2003, April 14, 2003~~

~~EC 2277/2003, December 22, 2003~~

~~EC 392/2004, February 24, 2004~~

~~EC 746/2004, April 22, 2004~~

~~EC 779/2004, April 26, 2004~~

(2)(a) remains the same.

(3) ~~Federal regulations~~ Regulations adopted by reference are effective as Montana law. A copy of these regulations may be obtained from the Montana Department of Agriculture, 303 N. Roberts, P.O. Box 200201, Helena, MT 59620-0201.

(4) remains the same.

AUTH: 80-11-601, MCA

IMP: 80-11-601, MCA

REASON: The underlying USDA and EU regulations have been changed. We are obligated, under terms of our accreditations, to certify to the current regulations.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Cort Jensen at the Montana Department of Agriculture, 303 North Roberts, P.O. Box 200201, Helena, MT 59620-0201; Fax: (406) 444-5409; or e-mail: [agr@mt.gov](mailto:agr@mt.gov). Any comments must be received no later than August 28, 2008.

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

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

should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

7. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was notified on April 15, 2008 by regular mail. For previous rule projects involving the same bill, the primary sponsor was given appropriate notice.

DEPARTMENT OF AGRICULTURE

/s/ Ron de Yong  
Ron de Yong, Director

/s/ Cort Jensen  
Cort Jensen, Rule Reviewer

Certified to the Secretary of State, July 21, 2008.

BEFORE THE BOARD OF PUBLIC EDUCATION  
OF THE STATE OF MONTANA

In the matter of the proposed	)	NOTICE OF PUBLIC HEARING
adoption of NEW RULE I and	)	ON PROPOSED ADOPTION AND
amendment of ARM 10.57.102 and	)	AMENDMENT
10.57.201 relating to Class 8 licensure	)	

TO: All Concerned Persons

1. On August 26, 2008 at 1:30 p.m. a public hearing will be held in the OCHE conference room at 46 North Last Chance Gulch, Helena, Montana, to consider the adoption and amendment of the above-stated rules.

2. The Board of Public Education 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 Public Education no later than 5:00 p.m. on August 12, 2008, to advise us of the nature of the accommodation that you need. Please contact Steve Meloy, P.O. Box 200601, Helena, MT 59620-0601, telephone: (406) 444-6576, FAX: (406) 444-0847, e-mail: smeloy@montana.edu.

3. The proposed new rule provides as follows:

NEW RULE I CLASS 8 DUAL CREDIT-ONLY POSTSECONDARY FACULTY LICENSE (1) A faculty member of a postsecondary institution is required to hold a Class 8 dual credit license, unless already licensed Class 1, 2, or 4 and properly endorsed, whenever a faculty member is teaching a course for which one or more students will earn both high school and college credit.

(2) The license is valid for five years:

(a) as long as the license holder is a faculty member of a regionally accredited postsecondary institution;

(b) only for the delivery of courses that fall within an endorsable major or minor, or the equivalent, held by the faculty member; and

(c) only when teaching dual credit courses within the role and scope of their duties assigned by the employing secondary institution.

(3) To obtain a Class 8 dual credit-only postsecondary faculty license, an applicant shall provide the following:

(a) Verification of faculty employment from the Chief Academic Officer or an appropriate official of the employing regionally accredited postsecondary institution that the Class 8 licensure applicant meets the definition in ARM 10.57.102(10) in their role of teaching a dual credit course at a regionally accredited postsecondary institution; and

(b) Recommendation from the appropriate official from a Montana or NCATE accredited professional educator preparation program stating all of the following:

(i) Applicant has earned a major or minor or the equivalent in one of the endorsable teaching areas as set forth in ARM 10.57.301; and



(ii) Applicant is competent, pursuant to ARM 10.58.501, as demonstrated by the applicant's satisfaction of criteria set forth in a rubric developed and published by the Superintendent of Public Instruction in consultation with K-12 education and higher education; and

(c) Compliance with all other nonacademic requirements for licensure as required by 20-4-104, MCA, ARM 10.57.201(4), and 10.57.201A.

(4) A Class 8 dual credit-only postsecondary faculty license shall be renewed pursuant to the requirements of ARM 10.57.215.

(5) A Class 8 license shall not be valid unless the licensee is in an employment relationship with a regionally accredited postsecondary institution.

AUTH: 20-4-102, MCA

IMP: 20-4-106, 20-4-108, MCA

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

10.57.102 DEFINITIONS The following definitions apply to this chapter.

(1) through (9) remain the same.

(10) "Dual credit-only postsecondary faculty" means:

(a) Qualified faculty employed by a regionally accredited postsecondary institution who:

(i) meet all qualifications for faculty set forth by the Montana Board of Regents or the regional accreditation organization, and the employing institution; and

(ii) have entered into a contractual employment relationship with the employing institution to assume formal teaching responsibilities for the course offered for dual credit.

(b) The regionally accredited postsecondary institution shall have hired the applicant through a process that includes all of the following:

(i) reference checks;

(ii) verification of the educational attainment level and experience appropriate and required for the discipline and the institution; and

(iii) compliance with the prevailing institution, system, and state policies, regulations, and laws.

(c) In addition to any postsecondary teaching assignments, an individual licensed as a dual credit-only postsecondary faculty pursuant to [NEW RULE I] is limited to teaching dual credit courses in their endorsed area to Montana high school students.

(10) through (20) remain the same but are renumbered (11) through (21).

AUTH: 20-4-102, MCA

IMP: 20-4-106, MCA

10.57.201 GENERAL PROVISIONS TO ISSUE LICENSES (1) through (3) remain the same.

(4) Applicants for initial Class 8 dual credit-only postsecondary faculty

licensure shall meet requirements of [NEW RULE I].

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

AUTH: 20-4-102, MCA

IMP: 20-4-103, MCA

5. Statement of reasonable necessity: The Board of Public Education has determined that it is reasonable and necessary to adopt New Rule I and amend ARM 10.57.102 and 10.57.201 to allow a faculty member of a postsecondary institution to teach a course for which one or more students earn both high school and college credit simultaneously. Further, these rules include language to keep the Board of Public Education's accreditation standards governing online learning contemporary with rapidly evolving online teaching.

6. Pursuant to the agreement between the Board of Public Education and the Legislature, the board does not anticipate any implementation costs, but shall request and report in its adoption notice any cost estimates received from districts during the hearing.

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 by mail to the Board of Public Education, P.O. Box 200601, Helena, Montana 59620-0601, or by e-mail to [smeloy@montana.edu](mailto:smeloy@montana.edu) and must be received no later than 5:00 p.m. on August 28, 2008.

8. Steve Meloy has been designated to preside over and conduct the hearing.

9. The Board of Public Education 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 Steve Meloy, P.O. Box 200601, Helena, Montana 59620-0601, faxed to the office at (406) 444-0847, by e-mail to [smeloy@montana.edu](mailto:smeloy@montana.edu), or may be made by completing a request form at any rules hearing held by the Board of Public Education.

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

11. The requirements of 20-1-501, MCA, have been fulfilled. Copies of these rules have been sent to all tribal governments in Montana.

/s/ Patty Myers

Patty Myers, Chairperson  
Board of Public Education

/s/ Steve Meloy

Steve Meloy, Rule Reviewer  
Board of Public Education

Certified to the Secretary of State July 21, 2008.

BEFORE THE BOARD OF PUBLIC EDUCATION  
OF THE STATE OF MONTANA

In the matter of the proposed ) NOTICE OF PUBLIC HEARING  
amendment of ARM 10.55.907 ) ON PROPOSED AMENDMENT  
relating to distance learning )

TO: All Concerned Persons

1. On August 26, 2008 at 9:30 a.m. a public hearing will be held in the OCHE conference room at 46 North Last Chance Gulch, Helena, Montana, to consider the amendment of the above-stated rule.

2. The Board of Public Education 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 Public Education no later than 5:00 p.m. on August 12, 2008 to advise us of the nature of the accommodation that you need. Please contact Steve Meloy, P.O. Box 200601, Helena, MT 59620-0601, telephone: (406) 444-6576, FAX: (406) 444-0847, e-mail: smeloy@montana.edu.

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

10.55.907 DISTANCE, ONLINE, AND TECHNOLOGY DELIVERED  
LEARNING (1) and (2) remain the same.

(3) Except as provided in (3)(a), teachers of distance, online, and technology delivered learning programs shall be licensed and endorsed in Montana or elsewhere in the area of instruction taught with such license granted as a result of the completion of an accredited professional educator preparation program as defined in ARM 10.57.102(3). School districts receiving distance, online, and technology delivered learning programs described in this rule shall have a distance learning facilitator for each course and available to the students.

(a) When a teacher of distance, online, and technology delivered learning programs and/or courses does not possess the qualifications specified in (3), the facilitator must be licensed and endorsed in Montana or elsewhere in the area of instruction facilitated with such license granted as a result of the completion of an accredited professional educator preparation program as defined in ARM 10.57.102(3).

(i) through (5) remain the same.

AUTH: 20-2-114, MCA

IMP: 20-2-121, 20-3-106, 20-7-101, MCA

4. Statement of reasonable necessity: The Board of Public Education has determined that it is reasonable and necessary to amend ARM 10.55.907(3) and (3)(a) to allow Montana school districts flexibility to select distance, online, and

technology courses and programs taught by qualified teachers whether in Montana or elsewhere. This amendment provides school districts flexibility in choosing distance, online, and technology courses and programs to best meet specific local learning needs while preserving education quality. Further, the proposed amendments include language to keep the Board of Public Education's accreditation standards governing online learning contemporary with rapidly evolving online teaching.

5. Pursuant to the agreement between the Board of Public Education and the Legislature, the board does not anticipate any implementation costs, but shall request and report in its adoption notice any cost estimates received from districts during the hearing.

6. Concerned persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted by mail to the Board of Public Education, P.O. Box 200601, Helena, Montana 59620-0601, or by e-mail to [smeloy@montana.edu](mailto:smeloy@montana.edu) and must be received no later than 5:00 p.m. on August 28, 2008.

7. Steve Meloy has been designated to preside over and conduct the hearing.

8. The Board of Public Education 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 Steve Meloy, P.O. Box 200601, Helena, Montana 59620-0601, faxed to the office at (406) 444-0847, by e-mail to [smeloy@montana.edu](mailto:smeloy@montana.edu), or may be made by completing a request form at any rules hearing held by the Board of Public Education.

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

10. The requirements of 20-1-501, MCA, have been fulfilled. Copies of these rules have been sent to all tribal governments in Montana.

/s/ Patty Myers  
Patty Myers, Chairperson  
Board of Public Education

/s/ Steve Meloy  
Steve Meloy, Rule Reviewer  
Board of Public Education

Certified to the Secretary of State July 21, 2008.

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

In the matter of the amendment of ) NOTICE OF PUBLIC HEARING ON  
ARM 12.6.2208, 12.6.2215, and ) PROPOSED AMENDMENT  
12.6.2220 regarding exotic species )

TO: All Concerned Persons

1. On August 21, 2008 at 6:00 p.m. the commission will hold a public hearing at the Fish, Wildlife and Parks Headquarter offices located at 1420 East 6th Avenue, Helena, Montana to consider the amendment of the above-stated rules.

2. The commission will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, please contact the commission no later than August 7, 2008, to advise us of the nature of the accommodation that you need. Please contact Jessica Snyder, Fish, Wildlife and Parks, P.O. Box 200701, Helena, MT 59620-0701; telephone (406) 444-4594; fax (406) 444-7456; e-mail [jesnyder@mt.gov](mailto:jesnyder@mt.gov).

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

12.6.2208 LIST OF CONTROLLED SPECIES (1) The following birds are classified as controlled species:

- (a) Black-Crowned Crane - *Balearica pavonina*;
- (b) Black-necked Crane - *Grus nigricollis*;
- (c) Blue Crane - *Anthropoides paradiseus*;
- (d) Brolga - *Grus rubicunda*;
- (e) Buff-banded Rail - *Gallirallus philippensis*;
- (f) Common Crane - *Grus grus*;
- (g) Demoiselle Crane - *Anthropoides virgo*;
- (h) Giant Wood Rail - *Aramides ypecaha*;
- (i) Grey Crowned Crane - *Balearica regulorum*;
- (j) Hooded Crane - *Grus monacha*;
- (k) Red-crowned Crane - *Grus japonensis*;
- (l) Sarus Crane - *Grus antigone*;
- (m) Siberian Crane - *Grus leucogeranus*;
- (n) Taita Falcon - *Falco fasciinucha*;
- (o) Wattled Crane - *Grus carunculata*;
- (p) White-breasted Waterhen - *Amaurornis phoenicurus*;
- (q) White-naped Crane - *Grus vipio*; and

~~(a)~~ (r) exotic waterfowl in the family Anatidae that are not classified as prohibited.

(2) remains the same.

AUTH: 87-5-704, 87-5-705, 87-5-712, MCA

IMP: 87-5-705, 87-5-707, 87-5-709, 87-5-711, 87-5-712, MCA

12.6.2215 LIST OF PROHIBITED SPECIES (1) through (3) remain the same.

(4) The following mammals are classified as prohibited species:

- (a) Brush-tailed possum - *Trichosurus vulpecula*;
  - (b) Nutria - *Myocastor coypus*;
  - (c) primates in the family *Cebidae* (new world primates);
  - (d) primates in the family *Cercopithecidae* (old world monkeys);
  - (e) primates in the family *Hylobatidae* (gibbons);
  - (f) primates in the family *Pongidae* (apes);
  - (g) Short-tailed opossum - *Monodelphis domestica*;
  - (h) Small spotted genet - *Genetta genetta*;
  - ~~(h)~~ (i) Southern flying squirrel - *Glaucomys volans*; and
  - ~~(i)~~ (j) Virginia opossum - *Didelphis virginiana*.
- (5) and (6) remain the same.

AUTH: 87-5-704, 87-5-705, 87-5-712, MCA

IMP: 87-5-707, 87-5-708, 87-5-711, 87-5-712, MCA

12.6.2220 PROHIBITED SPECIES PERMITS (1) The department may issue a permit for possession of a prohibited species only to the following:

- (a) through (e) remain the same.
- (f) a tax-exempt nonprofit organization licensed by the United States Department of Agriculture that exhibits wildlife solely for educational or scientific purposes; ~~or~~
- (g) a person who, due to a medical necessity, has assistance requirements that may be provided by the prohibited species and that requirement is certified by a physician licensed in the state of Montana; or
- (h) a rescue facility for exotic wildlife with either national or state agency affiliation engaged in temporary housing of exotic wildlife for the purpose of rescue for relocation.

(2) and (3) remain the same.

AUTH: 87-5-704, 87-5-705, 87-5-712, MCA

IMP: 87-5-705, 87-5-707, 87-5-709, 87-5-711, 87-5-712, MCA

4. The 2003 Legislature passed SB 442 granting the commission authority to adopt rules regarding the importation, possession, and sale of exotic wildlife through the operation of a "classification review committee" (committee). The intent of SB 442 was to protect Montana's native wildlife and plant species, livestock, horticultural, forestry, agricultural production, and human health and safety from the harmful effects of unregulated exotic animals.

The function of the committee created by SB 442 is to recommend classification of individual exotic animal species to the commission. The committee may recommend that a species be classified as noncontrolled, controlled, or

prohibited for importation, possession, and sale. If the commission approves the committee's recommendations, the commission begins administrative rulemaking to incorporate the recommendations into these classification lists: noncontrolled species, controlled species, and prohibited species.

The purpose of this rulemaking is to implement the recommendations of the committee and to increase the clarity of the existing rule through minor editing changes.

The committee recommended the addition of 17 species of exotic wildlife to the list of controlled species. These additions made revisions to ARM 12.6.2208 necessary. After evaluating these species and finding that potential impacts of private ownership could be minimized by the owners following restrictions on a controlled species permit, these animals were recommended to be classified as controlled. Additional and similar controls are placed on these species by the USFWS through the requirement for waterfowl sale and disposal permits and/or CITES permits for some of the species.

Revisions to ARM 12.6.2215 add one species of exotic wildlife to the list of prohibited species not allowed for personal possession as pets in Montana. The classification of this exotic wildlife species as prohibited for personal possession as pets was recommended by the committee because the species 1) would not be readily subject to control by humans while in captivity, 2) would pose a substantial threat to native wildlife and plants or agricultural production if released from captivity, or 3) would pose a risk to human health or safety, livestock, or native wildlife through disease transmission, hybridization, or ecological or environmental damage.

ARM 12.6.2220 was revised to allow "sanctioned" rescue facilities to temporarily house prohibited species until the animals are relocated.

5. Concerned persons may submit their data, views, or arguments concerning the proposed amendment in writing to FWP Exotics, Fisheries, P.O. Box 200701, Helena, MT 59620-0701, or e-mail them to fwpexotics@mt.gov. Any comments must be received no later than August 29, 2008.

6. Eileen Ryce or another hearings officer appointed by the department has been designated to preside over and conduct this hearing.

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

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



/s/ Steve Doherty

Steve Doherty

Chairman

Fish, Wildlife and Parks Commission

/s/ Bill Schenk

Bill Schenk

Rule Reviewer

Department of Fish, Wildlife and Parks

Certified to the Secretary of State July 21, 2008

BEFORE THE DEPARTMENT OF JUSTICE  
OF THE STATE OF MONTANA

In the matter of the amendment of            ) NOTICE OF PUBLIC HEARING ON  
ARM 23.6.106, pertaining to tow truck    ) PROPOSED AMENDMENT  
complaint resolution                        )

TO: All Concerned Persons

1. On August 26, 2008, at 1:00 p.m., a public hearing will be held to consider the proposed amendment of the above-stated rule in the auditorium of the Scott Hart Building, 303 North Roberts, Helena, Montana.

2. The Department of Justice will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m. on August 12, 2008, to advise us of the nature of the accommodation that you need. Please contact Jesse Laslovich, Department of Justice, 215 North Sanders, P.O. Box 201401, Helena, MT 59620-1401; telephone (406) 444-2026; Montana Relay Service 711; fax (406) 444-3549; or e-mail jlaslovich@mt.gov.

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

23.6.106 TOW TRUCK COMPLAINT RESOLUTION COMMITTEE –  
JURISDICTION AND PROCEDURE (1) remains the same.

(2) The committee shall have the authority to act as a hearing examiner in contested cases with the powers set forth in 2-4-611, MCA., ~~and shall have the authority to issue recommended proposals for decision as discussed in 2-4-621, MCA.~~ The attorney general shall review the recommended proposal and make the final decision.

(3) Complaints must be signed and submitted in writing to the Office of Consumer Protection (OCP) in the Attorney General's Office, 2225 Eleventh Avenue, P.O. Box 200151, Helena, MT 59620-0151, or a member of the committee. The complaint must identify the tow truck operator against whom it is filed and include a description of the underlying facts giving rise to the complaint.

(4) After receiving a written complaint, the OCP shall forward a copy of the complaint to the tow truck operator complained of, who has 20 days to respond in writing to the OCP. If the tow truck operator fails to respond within 20 days, beginning on the 21st day, the tow truck operator shall be suspended from participating in the state and local rotation system for a period of 30 days. The tow truck operator shall remain suspended from participating in the state and local rotation system until the tow truck operator responds to the OCP.

(5) The OCP will forward the complaint(s) to the full committee if:

(a) the tow truck operator fails to respond to the complaint;

- (b) the tow truck operator lacks the proper registration, licensing, endorsements, equipment, or any other requirement provided by law;
- (c) the OCP is unable to resolve the complaint; or
- (d) the OCP believes it to be in the best interests of the public.
- (6) If the complaint is forwarded to the committee, the committee will:
  - (a) through (e) remain the same.
  - (f) provide any witness the committee deems relevant an opportunity to address the committee; and
  - (g) keep a tape recording of the hearing that may be copied or transcribed at the request of any person who pays the cost thereof; and
  - ~~(h) issue a written proposal for decision which may be contested before the attorney general pursuant to 2-4-621, MCA.~~
- (7) With a majority vote, the committee may:
  - (a) dismiss the complaint; or
  - (b) treat the matter as a contested case under 2-4-611, MCA.
  - ~~(5) (8)~~ (8) If after a hearing, the committee finds the complaint to have merit, the committee may in its recommended proposal:
    - (a) through (d) remain the same.
  - (9) The committee's decision is subject to judicial review under 2-4-702, MCA.

AUTH: 61-8-912, MCA  
IMP: 61-8-908, 61-8-912, MCA

REASON: As currently written, the rules provide that a complaint be filed with a member of the committee. Since the rules were adopted, the only member who has received complaints is the chairman of the committee. The Office of Consumer Protection (OCP) handles numerous general complaints from consumers and is able to resolve many of them on an informal basis. The department believes that OCP should receive complaints about tow truck operators, just like it does on every other consumer issue facing consumers. If OCP cannot resolve the complaint informally, OCP can schedule a hearing for the committee members, resulting in cases being heard in a timely manner. At present, the complaint process is not timely.

The department also believes that there needs to be an incentive for tow truck operators to respond to a written complaint, which is why the rules propose to suspend an operator from the state and local rotation systems for 30 days if a response is not received within 20 days of receiving the complaint. Without a response from the tow truck operator, the committee is unable to resolve complaints in a timely and effective manner. The department believes that the possibility of permanent suspensions from the state and local rotation systems for continued failure to respond will result in most, if not all, of the complaints receiving a response.

The proposed rules also make the committee's decision final because the department believes that judicial review under 2-4-702, MCA, is an effective way for the aggrieved party to seek review. The committee members should make the final decision because they listen to all of the witnesses and review all of the evidence at the hearing, after which they are in the best position to determine an appropriate

resolution. The proposed rules provide for finality for the interested parties while still giving the party adversely affected by the decision the opportunity to appeal the decision to district court.

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: Jesse Laslovich, Department of Justice, 215 North Sanders, P.O. Box 201401, Helena, MT 59620-1401; telephone (406) 444-2026; Montana Relay Service 711; fax (406) 444-3549; or e-mail [jaslovich@mt.gov](mailto:jaslovich@mt.gov), and must be received no later than 5:00 p.m. on August 28, 2008.

5. Jesse Laslovich, Assistant Attorney General, Department of Justice, has been designated to preside over and conduct the hearing.

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

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

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

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

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

Certified to the Secretary of State on July 21, 2008.

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

In the matter of the proposed	)	NOTICE OF SECOND PUBLIC
amendment of ARM 36.12.1704, Permit	)	HEARING AND EXTENSION
Application - Existing Legal Demands	)	OF COMMENT PERIOD ON
and 36.12.1706, Permit Application	)	PROPOSED AMENDMENT
Criteria - Adverse Effect	)	

To: All Concerned Persons

1. On June 26, 2008, the Department of Natural Resources and Conservation published MAR Notice No. 36-22-128 regarding the notice of public hearing on the proposed amendment of the above-stated rules at page 1278 of the 2008 Montana Administrative Register, Issue No. 12.

2. On August 28, 2008, at 10:00 a.m. a second public hearing will be held in the Fred Buck Conference Room (lower floor), at the Department of Natural Resources and Conservation, Water Resources Building, 1424 Ninth Avenue, Helena, Montana, to consider the amendment of the above-stated rules. This second public hearing supplements the hearing that occurred on July 24, 2008. It has come to the attention of the department that certain interested parties were not initially notified of the proposed rule change. This second hearing has been scheduled to permit those parties to provide testimony and written comment.

3. The department will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m. on August 15, 2008, to advise us of the nature of the accommodation that you need. Please contact Kim Overcast, Montana Department of Natural Resources and Conservation, 1424 Ninth Avenue, Helena, MT 59620, telephone (406) 444-6614, fax (406) 444-0533, e-mail [kovercast@mt.gov](mailto:kovercast@mt.gov).

4. The department is also extending the time within which to submit written comment. Written data, views, or arguments may be submitted to Kim Overcast at the contact information listed in paragraph 3, and must be received no later than 5:00 p.m. on August 28, 2008. Testimony and comments that have already been submitted pursuant to the initial notice and hearing need not be repeated.

5. The rules as proposed to be amended remain the same.

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

7. An electronic copy of this Notice of Public Hearing on Proposed Amendment is available through the department's site on the World Wide Web at

<http://www.dnrc.mt.gov>. The department strives to make the electronic copy of this Notice of Public Hearing on Proposed Amendment conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered.

8. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding conservation districts and resource development, forestry, oil and gas conservation, trust land management, water resources, or a combination thereof. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be sent or delivered to the contact person in 3 above or may be made by completing a request form at any rules hearing held by the department.

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

#### DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

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

/s/ Anne Yates  
ANNE YATES  
Rule Reviewer

Certified to the Secretary of State on July 21, 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 XIII, the amendment of	)	ON PROPOSED ADOPTION,
ARM 37.86.2207, 37.86.2219, and	)	AMENDMENT, AND REPEAL
37.86.2221, and the repeal of ARM	)	
37.88.1101 through 37.88.1137	)	
pertaining to Medicaid and MHSP	)	
reimbursement for youth mental health	)	
services	)	

TO: All Interested Persons

1. On August 22, 2008, at 11:00 a.m., the Department of Public Health and Human Services will hold a public hearing in the Wilderness Room, 2401 Colonial Drive, Helena, Montana, to consider the proposed 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 August 11, 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 PSYCHIATRIC RESIDENTIAL TREATMENT FACILITY SERVICES.  
PURPOSE (1) The purpose of [RULES I through XIII] is to specify provider participation and program requirements and to define the basis and procedure the department will use to pay for psychiatric residential treatment facility (PRTF) services.

(2) Facilities in which these services are available are referred to as providers.

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

RULE II PSYCHIATRIC RESIDENTIAL TREATMENT FACILITY SERVICES.  
DEFINITIONS As used in this subchapter, the following definitions apply:

(1) "Continuity of care payment" means an annual payment made to qualifying hospital based psychiatric residential treatment facilities (PRTF) according to the eligibility criteria and payment calculation methodology in [RULE XI].

(2) "Devoted to the provision of inpatient psychiatric care for persons under the age of 21" means an inpatient psychiatric hospital facility or residential treatment facility whose goals, purpose, and care are designed for and devoted exclusively to persons under the age of 21.

(3) "Hospital based psychiatric residential treatment facility" means a residential treatment facility that meets the requirements of [RULE VIII].

(4) "Inpatient psychiatric services" means psychiatric residential treatment facility, or hospital based psychiatric residential treatment facility services.

(5) "Patient day" means a whole 24-hour period in which a person is present and receiving inpatient psychiatric services. Even though a person may not be present for a whole 24-hour period, the day of admission and, subject to the limitations and requirements of [RULE X], therapeutic home leave days are patient days. The day of discharge is not a patient day for purposes of reimbursement.

(6) "Psychiatric residential treatment facility (PRTF)" means a facility other than a hospital that provides psychiatric services only to individuals under age 21. The PRTF must be licensed by:

- (a) the department as a PRTF; or
- (b) the appropriate agency as a PRTF or the equivalent in the state where the facility is located.

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

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

RULE III PSYCHIATRIC RESIDENTIAL TREATMENT FACILITY SERVICES, PARTICIPATION REQUIREMENTS (1) These requirements are in addition to those contained in rule generally applicable to Medicaid providers.

(2) PRTF providers, as a condition of participation in the Montana Medicaid program, must comply with the following requirements:

(a) maintain a current license as a PRTF under the rules of the department's Quality Assurance Division to provide PRTF services, or, if the provider's facility is not located within the state of Montana, maintain a current license in the equivalent category under the laws of the state in which the facility is located;

(b) maintain a current certification for Montana Medicaid under the rules of the department's Quality Assurance Division to provide PRTF services or, if the provider's facility is not located within the state of Montana, meet the requirements of (2)(g) and (2)(h);

(c) for all providers, enter into and maintain a current provider enrollment form with the department's fiscal agent to provide psychiatric PRTF services;

(d) license and/or register facility personnel in accordance with applicable state and federal laws;

(e) accept, as payment in full for all operating and property costs, the amounts paid in accordance with the reimbursement method set forth in these rules;

(f) for providers maintaining patient trust accounts, ensure that any funds maintained in those accounts are used only for those purposes for which the youth, legal guardian, or personal representative of the patient has given written authorization. A provider may not borrow funds from these accounts for any purpose;



(g) maintain accreditation as a PRTF by the Joint Commission on Accreditation of Health Care Organizations (JCAHO), Council on Accreditation (COA), or the Commission on Accreditation of Rehabilitation Facilities (CARF) or any other organization designated by the Secretary of the United States Department of Health and Human Services as authorized to accredit PRTF for Medicaid participation;

(h) submit to the department prior to receiving initial reimbursement payments and thereafter within 30 days after receipt, all accreditation determinations, findings, reports, and related documents issued by the accrediting organization to the provider;

(i) provide PRTF services according to the service requirements for individuals under age 21 specified in Title 42 CFR, part 441, subpart D (2008). The department adopts and incorporates by reference Title 42 CFR, part 441, subpart D. A copy of these regulations may be obtained through the Department of Public Health and Human Services, Health Resources Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951;

(j) agree to indemnify the department in the full amount of the state and federal shares of all Medicaid inpatient psychiatric services reimbursement paid to the facility during any period when federal financial participation is unavailable due to facility failure to meet the conditions of participation specified in these rules or due to other facility deficiencies or errors.

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

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

#### RULE IV PSYCHIATRIC RESIDENTIAL TREATMENT FACILITY SERVICES, ADMINISTRATIVE REVIEW AND FAIR HEARING PROCEDURES

(1) The right to administrative review and fair hearing shall be in accordance with the provisions of ARM 37.5.310.

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

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

#### RULE V PSYCHIATRIC RESIDENTIAL TREATMENT FACILITY SERVICES, CERTIFICATION OF NEED FOR SERVICES, UTILIZATION REVIEW AND INSPECTIONS OF CARE

(1) Prior to admission and as frequently as the department deems necessary, the department or its agents may evaluate the medical necessity and quality of services for each Medicaid client.

(a) In addition to the other requirements of these rules, the provider must provide to the department or its agent upon request any records related to services or items provided to a Medicaid client.

(b) The department may contract with and designate public or private agencies or entities, or a combination of public and private agencies and entities, to perform utilization review, inspections of care, and other functions under this rule as an agent of the department.

(2) The department or its agents may conduct periodic inspections of care in PRTFs participating in the Medicaid program.

(3) Medicaid reimbursement is not available for PRTF services unless the provider submits to the department or its designee a complete and accurate certificate of need for services that complies with the requirements of 42 CFR, part 441, subpart D (2008) and these rules.

(a) For youth determined Medicaid eligible by the department at the time of admission to the facility, the certificate of need must:

(i) be completed, signed, and dated prior to, but no more than 30 days before admission; and

(ii) be made by an independent team of health care professionals that has competence in diagnosis and treatment of mental illness and that has knowledge of the youth's situation, including the youth's psychiatric condition. The team must include a physician that has competence in diagnosis and treatment of mental illness, preferably in child psychiatry, and a licensed mental health professional. No more than one member of the team of health care professionals may be professionally or financially associated with a PRTF program.

(b) For youth who are transferred between levels of inpatient psychiatric care within the same facility, the certificate of need may be completed by the facility-based team responsible for the plan of care within 14 days after admission provided that the:

(i) admission has been prior authorized by the department or the department's designee.

(c) For youth who apply for and become Medicaid eligible after admission to the facility, the certificate of need must be made by the facility-based team responsible for the plan of care as specified in 42 CFR, 441.156:

(i) within 90 days of the eligibility determination and must cover any period before application for which claims are made; and

(ii) services are determined medically necessary by the department or the department's designee.

(d) All certificates of need must be actually and personally signed by each team member, except that signature stamps may be used if the team member actually and personally initials the document over the signature stamp.

(4) An authorization by the department or its utilization review agent under this rule is not a final or conclusive determination of medical necessity and does not prevent the department or its agents from evaluating or determining the medical necessity of services or items at any time.

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

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

#### RULE VI PSYCHIATRIC RESIDENTIAL TREATMENT FACILITY SERVICES

(1) Inpatient psychiatric services are services that comply with the requirements of this subchapter and the applicable federal regulations and are provided in a PRTF that is devoted to the provision of inpatient psychiatric care for persons under the age of 21.

(2) 42 CFR 440.160 and 441.150 through 441.156 (2008) provide definitions and program requirements and the department adopts and incorporates them by reference. A copy of the regulations may be obtained through the Department of

Public Health and Human Services, Health Resources Division, 1400 Broadway,  
P.O. Box 202951, Helena, MT 59620-2905.

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

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

RULE VII PSYCHIATRIC RESIDENTIAL TREATMENT FACILITY SERVICES, TREATMENT REQUIREMENTS (1) PRTF services must include active treatment designed to achieve the youth's discharge to a less restrictive level of care at the earliest possible time.

(2) PRTF services must be provided under the direction of a licensed physician.

(3) The PRTF plan of care must be comprehensive and address all psychiatric, medical, psychological, social behavioral, developmental, and chemical dependency treatment needs.

(4) PRTF services include only treatment or services provided in accordance with all applicable licensure, certification, and accreditation requirements, and these rules.

(5) PRTF services include, at a minimum, a seven day supply of medication and a prescription for, at a minimum, a 30 day supply of medication on discharge from the facility.

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

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

RULE VIII HOSPITAL BASED PSYCHIATRIC RESIDENTIAL TREATMENT FACILITY, REQUIREMENTS (1) A hospital based PRTF must be paid as specified in ARM 37.86.2904, 37.86.2905, 37.86.2907, 37.86.2910, 37.86.2912, 37.86.2916, 37.86.2918, 37.86.2920, 37.86.2925, 37.86.2928, 37.86.2931, 37.86.2935, and 37.86.2940. It must also meet the following requirements:

(a) the PRTF must be in a hospital facility that includes inpatient psychiatric hospital beds and provides inpatient hospital psychiatric care to individuals under age 21. The PRTF beds and the hospital beds must be owned and operated by a single entity, and they must be located in an integrated facility;

(b) the PRTF must be located in Montana;

(c) the inpatient psychiatric hospital beds and the PRTF beds must be served by a common administrative and support staff;

(d) the PRTF must be served by no less than one full-time equivalent psychiatrist for every 25 youth;

(e) both the hospital and the PRTF must have an organized medical staff that is on call and available within 20 minutes, 24 hours a day, seven days a week; and

(f) both the hospital and the PRTF must have 24-hour nursing care by licensed registered nurses.

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

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

RULE IX PSYCHIATRIC RESIDENTIAL TREATMENT FACILITY, INTERIM RATE AND COST SETTLEMENT PROCESS (1) The interim rate for services provided to youths as the term "youth" is defined at [RULE I as proposed in MAR Notice No. 37-447] for PRTF providers located in the state of Montana is composed of:

(a) the psychiatric service rate provided in the department's Medicaid Mental Health and Mental Health Services Plan, Individuals Under 18 Years of Age Fee Schedule adopted in ARM 37.86.2207;

(b) a direct care wage add-on through a contract with the department, if applicable; and

(c) a facility specific add-on rate for medical and authorized ancillary costs, not already included in the base rate for psychiatric care at the facility.

(2) The ancillary rate in (1)(c) will be adjusted retrospectively when:

(a) allowable ancillary costs are reported using auditable data, standardized forms, instructions, definitions, and timelines supplied by the department; and

(b) ancillary costs in the aggregate for all discharges in a state fiscal year exceed or are less than 5% of the reimbursement that the facility received as an interim rate. If the costs exceed the aggregate by more than 5%:

(i) the department will reimburse the facility for costs exceeding 105% of the aggregate;

(ii) the facility will reimburse the department for costs less than 95% of the aggregate; and

(iii) no adjustments to reimbursement will be made by either the department or the facility for costs within 5% of the aggregate ancillary rate payment.

(3) The psychiatric service rate is an all-inclusive bundled per diem rate, and includes:

(a) all therapies, services, and items not specifically designated as an ancillary service that are provided while the youth is an inpatient in the PRTF;

(b) services provided by licensed psychologists, licensed clinical social workers, and licensed professional counselors; and

(c) lab and pharmacy costs related to the youth's psychiatric condition.

(4) Ancillary services are provided by or include the following:

(a) ambulatory surgical center;

(b) audiologist;

(c) chiropractor;

(d) dentist, denturist, and orthodontist;

(e) durable medical equipment;

(f) emergency room services not related to the psychiatric condition;

(g) eyeglasses;

(h) federally qualified health center;

(i) hearing provider and hearing aides;

(j) hospital;

(k) licensed addiction counselor;

(l) medical transportation and ambulance services;

(m) mental health center;

(n) nutritionist;

(o) optometrist and ophthalmologist;

- (p) outpatient hospital not relative to the psychiatric condition;
- (q) physical and speech therapist;
- (r) physician, psychiatrist, and mid-level practitioner;
- (s) podiatrist;
- (t) public health clinic;
- (u) respiratory therapy;
- (v) rural health clinic;
- (w) targeted case management;
- (x) at a minimum, a seven day supply of medication on discharge; and
- (y) any other Medicaid service provided to the youth receiving PRTF inpatient care not related to the youth's psychiatric condition may be considered an ancillary service.

(5) If a youth receiving inpatient care in a PRTF has a medical condition that requires a higher ancillary rate, prior to the cost settlement process, the PRTF may request interim reimbursement for the ancillary care. The department at its discretion may grant the youth specific request if the PRTF:

- (a) submits a request in writing to the department with documentation of the expenses; and
- (b) interim payments must be requested in the quarter of the state fiscal year in which the expense was incurred and will be taken into consideration during the ancillary cost settlement process described in (2).

(6) Reimbursement will be made to a PRTF provider for reserving a bed while the youth is temporarily absent for a therapeutic home visit if:

- (a) the youth's plan of care documents the medical need for therapeutic home visits as part of a therapeutic plan to transition the youth to a less restrictive level of care;
- (b) the youth is temporarily absent on a therapeutic home visit;
- (c) the provider clearly documents staff contact and youth achievements or regressions during and following the therapeutic home visit; and
- (d) the youth is absent from the provider's facility for no more than three patient days per therapeutic home visit, unless additional days are authorized by the department.

(7) No more than 14 patient days per youth in each state fiscal year will be allowed for therapeutic home visits.

(8) Providers must bill for PRTF services using the revenue codes designated by the department.

(9) Notice of the youth's admission and discharge dates must be submitted to the department or its designee the day of admission or discharge. A \$100 fine may be imposed against the facility for each instance where the department does not receive timely notification.

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

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

RULE X PSYCHIATRIC RESIDENTIAL TREATMENT FACILITY SERVICES, REIMBURSEMENT (1) For PRTF services provided on or after October 1, 2008, the Montana Medicaid program will pay a provider for each patient day as provided

in these rules.

(a) Medicaid payment is not allowable for treatment or services provided in a PRTF that are not consistent with the definition of PRTF in [RULE II] and unless all other applicable requirements are met.

(2) For inpatient psychiatric services provided by a PRTF in the state of Montana, the Montana Medicaid program will pay a provider, for each Medicaid patient day, a bundled per diem interim rate as specified in (3), less any third party or other payments. The interim rate is defined in [RULE IX].

(3) The statewide bundled per diem interim rate for inpatient psychiatric services is the lesser of:

(a) the amount specified in the department's Medicaid Mental Health and Mental Health Services Plan Fee Schedule, Individuals Under 18 Years of Age; or

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

(4) Out-of-state PRTF providers who are not hospital based will be reimbursed 50% of their usual and customary charges. Reimbursement will include all Medicaid covered psychiatric, medical, ancillary, and chemical dependency services.

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

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

RULE XI PSYCHIATRIC RESIDENTIAL TREATMENT FACILITY, CONTINUITY OF CARE PAYMENT (1) Hospital based residential treatment facilities as defined in [RULE VIII] qualify for a continuity of care payment.

(a) The amount of the continuity of care adjustor payment will be calculated and paid annually.

(b) The amount will be determined by the department according to the following formula:  $CCA = [M/D] * P$ :

(i) "CCA" represents the calculated continuity of care payment;

(ii) "M" is the number of Medicaid inpatient residential days provided by the facility for which the continuity of care payment is being calculated;

(iii) "D" is the total number of Medicaid inpatient residential days provided by all eligible facilities; and

(iv) "P" is the total amount available for distribution via the continuity of care payments. P equals 4% of the revenue generated by the Montana hospital utilization fee, plus federal financial participation.

(2) The number of Medicaid days shall be determined from the department's Medicaid paid claim data for the most recent calendar year that ended at least 12 months prior to the calculation of the continuity of care payment.

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

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

RULE XII PSYCHIATRIC RESIDENTIAL TREATMENT FACILITY, CHEMICAL DEPENDENCY ASSESSMENT AND TREATMENT (1) PRTF services include chemical dependency (CD) assessment and treatment according to the American Society of Addictions Medicine PPC-2R Manual (Second Edition, Revised

April 2001) for youth with a primary SED diagnosis who have a co-occurring CD diagnosis.

(2) Assessment and treatment must be provided by a licensed addiction counselor if the youth has a co-occurring diagnosis of substance dependency or abuse.

(3) CD treatment includes the following services based on the individual plan of care developed with the youth:

- (a) assessment;
- (b) individual therapy;
- (c) group therapy; and
- (d) family therapy.

(4) For youth with a co-occurring diagnosis of substance abuse or dependency outpatient services must be included in the discharge plan as needed.

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

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

#### RULE XIII PSYCHIATRIC RESIDENTIAL TREATMENT FACILITY.

ASSESSMENT SERVICES (1) PRTF assessment services must comply with the requirements of this subchapter and the applicable federal regulations for PRTF services.

(2) PRTF assessment services:

- (a) require prior authorization by the department or its designee;
- (b) are short-term lengths of stay, 14 days or less;
- (c) are reimbursed 15% higher than the department's current Medicaid

Mental Health and Mental Health Services Plan, Individuals Under 18 Years of Age Fee Schedule for PRTF services.

(3) Assessment services include the following, as clinically indicated:

- (a) diagnostic and functional assessment;
- (b) medication evaluation;
- (c) psychological and IQ testing;
- (d) chemical dependency assessment; and
- (e) supported group or independent living needs assessment.

(4) Assessment services include a written report within 14 days after the discharge that includes clear recommendations for treatment of the youth.

(5) If the PRTF admission continues beyond the assessment period and becomes a regular admission, the department will not reimburse at the higher rate for assessment services.

(a) If the youth is re-admitted to the facility within 30 days of the assessment, the admission for assessment may be subject to department review and full recovery.

(6) Assessment services must be provided by qualified staff or contractors operating within the scope of their practice.

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

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

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

37.86.2207 EARLY AND PERIODIC SCREENING, DIAGNOSTIC, AND TREATMENT SERVICES (EPSDT), REIMBURSEMENT (1) through (2) remain the same.

(3) Except as provided in (4), the reimbursement rate for the therapeutic portion of therapeutic youth group home treatment services provided on or after October 1, 2007 is the lesser of:

(a) the amount specified in the department's Medicaid Mental Health Fee Schedule. The department adopts and incorporates by reference the department's Medicaid Mental Health and Mental Health Services Plan, Individuals Under 18 Years of Age Fee Schedule dated ~~October 1, 2007~~ July 1, 2008. A copy of the fee schedule may be obtained from the Department of Public Health and Human Services, Health Resources Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951; or

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

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

(a) remains the same.

(b) Reports of allowable costs for SFY 2008 must be received by the department before ~~August 15~~ October 1, 2008.

(6) Reimbursement for the therapeutic portion of therapeutic family care treatment services is the lesser of:

(a) the amount specified in the department's Medicaid Mental Health and Mental Health Services Plan, Individuals Under 18 Years of Age Fee Schedule adopted in (3)(a) and a direct care wage add-on ~~as provided in ARM 37.88.1111~~, if applicable; or

(b) and (7) remain the same.

(8) Reimbursement will be made to a provider for reserving a therapeutic youth group home or therapeutic youth family care (other than permanency therapeutic family care) bed while the recipient is temporarily absent ~~only for a therapeutic home visit~~ if:

(a) through (c) remain the same.

(d) the recipient is absent from the provider's facility for no more than three patient days per ~~absence~~ therapeutic home visit, unless additional days are authorized by the department.

(9) No more than 14 patient days per recipient in each ~~rate~~ state fiscal year will be allowed for therapeutic home visits.

(10) and (11) remain the same.

(12) The department will not reimburse providers for two services that duplicate one another on the same day. The department adopts and incorporates by reference the Medicaid ~~Children's~~ Mental Health Plan and ~~Children's~~ Mental Health Services Plan (~~CHMSP~~) for youth Services Excluded from Simultaneous Reimbursement dated ~~September 1, 2005~~ October 1, 2008. A copy of the ~~CHMSP~~



Services Excluded from Simultaneous Reimbursement is posted on the internet at the department's web site at [www.dphhs.mt.gov/mentalhealth/children/childrensmentalhealthservicesmatrix.pdf](http://www.dphhs.mt.gov/mentalhealth/children/childrensmentalhealthservicesmatrix.pdf) or may be obtained by writing the Department of Public Health and Human Services, Health Resources Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

(13) remains the same.

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

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

37.86.2219 EARLY AND PERIODIC SCREENING, DIAGNOSTIC AND TREATMENT SERVICES (EPSDT), THERAPEUTIC YOUTH GROUP HOME SERVICES (1) through (3) remain the same.

(4) For recipients determined Medicaid eligible by the department as of the time of admission to the therapeutic youth group home, the certificate of need required under (2) must be:

(a) remains the same.

(b) made by a team of health care professionals that has competence in diagnosis and treatment of mental illness, and that has knowledge of the recipient's situation, including the recipient's psychiatric condition. The team must include a physician that has competence in diagnosis and treatment of mental illness, preferably in child psychiatry, and ~~must be~~ a licensed mental health professional. ~~The certificate of need must also be signed by an intensive case manager employed by a mental health center or other individual knowledgeable about local mental health services as designated by the department.~~ No more than one member of the team of health care professionals may be professionally or financially associated with a therapeutic youth group home program.

(5) through (6) remain the same.

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

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

37.86.2221 EARLY AND PERIODIC SCREENING, DIAGNOSTIC AND TREATMENT SERVICES (EPSDT), THERAPEUTIC FAMILY CARE TREATMENT SERVICES (1) through (3) remain the same.

(4) For recipients determined Medicaid eligible by the department as of the time of admission to the therapeutic youth family care, the certificate of need required under (2) must be:

(a) remains the same.

(b) made by a team of health care professionals that has competence in diagnosis and treatment of mental illness and that has knowledge of the recipient's situation, including the recipient's psychiatric condition. The team must include a physician that has competence in diagnosis and treatment of mental illness, preferably in child psychiatry, and ~~must be~~ a licensed mental health professional. ~~The certificate of need must also be signed by an intensive case manager employed by a mental health center or other individual knowledgeable about local mental~~

~~health services as designated by the department.~~ No more than one member of the team of health care professionals may be professionally or financially associated with a therapeutic family care program.

(5) through (6) remain the same.

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

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

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

37.88.1101 INPATIENT PSYCHIATRIC SERVICES, PURPOSE, is found on page 37-21709 of the Administrative Rules of Montana.

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

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

37.88.1102 INPATIENT PSYCHIATRIC SERVICES, DEFINITIONS, is found on page 37-21710 of the Administrative Rules of Montana.

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

IMP: 2-4-201, 53-2-201, 53-6-101, 53-6-111, 53-6-113, 53-6-149, MCA

37.88.1105 INPATIENT PSYCHIATRIC SERVICES, PARTICIPATION REQUIREMENTS, is found on page 37-21713 of the Administrative Rules of Montana.

AUTH: 53-6-113, MCA

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

37.88.1106 INPATIENT PSYCHIATRIC SERVICES, REIMBURSEMENT, is found on page 37-21717 of the Administrative Rules of Montana.

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

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

37.88.1107 INPATIENT PSYCHIATRIC SERVICES, COST SETTLEMENT AND UNDERPAYMENT, is found on page 37-21723 of the Administrative Rules of Montana.

AUTH: 53-6-113, MCA

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

37.88.1110 SERVICE ACCESS RATE ADJUSTMENT PAYMENT, ELIGIBILITY AND COMPUTATION, is found on page 37-21727 of the Administrative Rules of Montana.

AUTH: 53-6-113, 53-21-201, MCA

IMP: 53-6-101, 53-6-113, 53-21-201, MCA

37.88.1115 INPATIENT PSYCHIATRIC SERVICES, ADMINISTRATIVE REVIEW AND FAIR HEARING PROCEDURES, is found on page 37-21737 of the Administrative Rules of Montana.

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

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

37.88.1116 INPATIENT PSYCHIATRIC SERVICES, CERTIFICATION OF NEED FOR SERVICES, UTILIZATION REVIEW AND INSPECTIONS OF CARE, is found on page 37-21739 of the Administrative Rules of Montana.

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

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

37.88.1119 INPATIENT HOSPITAL PSYCHIATRIC CARE, is found on page 37-21745 of the Administrative Rules of Montana.

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

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

37.88.1121 INPATIENT PSYCHIATRIC SERVICES, is found on page 37-21747 of the Administrative Rules of Montana.

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

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

37.88.1125 INPATIENT PSYCHIATRIC HOSPITALS, REIMBURSEMENT, is found on page 37-21751 of the Administrative Rules of Montana.

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

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

37.88.1129 RESIDENTIAL PSYCHIATRIC CARE, is found on page 37-21757 of the Administrative Rules of Montana.

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

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

37.88.1131 HOSPITAL BASED RESIDENTIAL TREATMENT CENTERS, REQUIREMENTS, is found on page 37-21759 of the Administrative Rules of Montana.

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

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

37.88.1133 RESIDENTIAL TREATMENT CENTERS, REIMBURSEMENT, is found on page 37-21759 of the Administrative Rules of Montana.

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

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

37.88.1137 RESIDENTIAL TREATMENT CENTERS, CONTINUITY OF CARE PAYMENT, is found on page 37-21769 of the Administrative Rules of Montana.

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

IMP: 53-2-201, 53-6-101, 53-6-111, 53-6-113, 53-6-149, MCA

6. The Department of Public Health and Human Services (department) is proposing a 1.67% rate increase for youth mental health services reimbursement under the Medicaid Mental Health Fee Schedule for state fiscal year (SFY) 2009. The department intends to make the increased rates effective July 1, 2008.

The department is updating the administrative rule that requires a case manager sign the certificate of need (CON) for therapeutic group home, therapeutic family care, and residential treatment facility services. CMS has indicated case management may not be used as a "gate keeper". The department is proposing to take out the requirement that a CON be signed by a case manager. The department is updating the Medicaid Mental Health and Mental Health Service Plan for Youth, Services Excluded from Simultaneous Reimbursement chart. This chart indicates which mental health services are seen as a duplicate service when provided on the same day. The department is proposing to combine half-day treatment with day treatment in the same column. The proposed chart adds moderate and permanent therapeutic foster care.

The inpatient psychiatric care administrative rules would be changed to psychiatric residential treatment facility (PRTF) rules to align them with federal regulations. The definition of inpatient psychiatric acute hospital is found at ARM 37.86.2901, and the reimbursement rules are found at ARM 37.86.2801 and 37.86.2905. The proposed changes would simplify public access to reimbursement rules for all hospital types and units. A U.S. Department of Health and Human Services Appeals Board New York decision dated February 8, 2007 interprets the PRTF rate to be bundled and to include psychiatric, medical, and ancillary services. The department's rules currently refer to PRTFs as residential treatment facilities and bundle the reimbursement rate to include psychiatric services only. The department does not see a practical alternative to bundling all Medicaid services provided to youth in a PRTF. PRTFs will have to provide or pay for the medical or ancillary services youth need while an inpatient in a PRTF. No Federal Financial Participation (FFP) is available for Medicaid services outside the bundled rate. This includes in-state and out-of-state PRTF providers enrolled in Montana Medicaid.

PRTF recipients are not expected to see an increase in costs. Benefits should remain the same. The department will have more PRTF cost reports to review. The department will reimburse the PRTFs a percentage of the medical and ancillary expenses they incur. PRTFs will likely not receive the same Medicaid rate for medical and ancillary services for their recipients. Some of these expenses will be paid by the department at the end of the year through cost settlements. The department is not able to estimate what those additional expenses will be.

Proposed new Rules I through XIII are part of a reorganization of the mental health rules for youth with serious emotional disturbance (SED). Currently, those rules are located throughout the many rules for the department. The department is proposing the rule reorganization because it has proved difficult for consumers and providers to locate rules for youth with SED. Also, department staff will more readily maintain the rule set and maintain compliance with federal and state law and regulations should requirements change.

#### RULE I

Proposed new Rule I is substantially similar to ARM 37.88.1101. It does not increase or decrease fees, costs, or benefits. No fiscal or benefit effects are expected as a result of this proposed rule.

#### RULE II

Proposed new Rule II is similar to ARM 37.88.1102. Language was changed from "residential treatment facility" to "psychiatric residential treatment facility" or "PRTF" consistent with current terminology in the Code of Federal Regulations. The department is also proposing to tie the definition of "PRTF" to "residential treatment facility".

#### RULE III

Proposed new Rule III is substantially similar to ARM 37.88.1105. Language was changed to update "residential treatment facility" to "psychiatric residential treatment facility" or "PRTF". "Addictive and Mental Disorders Division" would be changed to "Health Resource Division", reflecting a 2005 reorganization of the department. The council on accreditation (COA), commission on accreditation of rehabilitation facilities (CARF) along with the joint commission on accreditation of health care organizations (JCAHO) would be added. COA and CARF are recognized by the United States Department of Health and Human Services to accredit psychiatric residential treatment facilities.

#### RULE IV

Proposed new Rule IV is substantially similar to ARM 37.88.1115.

#### RULE V

Proposed new Rule V is substantially similar to ARM 37.88.1116. Language was changed to take out the case management signature requirement on the certificate of need (CON) for residential treatment facility services. New federal regulations for case management prohibit one Medicaid service being a requirement to receive other Medicaid services. Therefore, targeted case management cannot be used as a "gate keeper" for other services. Requiring the case management service signature on the CON, even if the reason for their signature is to make sure other less restrictive services are not available to meet the youth's needs. The option of having another individual designated by the department has only been used when there is not a case manager working with the youth. The federal regulations governing inpatient psychiatric services do not require a case management signature on the CON.

#### RULE VI

This proposed new Rule VI is substantially similar to ARM 37.88.1121. Language would be changed from "residential treatment facility" to "PRTF". "Addictive and Mental Disorders Division" would be updated to "Health Resource Division".

#### RULE VII

Proposed new Rule VII was adapted from ARM 37.88.1129. The term "inpatient psychiatric care" would be changed to "residential psychiatric care". Specific language from the federal regulations for "psychiatric hospital" and "psychiatric residential treatment facility" was added. Specific language regarding active treatment, an individualized plan of care, specific discharge plan requirements, and review time frames was also added. The proposed new Rule VII contains language from the federal regulations specifying what is required in the plan of care to reflect the bundled service requirement.

#### RULE VIII

Proposed new Rule VIII is substantially similar to ARM 37.88.1131 except the term "residential treatment center" was changed to "PRTF".

#### RULE IX

Proposed new Rule IX is drawn from ARM 37.88.1133. The term "residential treatment center" was changed to "PRTF". The bundled PRTF rate would include psychiatric, medical, and ancillary services to be consistent with the interpretation of federal regulations expressed in the Appeals Board New York decision. Cost report and cost settlement language is added so the department can reimburse in-state PRTFs a percentage of their medical, CD treatment, and physician service expenses. The department will define these expenses as ancillary. Cost settlement will occur at the end of each calendar or state fiscal year.

Chemical dependency services are being added to PRTF services. The department

believes many youth receiving PRTF services also have a co-occurring substance abuse or dependency diagnosis that should be treated concurrently with their psychiatric diagnosis at this high level of care.

Pharmacy and laboratory costs for treatment of a youth's psychiatric condition will now be included as part of the interim rate. Pharmacy and lab costs for treatment of a medical condition may be cost settled at the end of the year. Under current rules they were included in the bundled rate.

The department proposes a process to request interim payments from the department for youth who have medical conditions that require a higher level of compensation. Interim payments may be made if prior approved. If a provider does not request interim payments in the quarter of the state fiscal year they were incurred, they will have to wait until they complete a cost report and use a form approved by the department.

Rule language was added requiring that providers notify the department when recipients are discharged. Other Medicaid providers will not be reimbursed as long as the youth is in a PRTF. Other Medicaid providers will be able to bill for services rendered for Medicaid eligible youth upon discharge.

Out-of-state PRTFs would be reimbursed 50% of their usual and customary charges. This language was inadvertently dropped from the rule last year and is being added back in to ensure that reimbursement for those facilities is appropriate.

#### RULE X

This proposed rule was based on ARM 37.88.1106. Language was changed to update the reimbursement rate effective "October 1, 2008". The term "residential treatment facility" would be replaced with "PRTF". Out-of-state inpatient hospital psychiatric services would be paid at the hospital rates in ARM 37.86.2905.

#### RULE XI

Proposed new Rule XI is substantially similar to ARM 37.88.1137, except the term "residential treatment facility" was changed to "psychiatric residential treatment facility".

#### RULE XII

Chemical dependency services would be added to PRTF services. The department believes many youth receiving PRTF services also have a co-occurring substance abuse or dependency diagnosis. These disorders should be treated concurrently with their psychiatric diagnosis(es) at this high level of care.

#### RULE XIII

Proposed new Rule XIII contains short-term assessment service language to

address the need for a more comprehensive assessment or reassessment at the PRTF level of care. Some youth are difficult to diagnose. Their clinical presentation changes, cognitive, psychological testing, or additional assessments need to be completed timely to receive appropriate treatment.

#### ARM 37.88.1110

The department is proposing repeal of the rule pertaining to service access rate adjustment payment, eligibility, and computation. It has never been approved by the Centers for Medicare and Medicaid Services and was never implemented by the department.

#### ARM 37.86.2207

The department proposes to amend this rule to update the Medicaid Mental Health and Mental Health Services Plan, Individuals Under 18 Years of Age Fee Schedule, and update the Medicaid Mental Health and Mental Health Service Plan for Youth, Services Excluded from Simultaneous Reimbursement chart. This chart indicates which mental health services may not be reimbursed when received on the same day. Some services may be reimbursed on the same day if prior authorized. A copy of the proposed fee schedule and chart can be accessed on the department's web site, [www.dphhs.mt.gov/mentalhealth/children](http://www.dphhs.mt.gov/mentalhealth/children). A hard copy may be obtained by writing the department at Department of Public Health and Human Services, Health Resources Division, Children's Mental Health Bureau, P.O. Box 202951, Helena, MT 59620-2951.

#### ARM 37.86.2219 and 37.86.2221

The department is proposing to amend these rules to take out the rule language requiring a case manager sign the certificate of need.

#### ARM 37.88.1101 through 37.88.1137

The department is proposing repeal of ARM 37.88.1101 through 37.88.1137 because they would be replaced by proposed new Rules I through XIII.

#### Estimated Financial and Budget Impacts

The proposed new Rules I through XIII would not significantly change the overall costs of mental health services to youths under the age of 18.

The 1.67% provider rate increases will increase overall expenditures \$3,067,386 for SFY 2009.

#### Persons and Entities Affected



There are three in-state and approximately 30 out-of-state PRTFs enrolled in Montana Medicaid. There were 418 youth served in a PRTF (in and out-of-state) in SFY 2007. PRTFs will likely not receive the same Medicaid rate for medical and ancillary services for their recipients. These expenses will be paid for by the department at the end of the year through cost settlements. The department is not able to estimate what those additional expenses will be at this time. Paid claim reports are being completed by the department to establish the ancillary service rate, per individual PRTF, based on SFY 2007 data.

7. The department intends proposed new Rules I through XIII to be effective October 1, 2008. The amended rules if adopted will be applied retroactively to July 1, 2008. There will be no detrimental effects on providers or recipients.

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 August 28, 2008. Comments may also be faxed to (406)444-1970 or e-mailed to [dphhslegal@mt.gov](mailto: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, do not apply.

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  
Director, Public Health and  
Human Services

Certified to the Secretary of State July 21, 2008.

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

In the matter of the proposed amendment of	)	NOTICE OF PUBLIC
ARM 42.18.110, 42.18.113, 42.18.122, and	)	HEARING ON PROPOSED
42.18.124 relating to Montana's Property	)	AMENDMENT
Appraisal Plan	)	

TO: All Concerned Persons

1. On August 21, 2008, at 2:30 p.m., a public hearing will be held in the Four-East Conference Room of the Sam W. Mitchell Building, at Helena, Montana, to consider the amendment of the above-stated rules.

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

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Revenue no later than 5:00 p.m., August 8, 2008, to advise us of the nature of the accommodation that you need. Please contact Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-5828; fax (406) 444-3696; or e-mail canderson@mt.gov.

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

42.18.110 2009 RESIDENTIAL REAPPRAISAL PLAN (1) through (6)(e) remain the same.

(7) Residential lots and tracts are valued through the use of CALP models. Homogenous areas within each county are geographically defined as neighborhoods. The CALP models reflect ~~January~~ July 1, 2008, land market values.

(8) through (13) remain the same.

AUTH: 15-1-201, 15-7-111, MCA

IMP: 15-7-111, MCA

REASONABLE NECESSITY: The proposed amendments to ARM 42.18.110, 42.18.113, 42.18.122, and 42.18.124 will change the base year date for the 2009 Reappraisal from January 1, 2008, to July 1, 2008. Historically, the department has used sales information that has occurred from the beginning of the reappraisal cycle until the base year date. Without this change, that would mean sales from January 1, 2003, through December 31, 2007. With the ongoing changes in the national housing market due to the subprime mortgage situation, the department is undertaking several extraordinary measures to help ensure that the 2009 reappraisal values reflect market value. One of those measures under consideration has been

extending the base year date from January 1, 2008, to July 1, 2008. The amendments to the rules will reflect the department adopting that proposal and approach. The additional sales that will be collected during that time period and that will become a part of the department's market modeling/sales comparison valuation approach will result in the department more accurately determining the market value of residential, commercial, and agricultural properties for the 2009 reappraisal. The proposal to change the base year date, as identified in the proposed rules, has been discussed with the Revenue and Transportation Interim Committee.

42.18.113 2009 COMMERCIAL REAPPRAISAL PLAN (1) through (6)(e) remain the same.

(7) Commercial lots and tracts are valued through the use of CALP models. Homogeneous areas within each county are geographically defined as neighborhoods. The CALP models reflect ~~January~~ July 1, 2008, land market values.

(8) through (13) remain same.

AUTH: 15-1-201, 15-7-111, MCA

IMP: 15-7-111, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.18.113 because commercial property is required to be reappraised on the same schedule as residential.

42.18.122 REVALUATION MANUALS (1) remains the same.

(2) For the reappraisal cycle beginning January 1, 2009, the 2008 Montana Appraisal Manual, adjusted for local conditions, will be used for valuing residential and agricultural/forest lands real property. The cost base schedules reflect ~~January~~ July 1, 2008, cost information.

(3) remains the same.

(4) For the reappraisal cycle beginning January 1, 2009, the 2008 Montana Appraisal Manual, adjusted for local conditions, will be used for valuing commercial and industrial real property. If the property is not listed in the 2008 Montana Appraisal Manual, other construction cost manuals such as Marshall Valuation Service; Richardson Engineering Services, Inc., entitled "Process Plant Construction Estimating Standards"; or R.S. Means Company, Inc., entitled "Building Construction Cost Data" will be used with a publication date as close to the 2008 Montana Appraisal Manual as possible. The cost base schedules reflect ~~January~~ July 1, 2008, cost information.

(5) and (6) remain the same.

AUTH: 15-1-201, 15-7-111, MCA

IMP: 15-7-111, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.18.122 because agricultural improvements are required to be reappraised on the same schedule as residential property.

42.18.124 CLARIFICATION OF VALUATION PERIODS (1) and (1)(a) remain the same.

(b) For the taxable years from ~~January~~ July 1, 2009, through December 31, 2014, all property classified in 15-6-134, MCA, (class four) must be appraised at its market value as of January 1, 2008.

AUTH: 15-1-201, 15-7-111, MCA

IMP: 15-6-134, 15-7-103, 15-7-111, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.18.124 for the same reasons as stated with regard to the proposed amendments to ARM 42.18.110, 42.18.113, and 42.18.122.

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: Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-5828; fax (406) 444-3696; or e-mail canderson@mt.gov and must be received no later than August 29, 2008.

5. Cleo Anderson, Department of Revenue, Director's Office, has been designated to preside over and conduct the hearing.

6. An electronic copy of this Notice of Public Hearing is available through the department's site on the World Wide Web at [www.mt.gov/revenue](http://www.mt.gov/revenue), under "for your reference"; "DOR administrative rules"; and "upcoming events and proposed rule changes." The department strives to make the electronic copy of this Notice of Public Hearing conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

7. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and e-mail or mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding particular subject matter or matters. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the person in 4 above or faxed to the office at (406) 444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

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

/s/ Cleo Anderson  
CLEO ANDERSON  
Rule Reviewer

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

Certified to Secretary of State July 21, 2008

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

In the matter of establishing a negotiated ) NOTICE OF NEGOTIATED  
rulemaking committee relating to prepaid ) RULEMAKING  
wireless telecommunications providers )

TO: All Concerned Persons

1. The Department of Revenue intends to establish a negotiated rulemaking committee and develop proposed rules relating to emergency telephone services.

2. The proposed rules must establish specific guidelines relative to determining how the fees described in 10-4-201, MCA, are to be collected and remitted by prepaid wireless telecommunication providers in a nondiscriminatory and competitively neutral manner and explain how consumers of prepaid wireless telecommunications services are to contribute to basic and enhanced 911 service.

3. Interests that are likely to be significantly affected by the proposed rules include but are not limited to the following entities: wireless telecommunications providers; landline providers; other taxpayers; agencies and members of the public affected by the services supported by the relevant funds collected by the state; and other affected parties.

4. The individuals proposed to represent the department on the negotiated rulemaking committee are: Lee Baerlocher, Business and Income Taxes Division; and Joel Silverman, Legal Services Office. Cleo Anderson, Disclosure, Rules and Policy Officer, Legal Services Office, will serve as hearing examiner for the negotiated rulemaking process.

5. The department is seeking applications from interested parties to serve on the committee.

6. Any individual or entity interested in applying for or nominating another person for membership on the committee must submit the following information in writing to: Cleo Anderson, Department of Revenue, P.O. Box 7701, Helena, Montana 59604-7701, no later than August 15, 2008:

(a) The person's name or the nominee's name, address, and contact information including telephone or fax number or e-mail address.

(b) A description of the interests the person or nominee represents.

(c) Evidence that the person or nominee is authorized to represent parties related to the interests of the persons proposed to be represented.

(d) The relationship of the person or nominee to universal system benefits programs, and the name of the establishment or trade association.

(e) A commitment that the person or nominee will be able to participate in the negotiated rulemaking process as contemplated in paragraph 6 and will actively participate in good faith in the development of the rules under consideration.

(f) The ability of the person or nominee to cover committee participation costs (such as telephone calls, travel, and per diem expenses).

7. Initially, the department proposes to limit the size of the negotiated rulemaking committee to no more than 15 persons. However, after receipt of comments and applications, the department may determine that a smaller or larger

number is necessary to adequately represent the interests of the persons significantly affected by the proposed rules.

8. The Director of Revenue, Dan R. Bucks, will select the committee members from the timely submitted applications. One representative will be allowed from each area impacted by the rules, e.g., one from each agency and one from each area of the telecommunications industry. The selected committee members will represent all identified segments of the prepaid wireless telecommunications providers and state and local officials.

9. Members of the public and other interested parties not selected to serve on the committee are invited to attend the meetings and may consult with committee members regarding issues and make recommendations of information to be considered.

10. The proposed working schedule for the negotiated rulemaking committee is as follows:

(a) On July 31, 2008, this notice will be published in the Montana Administrative Register (MAR), and in the five major newspapers in Montana. The notice will also be mailed to persons known to the department to have an interest in this matter. Applications for membership on the negotiated rulemaking committee must be received no later than September 1, 2008.

(b) After receipt and consideration of the comments and applications, the department will establish a negotiated rulemaking committee no later than September 19, 2008. The members selected to serve on the committee must be able to adequately represent the interests of the persons that will be significantly affected by the proposed rules. The committee members will be notified in writing of their selection. Within ten days from the notification of selection, the committee members will be sent an information packet.

(c) The negotiated rulemaking committee will convene its first organizational meeting on October 8, 2008, to begin the negotiation process. At this meeting, subsequent meeting dates will be established. Teleconferencing and e-mail correspondence will be utilized as much as possible for the meetings after the initial organizational meeting. The time and place of the first meeting will be provided to those selected to participate and posted on the department's web site at the time the appointees are notified.

(d) If the negotiated rulemaking committee is successful in achieving a consensus on the proposed rules, the committee will transmit, to the department, a report specifying the areas in which the committee has reached a consensus and the issues that remain unresolved.

(e) Thereafter, and in accordance with Title 2, chapter 4, part 3, MCA (Adoption and Publication of Rules), the department will file with the Secretary of State for publication in the Montana Administrative Register the proposed rules for prepaid wireless telecommunications providers.

(f) The department may seek the assistance and advice of the negotiated rulemaking committee with respect to comments received during the formal rulemaking process.

11. The department will make reasonable accommodations for persons with disabilities who wish to participate on the committee. If you require an accommodation, please advise the department of the nature of the accommodation

you need when applying for membership on the committee.

12. Please note the following concerning the process of negotiated rulemaking:

(a) "Interest" for the purpose of this process means multiple parties that have similar points of view or that are likely to be affected in a similar manner in relationship to matters affected by the rule(s) (2-5-103(5), MCA).

(b) Negotiated rulemaking is not a substitute for the public notification and participation requirements of the Montana Administrative Procedure Act, and a consensus agreement by a negotiated rulemaking committee may be modified by an agency as a result of the subsequent rulemaking process (2-5-102, MCA).

(c) The negotiated rulemaking committee may not continue to function and must be disbanded after the adoption of the final rule(s) (2-5-106(4), MCA).

13. Interested parties may submit their views and comments concerning the proposed negotiated rulemaking process to Cleo Anderson, Department of Revenue, P.O. Box 7701, Helena, Montana 59604-7701, no later than August 15, 2008.

14. The specific grant of rulemaking authority authorizing the department to adopt the proposed rules is found in 15-1-201, 15-30-305, and 15-32-407, MCA. The proposed rules will implement 10-4-201, MCA.

/s/ Cleo Anderson  
CLEO ANDERSON  
Rule Reviewer

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

Certified to Secretary of State July 21, 2008



BEFORE THE SECRETARY OF STATE  
OF THE STATE OF MONTANA

In the matter of the adoption of New	)	NOTICE OF PUBLIC HEARING ON
Rules I and II, amendment of ARM	)	PROPOSED ADOPTION,
44.5.111, 44.5.121, 44.6.105,	)	AMENDMENT, AND REPEAL
44.6.108, 44.6.109, 44.6.201, and	)	
44.6.203, and repeal of 44.2.201	)	
pertaining to business entity and	)	
uniform commercial code (UCC) filings	)	

TO: All Concerned Persons

1. On August 26, 2008, a public hearing will be held at 10:00 a.m. in the Secretary of State's Office Conference Room, Room 260, State Capitol Building, Helena, Montana, to consider the proposed adoption, amendment, and repeal of the above-stated rules.

2. The Secretary of State will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Secretary of State's office no later than 5:00 p.m. on August 19, 2008, to advise us of the nature of the accommodation that you need. Please contact Janice Doggett, P.O. Box 202801, Helena, Montana 59620-2801; telephone (406) 444-5375; fax (406) 444-3976; TDD/Montana Relay Service (406) 444-9068; or e-mail [jdoggett@mt.gov](mailto:jdoggett@mt.gov).

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

NEW RULE I DEFINITIONS AND REQUIREMENTS FOR ANNUAL REPORT ON-LINE FILING (1) The following definitions apply for filing corporation and limited liability company annual reports on-line:

(a) "Compliance officer" is a person who works in the Secretary of State's office who is qualified to certify that an annual report meets the requirements of the law;

(b) "Registered user" is a person or entity who is registered with a private vendor to file annual reports using the on-line filing system available through internet technology;

(c) "Submitter" is a person or entity that files an annual report on-line.

(2) Fees and payment methods for on-line filing of annual reports are published on-line by the private vendor.

(3) Annual reports filed through the use of internet technology are considered to be annual reports filed on-line.

(4) The following annual reports are acceptable for on-line filing:

(a) domestic and foreign profit corporations (meet the requirements of Title 35, chapter 1, section 1104, MCA);

(b) domestic and foreign nonprofit corporations (meet the requirements of Title 35, chapter 2, section 904, MCA);

(c) domestic and foreign limited liability companies (meet the requirements of Title 35, chapter 8, section 208, MCA).

(5) An annual report may be filed electronically without the signature of the authorized agent.

(a) If an original or reproduced paper document is filed, the annual report must be signed by an authorized agent.

(6) Annual reports against the following entities are not acceptable for on-line filing:

(a) inactive corporations;

(b) inactive limited liability companies;

(c) corporations or limited liability companies that are pending renewal for term of existence.

(7) On-line filing is available 24 hours a day, 7 days a week.

(8) On-line filing is not available for domestic corporations or domestic limited liability companies after the first business day in December, until the first business day in January. Foreign corporations and foreign limited liability companies will not be available for filing on-line after the first business day in November until the first business day in January.

(9) Submitters will be notified through the on-line application when the site is unavailable due to technology problems or system maintenance.

(10) The following requirements must be met in order to successfully complete an on-line annual report filing:

(a) the requirements set forth under Title 35, chapter 1, section 1104 and Title 35, chapter 2, section 904, and Title 35, chapter 8, section 208, MCA.

(11) An annual report document that is successfully completed and submitted on-line will be considered filed upon receipt by the Secretary of State's office. The on-line technology application will ensure the document is properly completed prior to acceptance. The submitter will be notified by an on-line message if required fields are not properly completed. A message confirming successful completion and acceptance will appear on-line when the filing is accepted.

(12) Submitters should print and retain their acknowledgement message as proof that the on-line filing was received by the Secretary of State's office. The acknowledgement message will contain a unique filing number, filing date, and time.

(13) The on-line annual reports will be rejected if information is omitted.

(14) The submitter will be notified through the on-line site if the electronically filed annual report is rejected. If a filing is later determined to be improper the Secretary of State's office will notify the submitter via phone, fax, or e-mail notification.

(15) The date and time a successfully submitted on-line filing is considered to be effective is the date and time the document was accepted by the Secretary of State's office.

AUTH: 30-9A-526, MCA

IMP: 30-9A-102, 30-9A-523, MCA

REASON: The International Association of Corporate Administrators (IACA) recommends these security procedures to clarify how on-line filings are treated. The states who are engaging in on-line filing are adopting similar rules to clarify security processes for on-line filings.

NEW RULE II NONSTANDARD INQUIRY (1) A "nonstandard" search logic is available on-line through the UCC search site. The "nonstandard" search logic results in a broader listing of debtor names being returned. The results from a "nonstandard" inquiry are not certified and should only be used to determine the name of the debtor for liens filed with the Secretary of State's office.

(a) The "nonstandard" search logic will return debtor names that contain the word(s) reflected in the registered user's search criteria.

(b) The basic "nonstandard" search logic is as follows:

(i) corporate identifiers are ignored. Refer to ARM 44.6.201(5) for list of identifiers ignored;

(ii) punctuation is ignored;

(iii) upper and lower case is ignored;

(iv) spaces are not ignored;

(v) an inquiry limited by city may not reveal all lien filings against the name being searched.

AUTH: 30-9A-526, MCA

IMP: 30-9A-102, 30-9A-523, MCA

REASON: This rule clarifies that the searches use "nonstandard" search logic. The use of "nonstandard" search logic is consistent with uniform practices recommended by IACA and is consistent with search criteria used in other states. "Nonstandard" searches return a wider range of names than exact name searches.

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

44.5.111 FORMS (1) The following shall be the official mandatory forms as prescribed by the Secretary of State. The forms are available at the Secretary of State's office, State Capitol, Room 260, P.O. Box 202801, Helena, Montana 59620-2801 or can be downloaded from: ~~http://sos.state.mt.us/css/BSB/Filing\_Forms.asp~~ http://sos.mt.gov/BSB/Business\_Forms.asp.

(a) Application for certificate of authority of foreign profit or nonprofit corporation ~~form number FC-4~~, shall contain the following information:

(i) remains the same.

(ii) if the name is not acceptable, the corporation must adopt an assumed business name for use in Montana;

(iii) through (ix) remain the same.

(x) if the corporation is a nonprofit corporation, which type of corporation it elects to be:

(A) through (C) remain the same.

(b) Application for amended certificate of authority of foreign corporation form number ~~FCM-6~~, shall contain the following information:

(i) ~~the date of the issuance of the certificate of authority and the name of the corporation the certificate of authority was issued to;~~

(ii) and (iii) remain the same.

(iv) the state or country of its incorporation;

(v) ~~if the corporation was involved in a merger or consolidation it must list the surviving corporation and its state of jurisdiction;~~

(c) Application for withdrawal of a foreign profit corporation form number ~~FC-10~~, shall contain the following information:

(i) through (iii) remain the same.

(iv) the corporation revokes the authority of its registered agent in Montana to accept service of process on its behalf and appoints the Secretary of State as its agent for service of process ~~consents that service of process in any action, suit or proceeding based upon any on a cause of action arising in Montana may thereafter be made on it by service thereof on the Secretary of State of the state of Montana during the time it was authorized to transact business in this state;~~

(v) the mailing address to which the Secretary of State may mail a copy of any process ~~against the corporation~~ served on the Secretary of State;

(vi) remains the same.

(vii) ~~if the corporation was involved in a merger it must list the surviving corporation and its state of jurisdiction and mailing address;~~

~~(viii) (vii) if a profit corporation, it has paid all taxes imposed on the corporation upon it by Title 15, MCA, have been paid, supported by a certificate by the Department of Revenue to be attached to the application to the effect that the department is satisfied from the available evidence that all taxes imposed have been paid. and must attach a certificate by the department of revenue to the effect that the department of revenue is satisfied from the available evidence that all taxes imposed by Title 15, MCA, have been paid.~~

(d) Application for withdrawal of a foreign nonprofit corporation shall contain the following information:

(i) the name of the corporation;

(ii) the state of jurisdiction;

(iii) the corporation is not transacting business and surrenders its authority to transact business in this state;

(iv) the corporation revokes the authority of its registered agent in Montana to accept service of process on its behalf and appoints the Secretary of State as its agent for service of process in any proceeding based on a cause of action arising during the time it was authorized to transact business in this state;

(v) the mailing address to which the Secretary of State may mail a copy of any process served on the Secretary of State;

(vi) an assurance the corporation will notify the Secretary of State of any change of its mailing address.

~~(d) (e)~~ Montana annual corporate report form, shall contain the following information:

(i) through (ix) remain the same.

- (x) shareholders' names, addresses, and number of shares for professional service corporations only;
- (xi) whether or not the corporation has members.

AUTH: 35-1-1307, MCA

IMP: 35-1-1308, MCA

REASON: Form numbers are no longer used so this rule reflects the name of the forms instead of form numbers. The web site address is updated. A new section of this rule specifically refers to foreign nonprofit corporations. This simply clarifies the application of the rule and further reflects the current statutory application. This rule also clarifies that the tax clearance certificate is required for foreign as well as domestic profit corporations. Changes in statutory language regarding service of process to appoint the Secretary of State are reflected in this rule and add a provision to clarify that corporate annual report forms for a nonprofit corporation must state whether the corporation has members. The new language reflects statutory changes.

#### 44.5.121 MISCELLANEOUS FEES

(1) and (2) remain the same.

(3) <u>Business Services</u> Documents or copies returned by fax	
up to 10 pages	<del>3.00</del> <u>5.00</u>
<del>(a) each additional page over 10</del>	<del>.50</del>
(b) through (d) remain the same but are renumbered (a) through (c).	
<u>(d) registering a commercial registered agent</u>	<u>150.00</u>
<u>(e) registering a nonqualified foreign entity</u>	<u>70.00</u>

(4) Bulk data for corporation records ~~varies~~ vary according to data type and number of documents. Please see the Secretary of State's web site.

AUTH: 2-6-103, 2-15-405, 30-9A-525, 35-1-1206, 35-1-1307, 35-2-1107, MCA

IMP: 2-15-405, 30-9A-525, 30-13-320, 35-1-1206, 35-2-119, 35-2-1003, 35-7-101, ~~35-8-211~~, MCA

REASON: Streamlining fees will eliminate payment and billing for most corporate filings. This rule will not result in additional revenue to the Secretary of State's office. Applying a fixed rate will be convenient for customers. Fees will remain commensurate with costs. This fee change will actually save many customers money. This fee change will affect approximately 103,000 Business Services clients. This rule also implements a fee structure for the Model Registered Agent Act that was passed in the 2007 legislative session and will affect approximately ten entities that are likely to become commercial registered agents.

#### 44.6.105 FEES FOR FILING DOCUMENTS -- UNIFORM COMMERCIAL

CODE (1) The Secretary of State and the county clerk and recorder shall charge and collect for:

(a) through (l) remain the same.

(m) copies of Uniform Commercial Code documents, ~~\$.50 per page~~ \$5.00 per search request form.

(2) and (3) remain the same.

AUTH: 2-15-405, 30-9A-525, 30-9A-526, MCA

IMP: 30-9A-501, 30-9A-502, 30-9A-525, 71-3-125, MCA

REASON: This rule will not result in additional revenue to the Secretary of State's office. Fees will remain commensurate with costs. The fee of \$5.00 per request "form" allows for copies of multiple filing numbers and copies of all filings associated with a particular debtor. This fee change will actually save many customers money. This also makes the UCC unit's copy practices consistent with the corporation unit's copy practices and streamlines the billing and accounting procedures in the Secretary of State's office. This rule affects approximately 2,000 customers who file Uniform Commercial Code filings.

44.6.108 FORMAT REQUIREMENTS FOR THE FILING OF UNIFORM COMMERCIAL CODE LIENS (1) remains the same.

(2) All Uniform Commercial Code liens are required to be filed on one of the following national forms or they will be rejected:

(a) through (m) remain the same.

~~(n) consumer goods refiling.~~

(n) tribal forms.

(3) The forms listed in (2), as they existed on ~~August 29, 2003~~ May 1, 2008, are herein incorporated by reference. Copies of the forms listed in (2)(a) through (h), (m), and ~~(n)~~ (l) are available at ~~www.sos.state.mt.us~~ www.sos.mt.gov. Copies of the forms listed in (2)(i) through (k) are available at ~~www.irs.gov~~ only to the Internal Revenue Service. Copies of the form listed in (2)(l) are available only to the Montana Department of Public Health and Human Services at www.dphhs.state.mt.us.

AUTH: 30-9A-526, MCA

IMP: 30-9A-102, 30-9A-501, 30-9A-502, MCA

REASON: This rule eliminates a reference to a consumer goods refiling form that was used for the transition from county to state filings. The transition period is over and the form is no longer necessary. This rule adds tribal filing forms to reflect the existence of tribal compacts that will allow for tribal lien filings with the Secretary of State's office. The rule also gives the office's new web address.

44.6.109 FORMAT REQUIREMENTS FOR FILING AN EFFECTIVE FINANCING STATEMENT LIEN UNDER THE FEDERAL FOOD SECURITY ACT OF 1985 (1) remains the same.

(2) Effective financing statement lien filings must be filed on the following forms or they will be rejected:

(a) Montana's effective financing statement;

(b) Montana's effective financing statement amendment;

- (c) Montana's effective financing statement addendum; or
- (d) Montana's effective financing statement amendment addendum.
- (3) The forms listed in (2), as they existed on August 29, 2003, are ~~herein~~ incorporated by reference and are available at ~~www.sos.state.mt.us.~~  
www.sos.mt.gov.
- (4) The following minimum required information must be included on all effective financing statements or they will be rejected:
  - (a) through (d) remain the same.
  - (e) ~~signature of the debtor~~ signed, authorized, or otherwise authenticated by the debtor;
  - (f) through (h) remain the same.
  - (i) ~~signature of the secured party~~ signed, authorized, or otherwise authenticated by the secured party.
- (5) An amendment to an effective financing statement is required when a change would render the farm bill master list entry no longer informative as to what is subject to the security interest in question. The effective financing statement amendment form must be used and must include:
  - (a) ~~the secured party's signature~~ an amendment including terminations that must be signed, authorized, or otherwise authenticated by the secured party; and
  - (b) ~~the debtor's signature.~~ an amendment modifying the debtor and/or collateral information that must be signed, authorized, or otherwise authenticated by the debtor;
  - (i) An amendment that is a continuation statement does not require the signature of the debtor.
    - (c) an original filing number on file with the Secretary of State's office;
    - (d) only one filing number per form;
    - (e) only one amendment per form is permitted;
    - (f) the name of a debtor currently reflected on the Secretary of State's records for the original filing number being amended; and
    - (g) the name of a secured party currently reflected on the Secretary of State's records for the original filing number being amended.

AUTH: 30-9A-526, MCA

IMP: 30-9A-501, 30-9A-502, 71-3-125, MCA

REASON: This rule incorporates Federal Farm Security Act amendments that allow for electronic authentications. The Secretary of State is committed to allowing eCommerce to exist whenever possible and has amended the state rules to follow the federal authority for electronic filings. The new rule also gives the office's new web address.

44.6.201 DEFINING SEARCH CRITERIA FOR UNIFORM COMMERCIAL CODE CERTIFIED SEARCHES (1) The Secretary of State provides information regarding centrally filed uniform commercial code records ~~from~~ via requests to office staff and via the Secretary of State's web site. ~~These searches are certified for their accuracy. These certified searches use "standard" search logic as described below.~~

(2) through (5)(x) remain the same.

- (xi) corporations;
- (xii) through (xxii) remain the same.
- (xxiii) joint venture;
- (xxiv) through (xxx) remain the same.
- (xxxi) limited liability partnership;
- (xxxii) through (xlvi) remain the same but are renumbered (xxxii) through (xlix).
- ~~(xlix)~~ (l) registered limited liability partnership;
- (l) through (liii) remain the same but are renumbered (li) through (liv).
- (6) and (7) remain the same.
- (8) Only one debtor name is permitted per search request form.

AUTH: 2-15-404, ~~30-9-407~~, 30-9A-526, MCA

IMP: ~~30-9-403, 30-9-421~~, 30-9A-516, 30-9A-519, 30-9A-522, 30-9A-526, MCA

REASON: This rule corrects a typographical error and includes limited liability partnerships that had been inadvertently excluded from the rule. The rule also clarifies that searches are limited to one debtor in order to accommodate an electronic filing system to be used by the Secretary of State's office. The rule also clarifies that standard search logic is used for all searches performed under the rule.

44.6.203 REQUIREMENTS FOR FILING UCC AMENDMENTS (1) In addition to the requirements of 30-9A-512, MCA, the following information needs to be included:

- (a) the name of ~~the debtor(s)~~ a debtor currently reflected on the Secretary of State's records for the original filing number being amended ~~on file with the Secretary of State;~~
  - (b) the name of ~~the a secured party(ies)~~ a secured party currently reflected on the Secretary of State's records for the original filing number being amended ~~on file with the Secretary of State;~~ and
  - (c) the original filing number on file with the Secretary of State;
  - ~~(d) (i)~~ (i) only one filing number per form is permitted.
- (2) Multiple amendments, ~~other than terminations~~, may not be submitted on one form.

AUTH: 30-9A-526, MCA

IMP: 30-9A-519, MCA

REASON: This rule cleans up language that was confusing and standardizes our practices with that of other states to allow one amendment per form. This will also be necessary for the implementation of the office's new electronic filing and retention system.

5. The Secretary of State proposes to repeal the following rule:

44.2.201 FEES FOR RECEIPT OF FACSIMILE FILING OF DOCUMENTS  
found at ARM page 44-17.



AUTH: 30-9-403, 30-13-217, 30-13-311, 35-1-1201, 35-2-1001, 35-12-521, MCA  
IMP: 30-9-403, 30-13-217, 30-13-311, 35-1-1201, 35-2-1001, 35-12-521, 71-3-125, MCA

REASON: This rule is unnecessary since fees for facsimile filing are found in another rule.

6. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Tana Gormely, Deputy for Business Services for the Secretary of State, P.O. Box 202801, Helena, Montana 59620-2801, telephone (406) 444-2896, fax (406) 444-3976, or e-mail [tgormely@mt.gov](mailto:tgormely@mt.gov), and must be received no later than 5:00 p.m., August 28, 2008.

7. Janice Doggett, Chief Legal Counsel and Assistant Chief Deputy for the office, has been appointed to preside over and conduct this hearing.

8. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to Jean Branscum, P.O. Box 202801, Helena, Montana 59620-2801, telephone (406) 444-5596, fax (406) 444-4263, e-mail [jabranscum@mt.gov](mailto:jabranscum@mt.gov), or may be made by completing a request form at any rules hearing held by the Secretary of State's office.

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

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

/s/ Janice Doggett

Janice Doggett  
Rule Reviewer

/s/ Brad Johnson

Brad Johnson  
Secretary of State

Dated this 21st day of July 2008.

BEFORE THE DEPARTMENT OF ADMINISTRATION  
OF THE STATE OF MONTANA

In the matter of the amendment of ARM	)	NOTICE OF AMENDMENT
2.59.1401, 2.59.1402, 2.59.1405,	)	AND ADOPTION
2.59.1406, 2.59.1409, 2.59.1410,	)	
2.59.1413, 2.59.1414, and 2.59.1417	)	
pertaining to the regulation of title lenders	)	
and the adoption of NEW RULES I	)	
through IX regarding title loan	)	
designation, notification to the	)	
department, rescinded loans, failure to	)	
correct deficiencies, department's cost of	)	
administrative action, examination fees,	)	
required record keeping, sale of	)	
repossessed property, and unfair practice	)	

TO: All Concerned Persons

1. On May 8, 2008, the Department of Administration, Division of Banking and Financial Institutions, published MAR Notice No. 2-59-400 regarding the public hearing on the proposed amendment and adoption of the above-stated rules at page 846 of the 2008 Montana Administrative Register, issue number 9.

2. On May 29, 2008, a public hearing was held in Helena concerning the proposed amendment and adoption. Two people testified. Four people submitted written comments.

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

Comment #1: Todd Koutts of Advance Finance of Missoula commented that in the statement of reasonable necessity for ARM 2.59.1414(1)(e) it was unclear if the department was giving an example or if the department was saying that lenders may not charge storage and repossession costs for in-state collections but may charge such fees for out-of-state collections. Mark Staples commented on behalf of Montana Title Loans. He quoted this statement of reasonable necessity, "In addition, lenders may not charge storage and repossession costs in all cases; for instance, they may not charge storage and repossession costs for in-state repossessions but they may charge such costs for out-of-state repossessions. If the lender would ever charge the costs, under any circumstances, the lender should disclose that fact to the applicant. The mandatory language "shall" is being changed to "may" to reflect that the costs must be disclosed even if they may only be charged under certain circumstances." Mr. Staples questioned where in the rules or statutes such language exists. He submits that a policy of allowing out-of-state costs while

disallowing in-state costs does not adequately take into account the geography of Montana.

Response #1: The department was giving an example. There is nothing in the Title Loan Act that addresses when a title lender may or may not charge storage and repossession costs. However, if the title lender chooses to charge costs under any circumstances, those costs should be disclosed to the applicant.

Comment #2: Aimee Grmoljez representing Select Management asked what to do about a customer that wants to "cure" a default. For instance if a customer who has defaulted comes in ten days after the default, can the lender allow the customer to "cure" the default and reinstate the loan and backdate documents to make the loan continue on in effect as if no default had occurred? Tiki Hut Title Loan in Billings commented that by not allowing the borrower to reinstate a loan that has gone into default, the division has relegated the borrower to either paying in full or losing the vehicle. Tiki Hut proposes that the lender have the ability to reinstate a loan that has gone into default.

Response #2: There is nothing in the Title Loan Act that allows the lender to allow the borrower to "cure" a default. Section 31-1-816(2)(f)(i), MCA, states, "upon failure of the borrower to redeem the certificate of title at the end of the original 30-day agreement period or at the end of any agreed-upon 30-day renewal, the borrower shall deliver the titled personal property to the title lender at the location specified in the title loan agreement;" and 31-1-816(2)(h), MCA, states, "upon taking possession of the titled personal property, the title lender is authorized to sell the titled personal property and to convey to the buyer good title, subject to the [20-day waiting period] provided for in 31-1-820, MCA."

The department cannot change statutes by administrative rule in accordance with 2-4-305(6), MCA. Nor can the department create a new remedy on default that does not exist in statute by adopting an administrative rule. The department advised Select Management and Tiki Hut that they may address this concern to the next legislative session.

Comment #3: Tiki Hut Title Loan in Billings commented that they agree that making it mandatory for all owners of the vehicle to be present to receive a loan on a vehicle will eliminate the risk that one owner will get a loan without the knowledge of all other owners. That requirement should eliminate the need to send documents and notices to both parties, since they should have the burden to communicate between them.

Response #3: By defining "borrower" to include all owners of a jointly-owned vehicle, the "borrower" would have to sign the title loan agreement, consent to the title lender keeping the certificate of title, have the right to redeem the certificate of title by repaying the loan in full, have the right to rescind the transaction, deliver the titled property to the title lender if a default occurs, as well as receive notice of the

right of redemption. The proposed rules do not say that the borrower(s) must be "present" to receive a loan on a vehicle.

Comment #4: Tiki Hut Title Loan in Billings commented that ARM 2.59.1409 prohibits the lender from putting a customer into repossession if the lender comes across information that makes them positive that the customer will not repay the loan. Tiki Hut thinks it would be beneficial to have the option to call the loan due at any time and not have to wait until the end of the renewal period.

Response #4: The Title Loan Act requires each title loan to have a term of 30 days and allows renewals for additional 30-day periods pursuant to 31-1-816, MCA. The department cannot by administrative rule change the statutes, nor can it provide remedies that conflict with the statutes in accordance with 2-4-305(6), MCA.

Comment #5: Tiki Hut Title Loan of Billings commented that the new rules will require the lender to suspend interest when a title loan goes into default. They question whether banks are required to suspend interest when a loan goes into default. They state it is not reasonable for the borrower to have no repercussion for defaulting on the contract. Tiki Hut states that it would lead to the customer being unchecked until they decide to return the vehicle or pay the loan off with only 60 days of interest accrued. Tiki Hut proposes that the lender be able to continue to renew the loan and accrue interest, regardless of the fact the loan is in default, until the borrower pays or the vehicle is repossessed. In addition, the borrower would be able to reinstate the loan if the loan were in default status until the vehicle is repossessed.

Response #5: The proposed amendments to the rules do require the lender to stop charging interest when a loan goes into default because 31-1-817, MCA, provides the maximum rate of interest that a title lender may contract for and receive in making and carrying any title loan authorized under the Title Loan Act. Those rates are set by loan amount for each 30-day period. If the lender were to continue to charge interest during the 20-day redemption period and beyond, the lender would be exceeding the maximum rate set forth by statute.

Banks are not required to stop charging interest on loans in default, but they are not making title loans pursuant to the Title Loan Act. If they were, they would be bound by the Title Loan Act and the rules adopted thereunder.

Borrowers have the repercussions for defaulting on the contract that are set forth in the Title Loan Act. Namely, the borrower must pay off the loan in full within the redemption period or surrender the vehicle for repossession and sale.

The department is proposing to limit interest to the period of the title loan. New Rule IX states it is an unfair practice to renew a title loan if the borrower has not paid toward either principal or interest for 60 days. This is designed to prevent the lender from renewing a title loan until it cannot be renewed any longer when it is clear a borrower cannot repay the loan. If the borrower cannot repay the loan, it is not fair

to continue to renew the loan to strip what equity remains in the titled personal property. The department believes that if the borrower cannot repay, then reasonably prompt repossession and sale will at least return what equity remains in the titled personal property to the borrower.

Comment #6: Tiki Hut Title Loan of Billings commented that New Rule IX states that the borrower is not to be charged interest after not making payments for 60 days and that the collateral is to be repossessed or surrendered by the borrower. Tiki Hut commented that this does not leave room for the discretion of the lender to work with the borrower to get the default worked out. Tiki Hut proposes a scenario in which the lender can renew the borrower until they decide the borrower is in default and would not return the collateral to them. Both the rules give the borrower two poor options for dealing with the situation, either pay off the loan or surrender the vehicle. The proposed rule only limits the customer's ability to work with the lender and get caught up and keep the vehicle.

Response #6: New Rule IX states, "[i]t is an unfair practice to renew a title loan if the borrower has failed to make a payment toward either principal or interest for 60 days." An amendment to ARM 2.59.1409 states that a licensee may not continue to accrue interest after the expiration of a title loan agreement, period of renewal, or after the redemption date of the loan. Together, those two provisions mean that if a borrower has failed to make any payment toward either principal or interest for 60 days, the loan must be placed into default and the lender cannot continue to charge interest on the loan. The rules do not limit the ability of the borrower to work with the lender to get caught up on a loan after default; the Title Loan Act does.

Comment #7: Tiki Hut Title Loan of Billings commented that the amendment to ARM 2.59.1409(11)(a) and (b) does not address what position fees are paid in. They suggest that fees should be paid after interest but before principal.

Response #7: The proposed amendment addresses the application of payments to principal and interest. Typically, fees are taken off the top of the payment. But in order to clarify this issue, the amendment will be redrafted to address the application of payments to fees, principal, and interest.

Comment #8: Mike Sopuch of Cash King, LTD asked if someone doesn't come in to pay the title loan, but the title lender does not wish to initiate repossession because they don't want to keep the vehicle for the required 20-day holding period, does this imply that that they will not be able to charge interest for the 20-day holding period?

Response #8: Yes.

Comment #9: Mike Sopuch of Cash King, LTD commented that it would be mutually beneficial if the lender could mail a statement to the borrower that they are in default and they would be charged interest until they pay off the loan or deliver the vehicle.

Response #9: The Title Loan Act sets the maximum rate of interest that can be charged for making and carrying a title loan. Section 31-1-817, MCA, sets forth the interest rate for each 30-day period based on the amount of the loan. It does not allow interest to continue past the term of the loan.

Comment #10: Mike Sopuch of Cash King, LTD commented that if they repossess the vehicle on the first default date in order to mitigate their interest loss, and the borrower comes in to pay 10 days later and says that the lender burned up their transmission, the lender has a problem. If they can't collect interest for 20 days and allow the borrower to drive a car in which they have a security interest "interest free" then they have another problem.

Response #10: Anytime a lender repossesses titled personal property, the borrower can claim that the property was damaged by the lender during the repossession. Section 31-1-822, MCA, provides that the title lender is strictly liable to the borrower for any loss to pledged property in the possession of the title lender but only if the borrower makes a redemption of the pledged property prior to the expiration of the 20-day holding period. The lender would not be allowed to charge interest during the 20-day redemption period.

Comment #11: Mark Staples representing Montana Title Loans stated, with the exception of comment #1, Montana Title Loans supports all current proposals as complimentary to a well-regulated title-lending sector of the Montana financial services industry.

Response #11: The department thanks Montana Title Loans for its comments.

Comment #12: John McCloskey of Select Management Resources, LLC, commented that he believes the division lacks the authority to prohibit the accrual of post-default interest on title loans. He believes the division's authority is the same as that under the Consumer Loan Act. He contends that if interest ceases on a title loan, then the same theory would compel the cessation of interest under the Consumer Loan Act.

Response #12: The department disagrees. The Title Loan Act specifically limits the maximum allowable interest to 30-day periods pursuant to 31-1-817, MCA. The Consumer Loan Act contains no such limitation.

Comment #13: John McCloskey of Select Management Resources, LLC, asked the following: Assume a customer takes out a \$400 loan on June 1 with a due date of June 30. On July 1, no payment is made but the lender automatically renews the loan. New due date is July 30. On July 30 no payment is made. Proposed New Rule IX prohibits a second automatic renewal so no new renewal notice is sent. Interest ceases and the customer is in default. On August 10, the customer comes into the title lender. What are the customer's options?

Response #13: The customer can deliver the titled personal property to the lender or pay the redemption amount pursuant to 31-1-816, MCA.

Comment #14: John McCloskey of Select Management Resources, LLC, suggests that the division rewrite ARM 2.59.1409 to provide that the renewal notice required by (3) only needs to be mailed if the customer does not come in to make their payment within five days of the due date as was the practice several years ago. The five-day delay allows time to see if the customer will come in to make a payment. A five-day delay simply makes sense.

Response #14: Section 31-1-816, MCA, provides that a title loan has a term of 30 days. The borrower has the exclusive right to redeem the certificate of title by repaying the loan in full and by complying with the title loan agreement for an agreed period of time. Upon the failure of the borrower to redeem the certificate of title at the end of the original 30-day agreement or at the end of any agreed upon 30-day renewal, the borrower shall deliver the titled personal property to the title lender pursuant to 31-1-816, MCA. The department may not adopt administrative rules that conflict with the statute in accordance with 2-4-305(6), MCA.

Comment #15: John McCloskey of Select Management Resources, LLC, commented that the division is promulgating a rule that is contrary to the Act by prohibiting a second automatic renewal.

Response #15: Section 31-1-816(2)(d)(i), MCA, provides that, "the title loan may be renewed for additional 30-day periods beyond the original term provided that beginning with the sixth renewal, and for each subsequent renewal, the borrower shall reduce the principal amount by at least 10% of the original principal amount of the loan." The Act gives no guidance as to what the requirements for a renewal may be, or how the renewal is to be accomplished. Presumably, the borrower cannot pay the full redemption amount or a renewal would not be necessary.

However, the Act also prohibits unfair, deceptive, or fraudulent practices in the making or collection of a title loan under 31-1-825(1)(j), MCA. If a borrower has not made any payment toward principal or interest for 60 days, it is clear that they cannot pay the redemption amount either. If the borrower cannot afford to pay anything toward principal or interest for 60 days, the loan should be placed into default. Failure to do so will result in stripping the equity from the titled personal property. The end result of either scenario is that the borrower will lose the titled personal property because the borrower cannot afford to repay the loan. The only issue is whether the borrower will also lose the equity in the titled personal property. As a matter of fairness, the department believes that the borrower who clearly cannot repay the loan should be put into default and any equity remaining in the titled personal property over the amounts owed should be returned to the borrower.

Comment #16: John McCloskey of Select Management Resources, LLC, commented that in comment 13, the customer should have the same right to cure their default on August 10 as they did on July 10 (by paying two months worth of

interest). No customer should ever be forced to surrender their vehicle because they cannot pay their loan in full at a specific point in time when they want and the lender is willing to give additional time. The Montana Title Loan Act specifically authorizes renewals to accommodate borrowers needing more time. Depriving the borrower of the ability to cure their default is very harmful to them and contrary to the intent of the Act. The current language of proposed New Rule IX could be interpreted as prohibiting this right as the borrower has "failed to make a payment" for 60 days. For this reason, he proposes that New Rule IX be revised to read:

"It is an unfair practice to renew a title loan if the borrower has failed to make a payment toward either principal or interest for 60 days. Provided however after 60 days of no payment a borrower can be given the option of curing their default by paying past due interest and principal and thereafter renewing their loan."

Response #16: The Title Loan Act does not allow a borrower to "cure" their default in any manner other than the right of redemption allowed in 31-1-820, MCA. The Title Loan Act provides that the borrower is entitled to redeem the certificate of title upon timely satisfaction of all outstanding obligations agreed to in the title loan agreement. If the borrower fails to redeem the certificate of title before the lapse of the 20-day holding period, they forfeit all right, title, and interest in the pledged property pursuant to 31-1-820, MCA. The department cannot adopt a rule that conflicts with the statute in accordance with 2-4-305(6), MCA.

Comment #17: John McCloskey of Select Management Resources, LLC, commented that the amendment to ARM 2.59.1410 contains a technical error. The amendment deletes section (1) but keeps section (2) which refers to section (1).

Response #17: The department concurs and thanks Mr. McCloskey for bringing this matter to its attention. The amendment will be redrafted to address this problem.

4. The department has amended ARM 2.59.1409 which assumes no payment will be made for six renewals. In addition, the word "automatic" will be removed from the rules since the statute contains no reference to "automatic" renewals.

5. The department has amended ARM 2.59.1401, 2.59.1402, 2.59.1405, 2.59.1406, 2.59.1413, 2.59.1414, and 2.59.1417 exactly as proposed and adopted New Rule I (2.59.1403), New Rule II (2.59.1404), New Rule III (2.59.1407), New Rule IV (2.59.1408), New Rule V (2.59.1411), New Rule VI (2.59.1412), New Rule VII (2.59.1415), New Rule VIII (2.59.1418), and New Rule IX (2.59.1419) exactly as proposed.

6. The department has amended ARM 2.59.1409 and 2.59.1410 with the following changes, stricken matter interlined, new matter underlined:

2.59.1409 DURATION OF LOANS – INTEREST  
(1) remains as proposed.



(2) The loan agreement may provide for ~~automatic~~ 30-day renewal periods beyond the original term if principal and interest are not paid in full on the maturity date. Any ~~automatic~~ 30-day renewal period must be clearly stated on the face of the loan agreement in bold, capital letters. In addition to any other disclosures that may be required by law, licensees must provide the borrower, in the original title loan agreement or by addendum, a statement of the principal and interest which would be due over a six-month period if the borrower fails to make any payments as set forth in Illustration A. This chart is illustrative only. A borrower must make a payment toward the principal or interest every 60 days. However, for the sake of illustration, this chart assumes no such payment is made. If the borrower does not make a payment toward principal or interest within 60 days, the loan is placed into default. Such statement must be initialed by the borrower at the time of the original loan and include the borrower's affirmation that the borrower has been shown and read the statement.

Illustration A

	Principal	Interest Per Month at 25%	Accrued Interest at 25%	Total Amount Due
Original Loan	\$500.00	\$125.00	\$125.00	\$625.00
Renewal 1	\$500.00	\$125.00	\$250.00	\$750.00
Renewal 2	\$500.00	\$125.00	\$375.00	\$875.00
Renewal 3	\$500.00	\$125.00	\$500.00	\$1,000.00
Renewal 4	\$500.00	\$125.00	\$625.00	\$1,125.00
Renewal 5	\$500.00	\$125.00	\$750.00	\$1,250.00

(3) through (10) remain as proposed.

(11) Licensees shall apply payments to fees, interest, and principal in the following order:

- (a) first, to accrued ~~interest fees~~; and
- (b) then, to ~~principal interest~~; and
- (c) then, to principal.

#### 2.59.1410 RENEWALS - REDUCTION OF PRINCIPAL

(1) In the event that a borrower fails to reduce the principal and interest as required in ~~(4) 31-1-816, MCA~~, a licensee at its option may either:

- (a) through (2) remain as proposed.

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

By: /s/ Michael P. Manion  
Michael P. Manion, Rule Reviewer  
Department of Administration

Certified to the Secretary of State July 21, 2008.

BEFORE THE DEPARTMENT OF ADMINISTRATION  
OF THE STATE OF MONTANA

In the matter of the adoption of NEW	)	NOTICE OF ADOPTION
RULES I through IV regarding mortgage	)	
lender surety bond, branch office	)	
licensing, supervision of branch offices	)	
and loan officers, and responsibility for	)	
acts of agents	)	

TO: All Concerned Persons

1. On May 8, 2008, the Department of Administration, Division of Banking and Financial Institutions, published MAR Notice No. 2-59-401 regarding the public hearing on the proposed adoption of the above-stated rules at page 862 of the 2008 Montana Administrative Register, issue number 9.

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

Comment #1: One person commented that he would like to see the effective date of the rules be at least 90 days from now.

Response #1: The rules will be effective on October 1, 2008, which is the effective date of the statutes they implement.

Comment #2: One person commented that the rules should not be made to apply retroactively.

Response #2: The rules will apply prospectively only.

3. The department has adopted New Rule I (2.59.1801), New Rule II (2.59.1802), New Rule III (2.59.1803), and New Rule IV (2.59.1804) with the following changes, stricken matter interlined, new matter underlined:

NEW RULE I (2.59.1801) MORTGAGE LENDER SURETY BOND (1) Every applicant for a mortgage lender license shall file with the department a bond as specified in (3) during the period of licensure. Each surety bond shall be subject to the filing of a claim for acts during the term of the bond ~~for a period of five years~~ license and for five years after the expiration of the license.

(2) and (3) remain as proposed.

AUTH: 32-10-303, 32-10-502, MCA

IMP: 32-10-203, ~~32-10-207~~, 32-10-208, ~~32-10-209~~, 32-10-303, ~~32-10-502~~,  
MCA

NEW RULE II (2.59.1802) BRANCH OFFICE LICENSING (1) In the event a mortgage lender desires to operate a branch office as defined in 32-10-103, MCA, the applicant or licensee must submit an application as required by 32-10-203, MCA, and the licensing fee specified in 32-10-202, MCA, and provide the following information on the original license application form, or upon an amendment to the original application, at least 30 days before the branch commences operation:

(a) remains as proposed.

(b) the information required pursuant to ~~this rule~~ ARM 2.59.1803 regarding the branch supervisor who will supervise the activities of loan officers employed by the branch to ensure compliance with all applicable rules and regulations; and

(c) remains as proposed.

AUTH: 32-10-203, 32-10-502, MCA

IMP: ~~32-10-103, 32-10-202, 32-10-203, 32-10-207, 32-10-208, 32-10-301, 32-10-401, 32-10-402, 32-10-403, 32-10-404, 32-10-405, 32-10-406, 32-10-501, 32-10-512, MCA~~

NEW RULE III (2.59.1803) SUPERVISION OF OFFICES AND LOAN OFFICERS (1) through (6) remain as proposed.

AUTH: ~~32-10-207, 32-10-502, MCA~~

IMP: ~~32-10-103, 32-10-202, 32-10-203, 32-10-207, 32-10-208, 32-10-301, 32-10-401, 32-10-402, 32-10-403, 32-10-404, 32-10-405, 32-10-406, 32-10-501, 32-10-512, MCA~~

NEW RULE IV (2.59.1804) RESPONSIBILITY FOR ACTS OF AGENTS

(1) remains as proposed.

AUTH: ~~32-10-207, 32-10-502, MCA~~

IMP: ~~32-10-103, 32-10-207, 32-10-208, 32-10-401, 32-10-402, 32-10-403, 32-10-404, 32-10-406, 32-10-512, 32-10-501, MCA~~

4. The department has amended ARM 2.59.1801 through 2.59.1804 based on the request of the Legislative Services Division. The changes deleting the statutes that provide the authority to implement these rules were recommended because the Legislative Services Division stated that the references were unnecessary. ARM 2.59.1801(1) was amended to clarify the duration of time in which claims may be made on the surety bond. This amendment sets forth that this duration of time be based upon license status of the mortgage lender. ARM 2.59.1802(1) was amended to clarify that this rule does apply to mortgage lender applicants as well as licensees. In addition, this section was amended to clarify that the submission of the branch office application is required by statute. ARM 2.59.1802(1)(b) was amended to correct the reference within this rule to ARM 2.59.1803.

5. The new rules will be effective October 1, 2008.

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

By: /s/ Michael P. Manion  
Michael P. Manion, Rule Reviewer  
Department of Administration

Certified to the Secretary of State July 21, 2008.

BEFORE THE DEPARTMENT OF AGRICULTURE  
OF THE STATE OF MONTANA

In the matter of the amendment of ARM ) NOTICE OF AMENDMENT  
4.6.302 relating to cherry assessment )

TO: All Concerned Persons

1. On June 12, 2008, the Montana Department of Agriculture published MAR Notice No. 4-14-181 regarding the above-stated rule at page 1074 of the 2008 Montana Administrative Register, Issue Number 11.

2. The agency has amended ARM 4.6.302 exactly as proposed.

3. No comments or testimony were received.

DEPARTMENT OF AGRICULTURE

/s/ Ron de Yong  
Ron de Yong, Director

/s/ Cort Jensen  
Cort Jensen, Rule Reviewer

Certified to the Secretary of State, July 21, 2008.

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

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

TO: All Concerned Persons

1. On July 17, 2008, the State Auditor and Commissioner of Securities published MAR Notice No. 6-177 regarding a public hearing on the proposed amendment and adoption of the above-stated rules at page 1367 of the 2008 Montana Administrative Register, Issue No. 13. These proposed rules incorporated current department procedure for regulating persons utilizing certain designations fraudulently and for clarifying filing requirements for transactional exemptions.
2. The department has decided to cancel the public hearing on the proposed amendment and adoption of rules that was scheduled for August 8, 2008, 10:00 a.m., at the State Auditor's Office, 840 Helena Ave., Helena, Montana. The hearing is canceled for the reasons stated in paragraphs three and four below.
3. After publishing notice of hearing on the above-stated rules, the department found that amending ARM 6.10.126, Unethical Practices by Broker-Dealers and Salesmen Defined, is premature and inefficient because the department is revising the entire subchapter. Adopting NEW RULE I pertaining to Filing Requirements for Transactional Exemption is also premature and inefficient because the department is revising the entire subchapter.
4. Therefore, the department has decided not to amend ARM 6.10.126, nor adopt NEW RULE I as originally proposed. Instead the department is proposing to adopt new rules to incorporate these rules and revisions of the entire subchapter in a future notice.

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

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

Certified to the Secretary of State July 21, 2008.

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

In the matter of the amendment of a )  
temporary emergency rule closing the ) NOTICE OF AMENDMENT OF A  
Yellowstone River from Carters ) TEMPORARY EMERGENCY RULE  
Bridge to Highway 89 North Bridge )

TO: All Concerned Persons

1. The Fish, Wildlife and Parks Commission (commission) has determined the following reasons justify the amendment of a temporary emergency rule:

(a) The emergency situation that created a safety hazard to any persons using the Yellowstone River at or below the 9th Street Bridge in Livingston, Montana has abated in part primarily as a result of much lower flows in the Yellowstone River. As a consequence, the commissioner in the region, Dan Vermillion, in consultation with regional staff and the director of the Department of Fish, Wildlife and Parks (department), and Park County officials have determined that debris that accumulated on the old bridge pillars now only poses a danger to persons swimming, boating, or floating in the west channel of the Yellowstone River that is crossed by the old 9th Street Island Bridge. The debris, including large trees, captured by the old bridge pillars are a significant safety threat to anyone attempting to boat, float, or swim in the west channel. Park County is no longer able to remove debris as they have in the past because the old bridge is unusable and the new temporary bridge is not strong enough to support debris removal. Also, even with lower flows, the old bridge may collapse which would be a safety hazard for anyone in the river in the immediate vicinity of the bridge.

(b) Therefore, as this situation constitutes an imminent peril to public health, safety, and welfare, and this threat cannot be averted or remedied by any other administrative act, the commission adopts the following amended temporary emergency rule. The amended emergency rule will be sent as a press release to newspapers throughout the state. Also, signs informing the public of the closure will be posted at access points.

2. The commission will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of the notice. If you require an accommodation, contact the department no later than 5:00 p.m. on August 11, 2008, to advise us of the nature of the accommodation that you need. Please contact Jessica Snyder, Fish, Wildlife and Parks, 1420 East Sixth Avenue, P.O. Box 200701, Helena, MT 59620-0701; telephone (406) 444-4594; fax (406) 444-7456; or e-mail [jesnyder@mt.gov](mailto:jesnyder@mt.gov).

3. The amended temporary emergency rule is effective July 10, 2008 when this rule notice is filed with the Secretary of State.

4. The text of the amended temporary emergency rule provides as follows, new matter underlined, stricken matter interlined:

RULE 1 YELLOWSTONE RIVER TEMPORARY EMERGENCY CLOSURE

(1) The closed portion of the Yellowstone River is located in Park County.

(2) The west channel of the Yellowstone River is closed to ~~all recreational use~~ boating, floating, and swimming of the river between ~~Carters Bridge~~ Siebeck Island and ~~Highway 89 North Bridge~~ the confluence of the east and west channels of the Yellowstone River near the civic center in Livingston, Montana.

(3) ~~This rule is effective as long as the 9th Street Island Bridge is in danger of collapsing or until such time as debris from such collapse does not pose any danger.~~ This rule is in effect as long as accumulated debris and the potential collapse of the 9th Street Bridge are a danger to the public. The commission delegates its authority to the department, in consultation with the commissioner in the region, to determine when this portion of the river is again safe for boating, floating, and swimming and to rescind the amended temporary emergency closure.

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

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

5. The rationale for the temporary emergency rule is as set forth in paragraph 1.

6. This rule will expire as soon as the commission determines the west channel of the Yellowstone River is again safe for boating, floating, and swimming. Signs restricting use of the river will be removed when the rule is no longer effective. Notice of repeal of this emergency rule will be published in the Montana Administrative Register.

7. Concerned persons are encouraged to submit their comments to the department. They should submit their comments along with their names and addresses to Jessica Snyder, Legal Unit, Department of Fish, Wildlife and Parks, 1420 East Sixth Avenue, P.O. Box 200701, Helena, MT 59620-0701; telephone (406) 444-4594; fax (406) 444-7456; or e-mail [jesnyder@mt.gov](mailto:jesnyder@mt.gov). Any comments must be received no later than August 18, 2008.

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



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

/s/ Susan W. Daly

Susan W. Daly,

Acting Secretary

Fish, Wildlife and Parks Commission

/s/ Robert N. Lane

Robert N. Lane

Rule Reviewer

Certified to the Secretary of State July 10, 2008.

BEFORE THE DEPARTMENT OF JUSTICE  
PUBLIC SAFETY OFFICER STANDARDS AND TRAINING COUNCIL  
OF THE STATE OF MONTANA

In the matter of the proposed adoption     )  
of NEW RULES I through XXV,                 )  
pertaining to the establishment of Public    )  
Safety Officers Standards and Training       )  
(POST) Council                                    )

NOTICE OF ADOPTION

TO: All Concerned Persons

1. On June 12, 2008, the Department of Justice published MAR Notice No. 23-13-196, pertaining to the proposed adoption of the above-stated rules at page 1076 of the 2008 Montana Administrative Register, Issue Number 11.

2. The department has adopted NEW RULE I (23.13.101); NEW RULE II (23.13.201); NEW RULE III (23.13.202); NEW RULE IV (23.13.203); NEW RULE V (23.13.204); NEW RULE VI (23.13.205); NEW RULE VII (23.13.206); NEW RULE VIII (23.13.207); NEW RULE IX (23.13.208); NEW RULE X (23.13.209); NEW RULE XI (23.13.210); NEW RULE XII (23.13.211); NEW RULE XIII (23.13.301); NEW RULE XIV (23.13.302); NEW RULE XV (23.13.304); NEW RULE XVI (23.13.401); NEW RULE XVII (23.13.501); NEW RULE XVIII (23.13.601); NEW RULE XIX (23.13.701); NEW RULE XX (23.13.702); NEW RULE XXI (23.13.703); NEW RULE XXII (23.13.704); NEW RULE XXIII (23.13.710); NEW RULE XXIV (23.13.711); and NEW RULE XXV (23.13.712) as proposed.

3. A public hearing was held on May 19, 2008. No adverse comments or suggestions were offered at the public hearing. The department received written comments from eight individuals regarding the proposed adoption.

Comments: All comments dealt with the issue of the removal of language that allowed the POST Council to grant training credit hours for secondary education achievement. All but one of the comments was opposed to the removal of the language.

Response: The council considered all of the comments and believes that the concerned persons have raised valid concerns. It was never the intent of the council to alleviate the ability to obtain POST credit for education, but instead to address this particular issue through resolution, policy, or procedures, thereby addressing the concerns without change to the proposed action.

By: /s/ Wayne C. Ternes  
WAYNE C. TERNES  
Executive Director, POST

/s/ Ali Bovington  
ALI BOVINGDON  
Rule Reviewer

Certified to the Secretary of State on July 21, 2008.

BEFORE THE DEPARTMENT OF JUSTICE  
BOARD OF CRIME CONTROL  
OF THE STATE OF MONTANA

In the matter of the repeal of Title 23,	)	NOTICE OF REPEAL, ADOPTION,
chapter 14, subchapters 4, 5, 8, and 9,	)	AND AMENDMENT
reflecting transfer of POST duties to a	)	
new division; repeal of ARM 23.14.207,	)	
pertaining to decision-making authority;	)	
repeal of ARM 23.15.105, pertaining to	)	
payments of claims; adoption of NEW	)	
RULES I through IX, establishing appeal	)	
procedures from POST decisions; and	)	
amendment of ARM 23.14.101,	)	
reflecting changes in statute	)	

TO: All Concerned Persons

1. On April 24, 2008, the Board of Crime Control published MAR Notice No. 23-14-189 regarding the public hearing on the proposed repeal, adoption, and amendment of the above-stated rules at page 748, 2008 Montana Administrative Register, Issue Number 8.

2. The Board of Crime Control has repealed Title 23, chapter 14, subchapters 4, 5, 8, and 9, ARM 23.14.207, and ARM 23.15.105. The board has adopted New Rules I through IX (ARM 23.14.1001 to 23.14.1009) exactly as proposed. The board has amended ARM 23.14.101 exactly as proposed.

3. A public hearing was held on May 19, 2008. No adverse comments or suggestions were offered at the public hearing and no changes have been made to the proposed rules.

By /s/ Roland Mena  
ROLAND MENA  
Executive Director  
Board of Crime Control

/s/ Ali Bovingdon  
ALI BOVINGDON  
Rule Reviewer

Certified to Secretary of State July 21, 2008.

BEFORE THE DEPARTMENT OF JUSTICE  
OF THE STATE OF MONTANA

In the matter of the amendment of ARM     )  
23.15.102, regarding definitions         )     NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On June 12, 2008, the Department of Justice published MAR Notice No. 23-15-197, pertaining to the proposed amendment of the above-stated rule at page 1092 of the 2008 Montana Administrative Register, Issue Number 11.

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

3. No comments or testimony were received.

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

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

Certified to the Secretary of State on July 21, 2008.

BEFORE THE DEPARTMENT OF LIVESTOCK  
STATE OF MONTANA

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

TO: All Concerned Persons

1.     On June 12, 2008, the Department of Livestock, published MAR Notice No. 32-8-191 regarding the above-stated rule at page 1120 of the 2008 Montana Administrative Register, issue number 11.

2.     The Department of Livestock has amended ARM 32.6.712 exactly as proposed.

3.     No comments or testimony were received.

DEPARTMENT OF LIVESTOCK

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

/s/ Carol Grell Morris  
Carol Grell Morris  
Rule Reviewer

Certified to the Secretary of State July 21, 2008.



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

In the matter of the amendment of ARM	)	NOTICE OF AMENDMENT
37.71.401 and 37.71.601 pertaining to	)	
low income weatherization assistance	)	
program (LIWAP)	)	

TO: All Interested Persons

1. On June 12, 2008, the Department of Public Health and Human Services published MAR Notice No. 37-444 pertaining to the public hearing on the proposed amendment of the above-stated rules, at page 1125 of the 2008 Montana Administrative Register, issue number 11.

2. The department has amended ARM 37.71.401 and 37.71.601 as proposed.

3. No comments or testimony were received.

/s/ Barbara Hoffmann  
Rule Reviewer

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

Certified to the Secretary of State July 21, 2008.

BEFORE THE SECRETARY OF STATE  
OF THE STATE OF MONTANA

In the matter of the amendment of ARM ) NOTICE OF AMENDMENT,  
1.3.101 and 1.3.102, the amendment ) AMENDMENT AND TRANSFER,  
and transfer of ARM 1.3.203 through ) AND ADOPTION  
1.3.210, and the adoption of New Rules I )  
through III pertaining to model rules )

TO: All Concerned Persons

1. On May 22, 2008, the office of the Secretary of State published MAR Notice No. 44-2-145 pertaining to the public hearing on the proposed amendment, amendment and transfer, and adoption of the above-stated rules at page 1003 of the 2008 Montana Administrative Register, Issue Number 10.

2. The Secretary of State has amended and transferred the following rule as proposed:

<u>OLD</u>	<u>NEW</u>	
1.3.210	1.3.304	RULEMAKING, BIENNIAL REVIEW

3. The Secretary of State has adopted the following rules as proposed: New Rule II (ARM 1.3.302) and New Rule III (ARM 44.17.101).

4. The Secretary of State has amended the following rules as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

1.3.101 INTRODUCTION AND DEFINITIONS (1) through (6) remain as proposed.

(7) "Template" refers to the Secretary of State's online forms depicting standard boilerplate language and layout for rulemaking petitions and notices published in the register, ~~and~~. The templates are available at [www.armtemplates.com](http://www.armtemplates.com).

(a) and (b) remain as proposed.

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

1.3.102 NOTICE OF AGENCY ACTION THAT IS OF SIGNIFICANT INTEREST TO THE PUBLIC (1) In accordance with 2-3-102 through 2-3-114, MCA, prior to making a final decision that is of significant interest to the public, the agency shall afford reasonable opportunity for public participation. Reasonable opportunity for p~~Public~~ participation may be afforded by:

(a) through (2) remain as proposed.



(3) ~~Public comment on any public matter, as limited in 2-3-103(1)(b), MCA, that is within the jurisdiction of an agency must be allowed at any public meeting as defined by 2-3-202, MCA, and in accordance with 2-3-203, MCA.~~ Public comment on any public matter within the jurisdiction of an agency must be allowed at any public meeting. See 2-3-103(1)(b), 2-3-202, and 2-3-203, MCA, for definitions of "public matter" and "meeting" and for the requirements applicable to opening and closing meetings to the public. The opportunity for public comment must be reflected on the meeting agenda and incorporated into the official minutes of the meeting. For purposes of this rule and 2-3-103(1)(b), MCA, contested case is defined at 2-4-102(4), MCA.

AUTH: 2-4-202, MCA

IMP: 2-3-103, 2-4-202, 2-4-302, MCA

5. The Secretary of State has amended and transferred the following rules as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

1.3.203 (1.3.305) ORGANIZATIONAL RULE (1) remains as proposed.

(2) ~~The~~ An organizational rule must be reviewed biennially to determine whether it should be modified, per 2-4-314, MCA.

(3) ~~The~~ An organizational rule should contain the following as illustrated by template 305a ([www.armtemplates.com](http://www.armtemplates.com)):

(a) through (c) remain as proposed.

AUTH: 2-4-202, MCA

IMP: 2-4-201, 2-4-202, 2-4-314, MCA

1.3.204 (1.3.307) RULEMAKING, INTRODUCTION (1) remains as proposed.

(2) See 2-4-102, MCA, for the definition of "rule." Because of the difficulty in determining whether an agency action ~~falls within~~ meets the definition of rule, construe the exceptions narrowly and if in doubt, consult legal counsel. Interpretative rules are statements issued by an agency to advise the public of the agency's construction of the statutes and rules which it administers. Interpretive rules may be made under the express or implied authority of a statute, but are advisory only and do not have the force of law.

(a) through (4)(c)(i) remain as proposed.

(ii) The agency shall schedule ~~an oral~~ hearing to be held at least 20 days from the publication of the notice of proposed action if the proposed rules affect matters which are of significant interest to the public as defined at 2-4-102(12), MCA.

(iii) Except where the proposed rules affect matters which are of significant interest to the public or unless a hearing is otherwise required by law, a public hearing must be held only if the agency's proposed action affects a substantive rule and a hearing is requested by either:

(A) through (5) remain as proposed.

(6) In the event of imminent peril to the public health, safety, or welfare, temporary emergency rules may be adopted without prior notice or hearing or after abbreviated procedures. However, special notice must be given to the appropriate administrative rule review committee. See ARM 1.3.313.

(7) ~~In the event~~ If a statute is becomes effective prior to October 1 of the year of enactment, temporary rules may be adopted with abbreviated notice or hearing, ~~but~~ and with at least 30 days' notice, ~~and~~ but are effective only through October 1 of that year. See ARM 1.3.313.

AUTH: 2-4-202, MCA

IMP: 2-4-202, 2-4-302, 2-4-303, 2-4-305, MCA

1.3.205 (1.3.308) RULEMAKING, PETITION TO ADOPT, AMEND, OR REPEAL RULE (1) remains as proposed.

(a) The petition shall be in writing, signed by or on behalf of the petitioner, and shall contain, as illustrated by template 308a ([www.armtemplates.com](http://www.armtemplates.com)), a detailed statement of:

(i) and (ii) remain as proposed.

(iii) ~~whether~~ the rule that the petitioner requests the agency to adopt, amend, or repeal. Where amendment of an existing rule is sought, the rule shall be set forth in the petition with proposed deletions interlined and proposed additions underlined; and

(iv) remains as proposed.

(b) Legislators may petition an agency on behalf of interested parties through an informal letter or memorandum. The petition should include the name of the person or a description of a the class of persons on whose behalf the legislator acts. Petitions filed by the appropriate administrative rule review committee of the Legislature need not be brought on the behalf of any specifically interested party. Any petition from the Legislature or its members should comply with (1)(a)(iii) and (iv).

(2) through (4) remain as proposed.

AUTH: 2-4-202, MCA

IMP: 2-4-202, 2-4-315, MCA

1.3.206 (1.3.309) RULEMAKING, PROPOSAL NOTICE (1) remains as proposed.

(a) An agency shall notify the primary sponsor of any legislation when the agency begins work on the initial rule proposal implementing one or more sections of that legislation. If a proposed rule implements more than one bill, the primary sponsor of each bill must be notified. If the legislation affected more than one program, notice must be given to the primary sponsor each time that a rule is being proposed to initially implement the legislation for a program, even if another agency has previously ~~done~~ initiated rulemaking under that legislation.

(i) through (2) remain as proposed.

(3) The contents of the notice shall include the following-:

(a) The notice of public hearing, as illustrated by template 309a (www.armtemplates.com), must include all notice items required by ~~2-4-302(4)~~ and 2-4-305, MCA, summarized as follows:

(i) The agency may issue a single public notice that it intends to adopt, amend, and or repeal several rules dealing with the same subject matter in a single proceeding.

(ii) and (iii) remain as proposed.

(A) The statement of reasonable necessity must be more substantive than stating ~~which the statute that~~ authorized~~s~~ rulemaking. A statute mandating that the agency adopt rules establishes the necessity for rules but does not, standing alone, constitute reasonable necessity for a rule.

(B) When an agency proposes to change or introduce a monetary amount that a person shall pay or will receive, such as a fee, cost, or benefit, the statement of reasonable necessity must state an estimate, if known, of the number of persons affected and the cumulative amount of the change for all persons.

(iv) remains as proposed.

(v) An agency may adopt a rule which adopts by reference any model code, federal agency rule, rule of any agency of this state, or other similar publication if the publication of the model code, rule, or other publication would be unduly cumbersome, expensive, or otherwise inexpedient. The notice must contain a citation to the material adopted by reference, a statement of its general subject matter content, and ~~must state~~ where a copy of the material may be obtained. Amendments to incorporated material are not effective unless adopted pursuant to 2-4-307, MCA.

(vi) through (b) remain as proposed.

(i) all notice items required by ~~2-4-302(4)~~ and 2-4-305, MCA;

(ii) and (iii) remain as proposed.

(iv) the name and address of the person to whom a request for public hearing must be submitted; ~~and~~ and the date by which a request must be submitted; and

(v) remains as proposed.

~~(e)~~ (4) When a hearing has been properly requested per 2-4-302, MCA, the agency shall send notice of the hearing to persons who have requested a public hearing. Also, notice must be published in the register, per 2-4-302(2), MCA.

~~(f)~~ (a) As illustrated by template 309c (www.armtemplates.com), the notice shall state that the hearing is being held upon request of the requisite number of persons designated in the original notice, per 2-4-302(4), MCA, or the appropriate administrative rule review committee of the Legislature, ~~2-4-402(4)(2)(c)~~, MCA, or a governmental agency or subdivision, or an association.

AUTH: 2-4-202, MCA

IMP: 2-4-202, 2-4-302, 2-4-305, 2-4-307, MCA

### 1.3.207 (1.3.311) RULEMAKING, OPPORTUNITY TO BE HEARD

(1) When the subject matter of a proposed rule is not of significant interest to the public, or an agency is not otherwise required and does not wish to hold a public hearing, the opportunity to submit written comments must be ~~permitted~~ provided.

(a) remains as proposed.

(b) The agency shall notify all persons who submit written comments that a list of interested persons exists and provide each commenter the opportunity to have ~~their~~ the commenter's name added to that list.

(2) through (2)(d)(iii) remain as proposed.

(e) The presiding officer or rulemaker has the right to ~~question or~~ examine any witnesses making a statement at the hearing. The presiding officer may, in the officer's discretion, permit other persons to examine witnesses.

(f) through (i) remain as proposed.

(j) A record must be made of all the proceedings, either in the form of minutes or a verbatim written, electronic, or mechanical record.

(k) The presiding officer shall, within a reasonable time after the hearing, provide the rulemakers with a written summary of statements given and exhibits received and a report of the officer's observations of physical experiments, demonstrations, and exhibits.

(3) remains as proposed.

AUTH: 2-4-202, MCA

IMP: 2-4-202, 2-4-302, 2-4-305, MCA

1.3.208 (1.3.312) RULEMAKING, AGENCY ACTION (1) Thirty days after publication of the proposal notice and following receipt of the presiding officer's report, the rulemaker may adopt, amend, or repeal rules covered by the notice of intended action.

(2) through (2)(a)(i) remain as proposed.

(ii) if the rule adopts a model code, rule, or other publication by reference, a citation to the material adopted, its year, a statement of ~~the~~ its general subject matter ~~thereof~~, and where a copy of the material may be obtained. The material adopted by reference need not be published if publication would be unduly cumbersome, expensive, or otherwise inexpedient. Upon request of the Secretary of State, a copy of the omitted material must be filed with the Secretary of State, per-2-4-307(2), MCA;

~~(A) State agencies shall retain copies of all versions of previously incorporated material, for research and reference purposes, pursuant to state of Montana records and information management requirements.~~

(iii) a statement of the principal reasons presented by interested persons for and against the adoption, amendment, or repeal of a rule ~~that was presented by interested persons~~. The statement also must include the agency's reasons for overruling ~~the~~ any considerations urged against the agency action. If substantial differences exist between the rule as proposed and as adopted, and the differences have not been described or set forth in the adopted rule, the differences must be described in the statement of reasons for and against the agency action. The statement may be omitted if no written or oral submissions were presented, per 2-4-305(1), MCA. See Patterson v. Montana Department of Revenue, 557 P.2d 798 (1976);

(iv) through (4) remain as proposed.

(5) If an agency decides not to adopt, amend, or repeal the rules covered by the notice of intended action, the agency can publish a notice of agency decision

stating why the action will not be ~~adopted~~ finalized at this ~~that~~ time, and whether the agency intends to repropose the changes in a subsequent rulemaking cycle. See template 312d ([www.armtemplates.com](http://www.armtemplates.com)).

(6) Notice of agency action must be published within six months of the date on which notice of the proposed action was published, per 2-4-305(7), MCA.

AUTH: 2-4-202, MCA

IMP: 2-4-202, 2-4-305, 2-4-307, MCA

1.3.209 (1.3.313) RULEMAKING, TEMPORARY EMERGENCY RULES AND TEMPORARY RULES (1) If an agency finds that circumstances exist that truly and clearly constitute an imminent peril to the public health, safety, or welfare, that the circumstances cannot be averted or remedied by any other administrative act, and that the circumstances require a rulemaking action upon fewer than 30 days' notice, it may adopt a temporary emergency rule without prior notice or hearing or, as illustrated by template 313a ([www.armtemplates.com](http://www.armtemplates.com)), upon any abbreviated notice and hearing that it finds practicable, per 2-4-303(1), MCA.

(a) remains as proposed.

(i) file with the Secretary of State a copy of the emergency rule containing a statement in writing of its reasons for finding that an imminent peril to the public health, safety, or welfare requires adoption of a rule upon fewer than 30 days' notice, per 2-4-306(4), MCA;

(ii) provide special notice of its intent to the appropriate administrative rule review committee, which is accomplished by the Secretary of State's office providing a copy of the notice to the Legislative Services Division;

(iii) take appropriate and extraordinary measures to make emergency rules known to persons who may be affected by them, per 2-4-306(4), MCA, including delivery of copies of the rule to a state wire service and to any other news media the agency considers appropriate. Extraordinary measures include, but are not limited to, immediate personal delivery of copies of the rule to affected parties, and immediate delivery of copies of the rule to associations whose members are affected, per 2-3-105, MCA.

(b) through (d) remain as proposed.

(e) If no longer necessary, an emergency rule may be repealed before the end of the 120-day effectiveness period. See template 313b ([www.armtemplates.com](http://www.armtemplates.com)).

(2) Temporary rules implementing a statute which becomes effective prior to October 1 of the year of enactment may be adopted through abbreviated procedures determined practicable by the agency, as illustrated by templates 313c and 313d ([www.armtemplates.com](http://www.armtemplates.com)).

(a) The temporary rules cannot become effective until at least 30 days after the notice of proposal to adopt is published. Per 2-4-306, MCA, temporary rules can be effective upon filing the adoption notice, or at a stated date following publication.

(b) ~~The t~~Temporary rules expire October 1 of the year adopted.

(c) remains as proposed.

AUTH: 2-4-202, MCA

IMP: 2-4-202, 2-4-303, 2-4-306, MCA

6. The Secretary of State has adopted the following rule as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

NEW RULE I (1.3.301) INTRODUCTION AND DEFINITIONS (1) remains as proposed.

(2) The Montana Administrative Procedure Act is referred to as "MAPA" and includes 2-4-101 through 2-4-711, MCA. MAPA ~~outlines~~ states procedures that agencies must follow when:

(a) through (c) remain as proposed.

(3) Each agency subject to MAPA must adopt rules describing its organization and procedures, per 2-4-201, MCA. Section 2-4-202, MCA, directs the Secretary of State to prepare a model form for a rule describing the organization of agencies and model rules of practice for agency guidance in fulfilling these requirements. The model rules have been adopted for that purpose. ~~The model rules may be incorporated by reference to the model rules.~~ Agencies may adopt the model rules by incorporating them by reference. Subsequent amendments may be adopted only by following the rulemaking procedure of MAPA. See 2-4-307, MCA.

(4) remains as proposed.

(5) "Template" refers to the Secretary of State's online forms depicting standard boilerplate language and layout for rulemaking petitions and notices published in the register, ~~and.~~ The forms are available at [www.armtemplates.com](http://www.armtemplates.com). The templates illustrate the Secretary of State's model rules in this subchapter.

(a) and (b) remain as proposed.

AUTH: 2-4-202, MCA

IMP: 2-4-201, 2-4-202, MCA

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

COMMENT #1: The commenter recommended revising "which" to "that," "shall" to "must," and "must" to "shall," to conform to the style of the Montana Legislative Services Division Bill Drafting Manual. The commenter also submitted handwritten suggestions to change rule language.

RESPONSE #1: The department appreciates the suggestion related to style, but the language used in the Administrative Rules is not required to conform to the guidelines of the Bill Drafting Manual. Per 2-4-306, MCA, the Secretary of State may prescribe the format, style, and arrangement for notices and rules. Per ARM 1.2.215(2), "Rules should be short and written in a simple, clear and direct style that is easily understood by the user." The model rules will continue to use common language that is more understandable to users who may not necessarily be familiar with bill language. The Bill Drafting Manual requirements also do not correspond to

the requirements of the Gregg Reference Manual, tenth edition, which is the style manual incorporated by reference in ARM 1.2.519. Based on the commenter's handwritten suggestions, the department made many other suggested changes to rule language.

COMMENT #2: The commenter wrote that the existing definition of "agency" in ARM 1.3.101 may be confusing. It appears that the intent of the rule is to point out that the definition applicable to these rules is broader than the definition that is applicable to MAPA rules; however, it might be clearer to state that.

RESPONSE #2: The commenter's rephrasing of the intention is accurate, but the department declines to change the existing text, which the department believes is also expressed accurately. The language has remained unchanged since 1999 without causing confusion for users.

COMMENT #3: In ARM 1.3.102(3), the commenter suggested rewriting the first sentence because the current wording is difficult to follow. The commenter offered new language.

RESPONSE #3: The department agrees and will rewrite the first sentence as suggested.

COMMENT #4: In ARM 1.3.204(2)(a), the commentor suggested adding language regarding bylaws and internal procedures also being exempt from what must be in rule, and that the list of examples should not be exclusive: "Among other limitations in 2-4-102, MCA, 'rule' does not include statements concerning only the internal management of an agency or state government and not affecting private rights or procedures available to the public, including but not limited to internal management procedures, bylaws, or rules implementing the state personnel classification plan, the state wage and salary plan, or the statewide budgeting and accounting system."

RESPONSE #4: The suggested language "including but not limited to" or "bylaws" is not found in 2-4-102, MCA. The department does make clear that the limitations cited in the rule are not meant to be exclusive. Therefore, the department declines to add the additional language.

COMMENT #5: In ARM 1.3.205(1)(a)(iii), the commenter noted that there appears to be a mistake in the proposed addition of the word "whether" to the beginning of this subsection. Making this change does not appear to make sense and appears to be inconsistent with the apparent intent of the subsection, which is to require a petitioner for rulemaking to describe the proposed new rule, amendment, or rule proposed for repeal.

RESPONSE #5: The department agrees and will strike the word "whether."

COMMENT #6: The commenter noted that ARM 1.3.206(2) (dealing with an adoption notice) seems to relate more to ARM 1.3.208 than to ARM 1.3.206

(specifying requirements for proposal notices). The commenter recommended moving this section to ARM 1.3.208.

RESPONSE #6: The department believes it is helpful for agencies to know, when preparing proposal notices, that they have six months to adopt them. The department agrees that this information would also apply to the topic in ARM 1.3.208. Therefore, the department will keep the section in ARM 1.3.206, and will also add it to ARM 1.3.208.

COMMENT #7: Regarding ARM 1.3.206(3)(a), the commenter wrote that some statutory requirements outside of 2-4-302, MCA, are being referenced, but the statute itself was not.

RESPONSE #7: The department agrees and is adding language to that subsection to reflect that requirements in 2-4-305, MCA, are also being summarized.

COMMENT #8: In ARM 1.3.206(3)(a)(ii), the commenter noted that the change appears to prohibit the use of summaries of the proposed rule in all cases, and asks for confirmation that this change does not prohibit use of incorporation by reference. Summaries and paraphrasing help the audience, the public, and other agencies and their staff understand the nature and major changes proposed by an agency; under the new rule they will have to read sometimes complicated and lengthy rule provisions in order to distill what impact the changes will have on them, a difficult if not impossible task. The agency makes the full text available to interested persons by mail and on their web sites, which can be read in the context of the agency's summary. The commenter stressed that the proposed stricken language should not be deleted.

RESPONSE #8: The stricken language refers only to the rule text itself, and not to summarizing or rephrasing in the rest of the notice. This change reflects a long-standing and common practice. It is imperative to users and the legal process that all proposed rule changes are specifically shown in detail. The proposed new language (regarding unchanged sections being listed as "remains the same") allows for space to be saved while still accounting for each component of the rule. It is also common practice for agencies to summarize and paraphrase the rule content and proposed changes in the statement of reasonable necessity, and that practice is still encouraged by the department when it will help the public and other users. This change does not affect an agency's ability to incorporate lengthy materials by reference, as granted by 2-4-307, MCA, and implemented in ARM 1.2.210. The new language will remain as proposed.

COMMENT #9: Regarding ARM 1.3.206(3)(a)(iii)(A), the commenter asked: Why would a statutory requirement to adopt a rule not constitute the reasonable necessity for adopting such a rule? The proposed language, "A statute mandating that the agency adopt rules establishes the necessity for rules but does not, standing alone, constitute reasonable necessity for a rule," is blatantly contradictory. If the statute



establishes the "necessity for rules," then how can it not constitute the "necessity for a rule?" Please explain the reasoning behind this additional requirement.

RESPONSE #9: The added rule language is not an additional requirement; it is from 2-4-305(6)(b), MCA, which states that a rule change is not valid or effective unless it is "reasonably necessary to effectuate the purpose of the statute. *A statute mandating that the agency adopt rules establishes the necessity for rules but does not, standing alone, constitute reasonable necessity for a rule.* The agency shall also address the reasonableness component of the reasonable necessity requirement by, as indicated in 2-4-302(1) and subsection (1) of this section, stating the principal reasons and the rationale for its intended action and for the particular approach that it takes in complying with the mandate to adopt rules. Subject to the provisions of subsection (8), reasonable necessity must be clearly and thoroughly demonstrated for each adoption, amendment, or repeal of a rule in the agency's notice of proposed rulemaking and in the written and oral data, views, comments, or testimony submitted by the public or the agency and considered by the agency. A statement that merely explains what the rule provides is not a statement of the reasonable necessity for the rule." [emphasis added] Based on agencies' experience that the Legislative Services Division has found statements of reasonable necessity not thorough enough, the department thought it would be useful to call attention to this statute by referencing its requirements in the model rules.

COMMENT #10: Regarding ARM 1.3.206(3)(a)(iii)(B), the commenter noted that the new language regarding fee changes contained a requirement that is not in statute.

RESPONSE #10: The department agrees and is adding the language "if known" to "the statement of reasonable necessity must state an estimate, *if known*, of the number of persons affected. . ." in order to follow statute.

COMMENT #11: In ARM 1.3.206(3)(c), commenters recommended renumbering (c) as (4) and (c)(i) as (4)(a) because the language in (c) does not follow from (3).

RESPONSE #11: The department agrees and will renumber as suggested.

COMMENT #12: The commenter noted that in ARM 1.3.206(3)(c)(i), there appears to be a mistake in the proposed correction to the statutory citation. The commenter believes the correct citation is 2-4-402(2)(c), MCA, rather than 2-4-402(1)(c), MCA.

RESPONSE #12: The department agrees and will make the change.

COMMENT #13: The commenter thanked Administrative Rules Services for the ongoing improvements to the rules process, and suggested that in ARM 1.3.207(2)(j) "electronic" be added as an option for recording.

RESPONSE #13: The department appreciates the commenter's feedback, and will add "electronic" to the options.

COMMENT #14: In ARM 1.3.208, the commenter suggested that 2-4-307, MCA, be added to the list of implemented sections, because the rule expressly references those requirements.

RESPONSE #14: The department agrees and this statute will be added to the IMP.

COMMENT #15: In ARM 1.3.208(2)(a)(i), the commenter asked: Can a reference to the page number of the ARM on which the rule appears constitute the reference to the notice of the proposed agency action in which the text was printed? In order to provide the easiest reference for the audience, the rule should require both: "(i) either the text of the rule adopted or amended, or reference to the notice of proposed agency action in which the text of the proposed rule or rule as proposed to be amended was printed in full, ~~or~~ with reference to the page number of the Administrative Rules of Montana on which the rule appears;..."

RESPONSE #15: Because they are two separate publications, the page number in the Administrative Rules of Montana (ARM) is not analogous to the page number of the proposal notice in the Montana Administrative Register (register). The first paragraph of each adoption notice references the page number of the proposal notice in the register, which is a different procedure than what this rule covers. Striking this language will not result in a change in process. This rule relates to adoption notices, and agencies do not currently reference ARM page numbers in adoption notices. This change will put common practice into rule. Additionally, there are more users of the online version of the ARM, and that system does not have page numbers, only rule numbers.

COMMENT #16: Regarding ARM 1.3.208, multiple commenters questioned the proposed new language in (2)(a)(ii)(A) pertaining to agencies retaining copies of material they incorporated by reference. The commentors were concerned that agencies would be required to keep material from other publishers, that it was not part of an agency's records management responsibility, and that the statutory authority for the added language is not listed.

RESPONSE #16: The department agrees and will strike the language in ARM 1.3.208(2)(a)(ii)(A). The intent was that an agency would keep materials that it generated and subsequently incorporated by reference in a rule. It was the department's goal that an agency would always have its own internal publications available for research, court cases, and so forth many years after that version had been incorporated by reference in rule. The Secretary of State's office had not intended for agencies to retain versions of federal material, or material from other sources, or previously published notices. The department will work with its Records and Information Management Bureau to develop a retention schedule for rulemaking materials.

COMMENT #17: Regarding ARM 1.3.209(2)(a), the commenter wrote that the existing language, stating that "temporary rules cannot become effective until at least 30 days after the notice of proposal to adopt is published," appears to be

inconsistent with 2-4-303(2), MCA, and ARM 1.3.208(4), which state that a temporary rule may not be *filed* with the Secretary of State until at least 30 days have passed since publication of the notice of proposed rulemaking and that an agency action is effective the day *following* publication of notice in the register.

RESPONSE #17: Per 2-4-306(4)(b)(i), MCA, a temporary rule is effective immediately upon filing the adoption notice with the Secretary of State or at a stated date following publication in the register. Because the temporary rule is effective upon filing the adoption notice, the rule *can* be *filed* 30 days after the proposal notice is published, which would make the rule *effective* 30 days after the proposal notice was published. In order to clarify the rule, language will be added to ARM 1.3.209(2)(a) as follows: "(a) The temporary rules cannot become effective until at least 30 days after the notice of proposal to adopt is published. Per 2-4-306, MCA, temporary rules can be effective upon filing the adoption notice, or at a stated date following publication."

/s/ Brad Johnson \_\_\_\_\_  
BRAD JOHNSON  
Secretary of State

/s/ Janice Doggett \_\_\_\_\_  
JANICE DOGGETT  
Rule Reviewer

Dated this 21st day of July 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.
2. Go to cross reference table at end of each number and title which lists MCA section numbers and department corresponding ARM rule numbers.

## ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through March 31, 2008. This table includes those rules adopted during the period April 1, 2008, through June 30, 2008, and any proposed rule action that was pending during the past six-month period. (A notice of adoption must be published within six months of the published notice of the proposed rule.) This table does not include the contents of this issue of the Montana Administrative Register (MAR or Register).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through March 31, 2008, this table, and the table of contents of this issue of the MAR.

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

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

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## BOARD APPOINTEES AND VACANCIES

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

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

In this issue, appointments effective in June 2008 appear. Vacancies scheduled to appear from August 1, 2008, through October 31, 2008, are listed, as are current vacancies due to resignations or other reasons. Individuals interested in serving on a board should refer to the bill that created the board for details about the number of members to be appointed and necessary qualifications.

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

### IMPORTANT

Membership on boards and commissions changes constantly. The following lists are current as of July 1, 2008.

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

## BOARD AND COUNCIL APPOINTEES FROM JUNE 2008

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Aging Advisory Council</b> (Public Health and Human Services)			
Rep. Beverly Barnhart Bozeman	Governor	reappointed	6/23/2008 7/18/2011
Qualifications (if required): public representative			
Ms. Toni Hagener Havre	Governor	reappointed	6/23/2008 7/18/2011
Qualifications (if required): public representative			
Ms. Jessie James-Hawley Harlem	Governor	reappointed	6/23/2008 7/18/2011
Qualifications (if required): public representative			
Ms. Lauren Lynch Butte	Governor	reappointed	6/23/2008 7/18/2011
Qualifications (if required): public representative			
<b>Board of Nursing</b> (Labor and Industry)			
Ms. Kathy Hayden Missoula	Governor	reappointed	6/2/2008 7/1/2012
Qualifications (if required): licensed practical nurse			
Ms. Heather Onstad Helena	Governor	Raph	6/2/2008 7/1/2012
Qualifications (if required): registered nurse/educator			

## BOARD AND COUNCIL APPOINTEES FROM JUNE 2008

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Board of Nursing Home Administrators</b> (Labor and Industry)			
Mr. Thomas Klotz Glasgow	Governor	Henderson	6/23/2008 5/28/2013
Qualifications (if required): nursing home administrator			
<b>Board of Optometry</b> (Labor and Industry)			
Mr. Randall Hoch Lewistown	Governor	McBride	6/17/2008 4/3/2012
Qualifications (if required): registered optometrist			
<b>Board of Physical Therapy Examiners</b> (Labor and Industry)			
Mr. Richard Smith Missoula	Governor	not listed	6/26/2008 7/1/2011
Qualifications (if required): physical therapist			
<b>Board of Plumbers</b> (Labor and Industry)			
Mr. Jeffrey Gruizenga Billings	Governor	reappointed	6/2/2008 5/4/2012
Qualifications (if required): professional engineer (mechanical)			
<b>Board of Real Estate Appraisers</b> (Labor and Industry)			
Mr. Peter Fontana Great Falls	Governor	reappointed	6/17/2008 5/1/2011
Qualifications (if required): real estate appraiser			
Mr. Kraig Kosena Missoula	Governor	reappointed	6/17/2008 5/1/2011
Qualifications (if required): real estate appraiser			

## BOARD AND COUNCIL APPOINTEES FROM JUNE 2008

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Board of Realty Regulation</b> (Labor and Industry)			
Mr. Pat Goodover	Governor	Floberg	6/23/2008
Great Falls			5/9/2012
Qualifications (if required): real estate salesperson			
<b>Board of Sanitarians</b> (Labor and Industry)			
Mr. Gerald Cormier	Governor	reappointed	6/26/2008
Billings			7/1/2011
Qualifications (if required): sanitarian			
Ms. Kathleen Driscoll	Governor	reappointed	6/26/2008
Hamilton			7/1/2011
Qualifications (if required): public representative			
Mayor Gene Townsend	Governor	reappointed	6/26/2008
Three Forks			7/1/2011
Qualifications (if required): public representative			
<b>Commission on Practice of the Supreme Court</b> (Justice)			
Ms. Jean Faure	elected	not listed	6/9/2008
Great Falls			6/9/2012
Qualifications (if required): none specified			
<b>Library Commission</b> (State Library)			
Ms. Joyce Funda	Governor	Carrywater	6/4/2008
Rollins			5/22/2011
Qualifications (if required): public representative			

## BOARD AND COUNCIL APPOINTEES FROM JUNE 2008

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Library Commission</b> (State Library) cont.			
Ms. Nora Smith Bozeman	Governor	reappointed	6/4/2008 5/22/2011
Qualifications (if required): public representative			
<b>Montana Historical Society Board of Trustees</b> (Historical Society)			
Ms. Janene Caywood Missoula	Governor	Foor	6/4/2008 7/1/2013
Qualifications (if required): archeologist			
Ms. Sharon Lincoln Billings	Governor	reappointed	6/4/2008 7/1/2013
Qualifications (if required): public member			
Clerk Ed Smith Helena	Governor	Holt	6/4/2008 7/1/2013
Qualifications (if required): public member			
<b>State-Tribal Economic Development Commission</b> (Commerce)			
Mr. Allen Fisher Lame Deer	Governor	not listed	6/6/2008 6/30/2008
Qualifications (if required): representative of the Northern Cheyenne Tribe			
Mr. Joe Fox Jr. Lame Deer	Governor	Killsback	6/6/2008 6/30/2008
Qualifications (if required): representative of the Northern Cheyenne Tribe			

## BOARD AND COUNCIL APPOINTEES FROM JUNE 2008

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Western Interstate Commission for Higher Education</b> (Higher Education)			
Ms. Kerra J. Melvin	Governor	Jasmin	6/19/2008
Butte			6/19/2011
Qualifications (if required):	public representative		

# **VACANCIES ON BOARDS AND COUNCILS -- AUGUST 1, 2008 through OCTOBER 31, 2008**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Board of Barbers and Cosmetologists</b> (Labor and Industry) Mr. Wendell Petersen, Missoula Qualifications (if required): cosmetologist	Governor	10/1/2008
Ms. Delores Lund, Plentywood Qualifications (if required): public representative	Governor	10/1/2008
Mr. Edward Dutton, Kalispell Qualifications (if required): barber	Governor	10/1/2008
Ms. Maxine Collins, Helena Qualifications (if required): manicurist	Governor	10/1/2008
<b>Board of Medical Examiners</b> (Labor and Industry) Dr. Dean Center, Bozeman Qualifications (if required): doctor of medicine	Governor	9/1/2008
<b>Board of Outfitters</b> (Governor) Rep. Carol Gibson, Billings Qualifications (if required): sportsperson	Governor	10/1/2008
Mr. John R. Redman, Sidney Qualifications (if required): public representative	Governor	10/1/2008
Mr. Thomas Sather, Bozeman Qualifications (if required): sportsperson	Governor	10/1/2008



## VACANCIES ON BOARDS AND COUNCILS -- AUGUST 1, 2008 through OCTOBER 31, 2008

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Board of Outfitters</b> (Governor) cont. Mr. Tim Linehan, Troy Qualifications (if required): big game outfitter	Governor	10/1/2008
<b>Board of Psychologists</b> (Labor and Industry) Dr. Edward Trontel, Kalispell Qualifications (if required): psychologist	Governor	9/1/2008
<b>Board of Veterans' Affairs</b> (Military Affairs) Mr. Mike Waite, Helena Qualifications (if required): nonvoting member and a representative of Congressman Dennis Rehberg	Governor	8/1/2008
Mr. Don Slavens, Billings Qualifications (if required): nonvoting member and a representative of Senator Max Baucus	Governor	8/1/2008
Mr. Bill Lombardi, Helena Qualifications (if required): nonvoting member and a representative of Senator Jon Tester	Governor	8/1/2008
<b>Building Codes Council</b> (Labor and Industry) Director Joan Miles, Helena Qualifications (if required): Director of the Department of Public Health and Human Services	Governor	10/1/2008
Commissioner Carol Brooker, Plains Qualifications (if required): public member	Governor	10/1/2008
Mr. Burl French, Kalispell Qualifications (if required): representative of the Board of Electricians	Governor	10/1/2008

## VACANCIES ON BOARDS AND COUNCILS -- AUGUST 1, 2008 through OCTOBER 31, 2008

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Building Codes Council</b> (Labor and Industry) cont.		
Mr. Paul Filicetti, Missoula	Governor	10/1/2008
Qualifications (if required): licensed architect		
Mr. Michael McCourt, Missoula	Governor	10/1/2008
Qualifications (if required): public member		
Mr. Dave Broquist, Great Falls	Governor	10/1/2008
Qualifications (if required): professional engineer		
Mr. Scott Lemert, Livingston	Governor	10/1/2008
Qualifications (if required): representative of the Board of Plumbers		
Mr. Mick Wonnacott, Butte	Governor	10/1/2008
Qualifications (if required): representative of the building contractor industry		
Mr. Neil Poulsen, Bozeman	Governor	10/1/2008
Qualifications (if required): building inspector		
Mr. Mike Seaman, Kalispell	Governor	10/1/2008
Qualifications (if required): manufactured housing industry representative		
Mr. Tony Laslovich, Anaconda	Governor	10/1/2008
Qualifications (if required): home building industry representative		
Mr. Rodney N. Driver, Bigfork	Governor	10/1/2008
Qualifications (if required): elevator mechanic selected by the Department of Labor and Industry		

**VACANCIES ON BOARDS AND COUNCILS -- AUGUST 1, 2008 through OCTOBER 31, 2008**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Building Codes Council</b> (Labor and Industry) cont.		
Mr. Allen Lorenz, Helena	Governor	10/1/2008
Qualifications (if required): state fire marshal		
Mr. Steven Meismer, Missoula	Governor	10/1/2008
Qualifications (if required): building inspector		
<b>Burial Preservation Board</b> (Administration)		
Mr. Mickey Nelson, Helena	Governor	8/22/2008
Qualifications (if required): representative of the coroner's association		
Mr. Loren Stiffarm, Harlem	Governor	8/22/2008
Qualifications (if required): representative of the Fort Belknap Indian Community		
Mr. George Reed Sr., Crow Agency	Governor	8/22/2008
Qualifications (if required): representative of the Crow Tribe		
Ms. Sherri Deaver, Billings	Governor	8/22/2008
Qualifications (if required): representative of the archaeological association		
Ms. Katherine Rink, East Glacier	Governor	8/22/2008
Qualifications (if required): representative of the Blackfeet Tribe		
Mr. Ed Lavenger, Havre	Governor	8/22/2008
Qualifications (if required): representative of the Little Shell Tribe		
Mr. Rufus Spear, Lame Deer	Governor	8/22/2008
Qualifications (if required): representative of the Northern Cheyenne Tribe		

## VACANCIES ON BOARDS AND COUNCILS -- AUGUST 1, 2008 through OCTOBER 31, 2008

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Eastern Montana State Veterans Cemetery Advisory Council</b> (Military Affairs) Ms. Donna Dukart, Miles City Qualifications (if required): American Legion Auxiliary	Director	10/1/2008
<b>Montana Noxious Weed Seed Free Forage Advisory Council</b> (Agriculture) Mr. Don Walker, Glendive Qualifications (if required): forage producer	Director	9/17/2008
Ms. Sharon Scognamiglio, Anaconda Qualifications (if required): representative of weed districts	Director	9/17/2008
Mr. Paul Helland, Miles City Qualifications (if required): representative of weed districts	Director	9/17/2008
<b>Montana Organic Commodity Council</b> (Agriculture) Mr. Andy Sponseller, Missoula Qualifications (if required): organic producer	Director	8/19/2008
Mr. Robert Forstenzer, Livingston Qualifications (if required): organic producer	Director	8/19/2008
Ms. Jill Owen, Choteau Qualifications (if required): consumer from the public at large	Director	8/19/2008
Mr. Jonathon Mysse, Ingomar Qualifications (if required): organic producer	Director	8/19/2008

## VACANCIES ON BOARDS AND COUNCILS -- AUGUST 1, 2008 through OCTOBER 31, 2008

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Montana Wheat and Barley Committee</b> (Agriculture)		
Ms. DeAnna Burgmaier, Power	Governor	8/20/2008
Qualifications (if required): producer residing in District 4		
Mr. Frank Schoonover, Dutton	Governor	8/20/2008
Qualifications (if required): resident of District 4		
Mr. Don H. Chaffee, Wibaux	Governor	8/20/2008
Qualifications (if required): resident of District 7		
<b>Private Security Patrol Officers and Investigators</b> (Labor and Industry)		
Mr. Raymond Murray, Missoula	Governor	8/1/2008
Qualifications (if required): Post Representative		
Ms. Holly Dershem-Bruce, Glendive	Governor	8/1/2008
Qualifications (if required): public representative		
<b>Statewide Interoperability Executive Advisory Council</b> (Administration)		
Attorney Mike McGrath, Helena	Governor	9/7/2008
Qualifications (if required): Attorney General		
General Randall Mosley, Fort Harrison	Governor	9/7/2008
Qualifications (if required): Adjutant General of the Department of Military Affairs		
Ms. Elizabeth Horsman-Witala, Helena	Governor	9/7/2008
Qualifications (if required): federal representative		

**VACANCIES ON BOARDS AND COUNCILS -- AUGUST 1, 2008 through OCTOBER 31, 2008**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Statewide Interoperability Executive Advisory Council</b> (Administration) cont.		
Director Mike Ferriter, Helena Qualifications (if required): Director of the Department of Corrections	Governor	9/7/2008
Director Janet Kelly, Helena Qualifications (if required): Director of the Department of Administration	Governor	9/7/2008
Director Joan Miles, Helena Qualifications (if required): Director of the Department of Public Health and Human Services	Governor	9/7/2008
Director Jeff Hagener, Helena Qualifications (if required): Director of Fish, Wildlife and Parks	Governor	9/7/2008
Director Mary Sexton, Helena Qualifications (if required): Director of the Department of Natural Resources and Conservation	Governor	9/7/2008
Mr. Chuck Winn, Bozeman Qualifications (if required): paid fire department representative	Governor	9/7/2008
Sheriff Cheryl Liedle, Helena Qualifications (if required): county law enforcement representative	Governor	9/7/2008
Director Jim Lynch, Helena Qualifications (if required): Director of the Department of Transportation	Governor	9/7/2008
Mr. William Hedstrom, Kalispell Qualifications (if required): Chair of the Board of Livestock	Governor	9/7/2008

## VACANCIES ON BOARDS AND COUNCILS -- AUGUST 1, 2008 through OCTOBER 31, 2008

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Statewide Interoperability Executive Advisory Council</b> (Administration) cont.		
Commissioner Kathy Bessette, Havre Qualifications (if required): county government representative	Governor	9/7/2008
Mr. Chuck Lee, Baker Qualifications (if required): 9-1-1 community representative	Governor	9/7/2008
Mayor Ron Tussing, Billings Qualifications (if required): municipal government representative	Governor	9/7/2008
Ms. Jodi O'Sullivan, Polson Qualifications (if required): volunteer fire department representative	Governor	9/7/2008
Ms. Mary Failing, Poplar Qualifications (if required): emergency medical community representative	Governor	9/7/2008
Mr. Bruce Nelson, Helena Qualifications (if required): Governor's Chief of Staff	Governor	9/7/2008
Captain Dick Lewis, Missoula Qualifications (if required): municipal law enforcement representative	Governor	9/7/2008
<b>Vocational Rehabilitation Council</b> (Public Health and Human Services)		
Ms. Arlene Templer, Pablo Qualifications (if required): Section 121 representative	Governor	10/1/2008
Ms. Maureen Kenneally, Butte Qualifications (if required): representative of the Workforce Investment Board	Governor	10/1/2008

**VACANCIES ON BOARDS AND COUNCILS -- AUGUST 1, 2008 through OCTOBER 31, 2008**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Vocational Rehabilitation Council</b> (Public Health and Human Services) cont.		
Ms. Jacqueline Colombe, Basin Qualifications (if required): representative of the disabilities community	Governor	10/1/2008
Mr. Dan Burke, Missoula Qualifications (if required): representative of the disabilities community	Governor	10/1/2008
Ms. Michelle Williamson, Pablo Qualifications (if required): representative of the disabilities community	Governor	10/1/2008
Mr. Paul Pearson, Anaconda Qualifications (if required): representative of the disabilities community	Governor	10/1/2008
Ms. Sharla LaFountain, Lewistown Qualifications (if required): representative of the disabilities community	Governor	10/1/2008
Ms. Faith Dawson, Missoula Qualifications (if required): representative of the disabilities community	Governor	10/1/2008
Ms. Dalayna Faught, Missoula Qualifications (if required): vocational rehabilitation counselor	Governor	10/1/2008
Ms. Christina Mattlin, Billings Qualifications (if required): representative of the disabilities community	Governor	10/1/2008
Ms. Mavis Young Bear, Harlem Qualifications (if required): Section 121 representative	Governor	10/1/2008



**VACANCIES ON BOARDS AND COUNCILS -- AUGUST 1, 2008 through OCTOBER 31, 2008**

Board/current position holder

Appointed by

Term end

**Water and Waste Water Operators' Advisory Council** (Environmental Quality)

Mr. Grant Burroughs, Bozeman

Governor

10/16/2008

Qualifications (if required): wastewater plant operator with highest class certificate