

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 15

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 The Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

In the matter of the proposed )  
amendment of ARM 6.2.124 regarding )  
Judicial Review, ARM 6.10.101 and )  
6.10.102 regarding Securities )  
Regulation, the proposed transfer of )  
ARM 6.10.104, 6.10.105, 6.10.108, )  
6.10.110, 6.10.125, 6.10.132, 6.10.134, )  
6.10.147, and 6.10.148, the proposed )  
amendment and transfer of ARM )  
6.10.103, 6.10.111, 6.10.120, 6.10.121, )  
6.10.126, 6.10.127, 6.10.130, 6.10.131, )  
6.10.135, 6.10.136, 6.10.138, 6.10.140, )  
6.10.141, 6.10.142, 6.10.143, 6.10.145, )  
and 6.10.149 regarding Securities )  
Regulation, and the proposed adoption )  
of NEW RULES I through VI pertaining to )  
Senior Specific Certifications and )  
Designations, and Filing Requirements )  
for Transactional Exemptions )

TO: All Concerned Persons

1. On September 5, 2008, a public hearing will be held at 10:30 a.m. in the 2nd floor conference room of the State Auditor's Office, Helena, Montana, to consider the proposed amendment, transfer, amendment and transfer, and adoption of the above-stated rules.

2. The State Auditor and Commissioner of Securities will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the State Auditor's Office no later than 5:00 p.m. on August 29, 2008, to advise us of the nature of the accommodation that you need. Please contact Darla Sautter, State Auditor's Office, 840 Helena Ave., Helena, MT 59601; telephone (406) 444-2726; fax (406) 444-3497; TDD (406) 444-3246; or e-mail dsautter@mt.gov.

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

6.2.124 JUDICIAL REVIEW (1) Any person aggrieved by a final order of the securities commissioner may obtain a review of the order in any court of competent jurisdiction by filing in court, within ~~sixty (60)~~ days after the entry of the order, a written petition praying that the order be modified or set aside, in whole or in part.

(2) Judicial review is made of the evidence which was before the securities commissioner and hearings examiner when the final order was entered.

~~(3) Judicial review shall not be accomplished by trial de novo, however, new evidence may be adduced in accordance with 30-10-308, MCA. pursuant to the Montana Administrative Procedure Act judicial review provisions for contested cases found at 2-4-702, 2-4-703, 2-4-704, and 2-4-711, MCA.~~

AUTH: 30-10-107, MCA

IMP: 30-10-308, MCA

6.10.101 APPLICABILITY OF SUB-CHAPTER SUBCHAPTER (1) Except as provided in ~~(2)~~, ~~this sub-chapter~~ chapter applies to the securities and transactions involving securities, subject to the Securities Act of Montana, Title 30, chapter 10, parts 1 through 3, MCA.

~~(2) ARM 6.10.138 does not apply to securities exempt under 30-10-104(1), MCA.~~

AUTH: 30-10-107, MCA

IMP: 30-10-107, MCA

6.10.102 DEFINITIONS As used in this ~~sub-chapter~~ subchapter, unless the context indicates otherwise:

(1) and (2) remain the same.

(3) "American depository receipt" is a negotiable certificate issued by a U.S. depository pursuant to an effective registration statement filed on form F-6 with the ~~s~~Securities and ~~e~~Exchange ~~e~~Commission, representing the securities of a non-U.S. company, which securities are held in a similar type of receipt or instrument issued with respect to a security, which receipt of instrument has been approved for sale by order of the commissioner.

(4) and (5) remain the same.

(6) "Promoter"

~~(a)~~ means a person who, acting alone or in conjunction with one or more persons, directly or indirectly, takes the initiative in founding and organizing the business or enterprise of an issuer or an officer, director or party owning, directly or indirectly, 5% or more of the outstanding shares of the corporation before or immediately following the public offering, or any affiliate of the aforesaid persons; and

~~(b)~~(a) does not include an unaffiliated institutional purchaser who purchased its shares more than 4 one year prior to the public offering.

(7) "Promotional or developmental stage" means a corporation which has no public market for its shares and has no significant earnings within the past 5 five years (or shorter period of its existence).

(8) "Promotional security" means:

~~(a)~~ a security issued within 3 three years before the date of registration in return for:

~~(i)~~ (a) a price less than 85% of the consideration for which such securities are proposed to be sold to the public; or

(ii) (i) services rendered, patents, copyrights, other intangibles, or real or personal property, the actual value of which has not been established to the satisfaction of the commissioner; or

(b) and (9) remain the same.

(10) "Significant earnings" exist if the corporation's earnings record over the last ~~5~~ five years (or shorter period of its existence) demonstrates that for such period the corporation's net earnings per share is 30% of the public offering price per share (as adjusted for stock splits and stock dividends) or the corporation has earnings per share of 5% or more of the public offering price per share for each of any ~~2~~ two consecutive years.

(11) remains the same.

AUTH: 30-10-107, MCA

IMP: 30-10-104, 30-10-107, MCA

4. The rules proposed to be transferred are as follows:

<u>OLD</u>	<u>NEW</u>	
6.10.104	6.10.202	Promotional Securities--Escrow
6.10.105	6.10.203	Promotional Securities--Required Waivers
6.10.108	6.10.205	Notice of Termination of Offering--Change of Officers
6.10.110	6.10.206	Stock Subscription Agreement--No Default or Penalty Provision
6.10.125	6.10.302	Foreign Savings and Loan Association Exemption
6.10.132	6.10.403	Sanctions Against Fraudulent Foreign Securities and Their Dealers
6.10.134	6.10.306	Transactional Exemptions for Cooperative Associations
6.10.147	6.10.208	Notice Filings for Offerings of Investment Company Securities
6.10.148	6.10.209	Notice Filings for Offerings of Federal Covered Securities Under 18(B)(3) or (4) of the Securities Act of 1933

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

6.10.103 (6.10.201) SALES MATERIALS (1) through (3) remain the same.

(4) This rule does not apply to sales material that is used exclusively by a broker-dealer registered pursuant to 30-10-201, MCA, if the sales material conforms to the provisions of section 2210 of the conduct rules of ~~the national association of securities dealers, inc~~ Financial Industry Regulatory Authority, Inc. (FINRA).

(5) through (7) remain the same.

AUTH: 30-10-107, MCA

IMP: 30-10-107, MCA

6.10.111 (6.10.207) WARRANTS AND OPTIONS (1) through (1)(c)(ii) remain the same.

(iii) the options or warrants may not be exercised for a period of 4 one year from the completion of the public offering;

(iv) through (v) remain the same.

(A) 7% each year they are outstanding, commencing 4 one year after issuance, so that the exercise price throughout the second year is 107%, throughout the third year is 114%, throughout the fourth year is 121%, and throughout the fifth year is 128%; or

(B) 20% at any time after 4 one year from the date of issuance;

(vi) the term of an option or warrant is not longer than 5 five years; and

(vii) units of securities underlying the options or warrants acquired by an underwriter and related persons, whether acquired prior to, at the time of, or after the offering (but which is determined to be in connection with, or related to, the offering) are not, in the aggregate, more than 10% of the total number of shares that are outstanding at the conclusion of the offering. For purposes of this limitation, over-allotment units and units underlying options, warrants, or convertible securities that are a part of the proposed public offering are not to be counted as part of the aggregate number of shares being offered against which the 10% limitation is to be applied.

(2) The commissioner may, upon a showing of good cause, approve an application even though warrants or options have been granted that do not meet the conditions specified in (1) ~~of this rule~~. However, the burden of justifying issuance rests upon the applicant.

AUTH: 30-10-107, MCA

IMP: 30-10-107, 30-10-207, MCA

6.10.120 (6.10.301) MONTANA LIMITED OFFERING EXEMPTION

(1) through (3) remain the same.

(a) has filed a registration statement that is the subject of a currently effective registration stop order entered pursuant to a state's securities law within 5 five years prior to the filing of the notice required under this exemption;

(b) has been convicted within 5 five years prior to the filing if the notice required under this exemption of a felony or misdemeanor in connection with the offer, purchase, or sale of a security or a felony involving fraud or deceit, including but not limited to forgery, embezzlement, obtaining money under false pretenses, larceny, or conspiracy to defraud;

(c) is currently subject to a state administrative enforcement order or judgment entered by that state's securities administrator within 5 five years prior to the filing of the notice required under this exemption or is subject to a state's administrative enforcement order or judgment in which fraud or deceit, including but not limited to making untrue statements of material facts and omitting to state material facts, was found and the order or judgment was entered within 5 five years prior to the filing of the notice required under this exemption;

(d) remains the same.

(e) is currently subject to an order, judgment, or decree of a court of competent jurisdiction temporarily or preliminarily restraining or enjoining, or is subject to an order, judgment, or decree of a court of competent jurisdiction, permanently restraining or enjoining, the party from engaging in or continuing any conduct or practice in connection with the purchase or sale of a security or involving the making of a false filing with the state entered within ~~5~~ five years prior to the filing of the notice required under this exemption.

(4) The prohibitions of (3)(a) through (3)(c) and (3)(e) do not apply if the person subject to the disqualification is licensed or registered to conduct securities-related business in the state in which the administrative order or judgment was entered against the person, or if the person subject to the disqualification is registered to conduct securities-related business by the Securities and Exchange Commission and the order or judgment was entered against the person by the Securities and Exchange Commission, or if the broker-dealer employing the person is registered in this state and the form BD as adopted by the North American ~~s~~Securities a~~Administrators a~~Association, i~~nc.~~, and filed with this state discloses the order, conviction, judgment, or decree relating to the person. A person disqualified under this rule may not act in a capacity other than that for which the person is registered.

(5) and (6) remain the same.

(a) a notice on an original, manually signed form D (17 CFR 239.500) at least ten days prior to an offer or sale being made to a person in this state, annually until completion and upon completion of the offer or sale, and at all such other times and in the form required under Securities Act of 1933, Regulation D, Rule 230.503, to be filed with the ~~S~~Securities and E~~xchange C~~ommission. The notice must contain an undertaking by the issuer to furnish to the commissioner, upon written request, the information furnished by the issuer to offerees, unless the commissioner, by order, requires that the information be filed at the time with the filing of the notice.

(b) through (9) remain the same.

(10) In the case of offerings of direct participation programs as defined in section 2810 of the ~~national association of securities dealers, inc.'s~~ Financial Industry Regulatory Authority, Inc. (FINRA) conduct rules, each person who offers or sells securities in this state under this rule shall deliver a disclosure document containing the information required by Securities Act of 1933, Regulation D, Rule 230.502(b), to individuals covered by Securities Act of 1933, Regulation D, Rules 230.502(a)(5), 230.502(a)(6), and 230.502(a)(7).

(11) and (12) remain the same.

AUTH: 30-10-105, 30-10-107, MCA

IMP: 30-10-104, 30-10-202, 30-10-211, MCA

6.10.121 (6.10.501) REGISTRATION AND EXAMINATION - SECURITIES SALESPERSON, INVESTMENT ADVISER REPRESENTATIVES, BROKER-DEALERS, AND INVESTMENT ADVISERS (1) To become registered in this state as a securities salesperson or an investment adviser representative, the individual applicant shall pass the ~~national association of securities dealers, inc., (NASD)~~ Financial Industry Regulatory Authority, Inc. (FINRA) uniform securities agent state



law exam or the uniform combined state law examination, or an examination designated by the commissioner. The applicant must also complete an application form described in (2). A salesperson applying to register with an issuer does not have to take an examination.

(2) Each application for registration in this state must be made on the most current revised uniform application form as adopted by the North American Securities Administrators Association (NASAA), unless the commissioner, by order, designates another form. Broker-dealers shall use ~~NASD~~ FINRA form BD, investment adviser representatives shall use ~~NASD~~ FINRA form ADV, and securities salespersons and investment adviser representatives shall use ~~NASD~~ FINRA form U-4.

(3) Except as provided in (3)(a) and (b) ~~of this rule~~, all applications, amendments, reports, notices, related filings, and fees required to be filed with the commissioner shall be filed electronically with and transmitted to the ~~NASD's~~ FINRA's investment adviser registration depository (IARD) for investment advisers and investment adviser representatives or to the ~~NASD's~~ FINRA's central registration depository (CRD) for broker-dealers and salespersons:

(a) ~~except as provided in (3)(b) of this rule~~, salespersons representing issuers, salespersons of non-~~NASD~~ FINRA firms and broker-dealers that are not members of the ~~NASD~~ FINRA shall file all applications, amendments, reports, notices, related filings, and fees directly with the commissioner;

(b) through (6) remain the same.

AUTH: 30-10-107, MCA

IMP: 30-10-201, MCA

6.10.126 (6.10.401) FRAUDULENT AND "UNETHICAL PRACTICES" PROHIBITED BY BROKER-DEALERS AND SALESMEN DEFINED (1) For purposes of 30-10-201, ~~and 30-10-301~~, MCA, fraudulent and unethical practices means, but is not limited to:

(a) through (g) remain the same.

(h) hypothecating a customer's securities without having a lien thereon unless the broker-dealer secures from the customer a properly executed written consent promptly after the initial transaction, except as permitted by rules of the ~~S~~ Securities and Exchange Commission;

(i) through (n)(iii) remain the same.

(o) guaranteeing a customer against loss in a securities account of the customer carried by the broker-dealer, or in a securities transaction effected by the broker-dealer with or for the customer;

(p) through (p)(ii) remain the same.

(q) using sales material or sales presentations in a deceptive or misleading fashion;

(r) failing to disclose that the broker-dealer is controlled by, controlling, affiliated with, or under common control with, the issuer of a security before entering into a contract with, or for, a customer. If the disclosure is not made in writing, it must be supplemented by giving, or sending a written disclosure at, or before, the completion ~~of~~ of the transaction;

(s) remains the same.

(t) failing or refusing to furnish a customer, upon reasonable request, information to which he is entitled, or to respond to a formal written request or complaint; or

(u) through (2)(g) remain the same.

AUTH: 30-10-107, MCA

IMP: 30-10-201, 30-10-301, MCA

6.10.127 (6.10.402) FRAUDULENT, AND UNETHICAL AND DECEPTIVE PRACTICES PROHIBITED BY INVESTMENT ADVISORS AND INVESTMENT ADVISOR REPRESENTATIVES

(1) A person who is a federal covered adviser, ~~or an investment adviser, or an investment advisor representative~~ is a fiduciary and has a duty to act for the benefit of its clients. The provisions of this rule apply to federal covered advisers to the extent that the conduct alleged is fraudulent, deceptive, or as otherwise permitted by the National Securities Markets Improvement Act of 1996 (PL 104-290). While the extent and nature of this duty varies according to the nature of the relationship between an investment adviser or a federal covered adviser and its clients and the circumstances of each case, an investment adviser or a federal covered adviser shall not engage in unethical business practices, including the following:

(a) through (f) remain the same.

(g) loaning money to a client unless the investment adviser is a financial institution engaged in the business of loaning funds, or the client is an affiliate of the investment adviser;

(h) through (n)(ii) remain the same.

(o) taking action, directly or indirectly, with respect to those securities or funds in which a client has a beneficial interest, if the investment adviser has custody or possession of the securities or funds when the investment adviser's action is subject to, and does not comply with, the requirements of Rule 206(4)-2 under the Investment Advisers Act of 1940, or the investment adviser is exempt from these requirements by virtue of Rule 206(4)-2(b);

(p) entering into, extending, or renewing an investment advisory contract, other than a contract for impersonal services, unless the contract is in writing and discloses, in substance, the services to be provided, the term of the contract, the advisory fee, the formula for computing the fee, the amount of or the manner of calculation of the prepaid fee to be returned in the event of contract termination or nonperformance, and whether the contract grants discretionary power to the investment advisor or its representative, and that no assignment of such contract shall be made by the adviser without the consent of the other party;

(q) remains the same.

(i) the financial condition of the investment adviser that is reasonably likely to impair the ability of the investment adviser to meet contractual commitments to a client, if the investment adviser has express or implied discretionary authority or custody over the client's funds or securities or requires prepayment of advisory fees of more than \$500 from the client, ~~6~~ six months or more in advance; or

(ii) and (r) remain the same.

(s) entering into, extending, or renewing any advisory contract contrary to the provisions of section 205 of the Investment Advisers Act of 1940. This provision is hereby adopted and incorporated herein, and applies to all advisers registered or required to be registered under the Securities Act of Montana, notwithstanding the fact that such investment adviser is not registered or required to be registered under section 203 of the Investment Advisers Act of 1940. Section 205 establishes standards for investment advisory contracts entered into by the adviser and may be obtained from the Commissioner of Securities, ~~P.O. Box 4009~~ 840 Helena Avenue, Helena, MT ~~59604~~ 59601;

(t) to indicate, in an advisory contract, any condition, stipulation, or provisions binding any person to waive compliance with any provision of this act or of the Investment Advisers Act of 1940, or any other practice contrary to the provisions of section 215 of the Investment Advisers Act of 1940, which is hereby adopted and incorporated herein notwithstanding the fact that such investment adviser is not registered or required to be registered under section 203 of the Investment Advisers Act of 1940. Section 215 of the Investment Advisers Act of 1940 establishes standards for the validity of advisory contracts, and may be obtained from the Commissioner of Securities, ~~P.O. Box 4009~~ 840 Helena Avenue, Helena, MT ~~59604~~ 59601;

(u) engaging in any act, practice, or course of business which is fraudulent, deceptive, or manipulative, or contrary to the provisions of section 206(4) of the Investment Advisers Act of 1940, which is hereby adopted and incorporated herein, notwithstanding the fact that such investment adviser is not registered or required to be registered under section 203 of the Investment Advisers Act of 1940. Section 206(4) of the Investment Advisers Act of 1940 establishes prohibited practices in the investment advisory business, and may be obtained from the Commissioner of Securities, ~~P.O. Box 4009~~, 840 Helena Avenue, Helena, MT ~~59604~~ 59601;

(v) through (w) remain the same.

AUTH: 30-10-107, MCA

IMP: 30-10-201, 30-10-301, MCA

#### 6.10.130 (6.10.303) SECOND TIER LIMITED OFFERING EXEMPTION

(1) remains the same.

(2) An issuer using the second tier limited offering exemption shall file with the Commissioner of Securities:

(a) and (b) remain the same.

(c) a consent to service of process which is attached to and made part of the second tier limited offering exemption form; and

(d) such other information as the Commissioner of Securities may require.

(3) Upon the entry ~~to~~ of an order denying or revoking the approval of this exemption, the Commissioner of Securities shall promptly notify the issuer of the securities that an order has been entered and of the reasons therefor and that, if requested by the issuer within 15 days after the receipt of the Commissioner of Securities' order, the matter will be promptly set down for hearing. If no hearing is requested within 15 days, and none is ordered by the Commissioner of Securities, the order will remain in effect until it is modified or vacated by the Commissioner of

Securities. If a hearing is requested or ordered, the Commissioner of Securities, after notice of and opportunity for hearing, may affirm, modify, or vacate the order.

AUTH: 30-10-107, MCA

IMP: 30-10-105, MCA

6.10.131 (6.10.305) FOREIGN SECURITY EXEMPTION (1) and (1)(a) remain the same.

(i) This exemption is not available for sales of securities constituting an unsold allotment to, or subscription by, the broker-dealer as a participant in the distribution of the securities by the issuer or by or through an underwriter.

(ii) through (iii) remain the same.

(A) the issuer, including any predecessors, has been in continuous operation for at least the preceding ~~2~~ two years, is a going concern actually engaged in business and is not in an organizational or developmental stage, and is not in bankruptcy or receivership; ~~and~~

(B) the issuer has net tangible assets of at least U.S. \$25,000,000 as of the date of its most recent externally audited financial statement prepared in accordance with U.S. or foreign GAAP. Such statement shall be dated as of a date within 18 months of the date of the transaction; ~~and~~

(C) the issuer had an average gross income of at least U.S. \$5,000,000 over its most recent ~~2~~ two consecutive years of operation according to audited profit and loss statements of the issuer prepared in accordance with U.S. or foreign GAAP for the issuer's two fiscal years immediately preceding the date of the financial statement referred to in ~~(1)(a)(iii)(B)~~; ~~and~~

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

AUTH: 30-10- 107, MCA

IMP: 30-10-104, 30-10-107, MCA

6.10.135 (6.10.502) CANADIAN BROKER-DEALERS AND SALESPERSONS (1) A Canadian broker-dealer that is resident in Canada, and has no office or other physical presence in the United States, and is not an office of, branch of, or a natural person associated with a broker-dealer otherwise registered in the United States may transact business in this state without registering as a broker-dealer pursuant to 30-20-201, MCA, under the following conditions:

(a) through (d) remain the same.

(2) A Canadian securities salesperson representing a Canadian broker-dealer transacting business in this state pursuant to (1) ~~of this rule~~ need not register pursuant to 30-10-201, MCA, provided that he or she is registered in good standing in the appropriate Canadian jurisdiction.

(3) Transactions by Canadian broker-dealers and their salespersons pursuant to (1) and (2) ~~of this rule~~ will be deemed not to involve the "offer" or "sale" of a security, as those terms are defined in 30-10-103, MCA, for purpose of compliance with 30-10-202, MCA, and the rules promulgated thereunder. Nothing in this rule shall affect the duty of the Canadian broker-dealer and its agents to comply with 30-10-301, MCA, and the rules promulgated thereunder.

AUTH: 30-10-105, 30-10-107, MCA  
IMP: 30-10-201, MCA

6.10.136 (6.10.503) MINIMUM FINANCIAL REQUIREMENTS AND FINANCIAL REPORTING OF BROKER-DEALERS (1) and (2) remain the same.

(3) The commissioner hereby adopts and incorporates by reference the rules cited in (1) and (2), which establish net capitalization requirements, customer free credit balance requirements, customer protection reserves, net capital decline reporting requirements, and capitalization reporting requirements. A copy of these rules may be obtained from the Securities Department, P.O. Box 4009 840 Helena Avenue, Helena, MT ~~59604~~ 59601.

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

6.10.138 (6.10.504) BROKER-DEALER BOOKS AND RECORDS

(1) Unless otherwise provided by order of the commissioner, each registered broker-dealer shall make, maintain, and preserve books and records in compliance with the United States Securities and Exchange Commission rules 17a-3 (17 CFR 240.17a-3 (1998)), 17a-4 (17 CFR 240.17a-4 (1998)), and 15c2-11 (17 CFR 240.15c2-11 (1998)) which are adopted and incorporated herein by this reference, and establish recordkeeping requirements related to the conduct of the business as a securities broker-dealer. Copies of these rules may be obtained from the Commissioner of Securities, P.O. Box 4009 840 Helena Avenue, Helena, MT ~~59604~~ 59601.

(2) To the extent that the Securities and Exchange Commission promulgates changes to the above-referenced rules, dealers in compliance with such rules as amended shall not be subject to enforcement action by the commissioner for violation of this rule to the extent that the violation results solely from the dealer's compliance with the amended rule.

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

6.10.140 (6.10.506) MINIMUM FINANCIAL REQUIREMENTS FOR INVESTMENT ADVISERS (1) Except as provided in (5), unless an investment adviser posts a bond pursuant to ARM 6.6.141, an investment adviser registered, or required to be registered, under the Securities Act of Montana who has custody of client funds or securities shall maintain at all times a minimum net worth of \$35,000. An investment adviser registered, or required to be registered, under the Securities Act of Montana who has discretionary authority over client funds or securities but does not have custody of client funds or securities, shall maintain at all times a minimum net worth of \$10,000.

(2) Unless otherwise exempted, as a condition of the right to continue to transact business in this state, every investment adviser registered, or required to be registered, under the Securities Act of Montana shall by the close of business on the

next business day notify the commissioner if such investment adviser's total worth is less than the minimum required. After transmitting such notice, each investment adviser shall file by the close of business on the next business day a report with the commissioner of its financial condition, including the following:

(a) through (4) remain the same.

(5) An investment adviser that has its principal place of business in a state other than this state is not required to comply with the requirements of this rule, provided that the investment adviser is licensed in the state, and is in compliance with the state's minimum capital requirements, if any.

AUTH: 30-10-107, MCA

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

6.10.141 (6.10.507) BONDING REQUIREMENTS FOR CERTAIN INVESTMENT ADVISERS (1) Every investment adviser having custody of, or discretionary authority over, client funds or securities shall be bonded in the amount of \$35,000.

(2) An investment adviser that has its principal place of business in a state other than this state shall be exempt from the requirements of (1), provided that the investment adviser is registered as an investment adviser in the state where it has its principal place of business, and is in compliance with such state's requirements relating to bonding, if any.

AUTH: 30-10-107, MCA

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

6.10.142 (6.10.508) CUSTODY OF CLIENT FUNDS OR SECURITIES BY INVESTMENT ADVISERS (1) It shall be unlawful for any investment adviser to take, or have custody of, any securities or funds of any client unless:

(a) the investment adviser notifies the commissioner in writing that the investment adviser has, or may have, custody. Such notification may be given on Form ADV;

(b) the securities of each client are segregated, marked to identify the particular client having the beneficial interest therein, and held in safekeeping in some place reasonably free from risk of destruction or other loss:

(i) through (iii) remain the same.

(c) immediately after accepting custody or possession of funds or securities from any client, the investment adviser notifies the client in writing of the place where, and the manner in which, the funds and securities will be maintained and subsequently, if and when there is a change in the place where, or the manner in which, the funds or securities are maintained, the investment adviser gives written notice thereof to the client;

(d) at least once every three months, the investment adviser sends each client an itemized statement showing the funds and securities in the investment adviser's custody at the end of such period, and all debits, credits, and transactions in the client's account during such period; and

(e) remains the same.

(f) for purposes of this rule, a person will be deemed to have custody if said person directly, or indirectly, holds client funds or securities, has any authority to obtain possession of them, or has the ability to appropriate them.

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

AUTH: 30-10-107, MCA

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

6.10.143 (6.10.510) INVESTMENT ADVISER BOOKS AND RECORDS

(1) Except as otherwise provided in (5) ~~of this rule~~, an investment adviser registered or required to be registered under the Securities Act of Montana must make and keep true, accurate, and current the following books, ledgers, and records:

(a) those books and records required to be maintained and preserved in compliance with Rule 204-2(a)(1)-(5), (7), (9), (10), (12), (13), (15), and (16) of the Investment Advisers Act of 1940 (17 CFR 275.204-2 (1998)), hereby adopted and incorporated by reference, notwithstanding the fact that the investment adviser is not registered or required to be registered under the Investment Advisers Act of 1940. Rule 204-2 establishes books and records maintenance requirements pertaining to the conduct of business as an investment adviser. Copies of these rules may be obtained from the Commissioner of Securities, ~~P.O. Box 4009~~ 840 Helena Avenue, Helena, MT ~~59604~~ 59601;

(b) through (d) remain the same.

(e) a copy of each written statement and each amendment or revision given or sent to any client or prospective client of the investment adviser in accordance with the provisions of 30-10-201(12)(b), MCA, and a record of the dates that each written statement, and each amendment or revision was given or offered to be given to any client or prospective client who subsequently becomes a client;

(f) for each client that was obtained by the adviser by means of a solicitor to whom a cash fee was paid by the adviser, records required by Rule 206(4)-3 of the Investment Advisers Act of 1940 (17 CFR 275.206(4)-3 (1998)), which is hereby adopted and incorporated by this reference, notwithstanding the fact that the investment adviser is not registered, or required to be registered, under the Investment Advisers Act of 1940;

(g) through (j) remain the same.

(k) a file containing a copy of each document (other than any notices of general dissemination) that was filed with, or received from, any state or federal agency or self regulatory organization, and that pertains to the registrant or its investment adviser representatives which file should contain, but is not limited to, all applications amendments, renewal filings, and correspondence.

(2) Every investment adviser subject to (1) ~~of this rule~~ shall preserve the following records in the manner prescribed:

(a) books and records required to be made under the provisions of (1)(a) shall be maintained and preserved in an easily accessible place for a period of not less than ~~5~~ five years from the end of the fiscal year during which the last entry was made on such record, the first ~~2~~ two years in the principal office of the investment adviser; and

(b) books and records required to be made under (1)(b) through (1)(k) must be maintained and preserved in an easily accessible place for a period of not less than ~~5~~ five years from the end of the fiscal year during which the last entry was made on such record, the first ~~2~~ two years in the principal office of the investment adviser or for the time period during which the investment adviser was registered, or required to be registered, in the state, if less.

(3) through (3)(a)(i) remain the same.

(ii) subsections (1)(c), (1)(e), (1)(i), and (1)(k) ~~of this rule.~~

(4) and (5) remain the same.

AUTH: 30-10-107, MCA

IMP: 30-10-201, MCA

6.10.145 (6.10.511) NOTICE FILING REQUIREMENTS FOR FEDERAL COVERED ADVISERS (1) The notice filing for a federal covered adviser pursuant to 30-10-201, MCA, shall be filed with the commissioner, or with a central registration depository designated by the commissioner on an executed Form ADV (uniform application for investment adviser registration (17 CFR 279.1 (1998))) and shall include:

(a) and (b) remain the same.

(2) A federal covered adviser shall file with the commissioner a copy of each amendment to its Form ADV when such amendment is filed with the ~~S~~ Securities and Exchange Commission.

(3) The renewal of the notice filing for a federal covered adviser pursuant to 30-10-209(2)(c), MCA, shall be filed upon the first page of an executed Form ADV (uniform application for investment adviser registration (17 CFR 279.1 (1998))), and shall contain the fee required under 30-10-209, MCA. Such filing shall be accompanied by any amendments or documents filed with the ~~S~~ Securities and Exchange Commission that have not previously been provided to the commissioner.

AUTH: 30-10-107, MCA

IMP: 30-10-201, MCA

6.10.149 (6.10.210) NOTICE FILING PROCEDURES FOR RULE 506 OFFERINGS (1) An issuer offering a security that is a covered security under section 18(b)(4)(D) of the Securities Act of 1933 shall file a notice on Form D (17 CFR 239.500), a consent to service of process on a form prescribed by the commissioner, and pay the fee required by 30-10-209(1)(a) and (1)(c), MCA, no later than 15 days after the first sale of the security in this state.

(2) For purposes of this rule, the SEC "Form D" is defined as the document, as adopted by the ~~S~~ Securities and Exchange Commission and in effect on September 1, 1996, as may be amended by the SEC from time to time, entitled "Form D; notice of sale of securities pursuant to regulation D, section 4(6), and/or uniform limited offering exemption," including Part E and the Appendix.

AUTH: 30-10-107, MCA



IMP: 30-10-202, 30-10-211, MCA

6. The new rules proposed to be adopted provide as follows:

NEW RULE I SENIOR SPECIFIC CERTIFICATIONS AND DESIGNATIONS GENERALLY UNLAWFUL (1) The use of a senior specific certification or designation by any person in connection with the offer, sale, or purchase of securities, or the provision of advice as to the value of or the advisability of investing in, purchasing, or selling securities, either directly or indirectly or through publications or writings, or by issuing or promulgating analyses or reports relating to securities, that indicates or implies that the user has special certification or training in advising or servicing senior citizens or retirees, in such a way as to mislead any person shall be a dishonest, fraudulent, and unethical practice in the securities business within the meaning of 30-10-201(13)(g) and 30-10-301, MCA. The prohibited use of such certifications or professional designation includes, but is not limited to, the following:

- (a) use of a certification or professional designation by a person who has not actually earned or is otherwise ineligible to use such certification or designation;
- (b) use of a nonexistent or self-conferred certification or professional designation;
- (c) use of a certification or professional designation that indicates or implies a level of occupational qualifications obtained through education, training, or experience that the person using the certification or professional designation does not have; and
- (d) use of a certification or professional designation that was obtained from a designating or certifying organization that:
  - (i) is primarily engaged in the business of instruction in sales and/or marketing;
  - (ii) does not have reasonable standards or procedures for assuring the competency of its designees or certificants;
  - (iii) does not have reasonable standards or procedures for monitoring and disciplining its designees or certificants for improper or unethical conduct; or
  - (iv) does not have reasonable continuing education requirements for its designees or certificants in order to maintain the designation or certificate.

AUTH: 30-10-107, MCA

IMP: 30-10-201, 30-10-301, MCA

NEW RULE II REBUTTABLE PRESUMPTION REGARDING CERTAIN DISQUALIFICATIONS (1) There is a rebuttable presumption that a designating or certifying organization is not disqualified solely for purposes of [NEW RULE I(1)(d)], when the organization has been accredited by:

- (a) The American National Standards Institute;
- (b) The National Commission for Certifying Agencies; or
- (c) an organization that is on the United States Department of Education's list entitled "Accrediting Agencies Recognized for Title IV Purposes" and the designation or credential issued therefrom does not primarily apply to sales and/or marketing.

AUTH: 30-10-107, MCA  
IMP: 30-10-201, 30-10-301, MCA

NEW RULE III FACTORS CONSIDERED TO DETERMINE UNLAWFUL CERTIFICATIONS OR DESIGNATIONS (1) In determining whether a combination of words (or an acronym standing for a combination of words) constitutes a certification or professional designation indicating or implying that a person has special certification or training in advising or servicing senior citizens or retirees, factors to be considered shall include:

- (a) use of one or more words such as "senior," "retirement," "elder," or like words, combined with one or more words such as "certified," "registered," "chartered," "adviser," "specialist," "consultant," "planner," or like words, in the name of the certification or professional designation; and
- (b) the manner in which those words are combined.

AUTH: 30-10-107, MCA  
IMP: 30-10-201, 30-10-301, MCA

NEW RULE IV CERTIFICATIONS OR DESIGNATIONS NOT CONSIDERED UNLAWFUL (1) For purposes of this rule, a senior certification or professional designation does not include a job title within an organization that is licensed or registered by a state or federal financial services regulatory agency, when that job title:

- (a) indicates seniority or standing within the organization; or
  - (b) specifies an individual's area of specialization within the organization.
- (2) For purposes of this rule, financial services regulatory agency includes, but is not limited to, an agency that regulates broker-dealers, investment advisers, or investment companies as defined under the Investment Company Act of 1940.

AUTH: 30-10-107, MCA  
IMP: 30-10-201, 30-10-301, MCA

NEW RULE V RULES NOT LIMITING AUTHORITY (1) Nothing in these rules shall limit the commissioner's authority to enforce existing provisions of law.

AUTH: 30-10-107, MCA  
IMP: 30-10-201, 30-10-301, MCA

NEW RULE VI FILINGS REQUIREMENT FOR TRANSACTIONAL EXEMPTION PURSUANT TO 30-10-105(15), MCA (1) A request for a transactional exemption pursuant to 30-10-105(15), MCA, shall include:

- (a) a letter of request explaining why an exemption would serve the purposes of 30-10-102, MCA;
- (b) a U-2 consent to service of process form; and
- (c) a fee of \$50.

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

AUTH: 30-10-107, MCA

IMP: 30-10-105, 30-10-301, MCA

STATEMENT OF REASONABLE NECESSITY: The Securities Division is proposing to organize its current administrative rules into subchapters for the purpose of logically grouping related topics in order to facilitate use and readability.

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

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

NEW RULE III is necessary to define criteria specific to the unlawful designations in order to avoid any vagueness or ambiguity with regard to what terms and what actions constitute an unlawful senior designation.

NEW RULE IV is necessary to clarify that the definition of unlawful "senior designations" is limited to those that are used to mislead or misrepresent a person's ability to perform certain tasks associated with the securities industry.

NEW RULE V is necessary to clarify that the rule is not an unlawful limitation on the State Auditor in the capacity of ex-Officio Securities Commissioner.

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

7. Concerned persons may present their data, views, or arguments concerning the proposed actions either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Roberta Cross Guns, State

Auditor's Office, 840 Helena Ave., Helena, Montana 59601; telephone (406) 444-5234; fax (406) 444-5558; or e-mail [rcrossguns@mt.gov](mailto:rcrossguns@mt.gov); and must be received no later than 5:00 p.m., September 12, 2008.

8. Roberta Cross Guns, Staff Attorney, has been designated to preside over and conduct the hearing.

9. The State Auditor's Office maintains a list of concerned persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing address of the person to receive notices, and specifies for which program the person wishes to receive notices. Such written request may be mailed or delivered to Darla Sautter, State Auditor's Office, 840 Helena Ave., Helena, MT 59601; e-mailed to [dsautter@mt.gov](mailto:dsautter@mt.gov); faxed to the office at (406) 444-5558; or may be made by completing a request form at any rules hearing held by the State Auditor's Office.

10. 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.

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

/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 August 4, 2008.

BEFORE THE DEPARTMENT OF COMMERCE  
OF THE STATE OF MONTANA

In the matter of the proposed	)	NOTICE OF PROPOSED
amendment of ARM 8.2.101	)	AMENDMENT
pertaining to incorporation of model	)	
rules by reference	)	NO PUBLIC HEARING
	)	CONTEMPLATED

TO: All Concerned Persons

1. On September 15, 2008, the Department of Commerce proposes to amend the above-stated rule.

2. The Department of Commerce 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., September 11, 2008, to advise us of the nature of the accommodation that you need. Please contact Gail Gallik, Department of Commerce, 301 South Park Avenue, P.O. Box 200501, Helena, Montana 59620-0501; telephone (406) 841-2700; TDD (406) 841-2702; fax (406) 841-2701; or e-mail ggallik2@mt.gov.

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

8.2.101 INCORPORATION OF MODEL RULES BY REFERENCE (1) The Department of Commerce adopts and incorporates the Attorney General's model rules by reference to such rules as stated in ARM 1.3.101 through ARM 1.3.234~~3~~ with the exceptions contained in this subchapter, and the Secretary of State's model rules by reference to such rules as stated in ARM 1.3.301 through ARM 1.3.313 with the exceptions contained in this subchapter.

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

REASON: The department proposes to amend the rule to correct the reference to the rules recently amended and transferred by the Secretary of State.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Kelly A. Casillas, Legal Counsel, Department of Commerce, 301 South Park Avenue, P.O. Box 200501, Helena, Montana 59620-0501; telephone (406) 841-2727; fax (406) 841-2701; or e-mail kcasillas@mt.gov, and must be received no later than 5:00 p.m., September 11, 2008.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Kelly A. Casillas at the above address no later than 5:00 p.m., September 11, 2008.

6. If the agency receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 25 persons based on the number of individuals in Montana who are interested in the department's procedures for adopting, amending, repealing, and transferring administrative rules.

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 Department of Commerce, 301 South Park Avenue, P.O. Box 200501, Helena, Montana 59620-0501, by fax to (406) 841-2731, by e-mail to lgregg@mt.gov, or may be made by completing a request form at any rules hearing held by the department.

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

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

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

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

Certified to the Secretary of State August 4, 2008.

BEFORE THE BOARD OF PUBLIC ACCOUNTANTS  
DEPARTMENT OF LABOR AND INDUSTRY  
STATE OF MONTANA

In the matter of the proposed amendment )  
of ARM 24.201.301, 24.201.401, 24.201.410, )  
24.201.415, 24.201.501, 24.201.502, )  
24.201.510, 24.201.516 through 24.201.518, )  
24.201.524, 24.201.528, 24.201.529, )  
24.201.535, 24.201.704 through 24.201.707, )  
24.201.709, 24.201.710, 24.201.720, )  
24.201.723, 24.201.726, 24.201.1102, )  
24.201.1106, 24.201.1107, 24.201.1108, )  
24.201.1111, 24.201.1115, 24.201.2137, )  
24.201.2401, 24.201.2410, 24.201.2411, )  
adoption of NEW RULE I through NEW )  
RULE V, and repeal of 24.201.506, )  
24.201.511, 24.201.512, 24.201.715 through )  
24.201.717, and 24.201.719, all pertaining to )  
accounting )

TO: All Concerned Persons

1. On September 5, 2008, at 10:00 a.m., a public hearing will be held in B-07, 301 South Park Avenue, Helena, Montana to consider the proposed amendment, adoption, and repeal of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Public Accountants (board) no later than 5:00 p.m., on August 29, 2008, to advise us of the nature of the accommodation that you need. Please contact Susanne Criswell, Board of Public Accountants, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2389; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2323; e-mail [dlibsdpac@mt.gov](mailto:dlibsdpac@mt.gov).

3. GENERAL STATEMENT OF REASONABLE NECESSITY: As part of the biennial review of its administrative rules as required by 2-4-314, MCA, the board is proposing revisions throughout the rules. Some of the proposed amendments are technical in nature such as substituting modern language for archaic phrasing, updating grammar and language choices, and deleting unnecessary or redundant sections. Other changes replace out-of-date terminology for current language and processes, substitute gender neutral terms for gender specific language, and amend rules and catchphrases for accuracy, consistency, simplicity, better organization, and ease of use. The board is also amending throughout to substitute gender neutral terms for gender specific language, and to correct punctuation, earmarking,

and references to MCA or rule sections in compliance with ARM formatting requirements. Authority and implementation cites are being amended throughout to accurately reflect all statutes implemented through the rules, to provide the complete sources of the board's rulemaking authority, and to delete references to repealed statutes. Accordingly, the board determined there is reasonable necessity to generally amend and repeal certain existing rules and adopt new rules at this time. Where additional specific bases for a proposed action exist, the board will identify those reasons immediately following that rule.

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

24.201.301 DEFINITIONS ~~(4)~~ For purposes of these rules the following terms have the meanings indicated:

~~(a)(2)~~ "Client" –The means the person, entity, or enterprise whether organized for profit or not, which retains a permit holder for the performance of professional services. A client may be an entity served by governmental or nongovernmental agencies performing services similar to public accounting firms.

~~(b)(4)~~ "Firm" –A means a proprietorship, partnership, or professional corporation engaged in the practice of public accounting.

~~(c)(10)~~ "Report" – (when used with reference to financial statements), means an opinion, report, or other form of language which states or implies assurance as to the reliability of any financial statements (examples include audits, reviews, and compilations) and which also includes or is accompanied by any statement or implication that the person or firm issuing it has special knowledge or competence in accounting or auditing. Such a statement or implication of special knowledge or competence may arise from use by the issuer of the report of names or titles indicating that ~~he~~ the person or the firm is an accountant or auditor, or from the language of the report itself. The term "report" includes any form of language which disclaims an opinion when such form of language is conventionally understood to imply any positive assurance as to the reliability of the financial statements referred to and/or special competence on the part of the person or firm issuing such language; and it includes any other form of language that is conventionally understood to imply such assurance and/or such special knowledge or competence.

~~(d)(1)~~ "Certificate holder" –A means a person holding a CPA certificate issued by the board pursuant to 37-50-302, MCA.

~~(e)(6)~~ "License holder" –A means a person holding a license issued by the board pursuant to 37-50-303, MCA.

(7) "NASBA" means the National Association of State Boards of Accountancy.

~~(f)(8)~~ "Permit holder" –A means a person holding an annual permit to practice public accounting issued by the board pursuant to 37-50-314, MCA.

~~(g)(5)~~ "Licensee" –A means a certificate, license, or permit holder.

~~(h)(9)~~ "Professional services" –Any means any services performed or offered to be performed by a permit holder for a client in the course of the practice of public accountancy.



~~(i)~~(3) "Financial statement"—A means a presentation of financial data, derived from accounting records and intended to communicate an entity's economic resources or obligations at a point in time, or the changes therein for a period of time. Financial presentations included in tax returns are not financial statements for purposes of this definition. Financial statements include, but are not limited to, the following:

- ~~(i)~~(a) balance sheet;<sub>i</sub>
- ~~(ii)~~(b) statement of income;<sub>i</sub>
- ~~(iii)~~(c) statement of retained earnings;<sub>i</sub>
- ~~(iv)~~ statement of changes in financial position;
- ~~(v)~~(d) statement of changes in owners' equity;<sub>i</sub>
- ~~(vi)~~(e) financial forecasts, projections, and similar presentations;<sub>i</sub>
- ~~(vii)~~(f) statement of assets and liabilities (with or without owners' equity accounts);<sub>i</sub>
- ~~(viii)~~(g) statement of revenue and expenses;<sub>i</sub>
- ~~(ix)~~(h) summary of operations;<sub>i</sub>
- ~~(x)~~(i) statement of operations by product lines;<sub>i</sub>
- ~~(xi)~~(j) statement of cash receipts and disbursements;<sub>i</sub> and
- ~~(xii)~~(k) statement of cash flows.

AUTH: 37-50-203, MCA

IMP: 37-50-203, MCA

REASON: The board is amending this rule to add the definition of the National Association of State Boards of Accountancy for consistent use of the term throughout the rules. It is reasonable and necessary to delete the statement of changes in financial position from the definition of financial statement as it is an out dated standard that is no longer required in current accounting standards.

24.201.401 BOARD MEETINGS (1) The ~~chairman~~ presiding officer shall preside at all meetings and shall perform such duties as the board may direct. At any meeting at which the ~~chairman~~ presiding officer is absent, the members present will, by a majority vote, select a temporary ~~chairman~~ presiding officer for the meeting.

(2) remains the same.

(3) Meetings shall be held, after reasonable notice, at the call of the ~~chairman~~ presiding officer or of any two members of the board.

AUTH: 37-50-201, 37-50-203, MCA

IMP: 37-50-201, 37-50-203, ~~37-50-315~~, MCA

24.201.410 FEE SCHEDULE (1) through (1)(d) remain the same.

~~(e)~~ Reissue of certificate or license 15

~~(f)~~(e) Application as candidate applicant for examination 25

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

~~(i)~~(h) Fees for ~~PMP~~ profession monitoring program reviews:

(i) through (i)(iv) remain the same but are renumbered (i) through (h)(iv).

(j) through (k)(ii) remain the same but are renumbered (i) through (j)(ii).  
(2) and (3) remain the same.

AUTH: 37-1-134, 37-50-203, 37-50-204, 37-50-323, MCA

IMP: 37-1-134, 37-1-141, 37-50-204, 37-50-314, 37-50-323, MCA

REASON: It is reasonably necessary to amend this rule and delete the fee for reissuing a license. This standardized fee is a department established administrative fee, per 37-1-130, MCA, and is properly set forth in department rule at ARM 24.101.403.

24.201.415 USE OF CPA/LPA DESIGNATION (1) Certificate or license holders not otherwise in the practice of public accounting, but providing financial or consulting services to the public, must have permits to practice, if they hold themselves out to the public in any manner as a CPA or LPA.

(2) Certificate or license holders working for nonpublic accounting employers shall not use their CPA or LPA designations when presenting employer reports to outside parties unless they maintain a permit to practice.

AUTH: 37-1-131, 37-50-203, MCA

IMP: 37-1-131, 37-50-203, 37-50-301, MCA

24.201.501 EDUCATION REQUIREMENTS (1) ~~A candidate~~ An applicant who has a ~~previously approved and unexpired application~~ examination scores for an examination administered prior to or in May, 1996, or a ~~candidate~~ an applicant who ~~applied by~~ wishes to transfer of grades for an examination taken prior to or in May of 1996, must, prior to certification or licensure, have graduated from a college or university accredited then (or at the time of the applicant's graduation) to offer:

(a) remains the same.

(b) a baccalaureate degree, with a concentration other than accounting, if supplemented by experience and which the board ~~determines that an~~ considers to be an equivalent education has been achieved; or

(c) a baccalaureate degree, with a concentration other than accounting, if supplemented by related courses in other areas of business administration and which the board ~~determines that~~ considers to be an equivalent education ~~has been achieved~~;

(d) a concentration in accounting will be interpreted by the board to include 24 semester hours (36 quarter hours) of accounting, auditing, and tax courses, and 18 semester hours (27 quarter hours) in other areas of business such as business law, management, marketing, economics, and finance. The 18 semester hours (27 quarter hours) shall include no more than six semester hours (nine quarter hours) in one area;

(e) supplemental experience will be interpreted by the board to be five years of employment by a public accounting firm, or five years of employment in industry or government in a responsible financial position; ~~and the board determines that an equivalent accounting education has been achieved.~~

(f) a concentration, other than accounting, if supplemented by related courses in other areas of business, will be interpreted by the board to include 12 semester hours (18 quarter hours) of accounting, auditing, and tax courses and nine semester hours (14 quarter hours) in other areas of business such as business law, management, marketing, economics, and finance. The nine semester hours (14 quarter hours) shall include no more than three semester hours (five quarter hours) in one area.

~~(2) A candidate for examination, to be approved to sit for the examination, who submits an initial application~~ An applicant who has examination scores for an examination administered in November, 1996 or May, 1997, or ~~a candidate an applicant~~ who applies by wishes to transfer of grades obtained for November, 1996 or May, 1997 examinations, must have completed 24 semester hours (36 quarter hours) of accounting, auditing, and tax courses, and 18 semester hours (27 quarter hours) in other areas of business such as business law, management, marketing, economics, and finance. The 18 semester hours (27 quarter hours) shall include no more than six semester hours (nine quarter hours) in one area.

(a) Subsequent to successful passage of the exam, the ~~candidate~~ applicant, to be certified or licensed as a public accountant, must have graduated from a college or university then accredited to offer a baccalaureate degree.

~~(3) A candidate~~ An applicant submitting an ~~initial application for an~~ examination scores for an examination administered in November, 1997 or thereafter, or ~~a candidate an applicant~~ whose approved application for examination has expired and is making reapplication for an examination ~~in~~ after November, 1997 ~~or thereafter~~, or ~~a candidate an applicant~~ who applies by transfer of grades ~~for~~ after the November, 1997 examination ~~or thereafter to be approved to sit for the examination~~, must have completed at least 24 semester hours of upper division (an upper division course is normally defined as a course taken at the junior or senior level and would exclude introductory courses in accounting and economics) or graduate level accounting courses including at least one course in each of the following subject areas to be approved to sit for the examination:

(a) through (d) remain the same.

(e) ~~has~~ at least 24 semester hours in business related courses. Examples of business related courses include information systems, business law, finance, economics, marketing, ethics, organizational behavior, quantitative applications in business, and communication skills;

~~(f) an upper division course is normally defined as a course taken at the junior or senior level and would exclude introductory courses in accounting and economics; and~~

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

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

~~(d) Northwest association of schools and~~ Commission of Colleges and Universities;

(e) through (6) remain the same.

AUTH: 37-1-131, 37-50-203, MCA

IMP: 37-1-131, 37-50-302, 37-50-303, 37-50-305, MCA

REASON: The board is amending this rule to clarify that applicants with exams prior to May 1996 must have graduated from an institution that was accredited when the exam was taken or when the applicant graduated. The board does not intend for an applicant to be negatively affected if a once accredited institution later loses its accreditation. The board is amending (4)(d) to correct reference to the portion of the disbanded Northwest Association of Schools and Colleges that remains as a regional accrediting agency.

24.201.502 ACCOUNTING AND AUDITING EXPERIENCE

REQUIREMENTS (1) To be issued an initial permit to practice under 37-50-203(2)(g), MCA, an applicant must provide evidence of "~~adequate~~" acceptable accounting and auditing experience.

(2) Accounting and auditing experience will be considered ~~adequate~~ acceptable by the board if satisfactory evidence is presented of having performed accounting and auditing functions ordinarily required in the practice of public accounting, provided this experience:

(a) be attested to by a holder of a permit to practice;<sub>i</sub> and  
(b) takes place in the five years prior to the date of the application for permit to practice;<sub>i</sub> and

(c) includes at least:

~~(e)(i) includes at least~~ 12 calendar months (2000 hours actual work experience) with at least 500 hours of attest oriented experience requiring application of generally accepted standards and issuance of reports requiring application of generally accepted accounting principles. The prescribed experience may be fulfilled from a combination of attest experience having as its objective financial audits, compliance audits, reviews, ~~and~~ compilations, or internal financial audits;<sub>i</sub> or

(ii) ~~includes at least~~ 24 calendar months (4000 hours actual work experience) of private, governmental, or public accounting work acceptable to the board.

AUTH: 37-1-131, ~~37-50-204~~, 37-50-203, MCA

IMP: 37-1-131, ~~37-50-204~~, 37-50-203, MCA

24.201.510 EXAMINATIONS (1) through (4) remain the same.

(5) The passing score on each section is 75, subject to the granting of credit requirements of ARM ~~24.201.512 and~~ 24.201.516.

(6) remains the same.

(7) Eligible applicants shall make the necessary contacts to schedule the time and place for examination at an approved test site and pay all applicable fees. Once the ~~candidate~~ applicant obtains a notice to schedule from the board or the board's contractor, the applicant has six months to sit for the scheduled test section(s). If the time expires without sitting for the test section(s) applied for, the applicant ~~will need to~~ shall reapply.

(8) remains the same.

AUTH: 37-1-131, 37-50-204, ~~37-50-308~~, MCA

IMP: 37-1-131, 37-50-204, 37-50-302, 37-50-303, ~~37-50-308~~, MCA

24.201.516 GRANTING OF EXAMINATION CREDIT (1) and (2) remain the same.

AUTH: 37-50-204, ~~37-50-308~~, MCA

IMP: 37-50-204, 37-50-302, 37-50-303, ~~37-50-308~~, MCA

24.201.517 ACCEPTANCE OF EXAMINATION CREDITS (1) In order for credits for passing the Uniform Certified Public Accountant's Accountant Examination to be recognized by the board, ~~a candidate~~ an applicant who has never held a certificate as a certified public accountant, or a license as a licensed public accountant in any state must have earned those credits under circumstances ~~and conditions identical~~ comparable to the circumstances and conditions those applicable to Montana ~~candidates~~ applicants at the time those credits were earned. Those circumstances and conditions include the conditioning requirements for accumulation of examination credits, if the applicant did not pass all required parts of the examination on the first attempt.

AUTH: 37-1-131, 37-50-203, MCA

IMP: 37-50-302, 37-50-303, 37-50-309, MCA

24.201.518 EXAMINATION CREDITS - OUT-OF-STATE CANDIDATES APPLICANTS (1) The board will recognize credits for any part of the computer-based Uniform Certified Public Accountant Examination passed in other jurisdictions, provided those credits meet the requirements ~~of adopted pursuant to~~ 37-50-204, MCA, and the applicable rules of the board, and were earned under circumstances comparable to those in Montana.

(2) remains the same.

(a) meet the requirements ~~of adopted pursuant to~~ 37-50-204, MCA; and

(b) were earned under circumstances comparable to those in Montana; ~~and~~

~~(c) timely qualify for conditional credit pursuant to ARM 24.201.512.~~

AUTH: 37-50-204, ~~37-50-308~~, MCA

IMP: 37-50-204, 37-50-302, 37-50-303, ~~37-50-308~~, 37-50-309, MCA

REASON: The board is deleting (2)(c) from this rule to match the repeal of ARM 24.201.512 in this notice.

24.201.524 CHEATING (1) Cheating by ~~a candidate~~ an applicant in applying for, taking, or subsequent to taking the examination will ~~be deemed to~~ invalidate any score otherwise earned by ~~a candidate~~ an applicant on any test section of the examination. Cheating may warrant summary expulsion from the test site, and disqualification by the board from taking the examination for a specified period of time. For purposes of this rule, the following actions or attempted activities, among others, ~~may be~~ are considered cheating:

(a) remains the same.

- (b) communication between ~~candidates~~ applicants inside or outside the test site or copying another ~~candidate's~~ applicant's answers while the examination is in progress;
- (c) remains the same.
- (d) substitution of another person to sit in the test site in place of a ~~candidate~~ an applicant;
- (e) reference to crib sheets, textbooks or other material, or electronic media (other than that provided to the ~~candidate~~ applicant as part of the examination) inside or outside the test site while the examination is in progress;
- (f) remains the same.
- (g) retaking or attempting to retake a test section by an individual holding a valid certificate or by a ~~candidate~~ an applicant who has unexpired credit for having already passed the same test section, unless the individual has been directed to retake a test section pursuant to board order or unless the individual has been expressly authorized by the board or testing service to retake the test section.

AUTH: 37-50-204, ~~37-50-308~~, MCA

IMP: 37-50-204, 37-50-302, 37-50-303, ~~37-50-308~~, MCA

24.201.528 LICENSURE OF OUT-OF-STATE APPLICANTS (1) The board may ~~waive the requirement of examination for those holders~~ issue a certificate, license, or permit to practice to a holder of certificates or licenses, then in full force and effect a current and unencumbered certificate, license, or permit to practice issued under the laws of another state ~~and issue a certificate or license and permit to practice upon:~~ the applicant's meeting the applicable requirements established under 37-50-203, 37-50-302, 37-50-303, and 37-50-314, MCA, and the rules established thereunder.

~~(a) meeting the requirements established under 37-50-302 and 37-50-303, MCA, and regulations established thereunder.~~

~~(b) meeting the requirements established under 37-50-203(2)(g), MCA, and the regulations established thereunder.~~

~~(c) meeting the requirements established under 37-50-314, MCA, and the regulations established thereunder.~~

(2) The board may waive the education requirements and issue a certificate, or license, or permit to practice to a holder of a certificate, license, or permit issued by another state upon a the applicant's showing that:

(a) the applicant passed the examination required for issuance of the applicant's certificate or license with grades that would have been passing grades at the time in this state;

(b) the applicant has had five ~~year's~~ years' experience in the practice of public accountancy after passing the examination upon which the applicant's certificate or license was based, within the ten years immediately preceding the application; and

(c) the applicant's certificate, license, or permit was issued more than four years prior to the application for issuance of an initial certificate in this state, ~~that~~ ; and

(d) the applicant has fulfilled the requirements of continuing professional education ~~meeting the requirements~~ established under 37-1-306 and 37-50-314, MCA, ~~and the regulations established thereunder.~~

(3) remains the same.

AUTH: 37-50-203, 37-50-309, ~~37-50-311, 37-50-312, 37-50-313, 37-50-317~~,  
MCA

IMP: 37-1-304, 37-1-306, 37-50-311, 37-50-312, 37-50-313, 37-50-314, ~~37-50-317~~, MCA

24.201.529 LICENSURE OF FOREIGN-TRAINED APPLICANTS (1) The board may grant a certificate, license, or permit to practice to a foreign-trained applicant if all of the ~~regulations~~ requirements established under ARM 24.201.528 regarding out-of-state applicants have been met, or by meeting the following requirements:

(a) the applicant has met the issuing body's education requirement and has passed the issuing body's examination used to qualify its ~~own domestic candidates~~ applicants. The board may, in its discretion, rely on the International Qualifications Appraisal Board (IQAB) for evaluation of foreign credential equivalency;

(b) ~~all held the applicant's~~ foreign and/or domestic credentials must be valid and in good standing at the time of application;

(c) the applicant must successfully have passed ~~pass~~ a uniform qualifying examination to ensure that the holder possesses ~~possess~~ adequate knowledge of national practice standards. The board may, in its discretion, rely on the National Association of State Boards of Accountancy (NASBA), the American Institute of Certified Public Accountants (AICPA), or other professional bodies to develop, administer, and grade such a qualifying examination;

(d) the applicant must take and pass the open book AICPA ethics course;

(e) the applicant must provide evidence of having met an equivalent experience requirement obtained under the supervision or direction of a chartered accountant, Mexicano de Contradores Publicos, certified public accountant, or licensed public accountant permitted to practice in the original jurisdiction in order to be issued an initial permit to practice;

(f) the applicant must meet the continuing professional education requirements established under 37-1-306 and 37-50-314, MCA, ~~and the regulations established thereunder~~ in order to be issued an initial permit to practice; and

(g) the foreign authority granting the designation to the applicant must ~~make a similar provision to allow~~ extend reciprocity to a person who holds a valid certificate, license, or permit to practice issued by this state ~~to obtain such foreign authority's comparable designation.~~

AUTH: 37-1-131, 37-50-203, MCA

IMP: 37-1-306, 37-50-311, 37-50-312, 37-50-314, MCA

REASON: There is reasonable necessity to amend this rule and add to the board-accepted supervisors of foreign-educated applicants. The board's process to grant reciprocal certificates and licenses to foreign accountants is based on professional

competence and its objective is to provide international reciprocity to qualified individuals without imposing arbitrary or unnecessary restrictions. The board is adding the Mexicano de Contradores Publicos because the board determined they are qualified to supervise by holding the equivalent credential to chartered accountants, certified public accountants, or licensed public accountants.

24.201.535 REACTIVATION OF INACTIVE AND REVOKED STATUS

(1) A licensee may place the license on inactive status (certificate/license maintenance) by either indicating on the renewal form that inactive status is desired, or by informing the board office, in writing, that an inactive status is desired, and paying the appropriate fee. It is the sole responsibility of the inactive licensee to keep the board informed as to any change of address during the period of time the license remains on inactive status.

(2) A licensee may not practice accounting in the state of Montana while the license is on ~~in an~~ inactive status.

(3) remains the same.

~~(4) Upon application and payment of the appropriate fee, the board may reactivate a revoked license provided the following requirements are met:~~

~~(a) submits written petition stating the reasons for requesting reactivation and outlining employment since certificate or permit was revoked;~~

~~(b) presents satisfactory evidence that the applicant has complied with the continuing education requirements of the board under ARM 24.201.2106 if applying for a permit to practice; and~~

~~(c) submits certification from the licensing body of all jurisdictions where the licensee is licensed or has practiced that the applicant is in good standing and has not had any disciplinary actions taken against the applicant's license, or if the applicant is not in good standing by that jurisdiction, an explanation of the nature of the violation(s) resulting in that status, including the extent of the disciplinary treatment imposed.~~

~~(5) Certificate or license holders who are fully retired from active employment will be exempt from paying annual renewal fees upon submitting a retired status request form to the board and receiving approval.~~

AUTH: 37-1-319, 37-50-203, MCA

IMP: 37-1-319, MCA

REASON: There is reasonable necessity to delete (4) and (5) from this rule as the provisions have been moved to New Rules II and III in this notice.

24.201.704 INDEPENDENCE ~~(1) A firm or permit holder shall not express an opinion on financial statements of an enterprise in such a manner as to imply that he is acting as an independent public accountant with respect thereto unless he is independent with respect to such enterprise. Independence will be considered to be impaired if, for example:~~

~~(a) During the period of his professional engagement, at the time of expressing his opinion, the firm or permit holder;~~



- ~~(i) had or was committed to acquire any direct or material indirect financial interest in the enterprise, or~~
- ~~(ii) was a trustee of any trust or executor or administrator of any estate if such trust or estate had or was committed to acquire any direct or material indirect financial interest in the enterprise, or~~
- ~~(iii) had any joint closely held business investment with the enterprise or any officer, director or principal stockholder thereof which was material in relation to the net worth of either the firm or permit holder or the enterprise, or~~
- ~~(iv) had any loan to or from the enterprise or any officer, director or principal stockholder thereof other than loans of the following kinds made by a financial institution under normal lending procedures, terms and requirements:~~
  - ~~(A) loans obtained by the firm or permit holder which are not material in relation to the net worth of the borrower, and~~
  - ~~(B) home mortgages, and~~
  - ~~(C) other secured loans, except those secured solely by a guarantee of the firm or permit holder.~~
- ~~(b) during the period covered by the financial statements, during the period of the professional engagements, or at the time of expressing an opinion, the firm or permit holder:~~

~~(i) was connected with the enterprise as a promoter, underwriter or voting trustee, a director or officer or in any capacity equivalent to that of a member of management or of an employee, or~~

~~(ii) was a trustee for any pension or profit sharing trust of the enterprise.~~

~~(2) The foregoing examples are not intended to be all inclusive.~~

(1) Independence, where required by professional standards, is essential to establishing and maintaining the public's faith and confidence in, and reliance on, the information reported on by the licensee. A licensee in the practice of public accounting shall be independent in fact and appearance when engaged to provide services where independence is required by professional standards.

(a) Independence in fact is the state of mind that permits a licensee to perform an attest service without being affected by influences that compromise professional judgment, thereby allowing the licensee to act with integrity and exercise objectivity and professional skepticism.

(b) Independence in appearance is the avoidance of circumstances that would cause a reasonable and informed third-party, having knowledge of all relevant information, to reasonably conclude that the integrity, objectivity, or professional skepticism of the licensee had been compromised.

AUTH: 37-1-131, 37-50-203, MCA

IMP: 37-1-131, 37-50-203, ~~37-50-321~~, MCA

REASON: The board determined it is reasonably necessary to amend this rule to update the provisions on independence to current professional standards generally accepted within the profession of public accounting.

24.201.705 INTEGRITY AND OBJECTIVITY (1) ~~A firm or permit holder shall not in the performance of professional services knowingly misrepresent facts,~~

nor subordinate his judgement to another. In tax practice, however, a firm or permit holder may resolve doubt in favor of his client as long as there is a reasonable support for his position. Integrity is a character trait demonstrated by acting honestly, candidly, and not knowingly misrepresenting facts, accommodating deceit, or subordinating ethical principles. Acting with integrity is essential to maintaining credibility and public trust. It incorporates both the spirit and substance in the application of the ethical and technical standards that govern the profession, or in the absence thereof, what is just and right. A licensee shall act with integrity in the performance of all professional activities in whatever capacity performed.

(2) Objectivity is a distinguishing feature of the accounting profession and is critical to maintaining the public's trust and confidence. It is a state of mind that imposes the obligation to be impartial and free of bias that may result from conflicts of interest or subordination of judgment. Objectivity requires a licensee to exercise an appropriate level of professional skepticism in carrying out all professional activities. Although a licensee may serve multiple interests in many different capacities, objectivity must be maintained. A licensee shall make a careful assessment of the effects on objectivity of all professional relationships and activities. A licensee shall maintain objectivity in the performance of all professional activities in whatever capacity performed.

AUTH: 37-1-131, 37-50-203, MCA

IMP: 37-1-131, 37-50-203, ~~37-50-321~~, MCA

REASON: It is reasonably necessary to amend this rule to update the provisions on integrity and objectivity to current professional standards generally accepted within the profession of public accounting.

24.201.706 COMPETENCE (1) A firm or permit holder shall not undertake any engagement for the performance of professional services unless ~~he complies with~~ the following general standards are met:

~~(a) professional competence~~ – A a firm or permit holder shall undertake only those engagements which ~~he or his~~ the firm or permit holder can reasonably expect to complete with professional competence, including compliance where applicable, with ~~ARM 24.201.715 and 24.201.716~~ [NEW RULE V];

~~(b) due professional care~~ – A a firm or permit holder shall exercise due professional care in the performance of an engagement;

~~(b)(c) planning and supervision~~ – A a firm or permit holder shall adequately plan and supervise an engagement; and

~~(c)(d) sufficient relevant data~~ – A a firm or permit holder shall obtain sufficient relevant data to afford a reasonable basis for conclusions or recommendations in relation to an engagement.

AUTH: 37-1-131, 37-50-203, MCA

IMP: 37-1-131, 37-50-203, ~~37-50-321~~, MCA

REASON: There is reasonable necessity to amend this rule to coordinate the provisions regarding due professional care in New Rule IV.

24.201.707 DISCREDITABLE ACTS (1) A firm, permit holder, certificate holder, or license holder shall not commit any act discreditable to the profession. A discreditable act will be considered to have occurred if, for example:

(a) a firm or permit holder retains any records rightfully belonging to the client in order to enforce payment of fees.

~~(b) a firm or permit holder fails to follow required standards or procedure required in governmental audits and does not disclose in his report the fact that such requirements were not followed and the reasons therefor. Engagements for audits of government grants, government units or other recipients of government monies typically require that such audits be in compliance with government audit standards, guides, procedures, statutes, rules, and regulations, in addition to generally accepted auditing standards. If a member has accepted such an engagement and undertakes an obligation to follow specified government audit standards, guides, procedures, statutes, rules and regulations, in addition to generally accepted auditing standards, he is obligated to follow such requirements.~~

AUTH: 37-1-131, 37-50-203, MCA

IMP: 37-1-131, 37-50-203, ~~37-50-321~~, MCA

REASON: The board is amending this rule to coordinate with the provisions of New Rule V regarding applicable technical profession accounting standards.

24.201.709 COMMISSIONS (1) A firm or permit holder shall not pay a commission to obtain a client, nor accept a commission for a referral to a client of products or services of others when the firm or permit holder also performs for that client any services for which professional standards require independence referring the products or services of others to a client. This prohibition applies during the period in which the firm or permit holder is engaged to perform any services requiring independence and the period covered by those services.

(2) through (4) remain the same.

AUTH: 37-1-131, 37-50-203, MCA

IMP: 37-1-131, 37-50-203, ~~37-50-321~~, MCA

24.201.710 CONTINGENT FEES (1) through (3) remain the same.

AUTH: 37-1-131, 37-50-203, MCA

IMP: 37-1-131, 37-50-203, ~~37-50-321~~, MCA

24.201.720 CONFIDENTIAL CLIENT INFORMATION CONFIDENTIALITY

~~(1) A firm or permit holder shall not without the consent of his client disclose any confidential information pertaining to his client obtained in the course of performing professional services. A licensee has an obligation to maintain the confidentiality of information obtained in the performance of all professional activities. Maintaining such confidentiality is vital to the proper performance of the licensee's professional activities. A licensee shall not use or disclose, or permit~~

others within the licensee's control to use or disclose, any confidential client or employer information without the consent of the client or employer. This obligation of confidentiality continues after the termination of the relationship between the licensee and the client or employer and extends to information obtained by the licensee in professional relationships with prospective clients and employers.

(a) This rule must not be construed to prohibit a licensee from disclosing information as required to meet professional, regulatory, or other legal obligations.

~~(2) This rule does not:~~

~~(a) relieve a firm or permit holder of any obligations under ARM 24.201.715 and 24.201.716, or~~

~~(b) affect in any way a firm or permit holder's obligation to comply with a validly issued subpoena or summons enforceable by order of a court, or~~

~~(c) prohibit disclosures in the course of a quality review of a firm or permit holder's professional service, or~~

~~(d) preclude a firm or permit holder from responding to any inquiry made by the board or any investigative or disciplinary body established by law or formally recognized by the board, or~~

~~(e) relieve a firm or permit holder of the requirement to file reports under ARM 24.201.1107.~~

~~(3)~~(2) Members of the board and professional practice reviewers shall not disclose any confidential client information which comes to their attention from firms or permit holders in disciplinary proceedings or otherwise in carrying out their responsibilities, except that they may furnish such information to an investigative or disciplinary body of the kind referred to above requiring compliance with state law.

AUTH: 37-1-131, 37-50-203, MCA

IMP: 37-1-131, 37-50-203, ~~37-50-321~~, MCA

REASON: It is reasonably necessary to amend this rule to update the provisions on confidentiality to current professional standards generally accepted within the profession of public accounting.

24.201.723 RECORDS (1) A firm or permit holder shall furnish to ~~his~~ the client or former client, upon request made within a reasonable time after original issuance of the document in question:

(a) a copy of a tax return of the client; ~~and~~

(b) a copy of any report, or other document, issued by the firm or permit holder to or for such client; ~~and~~

(c) any accounting or other records which the firm or permit holder obtained from or on behalf of, the client which the firm or permit holder removed from the client's premises or received for the client's account, but the firm or permit holder may make and retain copies of such documents when they form the basis for work done by ~~him~~ the firm or permit holder; and

(d) remains the same.

(2) Examples of working papers that are considered to be a client's records ~~would~~ include:

(a) and (b) remain the same.

(c) all adjusting and closing journal entries and supporting details. (If supporting details are not fully set forth in the explanation of the journal entry, but are contained in analyses of accounts in the accountant's working papers, then copies of such analyses must be furnished to the client.); or

(d) remains the same.

(3) Retention by a firm or permit holder of clients records after a demand is made for them is an act discreditable to the profession in violation of ARM 24.201.707.

(4) A firm's or permit holder's working papers are ~~his~~ the firm's or permit holder's property and need not be surrendered to the client. Any working papers developed by the firm or permit holder incident to the performance of ~~his~~ the engagement which do not result in changes in the ~~clients'~~ client's records or are not in themselves part of the records ordinarily maintained by such clients, are considered to be solely "accountant's working papers" and are not the property of the client. If the firm or permit holder has retained ~~in his files~~ file copies of a client's records already in possession of the client, the firm or permit holder is not required to return such copies to the client.

AUTH: 37-1-131, 37-50-203, MCA

IMP: 37-1-131, 37-50-203, ~~37-50-321~~, MCA

24.201.726 ADVERTISING (1) A firm or permit holder shall not use or participate in the use of any form of public communication ~~having reference to his~~ referencing professional services which contains a false, fraudulent, misleading, deceptive, or unfair statement or claim including, ~~but is not limited to,~~ a statement or claim which:

(a) contains a misrepresentation of fact; ~~or~~

(b) is likely to mislead or deceive because it fails to make full disclosure of relevant facts; ~~or~~

(c) contains any testimonial or laudatory statement, or that is not based on verifiable facts; ~~or~~

(d) is intended or likely to create false or unjustified expectations of favorable results; ~~or~~

(e) implies educational or professional attainments or licensing recognition not supported in fact; ~~or~~

(f) states or implies that the firm or permit holder has received formal recognition as a specialist in any aspect of the practice of public accountancy, if this is not the case; ~~or~~

(g) represents that professional services can or will be competently performed for a stated fee when this is not the case, or makes representations with respect to fees for professional services that do not disclose all variables affecting the fees that will in fact be charged; ~~or~~

(h) implies the ability to influence any court, tribunal, regulatory agency, or similar body or official; or

(i) contains other representations or implications that in reasonable probability ~~will~~ would cause an ordinarily prudent person to misunderstand or be deceived.

AUTH: 37-1-131, 37-50-203, MCA

IMP: 37-1-131, 37-50-203, ~~37-50-321~~, MCA

24.201.1102 DEFINITIONS As used in this subchapter:

(1) "Practice unit" means:

(a) each permit holder who practices public accounting as an individual or sole proprietor; or

(b) each separate office of a sole proprietorship, partnership, or professional corporation which practices public accounting; or

(c) a governmental organization which employs a permit holder in a public accounting capacity.

(2) "Peer review" means a review under a formal peer review program sponsored by the division of firms of the American Institute of Certified Public Accountants (AICPA) or such other formal peer review program approved by the Board of Public Accountants (board).

AUTH: 37-50-203, MCA

IMP: 37-50-203, MCA

24.201.1106 STATEMENT BY PERMIT HOLDERS (1) and (2) remain the same.

(a) sign reports which indicate an expert knowledge of accounting or auditing; or

(b) remains the same.

(c) are members of a practice unit and ~~who~~ have the final authority to issue a report that indicates an expert knowledge of accounting or auditing.

(3) remains the same.

(a) do not sign reports which indicate an expert knowledge of accounting or auditing; or

(b) through (4) remain the same.

AUTH: 37-50-203, MCA

IMP: 37-50-203, MCA

24.201.1107 FILING OF REPORTS (1) remains the same.

(a) an audit report (including the complete financial statements reported on);

or

(b) a review report (including the complete financial statements reported on);

or

(c) remains the same.

(d) if reports mentioned in (1)(a), (b), or (c) ~~above~~ have not been issued, any other report (complete with the information reported on) that indicates the permit holder has expert knowledge of accounting or auditing.

(2) The board may require a permit holder to submit workpapers prepared in support of the reports issued in (1)(a) and (b) ~~above~~.

(3) The report submitted must have been issued within the period of time specified by the board. For reports submitted pursuant to (1)(c), the client's or employer's name and ~~similar~~ other identifying information must be deleted.

(4) This requirement will be satisfied by ~~the~~ submission of a report by the practice unit of which the permit holder is a member. One report filed by a practice unit may be used to meet the filing requirement for all members of that practice unit who are required to file a report.

AUTH: 37-50-203, MCA

IMP: 37-50-203, MCA

24.201.1108 ALTERNATIVES AND EXEMPTIONS (1) A practice unit which has undergone an AICPA or board-sanctioned peer review within three calendar years must file a copy of its peer review report, including letter of comments (if any), letter of responses (if any), and acceptance of the review report by the administering entity.

(2) The board reserves the authority to request a practice unit to submit a copy of any or all reports, financial statements, and supporting workpapers for engagements subject to peer review.

(3) remains the same.

AUTH: 37-50-203, MCA

IMP: 37-50-203, MCA

24.201.1111 PROFESSION MONITORING OF HOLDERS OF A SPECIAL PRACTICE PERMIT (1) The board will apply its profession monitoring program rules to each individual or business entity that is registered pursuant to 37-50-324, MCA. For individuals engaging in the practice of public accounting with a registered business entity (a "firm"), the monitoring program will apply to the firm, ~~not just~~ as well as the individual with a special practice permit.

(2) remains the same.

AUTH: 37-50-203, 37-50-323, MCA

IMP: 37-1-306, 37-50-203, ~~37-50-317~~, 37-50-323, 37-50-324, MCA

24.201.1115 PROFESSION MONITORING PROGRAM (PMP) REVIEWS AND ENFORCEMENT (1) ~~Reports~~ Profession monitoring program reports submitted shall be classified as either acceptable or not acceptable. Definitions of these terms are as follows:

(a) and (b) remain the same.

(2) Responses are required from those practice units whose reports are classified as not acceptable or from practice units that have submitted a peer review report that is other than unmodified. The board may also require a written comprehensive statement of future procedures to be followed that will ensure an improvement in the quality of future reports.

(3) For those practice units which are required to submit responses under (2), the board will consider the review of the practice unit in closed, executive session. The board may require one or more of the following actions:

(a) completion of specific CPE courses pursuant to ARM 24.201.2155;

(b) through (f) remain the same.

(g) withdrawal and/or reissuance of a report ~~all other sanctions allowed by 37-1-312, MCA.~~

(4) ~~The reports submitted to the board under this subchapter shall be subject to review, investigation and enforcement~~ enforcement coordinator will monitor practice unit compliance with board recommendations set forth under (3) and may refer noncompliant practice units to the screening panel for appropriate disciplinary action under subchapter 24.

AUTH: 37-1-319, 37-50-203, MCA

IMP: 37-1-312, 37-50-203, MCA

REASON: The board is amending this rule to align the processes for profession monitoring program reviews with current uniform statutes in Title 37, chapter 1, MCA, regarding compliance and disciplinary processes.

#### 24.201.2137 CREDIT FOR FORMAL INDIVIDUAL STUDY PROGRAMS

(1) remains the same.

(a) Interactive self-study programs shall receive continuing education credit equal to the average completion time, if the sponsor is recognized and approved by NASBA's CPE quality assurance service (referred to as a NASBA QAS sponsor) or NASBA's national registry of CPE sponsors (referred to as a NASBA registry sponsor). An interactive self-study program is designed to use interactive learning methodologies that simulate a classroom learning process that provides significant ongoing, interactive feedback to the participant regarding ~~his or her~~ the participant's learning progress.

(b) ~~Noninteractive~~ All other interactive and noninteractive self-study programs receive continuing education credit equal to one-half of the average completion time.

(2) remains the same.

AUTH: 37-1-319, 37-50-201, 37-50-203, MCA

IMP: 37-1-306, 37-50-203, MCA

REASON: It is reasonable and necessary to amend this rule to add NASBA's registry sponsor to those entities approved by the board to recognize self-study programs. The board concluded that the NASBA registry adequately scrutinizes interactive self-study programs and notes that this amendment will broaden the CE opportunities available to licensees. The board is amending (1)(b) to clarify that all interactive and noninteractive self-study programs not recognized per (1)(a) will receive only half CE credit, to address confusion and questions among licensees.

#### 24.201.2401 ANONYMOUS COMPLAINTS COMPLAINT PROCEDURE



~~(1) A person, government or private entity may submit a written complaint to the board charging a licensee or license applicant with a violation of board statute or rules, and specifying the grounds for the complaint.~~

~~(2) Complaints must be in writing, and shall be filed on the proper complaint form prescribed by the board.~~

~~(3) Upon receipt of the written complaint form, the board office shall log in the complaint and assign it a complaint number. The complaint shall then be sent to the licensee complained about for a written response. Upon receipt of the licensee's written response, both complaint and response shall be considered by the screening panel of the board for appropriate action including dismissal, investigation or a finding of reasonable cause of violation of a statute or rule. The board office shall notify both complainant and licensee of the determination made by the screening panel.~~

~~(4) If a reasonable cause violation determination is made by the screening panel, the Montana Administrative Procedure Act shall be followed for all disciplinary proceedings undertaken.~~

~~(5) (1) The screening panel board shall review anonymous complaints to determine whether appropriate investigative or disciplinary action may be pursued, or whether the matter may be dismissed for lack of sufficient information.~~

AUTH: 37-50-203, MCA

IMP: 37-1-307, 37-1-308, ~~37-1-309~~, MCA

REASON: The board is amending this rule to delete the provisions regarding the complaint process as unnecessary and redundant. Standardized complaint procedures are adequately set forth in statute in Title 37, chapter 1, MCA, and department policy.

24.201.2410 ENFORCEMENT AGAINST LICENSEES (1) remains the same.

(a) failure on the part of a holder of a certificate, license<sub>1</sub> or permit to ~~maintain compliance~~ comply with the requirements for issuance of a certificate, license<sub>1</sub> or annual permit including failure to comply with the profession monitoring rules of subchapter 11;

(b) remains the same.

(c) performance of any fraudulent act while holding a certificate, license<sub>1</sub> or permit issued under Title 37, chapter 50, MCA;

(d) and (e) remain the same.

AUTH: 37-1-131, 37-1-136, 37-1-319, 37-50-203, MCA

IMP: 37-1-136, 37-1-316, 37-1-319, MCA

24.201.2411 ENFORCEMENT PROCEDURES - INVESTIGATIONS AND PROFESSION MONITORING PROGRAM (PMP) REVIEW (1) The board may designate any person not a board member to serve as the enforcement coordinator to conduct or coordinate an investigation of complaints filed with the board and the review of PMP reports. During the investigative or review process, the report of the

enforcement coordinator or designated investigator or reviewer, the testimony, and PMP report, documents, and comments and responses gathered in the investigation and the pendency of the investigation or review shall be treated as confidential information by the board and its designees, and shall not be disclosed except to the extent deemed necessary in order to conduct the investigation or review or in compliance with 37-1-135, MCA, ~~for the public's right to know provided by Article II, section 9 of the Montana Constitution.~~

(2) The board may request assistance from permit holders having appropriate experience and competence to review reports submitted by the ~~positive~~ enforcement coordinator, or submitted under the profession monitoring rules of subchapter 11, ~~in the determination of reasonable cause for the board to initiate disciplinary proceedings.~~

(3) Upon the determination of the enforcement coordinator that a practice unit failed to follow board recommendations pursuant to ARM 24.201.1115 subsequent to an unacceptable PMP report, the enforcement coordinator shall inform the board of the noncompliance. The board may issue a formal complaint and refer the matter to the screening panel for appropriate disciplinary action.

AUTH: 37-1-136, 37-1-319, 37-50-203, MCA

IMP: 37-1-136, 37-1-316, 37-1-319, MCA

REASON: The board is determined it is reasonable and necessary to amend this rule to align the board's enforcement procedures for investigations and profession monitoring program review with current uniform statutes in Title 37, chapter 1, MCA, regarding the complaint and disciplinary processes.

5. The proposed new rules provide as follows:

NEW RULE I APPLICATION REVIEW (1) All applications, except those applications for a special practice permit, are considered nonroutine and must be reviewed by the board.

AUTH: 37-1-131, 37-50-203, MCA

IMP: 37-1-131, 37-50-203, MCA

REASON: There is reasonable necessity to adopt this new rule to clarify that all applications, other than special practice permit applications, must be reviewed by the board. Full board review has been the historical practice of the board because the board's professional qualifications are used when evaluating an applicant's experience. This new rule also clarifies that the department may process routine special practice permit applications without the board's direct involvement as evaluation of routine exam candidate qualifications is handled by the examination entity, and only nonroutine matters require the board's attention.

NEW RULE II REQUIREMENTS FOR PREVIOUSLY HELD CERTIFICATES, LICENSES, AND/OR PERMITS TO PRACTICE (1) Previously held certificates, licenses, and/or permits to practice that have been revoked or

terminated for disciplinary action or failure to renew may be reissued providing the following requirements are met:

- (a) board receipt of completed application and payment of the appropriate fee;
- (b) board receipt of a written petition stating the reasons for requesting reissuance and outlining employment since certificate, license, or permit was revoked or terminated;
- (c) board receipt of satisfactory evidence that the applicant has complied with the continuing education requirements of the board under ARM 24.201.2106 if applying for a permit to practice; and
- (d) board receipt of verification from the licensing body of all jurisdictions where the licensee is licensed or has practiced that the applicant is in good standing and has not had any disciplinary actions taken against the applicant's license, or if the applicant is not in good standing in that jurisdiction, an explanation of the nature of the violation(s) resulting in that status, including the extent of the disciplinary treatment imposed.

AUTH: 37-50-203, MCA

IMP: 37-1-141, 37-50-310, 37-50-314, MCA

REASON: It is reasonably necessary to adopt New Rule II and separately set forth the provisions for reactivating revoked, inactive, or terminated certificates, permits, and licenses. The substance of this rule was formerly combined with provisions for inactive and retired status at ARM 24.201.535.

NEW RULE III RETIRED STATUS (1) The holder of a certificate or license who is fully retired from active employment will be exempt from paying annual renewal fees upon submitting a retired status request form to the board and receiving approval.

(2) An individual on retired status may apply for certificate, license, or permit to practice renewal within two years of the renewal date by complying with the renewal requirements. A license that is not renewed within two years from the renewal date automatically terminates. An individual whose license has terminated may apply for reinstatement of a certificate, license, or permit to practice by complying with the requirements pursuant to [NEW RULE II].

AUTH: 37-1-131, MCA

IMP: 37-1-131, MCA

REASON: It is reasonably necessary to adopt New Rule III and separately set forth the provisions regarding retired status for certificate, license, or permit holders. The substance of this rule was formerly combined with provisions for inactive status and reactivating revoked, inactive, or terminated certificates, permits, and licenses at ARM 24.201.535.

NEW RULE IV DUE PROFESSIONAL CARE (1) Due care imposes upon the licensee the obligation to perform professional activities with concern for the best

interest of those for whom the activities are performed and consistent with the profession's responsibility to the public. It is essential to preserving the public's trust and confidence. Due care requires the licensee to discharge professional responsibilities with reasonable care and diligence and to adequately plan and supervise all professional activities for which the licensee is responsible. A licensee shall act with due care in the performance of all professional activities in whatever capacity performed.

AUTH: 37-1-131, 37-50-203, MCA  
IMP: 37-1-131, 37-50-203, MCA

REASON: The board determined it is reasonable and necessary to adopt New Rule IV to adequately set forth current standards generally accepted in the profession regarding the duty of due professional care owed by a licensee. This new rule contains language being deleted from ARM 24.201.706, and recognizes the distinction between being technically competent in the field of public accounting and the obligation to exercise that competence in a diligent manner.

NEW RULE V APPLICABLE STANDARDS (1) A licensee shall comply with the standards set forth in this rule as applicable under the circumstances and at the time of service when providing professional services. In addition to the applicable standards set forth below, a licensee shall comply with the standards issued by other professional or governmental bodies including international standards setting bodies with which a licensee is required by law, regulation, or the terms of engagement to comply.

(2) The board incorporates by reference the following standards, as they exist as of July 1, 2007:

- (a) all of the standards promulgated by the Security Exchange Commission (SEC);
- (b) all of the standards promulgated by the Public Company Accounting Oversight Board (PCAOB);
- (c) all of the auditing standards issued by the American Institute of Certified Public Accountants (AICPA);
- (d) all of the standards for accounting and review services issued by AICPA;
- (e) all of the Statements on Standards for Attestation Engagements issued by the AICPA;
- (f) all of the standards for management consulting services (including the definition of such services) issued by the AICPA;
- (g) all of the standards for tax services issued by the AICPA;
- (h) all of the standards for accountants' services on prospective financial information issued by the AICPA;
- (i) all of the standards for governmental accounting issued by the Government Accounting Standards Board (GASB); and
- (j) all of the Statements of Financial Accounting Standards issued by the Financial Accounting Standards Board (FASB).

(3) The standards incorporated by reference are available at the professional resources or publication offices at the respective web sites:

- (a) www.sec.gov;
- (b) www.pcaob.org;
- (c) www.aicpa.org;
- (d) www.gasb.org; and
- (e) www.fasb.org.

AUTH: 37-50-203, MCA  
IMP: 2-4-307, 37-50-203, MCA

REASON: The board is adopting New Rule V to incorporate by reference the standards licensees must follow when providing professional services. The board is repealing several outdated standards elsewhere in this notice and is replacing the repealed standards with those in this new rule. This list of current professional standards has been adopted by the accountancy boards in most U.S. states.

6. The rules proposed to be repealed are as follows:

24.201.506 PREVIOUS APPLICATIONS IN EFFECT found at ARM page 24-22565.

AUTH: 37-50-203, MCA  
IMP: 37-50-311, 37-50-312, MCA

REASON: It is reasonably necessary to repeal ARM 24.201.506, 24.201.511, and 24.201.512 as obsolete and unnecessary because the computer-based examination has been in operation since April of 2004.

24.201.511 IMPLEMENTATION OF THE COMPUTER-BASED UNIFORM CERTIFIED PUBLIC ACCOUNTANT EXAMINATION found at ARM page 24-22567.

AUTH: 37-50-204, 37-50-308, MCA  
IMP: 37-50-204, 37-50-302, 37-50-303, 37-50-308, MCA

24.201.512 TRANSITION RULE FOR APPLICANTS WHO HAVE PRE-COMPUTER-BASED EXAMINATION CONDITIONAL CREDIT found at ARM page 24-22568.

AUTH: 37-50-204, 37-50-308, MCA  
IMP: 37-50-204, 37-50-302, 37-50-303, 37-50-308, MCA

24.201.715 AUDITING STANDARDS found at ARM page 24-22615.

AUTH: 37-50-203, MCA  
IMP: 37-50-203, 37-50-321, MCA

REASON: The board is repealing ARM 24.201.715, 24.201.716, 24.201.717, and 24.201.719 as unnecessary because compliance with applicable accounting standards and principles is now set forth in New Rule V.

24.201.716 ACCOUNTING PRINCIPLES found at ARM page 24-22615.

AUTH: 37-50-203, MCA  
IMP: 37-50-203, 37-50-321, MCA

24.201.717 OTHER TECHNICAL STANDARDS found at ARM page 24-22616.

AUTH: 37-50-203, MCA  
IMP: 37-50-203, MCA

24.201.719 FORECASTS found at ARM page 24-22616.

AUTH: 37-50-203, MCA  
IMP: 37-50-203, 37-50-321, MCA

7. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Public Accountants, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2323, or by e-mail to [dlibsdpac@mt.gov](mailto:dlibsdpac@mt.gov), and must be received no later than 5:00 p.m., September 15, 2008.

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

9. The Board of Public Accountants maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies the person wishes to receive notices regarding all Board of Public Accountants administrative rulemaking proceedings or other administrative proceedings. The request must indicate whether e-mail or standard mail is

preferred. Such written request may be sent or delivered to the Board of Public Accountants, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2323, e-mailed to [dlibsdpac@mt.gov](mailto:dlibsdpac@mt.gov), or made by completing a request form at any rules hearing held by the agency.

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

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

BOARD OF PUBLIC ACCOUNTANTS  
RICK REISIG, CPA, CHAIRPERSON

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

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

Certified to the Secretary of State August 4, 2008

BEFORE THE BOARD OF REALTY REGULATION  
DEPARTMENT OF LABOR AND INDUSTRY  
STATE OF MONTANA

In the matter of the proposed amendment ) NOTICE OF PUBLIC HEARING  
of ARM 24.210.301 definitions, 24.210.611 ) ON PROPOSED AMENDMENT  
licensure, 24.210.641 unprofessional ) AND ADOPTION  
conduct, adoption of NEW RULE I )  
supervising broker endorsement, and )  
NEW RULE II citations and fines )

TO: All Concerned Persons

1. On September 4, 2008, at 9:00 a.m., a public hearing will be held in B-07, 301 South Park Avenue, Helena, Montana to consider the proposed amendment and adoption of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Realty Regulation (board) no later than 5:00 p.m., on August 29, 2008, to advise us of the nature of the accommodation that you need. Please contact Barb McAlmond, Board of Realty Regulation, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2325; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2323; e-mail dlibsdrre@mt.gov.

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

24.210.301 DEFINITIONS The terms used in this chapter shall have their common meaning as used in the real estate industry, and, unless the context otherwise requires, the following meanings shall also apply:

(1) through (6) remain the same.

(7) "Closed transaction" means a transaction in which parties have performed all duties in the agreement. In the case of a lease, it would be at the signing of the lease.

(7) through (20) remain the same but are renumbered (8) through (21).

(22) "Transaction" means a listing, sale, or lease.

AUTH: 37-1-131, 37-51-203, MCA

IMP: 37-1-131, 37-1-136, 37-51-202, MCA

REASON: The board determined it is reasonable and necessary to amend this rule by adding definitions for the transaction activity acceptable for broker licensure. Qualifications for a broker license include completion of closed transactions and



defining the term will enable applicants to determine at what point their transaction activity qualifies to obtain a broker license.

24.210.611 APPLICATION FOR LICENSE -- SALESPERSON AND BROKER (1) through (3) remain the same.

(4) If an applicant currently holds, or has ever held a real estate license in another jurisdiction, a ~~certified~~ license verification from that licensing jurisdiction is required before a Montana license will be issued.

(5) through (6)(a) remain the same.

(b) submit for the purpose of determining if a broker applicant has been "actively engaged as a licensed real estate salesperson," evidence acceptable to the board that the salesperson has ~~performed functions as a licensee as follows:~~ obtained a total of 30 points in any combination of point types within the past 36 months prior to the date of application. Point types and values are as follows:

(i) transaction points:

(A) one point for each closed residential real estate transaction, no more than five leases;

(B) three points for each closed farm, ranch, agricultural, or commercial transaction, no more than five leases; or

(C) upon furnishing evidence satisfactory to the board, an applicant may receive credit for both sides of a transaction.

(ii) education points:

(A) three points for an associate degree in real estate;

(B) three points for Certified Commercial Investment Member (CCIM) or Council of Real Estate Broker Managers (CRB);

(C) five points for a bachelor degree or higher in business management;

(D) five points for a law degree; or

(E) five points for a bachelor degree or higher in real estate.

(iii) supervision points are obtained through supervision of real estate activity for any broker who has supervised real estate activity a minimum of 36 months:

(A) one point for each year of real estate brokerage supervisory experience, maximum of three points;

(B) one point for each licensed real estate full time equivalent (FTE) supervised within the last 36 months, maximum of ten points; or

(C) one point for every five transactions supervised in the last 36 months, maximum of 15 points.

(iv) educator points are obtained by being an approved real estate educator in a jurisdiction:

(A) one point for each instructor day (minimum of six hours) within the past 36 months, maximum of ten points.

~~(i) 30 closed real estate property transactions in the last three years from the date of application for a residential applicant, no more than five of which can be leases;~~

~~(ii) ten closed real estate transactions within the last three years for an agricultural, farm, ranch, or commercial applicant. No more than two commercial transactions other than listings and/or sales may be used; or~~

~~(iii) a combination of (6)(b)(i) and (ii).~~

~~(iv) Upon furnishing evidence satisfactory to the board, an applicant may receive credit for both sides of a transaction.~~

(c) through (e) remain the same.

AUTH: 37-1-131, 37-51-203, MCA

IMP: 37-1-131, 37-51-202, 37-51-302, MCA

REASON: It is reasonably necessary to amend this rule to eliminate the requirement that applicants licensed in other jurisdictions provide certified license verification from the other jurisdictions. Many states are no longer providing certified verification and are relying more on web site verification. The amendment will address problems encountered by some applicants when certified statements are not available from every jurisdiction.

The board is amending this rule to identify the new method for determining if a broker applicant meets the statutory requirement of being actively engaged as a licensed real estate salesperson. Numerous broker applicants have appeared before the board with many years of sales experience, but due to Montana's rural nature were unable to meet the requirement of 30 closed transactions. The amendment will allow applicants to combine and submit experience in transactions, supervision, and education, and will provide an alternative method for broker applicants to prove qualification as an actively engaged salesperson.

24.210.641 UNPROFESSIONAL CONDUCT (1) through (5)(l) remain the same.

~~(m) failing, as a seller's agent, to continue to submit to the seller all offers and counter offers received by the licensee until such time as a pending transaction has been closed or the listing agreement terminates, unless the seller has waived this participate in negotiations as defined in 37-51-102, MCA. A licensee may not abrogate this obligation in writing. ;~~

(n) failing, as a seller's agent, to submit to the seller all offers and counter offers received by the licensee until such time as a pending transaction has been closed or the listing agreement terminates unless the seller waives these obligations in writing. Seller agents are not obligated to continue to actively market the property after an offer has been accepted by the seller unless directed in writing to do so by the seller. ;

(o) failing, as a buyer agent, to participate in negotiations as defined in 37-51-102, MCA. A licensee may not abrogate this obligation;

~~(n) (p) failing, as a buyer agent, to submit to the buyer all offers and counter offers until an offer has been accepted or the buyer broker agreement terminates unless the buyer waives these obligations in writing. Buyer agents have no obligation to continue are not obligated to show properties to their clients buyer after an offer has been accepted unless otherwise directed in writing to do so by the buyer;~~

(o) through (ac) remain the same but are renumbered (q) through (ae).

~~(ad) (af) failing to respond to a request from the board; or~~

~~(ae) (ag) a licensee shall not engage in or conduct business as a real estate licensee, or advertise as a real estate licensee, or engage in or conduct the business~~

of a real estate licensee at a time when the licensee's real estate license has expired or is on inactive status;

(ah) acting as a buyer agent without a written buyer broker agreement;

(ai) acting as a seller agent without a written listing agreement;

(aj) acting as a dual agent in a transaction if the licensee is a principal;

(ak) acting as a seller agent in a transaction if the licensee is the buyer in the same transaction;

(al) acting as a buyer agent in a transaction if the licensee is the seller in the same transaction;

(am) submitting a competing offer as a principal in a transaction with the licensee's client; or

(an) failing to account for or misappropriation of funds being held in trust.

(6) remains the same.

AUTH: 37-1-131, 37-1-136, 37-1-319, 37-51-203, MCA

IMP: 37-1-141, 37-1-306, 37-1-307, 37-1-312, 37-1-316, 37-1-319, 37-51-102, 37-51-202, 37-51-313, 37-51-314, 37-51-321, 37-51-512, MCA

**REASON:** The board determined it is reasonable and necessary to amend this rule for clarity and formatting consistency among all sections. The board is adding to unprofessional conduct the failure of buyer and seller agents to participate in negotiations. Negotiation is included in the definitions of broker and salesperson at 37-51-102, MCA, and the board is amending this rule to align with the practice definitions. The board is amending (5)(p) of this rule to achieve consistency between similar requirements on seller agents in (5)(n). The board never intended to have different requirements between seller and buyer agents regarding the necessity to submit offers and counter offers.

It is reasonably necessary to add specific conflict of interest situations the board considers unprofessional conduct. The amendment will put licensees on notice that these acts are a violation of current responsibilities set forth in 37-51-313 and 37-51-314, MCA.

The 2007 Montana Legislature enacted Chapter 502, Laws of 2007 (Senate Bill 153), an act revising professional and occupational licensing laws. The bill was signed by the Governor on May 16, 2007, and became effective October 1, 2007. Section 24 of the bill was codified at 37-51-324, MCA, to provide penalties for noncompliance by real estate brokers and property managers with trust account provisions. The board is adding (5)(an) to reinforce 37-1-316(14), MCA, and to implement the legislation by adding the failure to account for trust funds or the misappropriation of funds as unprofessional conduct.

4. The proposed new rules provide as follows:

**NEW RULE I SUPERVISING BROKER ENDORSEMENT** (1) A supervising broker endorsement will be issued to any broker completing the supervising broker pre-endorsement course.

(2) An out-of-state broker shall complete the supervising broker pre-endorsement course before being issued the supervising broker endorsement.

(3) To maintain the supervising broker endorsement, a broker shall complete four hours each licensure year of board approved education in the area of supervising broker continuing education as designated by the board. This education will be part of the overall continuing education requirement.

(4) After October 31, 2008, only brokers with the supervising broker endorsement may get credit for completing supervising broker continuing education.

(5) A supervising broker who obtains the endorsement by grandfathering may complete the supervising broker pre-endorsement education course and receive continuing education credit one time.

(6) Failure to complete the four-hour supervising broker continuing education requirement shall result in the lapsing, expiration, or termination of the supervising broker endorsement pursuant to 37-1-141, MCA.

(7) A lapsed or expired supervising broker endorsement may be renewed pursuant to 37-1-141, MCA.

AUTH: 37-1-131, 37-51-203, MCA

IMP: 37-1-131, 37-51-202, 37-51-204, 37-51-302, MCA

REASON: The 2007 Montana Legislature enacted Chapter 502, Laws of 2007 (Senate Bill 153), an act revising professional and occupational licensing laws and creating a license endorsement for supervising real estate brokers. The bill was signed by the Governor on May 16, 2007, and became effective October 1, 2007. The board determined it is reasonably necessary to propose this new rule to implement the legislation by setting forth the qualifications for obtaining initial supervising broker endorsement and for maintaining the endorsement.

NEW RULE II CITATIONS AND FINES (1) Citations issued by the department may be presented to the broker or property manager responsible for the maintenance of the trust account personally or mailed by certified mail.

(2) A broker or property manager who receives a citation has five business days from the receipt of the citation to either pay the fee or file a written dispute. Failure to either pay the fine or file a written dispute within five business days is unprofessional conduct and subject to board discipline.

(3) Significant violations shall be forwarded to the complaint screening panel. Significant violations may include:

- (a) an excessive number of violations in a single audit;
- (b) repeat violations; or
- (c) a single, severe violation.

AUTH: 37-1-319, 37-51-203, MCA

IMP: 37-51-324, MCA

REASON: The board is proposing this new rule to implement 37-51-324, MCA, as enacted by the 2007 Montana Legislature, providing for department employees to issue citations for trust account violations found during compliance audits. The rule specifies the issuance of citations, the licensee's options upon receipt of a citation, and the board's ability to address significant trust account violations.

5. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Realty Regulation, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2323, or by e-mail to [dlibsdrre@mt.gov](mailto:dlibsdrre@mt.gov), and must be received no later than 5:00 p.m., September 12, 2008.

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

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

8. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was notified on July 30, 2007, by regular mail.

9. Barb McAlmond, Program Manager, has been designated to preside over and conduct this hearing.

BOARD OF REALTY REGULATION  
CINDY WILLIS, CHAIRPERSON

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

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

Certified to the Secretary of State August 4, 2008

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

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

TO: All Concerned Persons

1. On July 17, 2008, the Department of Public Health and Human Services published MAR Notice No. 37-445 regarding the proposed amendment of the above-stated rule at page 1417 of the 2008 Montana Administrative Register, issue number 13.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or who need an alternative accessible format of this notice. If you need an accommodation, contact the department no later than 5:00 p.m. on August 25, 2008. Please contact Rhonda Lesofski, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena MT 59604-4210; telephone (406)444-5622; fax (406)444-1970; e-mail dphhslegal@mt.gov.

3. This amended notice is being filed to correct an error in the assigned Montana Administrative Register (MAR) notice number for the proposal notice and an error to references to MAR 37-435 in the rationale. The proposal notice was inadvertently assigned a MAR notice number that was already assigned and in use by the previously filed notice pertaining to Medicaid inpatient hospital reimbursement published on June 26, 2008 as 37-445 on page 1281 of issue number 12. The proposal notice being amended in this notice of amendment is renumbered to MAR notice number 37-449. In addition, the rationale contained references to MAR notice number 37-435 and should have referred to the previously filed notice pertaining to Medicaid inpatient hospital reimbursement published on June 26, 2008 as 37-445 on page 1281 of issue number 12 instead.

4. All other provisions in the proposal notice published on July 17, 2008 at page 1417 of the 2008 Montana Administrative Register, issue number 13 remain the same.

/s/ John Koch  
Rule Reviewer

/s/ Russell E. Cater for  
Director, Public Health and  
Human Services

Certified to the Secretary of State August 4, 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 ON  
Rule I and the amendment of ARM ) PROPOSED ADOPTION AND  
37.10.101, 37.10.104, and 37.10.105 ) AMENDMENT  
pertaining to living wills )

TO: All Concerned Persons

1. On September 3, 2008, at 1:00 p.m., the Department of Public Health and Human Services will hold a public hearing in the Sapphire Room of the Colonial Building, at 2401 Colonial Drive, Helena, Montana, to consider the proposed adoption and amendment of the above-stated rules.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Health and Human Services no later than 5:00 p.m. on August 25, 2008, to advise us of the nature of the accommodation that you need. Please contact Gwen Knight, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 202951, Helena, Montana, 59620-2951; telephone (406)444-9503; fax (406)444-6744; or e-mail [dphhslegal@mt.gov](mailto:dphhslegal@mt.gov).

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

NEW RULE I DO-NOT-RESUSCITATE PROTOCOL (1) POLST is intended to replace Comfort One as the system used by medical professionals to identify and administer appropriate care, including DNR orders, to terminally ill patients.

(2) When issuing a DNR order, medical professionals must use the POLST form and follow the DNR/POLST protocol approved by the Board of Medical Examiners and the department. The department adopts and incorporates the DNR/POLST protocol July, 2008 which can be found at [www.mt.gov/dli/bsd/license/bsd\\_boards/med\\_board/licenses/med/polst.asp](http://www.mt.gov/dli/bsd/license/bsd_boards/med_board/licenses/med/polst.asp) or upon request from the Montana Board of Medical Examiners, P.O. Box 200513, 301 S. Park, 4th Floor, Helena, MT 59620.

(3) All previously issued Comfort One identifying material, including forms, will be considered valid by health care providers.

(4) All previously issued DNR orders will be considered valid by health care providers.

AUTH: 50-10-105, MCA

IMP: 50-10-101, MCA

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

37.10.101 DEFINITIONS (1) "Comfort ~~one~~ One" means a ~~comprehensive, statewide program of identifying, providing palliative care and method~~ withholding resuscitative measures for ~~to~~ terminally ill patients ~~who have declared living wills or~~ for whom a physician has issued a do-not-resuscitate (DNR) order. ~~Comfort one~~ may also be used as an identifying term in educational programs for pre-hospital care providers, patients, physicians, hospital, hospice, home health and other medical personnel. The Comfort One program is to be succeeded by "POLST".

~~(3)~~ (2) "Comfort ~~one~~ One card or form" means a uniform statewide identification card or form, issued before January 1, 2010, approved by the department, indicating that a ~~comfort one form~~ DNR has been issued to the patient, and containing the following identifying information:

~~(a)~~ name, sex, and birth date of the patient;

~~(b)~~ comfort one logo;

~~(c)~~ signature of the patient's attending physician or representative of a licensed hospice program in which the patient is enrolled; and

~~(d)~~ the method by which a declaration may be revoked, if desired.

(4) (3) "Comfort ~~one~~ One logo" means a standard, statewide graphic display, including the words "comfort one", approved by the department, ~~which must be displayed on comfort one forms, cards, necklaces, and bracelets.~~

~~(5)~~ (4) "Comfort ~~one~~ One necklace or bracelet" means a necklace or bracelet of uniform statewide design, approved by the department, ~~and indicating that a comfort one form has been issued to the patient.~~ The comfort one Comfort One necklace or bracelet must prominently display the ~~comfort one~~ Comfort One logo and may only be issued to patients on verification that they have a ~~comfort one~~ Comfort One form, or have been identified as DNR patients on the POLST form.

(5) "POLST" means Provider Orders for Life-Sustaining Treatment, a comprehensive statewide method of identifying a patient's wishes for providing palliative care, medical interventions, or withholding resuscitative measures to terminally ill patients who have declared living wills or for whom a DNR order has been issued.

~~(2)~~ (6) "Comfort ~~one~~ "POLST form" means a uniform, single form for statewide use, approved by the department and Board of Medical Examiners, indicating either that a valid and current declaration pursuant to 50-9-103, MCA, has been executed and that the declarant is a qualified patient as defined in 50-9-102, MCA, or that a physician provider has issued a do-not-resuscitate DNR order for the patient. ~~The form must contain the following:~~

~~(a)~~ name, sex, and birth date of the patient;

~~(b)~~ signature of the patient's attending physician or representative of a licensed hospice program in which the patient is enrolled;

~~(c)~~ comfort one logo;

~~(d)~~ the method by which a declaration may be revoked, if desired; and

~~(e)~~ an explanation of comfort one, including the actions emergency care providers will take when presented with comfort one identification.



(7) "Provider" means a physician, or advanced practice registered nurse. A physician assistant with a valid agreement with a supervising physician who has delegated the authority to sign DNR orders may also be considered a provider.

AUTH: 50-9-110, MCA

IMP: 50-9-102, 50-9-106, MCA

37.10.104 LIVING WILL PROTOCOL FOR EMS PERSONNEL (1) The living will protocol may also be designated the "POLST protocol". Providers may use POLST to implement DNR orders, or the end of life treatment decisions by a patient expressed through a living will or otherwise.

(2) For a patient who has completed a POLST or Comfort One form, Under any of the following three circumstances, emergency medical services personnel must follow the POLST protocol approved by the board of medical examiners for providing palliative care or withholding life-sustaining procedures from a patient if a patient meets the following criteria:

(a) The identity of the patient has been clearly established and the personnel have been presented with any one of the following:

(i) a POLST form for the patient;

(ii) a ~~comfort one~~ Comfort One card or form for the patient; or

(iii) a written ~~do-not-resuscitate~~ DNR order signed and dated by a physician.

(b) An unresponsive person is wearing a ~~comfort one~~ Comfort One necklace or bracelet identifying the existence of a DNR order (no further identification is necessary).

~~(c) A physician's do-not-resuscitate order has been presented, but only when:~~

~~(i) the order is in writing and the personnel have a copy of the order or have seen the order; or~~

~~(ii) a physician issues a verbal order directly to the emergency medical services personnel.~~

~~(2) The living will protocol may also be designated the "comfort one protocol".~~

~~(3) This rule applies to an inter-hospital transfer of patients as well as a response to an emergency by emergency medical service personnel.~~

AUTH: 50-9-110, MCA

IMP: 50-9-102, 50-9-103, MCA

#### 37.10.105 SOURCES OF POLST AND COMFORT ONE IDENTIFICATION

(1) POLST forms, Comfort One forms, cards, necklaces, and bracelets may be obtained only through:

(a) physicians;

(b) licensed hospice programs;

(c) licensed home health agencies;

(d) hospitals;

(e) skilled nursing facilities;

(f) long term care facilities; and

(g) any other agency entity specifically approved by the department.

AUTH: 50-9-110, MCA

IMP: 50-9-102, MCA

5. The department proposes to adopt and amend these rules in order to adopt "Provider Orders for Life-Sustaining Treatment (POLST)" as a comprehensive system for treating patients with a terminal condition. The program is designed to improve the quality of care people receive at the end of life by improving communication of patient wishes, and documenting of medical orders on a single form.

#### NEW RULE I

Modeled after programs implemented in several other states, Montana's Provider Orders for Life-Sustaining Treatment (POLST) form and protocol is necessary to assure that a patient's wishes for life-sustaining treatments are honored by all health care professionals in all health care settings.

The department is proposing the adoption of New Rule I to reflect that the Board of Medical Examiners and the department have adopted, and the department has approved POLST as the protocol for implementing do-not-resuscitate (DNR) orders in medical settings. POLST is a comprehensive system that will incorporate both DNR orders as well as wishes for palliative care expressed by the patient in a living will or to the patient's provider. Comfort One will continue to be used to identify patients with a DNR order.

Current studies estimated that 20-30 percent of the U.S. population has an advance directive such as a DNR order or living will to define their preferences for "end-of-life" treatment. However, advance directives are often unavailable to ambulances or hospitals. Some advance directives are not followed because the order is not transferred from facility to facility, is not specific enough, is overridden, or is not immediately recognized as a "physician order". Montana's POLST form and protocol addresses all of these issues and assures that a patient's wishes are defined and followed when a patient is in terminal condition. POLST forms accompany patients as they are transferred to and from different locations and facilities.

The POLST form and protocol were developed by the Montana Board of Medical Examiners, in consultation with the department, as well as members of the medical community. The Board of Medical Examiners has held a number of public meetings, at which public input was sought.

#### ARM 37.10.101

The department is proposing changes to the definitions section to reflect the adoption of the POLST system to be used in all medical settings.

Although POLST is intended to replace the Comfort One system, Comfort One is being retained to identify terminally ill patients who have been issued a DNR order. This will help assure that emergency medical service providers will quickly be able to identify those patients having a DNR order and to make patient care decisions accordingly.

The current Comfort One form is being replaced by the POLST form. As this form encompasses aspects of both the department's rulemaking responsibility and the board's POLST protocol, it is approved by both entities. A reference to 50-9-102, MCA, "qualified patient", has been added.

Upon approval of these proposed rules, the POLST form will replace the current Comfort One form and card. While every effort will be made to educate health care providers, health care facilities, and the public about the POLST program, forms that are issued before January 1, 2010 will still be valid to allow for continuity of care with respect to DNR orders that are currently in effect.

Comfort One is a registered trademark, approved by the department, that is currently used on all forms and materials. While it is necessary to retain "approved by department" in order to be in command of how the logo is used, its current use on materials will change as we transition from the Comfort One program to the POLST program.

The Comfort One bracelet and necklace are only issued to persons who have a DNR order. Under these proposed rules, the only way to document that patients have a DNR order and receive a bracelet or necklace is if they have a Comfort One form (due to be phased out by January 1, 2010) or by being identified as DNR patients on the new POLST form.

"Provider" is a new definition in these proposed rules which supports language in the Montana Rights of the Terminally Ill Act and Do-Not-Resuscitate -- Notification, 50-10-101 through 50-10-107, MCA which allows physicians and advanced practice nurses to issue DNR orders. This definition also makes it clear that physician assistants who have been delegated do-not-resuscitate authority by their supervising physician can issue such orders.

#### ARM 37.10.104

Proposed changes to this rule reflect the adoption of the POLST protocol as the "living will" protocol to be followed by EMS personnel in treating qualified patients and implementing DNR orders as well as other instructions for palliative care expressed in a living will or to a patient's physician and reflected in the POLST form.

Reference to a physician's DNR order (verbal or written) is being deleted as this information is clear in other parts of these proposed rules and in the POLST protocol.

ARM 37.10.105

The department is proposing to amend this rule to reflect that POLST forms as well as Comfort One identifying material must still be obtained through specific authorized sources.

6. Interested persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Gwen Knight, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 202951, Helena MT 59620-2951, no later than 5:00 p.m. on September 11, 2008. Comments may also be faxed to (406)444-9744 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.

7. 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. 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.

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

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

/s/ Shannon McDonald  
Rule Reviewer

/s/ Russell E. Cater for  
Director, Public Health and  
Human Services

Certified to the Secretary of State August 4, 2008.

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION  
OF THE STATE OF MONTANA

In the matter of the adoption of New	)	NOTICE OF ADOPTION AND
Rule I and the amendment of ARM	)	AMENDMENT
10.7.101, 10.7.104, 10.7.105,	)	
10.7.106, 10.7.106A, 10.7.109,	)	
10.7.111, 10.7.113, 10.7.118,	)	
10.10.301, 10.10.306, 10.10.310,	)	
10.15.101, 10.16.3818, 10.20.102,	)	
10.20.102A, 10.20.104, 10.21.101B,	)	
10.21.101H, 10.21.201, 10.21.202,	)	
10.21.203, 10.21.204, 10.22.102, and	)	
10.23.103, relating to school finance	)	

TO: All Concerned Persons

1. On June 26, 2008, the Superintendent of Public Instruction published MAR Notice No. 10-7-117 pertaining to the public hearing on the proposed adoption and amendment of the above-stated rules at page 1176 of the 2008 Montana Administrative Register, Issue Number 12.

2. The superintendent has amended the above-stated rules as proposed.

3. The superintendent has adopted the above-stated rule as proposed:

New Rule I (10.20.104A)

4. No comments or testimony were received.

/s/ Linda McCulloch  
Linda McCulloch  
Superintendent of Public Education

/s/ Kathleen Magone  
Kathleen Magone  
Rule Reviewer

Certified to the Secretary of State August 4, 2008.

BEFORE THE BOARD OF PUBLIC EDUCATION  
OF THE STATE OF MONTANA

In the matter of the adoption of NEW ) NOTICE OF ADOPTION,  
RULE I through NEW RULE LXIV, ) AMENDMENT, AND REPEAL  
amendment of ARM 10.54.6510 )  
through 10.54.6513, 10.54.6520 )  
through 10.54.6523, 10.54.6530 )  
through 10.54.6533, 10.54.6540 )  
through 10.54.6543 and repeal of )  
ARM 10.54.6587 through 10.54.6598, )  
rules relating to information )  
literacy/library media content )  
standards and performance )  
descriptors )

TO: All Concerned Persons

1. On June 26, 2008 the Board of Public Education published MAR Notice No. 10-54-245 pertaining to the public hearing on the proposed adoption, amendment, and repeal of the above-stated rules at page 1223 of the 2008 Montana Administrative Register, Issue Number 12.

2. The board has adopted the following rules as proposed: NEW RULE I (10.54.6550), NEW RULE II (10.54.6551), NEW RULE III (10.54.6552), NEW RULE IV (10.54.6553), NEW RULE V (10.54.6601), NEW RULE VI (10.54.6602), NEW RULE VII (10.54.6603), NEW RULE VIII (10.54.6604), NEW RULE IX (10.54.6605), NEW RULE X (10.54.6606), NEW RULE XI (10.54.6607), NEW RULE XII (10.54.6608), NEW RULE XIII (10.54.6609), NEW RULE XIV (10.54.6610), NEW RULE XV (10.54.6611), NEW RULE XVI (10.54.6612), NEW RULE XVII (10.54.6613), NEW RULE XVIII (10.54.6614), NEW RULE XIX (10.54.6615), NEW RULE XX (10.54.6616), NEW RULE XXIX (10.54.6625), NEW RULE XXX (10.54.6626), NEW RULE XXXI (10.54.6627), NEW RULE XXXII (10.54.6628), NEW RULE XXXIII (10.54.6629), NEW RULE XXXIV (10.54.6630), NEW RULE XXXV (10.54.6631), NEW RULE XXXVI (10.54.6632), NEW RULE XXXVII (10.54.6633), NEW RULE XXXVIII (10.54.6634), NEW RULE XXXIX (10.54.6635), NEW RULE XL (10.54.6636), NEW RULE XLI (10.54.6637), NEW RULE XLII (10.54.6638), NEW RULE XLIII (10.54.6639), NEW RULE XLIV (10.54.6640), NEW RULE XLV (10.54.6641), NEW RULE XLVI (10.54.6642), NEW RULE XLVII (10.54.6643), NEW RULE XLVIII (10.54.6644), NEW RULE XLIX (10.54.6645), NEW RULE L (10.54.6646), NEW RULE LI (10.54.6647), NEW RULE LII (10.54.6648), NEW RULE LIII (10.54.6649), NEW RULE LIV (10.54.6650), NEW RULE LV (10.54.6651), NEW RULE LVI (10.54.6652), NEW RULE LVII (10.54.6653), NEW RULE LVIII (10.54.6654), NEW RULE LIX (10.54.6655), NEW RULE LX (10.54.6656), NEW RULE LXI (10.54.6657), NEW RULE LXII (10.54.6658), NEW RULE LXIII (10.54.6659), and NEW RULE LXIV (10.54.6660).

3. The board has adopted the following rules as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

NEW RULE XXI (10.54.6617) GRADE 8 PERFORMANCE DESCRIPTORS FOR CONTENT STANDARD 2 AT THE ADVANCED LEVEL (1) and (1)(a) remain as proposed.

- (b) evaluates authority, accuracy, and ~~reeceny~~ currency of resources;
- (c) through (g) remain as proposed.

NEW RULE XXII (10.54.6618) GRADE 8 PERFORMANCE DESCRIPTORS FOR CONTENT STANDARD 2 AT THE PROFICIENT LEVEL (1) and (1)(a) remain as proposed.

- (b) evaluates authority, accuracy, and ~~reeceny~~ currency of resources;
- (c) through (g) remain as proposed.

NEW RULE XXIII (10.54.6619) GRADE 8 PERFORMANCE DESCRIPTORS FOR CONTENT STANDARD 2 AT THE NEARING PROFICIENT LEVEL (1) and (1)(a) remain as proposed.

- (b) evaluates authority, accuracy, and ~~reeceny~~ currency of resources;
- (c) through (g) remain as proposed.

NEW RULE XXIV (10.54.6620) GRADE 8 PERFORMANCE DESCRIPTORS FOR CONTENT STANDARD 2 AT THE NOVICE LEVEL (1) and (1)(a) remain as proposed.

- (b) evaluates authority, accuracy, and ~~reeceny~~ currency of resources;
- (c) through (g) remain as proposed.

NEW RULE XXV (10.54.6621) UPON GRADUATION PERFORMANCE DESCRIPTORS FOR CONTENT STANDARD 2 AT THE ADVANCED LEVEL

- (1) and (1)(a) remain as proposed.
- (b) evaluates authority, accuracy, and ~~reeceny~~ currency of resources;
- (c) through (g) remain as proposed.

NEW RULE XXVI (10.54.6622) UPON GRADUATION PERFORMANCE DESCRIPTORS FOR CONTENT STANDARD 2 AT THE PROFICIENT LEVEL

- (1) and (1)(a) remain as proposed.
- (b) evaluates authority, accuracy, and ~~reeceny~~ currency of resources;
- (c) through (g) remain as proposed.

NEW RULE XXVII (10.54.6623) UPON GRADUATION PERFORMANCE DESCRIPTORS FOR CONTENT STANDARD 2 AT THE NEARING PROFICIENT LEVEL (1) and (1)(a) remain as proposed.

- (b) evaluates authority, accuracy, and ~~reeceny~~ currency of resources;
- (c) through (g) remain as proposed.

NEW RULE XXVIII (10.54.6624) UPON GRADUATION PERFORMANCE  
DESCRIPTORS FOR CONTENT STANDARD 2 AT THE NOVICE LEVEL

- (1) and (1)(a) remain as proposed.
- (b) evaluates authority, accuracy, and ~~recency~~ currency of resources;
- (c) through (g) remain as proposed.

4. The board has amended and repealed the above stated rules as proposed.

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

COMMENT # 1: Dr. Claudette Morton from the Montana Small Schools Alliance stated her support for the rules as written.

RESPONSE # 1: The board thanks Dr. Morton for her support.

COMMENT # 2: Colet Bartow, Library Media Curriculum Specialist from the Office of Public Instruction requested that the term "recency" in New Rules XXI through XXVIII be replaced with the term "currency." She stated that the term "currency" is an accepted and widely used term in information literacy instruction to refer to information that is timely and recent in history. The term "recency" is not a term that would be understood within the context of information literacy instruction and is not used to describe the concept of currency in literature associated with information literacy concepts.

RESPONSE # 2: The board thanks Ms. Bartow for her comment and has amended the rules as requested.

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

/s/ Steve Meloy  
Steve Meloy  
Rule Reviewer

Certified to the Secretary of State August 4, 2008.



BEFORE THE BOARD OF PUBLIC EDUCATION  
OF THE STATE OF MONTANA

In the matter of the adoption of NEW	)	NOTICE OF ADOPTION,
RULE I through NEW RULE XLVIII,	)	AMENDMENT, AND REPEAL
amendment of ARM 10.54.7510	)	
through 10.54.7513, 10.54.7520	)	
through 10.54.7523, 10.54.7530	)	
through 10.54.7533, 10.54.7540	)	
through 10.54.7543, and repeal of	)	
ARM 10.54.7550 through 10.54.7553,	)	
10.54.7560 through 10.54.7563, and	)	
10.54.7587 through 10.54.7598, rules	)	
relating to technology content	)	
standards and performance	)	
descriptors	)	

TO: All Concerned Persons

1. On June 26, 2008 the Board of Public Education published MAR Notice No. 10-54-244 pertaining to the public hearing on the proposed adoption, amendment, and repeal of the above-stated rules at page 1198 of the 2008 Montana Administrative Register, Issue Number 12.

2. The board has adopted the above stated rules as proposed: NEW RULE I (10.54.7601), NEW RULE II (10.54.7602), NEW RULE III (10.54.7603), NEW RULE IV (10.54.7604), NEW RULE V (10.54.7605), NEW RULE VI (10.54.7606), NEW RULE VII (10.54.7607), NEW RULE VIII (10.54.7608), NEW RULE IX (10.54.7609), NEW RULE X (10.54.7610), NEW RULE XI (10.54.7611), NEW RULE XII (10.54.7612), NEW RULE XIII (10.54.7613), NEW RULE XIV (10.54.7614), NEW RULE XV (10.54.7615), NEW RULE XVI (10.54.7616), NEW RULE XVII (10.54.7617), NEW RULE XVIII (10.54.7618), NEW RULE XIX (10.54.7619), NEW RULE XX (10.54.7620), NEW RULE XXI (10.54.7621), NEW RULE XXII (10.54.7622), NEW RULE XXIII (10.54.7623), NEW RULE XXIV (10.54.7624), NEW RULE XXV (10.54.7625), NEW RULE XXVI (10.54.7626), NEW RULE XXVII (10.54.7627), NEW RULE XXVIII (10.54.7628), NEW RULE XXIX (10.54.7629), NEW RULE XXX (10.54.7630), NEW RULE XXXI (10.54.7631), NEW RULE XXXII (10.54.7632), NEW RULE XXXIII (10.54.7633), NEW RULE XXXIV (10.54.7634), NEW RULE XXXV (10.54.7635), NEW RULE XXXVI (10.54.7636), NEW RULE XXXVII (10.54.7637), NEW RULE XXXVIII (10.54.7638), NEW RULE XXXIX (10.54.7639), NEW RULE XL (10.54.7640), NEW RULE XLI (10.54.7641), NEW RULE XLII (10.54.7642), NEW RULE XLIII (10.54.7643), NEW RULE XLIV (10.54.7644), NEW RULE XLV (10.54.7645), NEW RULE XLVI (10.54.7646), NEW RULE XLVII (10.54.7647), and NEW RULE XLVIII (10.54.7648).

3. The board has amended and repealed the above-stated rules as proposed.

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

COMMENT # 1: Marcia Davis, Lewis and Clark County Superintendent of Schools commented in support of the technology content standards and performance descriptors as written.

RESPONSE # 1: The board appreciates Ms. Davis' support of the rules.

COMMENT # 2: Linda Vrooman Peterson, the Office of Public Instruction Division Administrator for the Accreditation Division commented in support of the rules.

RESPONSE # 2: The board appreciates Ms. Peterson's support of the rules.

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

/s/ Steve Meloy  
Steve Meloy  
Rule Reviewer

Certified to the Secretary of State August 4, 2008.

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

In the matter of the adoption of a )  
temporary emergency rule closing the ) NOTICE OF ADOPTION OF A  
Big Hole River, Silver Bow County, ) TEMPORARY EMERGENCY RULE  
from Silver Bridge to Divide Bridge )

TO: All Concerned Persons

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

(a) There is an immediate need for a source of water for aircraft dropping water on the Pump Station fire.

(b) Persons recreating on the Big Hole River while aircraft are loading water from the river would be subjected to potential collisions that could result in injury or death. Furthermore, flight crews would be subjected to increased and additional peril if aircraft had to maneuver to avoid recreationists.

(c) ARM 12.11.6601 outlines the Department of Fish, Wildlife and Parks' (department) authority to close public waters due to fire emergency.

(d) Therefore, as this situation constitutes an imminent peril to public health, safety, and welfare, and this threat cannot be averted or remedied by any other administrative act, the commission adopts the following temporary emergency rule. The emergency rule will be sent as a press release to newspapers throughout the state. Also, signs informing the public of the closure will be posted at access points. The rule will be sent to interested parties, and published as a temporary emergency rule in Issue No. 15 of the 2008 Montana Administrative Register.

2. The commission will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of the notice. If you require an accommodation, contact the department no later than 5:00 p.m. on August 29, 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 temporary emergency rule is effective August 1, 2008 when this rule notice is filed with the Secretary of State.

4. The text of the temporary emergency rule provides as follows:

RULE I BIG HOLE RIVER TEMPORARY EMERGENCY CLOSURE (1) The Big Hole River closure is located in Silver Bow County.

(2) The Big Hole River is closed to all boating, floating, and swimming and any other public occupation of the water from the Silver Bridge to the Divide Bridge.

(3) This rule is effective as long as the Big Hole River is needed as a source of water for fighting wildfires.

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

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

6. This rule will expire as soon as the department determines the river is again safe for boating, floating, and swimming and any other occupation of the river. This will depend on the extent and duration of wildfires in the area. Signs restricting use of the river will be removed when the rule is no longer in effect. 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, Montana 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 September 15, 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/ Larry Peterman  
Larry Peterman,  
Acting Secretary  
Fish, Wildlife and Parks Commission

/s/ Robert N. Lane  
Robert N. Lane  
Rule Reviewer

Certified to the Secretary of State August 1, 2008.

BEFORE THE DEPARTMENT OF JUSTICE  
OF THE STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF AMENDMENT AND  
ARM 1.3.211 through 1.3.224, ) REPEAL  
1.3.226, 1.3.227, 1.3.229 through )  
1.3.233; and repeal of ARM 1.3.225, )  
all pertaining to model rules )

TO: All Concerned Persons

1. On May 22, 2008, the Department of Justice published MAR Notice No. 23-20-192, pertaining to the public hearing on the proposed amendment and repeal of the above-stated rules at page 988 of the 2008 Montana Administrative Register, Issue Number 10.

2. A public hearing was held on June 11, 2008. No adverse comments or suggestions were offered at the public hearing. The department received written comments from two individuals regarding the proposed adoption.

Comment: Comments were provided regarding the style and grammar of the rule notice.

Response: The department made changes, reflected in this notice of adoption, as appropriate.

Comment: Comment was provided that the department's amendment to ARM 1.2.211 regarding applicability of agency rules was overbroad.

Response: The department's notice of adoption amends rule 1.3.211 to clarify its applicability.

Comment: Comment was provided that the rule 1.3.212, which governs the notice that must be provided in contested case hearings, should be clarified to note that not all notices of contested case hearings must include an automatic stay or a statement revoking a party's rights.

Response: The department's notice of adoption amends rule 1.3.212 to clarify that the notice of a contested case hearing must only include notice of a stay or revocation of rights in applicable cases.

Comment: Comment was provided recommending revision to rule 1.3.217 to clarify that an agency may request discovery in, for example, a proceeding before another agency or separate board.

Response: The department considered the comment and determined amendment to rule 1.3.217 was not necessary. The rule provides that discovery is

available to "the parties" and in the example cited in the comment the agency would be a party to an action and thus entitled to discovery.

Comment: Comments were received recommending that rule 1.3.219 be amended to clarify that the party who bears the burden of proof in a contested case proceeding is required to present its case first.

Response: The department's notice of adoption amends rule 1.3.219 to clarify that the party asserting a claim for relief bears the burden of proof and is required, in most circumstances, to present its evidence first. This change is consistent with the Montana Supreme Court's decision in Montana Environmental Information Fund v. DEQ, et al, 2005 MT 502, 112 P.3d 964.

Comment: Comments were provided regarding rule 1.3.230 which governs agency subpoena power. The comment recommended that the rule be revised to clarify that the issuing agency or the requesting party may petition a district court to compel compliance with a subpoena.

Response: The department's notice of adoption amends rule 1.3.230 to make this clarification.

3. The department has amended the following rules as proposed, but with changes from the original proposal, new matter underlined, deleted matter interlined:

1.3.211 CONTESTED CASES, INTRODUCTION (1) A rule is an agency statement of general applicability that interprets law or describes agency requirements. It applies to all persons who are subject to the requirements or regulations of the agency and comes within the terms of the rule. A contested case involves an agency determination that affects the rights or responsibilities of a specifically named party. "Contested case" and "party" are defined by 2-4-102, MCA.

AUTH: 2-4-202, MCA

IMP: 2-4-202, MCA

1.3.212 CONTESTED CASES, NOTICE OF OPPORTUNITY TO BE HEARD  
(1) All parties to contested cases ~~shall~~ must be ~~afforded~~ provided notice of hearing. As illustrated by sample form 212a, the notice must include:

(a) through (f) remain as proposed.

(g) if applicable, a statement ~~either~~ staying the agency action or detailing at what point the party's legal rights, duties, or privileges will be revoked or imposed.

AUTH: 2-4-202, MCA

IMP: 2-4-202, MCA

1.3.216 CONTESTED CASES, APPLICATION FOR MORE DEFINITE AND DETAILED STATEMENT (1) ~~Upon application to the agency or the designated~~

hearing examiner, a A party who has been given notice of a contested case hearing may apply to the agency or the designated hearing examiner for a more definite and detailed statement of the issues involved in the hearing.

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

1.3.217 CONTESTED CASES, DISCOVERY (1) In all contested cases, discovery ~~shall be~~ is available to the parties in accordance with Rules 26 through 37 of the Montana Rules of Civil Procedure. However, Rule 27 and Rule 37(b)(1) and 37(b)(2)(D) shall not apply. ~~Provided, however, all~~ All references to the "court" shall be considered to refer to the appropriate "agency"; all references to the use of the subpoena power shall be considered references to ARM 1.3.230; all references to "trial" shall be considered references to "hearing"; all references to "plaintiff" shall be considered references to "a party"; all references to "clerk of court" shall be considered references to the person designated by the department head to keep documents filed in a contested case.

(2) If a party or other witness refuses to be sworn or refuses to answer any question after being directed to do so by the agency in which the action is pending, the refusal to obey ~~such~~ the agency order shall be enforced as provided in ARM 1.3.230.

(3) remains as proposed.

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

1.3.218 CONTESTED CASES, HEARING EXAMINERS

(1) through (2)(b) remain as proposed.

(c) provide for the taking of testimony and depositions;

(2)(d) through (4) remain as proposed.

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

1.3.219 CONTESTED CASES, HEARING (1) and (2) remain as proposed.

(3) ~~At the discretion of~~ Absent a determination by the presiding officer, ~~the hearing may be conducted in the following order:~~ that the interests of justice require otherwise, the order of hearing is as follows:

(a) any opening statements requested or allowed by the presiding officer;

(b) presentation of evidence by the agency party asserting a claim for relief (the challenging party);

(c) cross examination by the challenging opposing party;

(d) presentation of evidence by the challenging opposing party;

(e) cross examination by agency the challenging party; and

(f) through (4) remain the same.

(5) Exhibits ~~shall~~ must be marked and ~~shall~~ must identify the person offering the exhibits. The exhibits shall be preserved by the agency as part of the record of

the proceedings.

(6) The presiding officer may hear closing arguments, request written argument, or order a briefing schedule for parties to submit proposed findings of fact and conclusions of law.

(7) remains as proposed.

AUTH: 2-4-202, MCA

IMP: 2-4-202, MCA

1.3.220 CONTESTED CASES, RECORD (1) The record in a contested case shall must include:

(a) through (f) remain as proposed.

(2) At the request of any party, the record must be transcribed. The cost of transcription ~~will be~~ is the responsibility of the requesting party.

AUTH: 2-4-202, MCA

IMP: 2-4-202, MCA

1.3.223 CONTESTED CASES, PROPOSED ORDERS (1) If a majority of the officials of the agency who are to render the final decision have not heard the case, a decision that is adverse to a party (other than the agency itself) may not be ~~rendered~~ made until a proposed decision is served upon the parties and the parties are given an opportunity to file exceptions and briefs, and present oral argument to the officials responsible for ~~rendering~~ making a final decision.\_

(2) through (4) remain as proposed.

AUTH: 2-4-202, MCA

IMP: 2-4-202, MCA

1.3.224 CONTESTED CASES, FINAL ORDERS (1) A final decision or order adverse to a party in a contested case shall must be in writing and must include findings of fact and conclusions of law.

(2) remains as proposed.

(3) Parties and their attorneys shall must be served with a copy of a final decision or order.

AUTH: 2-4-202, MCA

IMP: 2-4-202, MCA

1.3.226 DECLARATORY RULINGS, INTRODUCTION (1) A party may seek a declaratory ruling from the agency when doubt exists as to how a statute or rule administered by an agency affects the party's legal rights.

AUTH: 2-4-202, MCA

IMP: 2-4-202, MCA

1.3.229 DECLARATORY RULINGS, EFFECT (1) remains as proposed.



(2) A declaratory ruling or notice of refusal to issue ~~such~~ a ruling is a final agency decision subject to judicial review in the same manner as decisions or orders in contested cases.

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

1.3.230 GENERAL PROVISIONS, SUBPOENAS (1) remains as proposed.

(a) Subpoenas ~~shall~~ must be issued and served pursuant to the rules of civil procedure. Except as otherwise provided by law, costs associated with the subpoena must be paid by the party who requested it.

(b) In case of disobedience, an agency or other party may petition a district court to compel compliance with a subpoena or the giving of testimony.

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

1.3.231 GENERAL PROVISIONS, REPRESENTATION (1) A person appearing before the agency has the right to be accompanied, represented, and advised by counsel. The agency should advise a party to a contested case of ~~his~~ the right to counsel.

(2) A corporation appearing before ~~the~~ an agency is considered a separate legal entity and may not appear on its own behalf through an agent other than an attorney.

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

1.3.233 GENERAL PROVISIONS, PUBLIC INSPECTION OF ORDERS AND DECISIONS (1) ~~The agency~~ Agencies must maintain an index of all final orders and decisions in contested cases and declaratory rulings. All final decisions and orders ~~shall~~ must be available for public inspection on request. Copies of final decisions and orders must be given to the public on request after payment of the cost of duplication.

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

4. The department has amended ARM 1.3.213, 1.3.214, 1.3.215, 1.3.221, 1.3.222, 1.3.227, and 1.3.232, and repealed ARM 1.3.225 as proposed.

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

/s/ Ali Bovington  
ALI BOVINGDON  
Rule Reviewer

Certified to the Secretary of State on August 4, 2008.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY  
AND THE BOARD OF ATHLETIC TRAINERS  
STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF AMENDMENT  
ARM 24.101.413 renewal dates and ) AND ADOPTION  
requirements and adoption of NEW )  
RULE I fees )

TO: All Concerned Persons

1. On June 12, 2008 the Board of Athletic Trainers (board) published MAR Notice No. 24-118-1 regarding the amendment and adoption of the above-stated rules, at page 1094 of the 2008 Montana Administrative Register, issue no. 11.

2. On July 2, 2008, a public hearing was held on the proposed amendment and adoption of the above-stated rules in Helena. Several comments were received by the July 10, 2008, deadline.

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

COMMENT 1: Several commenters stated that the proposed three-year licensure fee is excessively high and that many certified Athletic Trainers (ATCs) would be unable to keep their ATC status with the proposed fee. The commenters expressed concern that standard of care might decrease.

RESPONSE 1: All licensing boards are statutorily mandated by 37-1-134, MCA, to set board fees commensurate with the costs of licensing and regulating the members of the particular profession. The board cannot set fees according to inflation, cost of living, or the current salaries of the regulated licensees. Licensure fees are directly impacted by the number of licensees a board regulates; thus, boards with fewer licensees generally charge higher fees and boards with more licensees are able to charge lower licensure fees.

COMMENT 2: Several commenters compared the proposed license fees to that paid by other professionals in the state pointing out that other professionals pay a lower fee for licensure.

RESPONSE 2: See Response 1 above.

COMMENT 3: A number of commenters suggested that the three-year fee of \$750 be divided into three equal parts of \$250 each year.

RESPONSE 3: The board agrees with the comment but the current statutes do not allow this. The board is attempting to lessen the burden by setting the renewal

dates to not coincide with the national association's renewal dates. The board is seeking a statutory amendment at the 2009 Legislature to change the licensure period from three years to a one year license.

COMMENT 4: One commenter suggested moving the renewal date to June rather than August to allow at least six months between the license fees and the payment of a national association's dues.

RESPONSE 4: The board agrees that it would be ideal to have the dates for license renewal and the national association dues six months apart. However, due to the statutory time frame for administrative rulemaking, the board was unable to implement these rules by June of 2008. As well, the board must implement and fund the 2007 legislation now and is unable to wait until June of 2009 to collect licensure fees. The board concluded that setting the renewal date for August 31 allows the board to fund the regulation of athletic trainers while keeping several months' span between licensure fees and association dues.

COMMENT 5: One commenter stated that the cost of licensing athletic trainers working in the public sector would be passed on to the school employer but that privately employed trainers would have more difficulty paying the fee.

RESPONSE 5: See Response 1 above.

COMMENT 6: One commenter asked the purpose of the licensure fee, how the fee will benefit licensees and the profession, and whether the board would sponsor annual training, recertification, or board newsletters. The commenter also asked whether someone with a revoked or surrendered license would get a refund.

RESPONSE 6: Licensing boards are statutorily created and mandated to license and regulate members of a profession or occupation for the protection of the public. The main purpose of a professional association is to promote and advocate for a specific profession. The 2007 Montana Legislature determined that regulation of athletic trainers would be in the best interest of the Montana public and created the board to do so. As stated previously, the board is required by law to assess and collect fees to adequately fund the board and staff in this professional regulation.

In order to keep costs low, the board has no immediate plans to offer training, recertification, or newsletters but hopes to be able to do so in the future.

By administrative rule, fees are deemed earned upon receipt and are nonrefundable. License fees fund the ongoing function of the board and staff. By the time a license is revoked or surrendered, the staff has already performed the functions leading to the fees and no refund is available.

COMMENT 7: One commenter questioned what "original examination" and "license" meant in the fee schedule rule.

RESPONSE 7: The terms specify the fee for licensure by examination for athletic trainers. The board notes that there is no examination required except that of the board of certification.

COMMENT 8: One commenter asked what would happen if a person paid NATA dues and not Montana dues.

RESPONSE 8: The board is unsure of the commenter's question. The board has no jurisdiction over dues owed to private associations. If the commenter is referring to national dues and the board's licensing fees, the board notes that the two organization types perform different functions. A license fee will still be required to practice as an ATC in Montana regardless of whether or not a licensee pays an association fee.

COMMENT 9: One commenter asked if a person could still hold a national license if they did not pay the Montana license fee.

RESPONSE 9: The board is unsure of the commenter's question. A license fee is required to practice as an ATC in Montana and the board is not aware of a national license.

COMMENT 10: Several commenters asked if license fees would be higher if fewer people applied for or maintained their licensure than the estimated numbers.

RESPONSE 10: The department and all licensing boards continually review and evaluate board costs and establish a budget every biennium. Following this process, the board will be aware of changes in licensee numbers and associated board costs and will address any such changes through the budgetary process.

COMMENT 11: One commenter asked whether the suspected \$120,000 bank will support ATCs charging and billing for clinic time, when unsupported by PT's billing PT codes.

RESPONSE 11: The board is unsure of the commenter's question. The board has no jurisdiction over agencies billing for clinic time and cannot use any of its budget to subsidize or reimburse licensees for differences between what they bill and what is paid. The board notes that licensure of athletic trainers may result in coverage by insurance companies due to the validation as competent healthcare professionals.

COMMENT 12: Two commenters suggested the board reduce costs and licensure expenses.

RESPONSE 12: Several board members are ATCs who will be required to pay the same licensure fees and the board is very aware of the financial burden of the fees. The board also notes that both the department and the board continually seek and implement ways to reduce costs associated with board functions. Examples of this

are the recent shift to using electronic board books instead of paper ones and having some board meetings by telephone conference instead of in-person attendance.

COMMENT 13: A commenter asked if the proposed fee is a "start up fee" and whether it would go down in the future.

RESPONSE 13: The board notes that a certain amount of start-up shock exists for a new board without a financial track record. The proposed fee was based on an estimated fiscal note for a similarly-sized existing board with a similar number of licensees. It is a possibility that current budget issues may change over time and will be evaluated through the board's ongoing budgetary process.

COMMENT 14: One commenter notes the number of continuing education (CE) hours required by other professions and by the ATC national association.

RESPONSE 14: The board has no jurisdiction over the number of CE hours required by other organizations.

COMMENT 15: One commenter suggested the board raise funds in other ways.

RESPONSE 15: The board is statutorily mandated to set, collect, and use license fees to adequately cover associated board costs. State agencies such as licensing boards may not fundraise to cover costs.

COMMENT 16: One commenter asked if ATCs could be regulated under the Board of Medical Examiners.

RESPONSE 16: The board notes that any transfer of the licensure and regulation of athletic trainers would have to be done via statutory changes through the Legislature.

4. The department has amended ARM 24.101.413 exactly as proposed.
5. The board has adopted NEW RULE I (24.118.402) exactly as proposed.

BOARD OF ATHLETIC TRAINERS  
CHRIS HEARD, ATC, CHAIRPERSON

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

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

Certified to the Secretary of State August 4, 2008

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

In the matter of the amendment of ) NOTICE OF AMENDMENT  
ARM 24.159.301 definitions, 24.159.1003 )  
through 24.159.1006 and 24.159.1010 )  
standards related to the practical nurse, )  
and 24.159.1011 prohibited IV therapies )

TO: All Concerned Persons

1. On February 14, 2008, the Board of Nursing (board) published MAR Notice No. 24-159-70 regarding the proposed amendment of the above-stated rules, at page 279 of the 2008 Montana Administrative Register, issue no. 3. On March 27, 2008, the board published MAR Notice No. 24-159-72 regarding a notice of extension of comment period at page 532 of the 2008 Montana Administrative Register, issue no. 6.

2. On March 6, 2008, a public hearing was held on the proposed amendment of the above-stated rules in Helena. Several comments were received by the March 14, 2008, deadline.

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

COMMENT 1: Several comments were received regarding the definition of "charge nurse" in ARM 24.159.301. Suggested additions to the duties include transcription of medical record orders, presenting status reports for nursing unit patients, completing the controlled substance count on each shift, and being the charge nurse in a hospice or home healthcare organization. One commenter stated that licensed practical nurses (LPN) should not serve as charge nurses because they lack appropriate training.

RESPONSE 1: The definition of "charge nurse" is designed to cover a broad array of work place settings. The nurse working as the charge nurse in every employment setting is not responsible for all of the tasks enumerated by the commenters. The employer generally establishes the specific duties of a charge nurse, within the scope of practice of the nurse so designated. Licensed practical nurses are only authorized by law to serve as charge nurses in long term care facilities, thus an LPN may not serve as a charge nurse in a hospice or home healthcare setting. To clarify the limited circumstances in which an LPN may fulfill the role of charge nurse, the board is amending the definition to add the reference to an LPN as a charge nurse in long term care facilities, pursuant to 37-8-102(7)(b), MCA.

COMMENT 2: Two commenters asked for a more precise definition of "focused nursing assessment" to distinguish the LPN's focused assessment from the registered nurse's (RN) comprehensive assessment. One commenter suggested the board use language adopted by the National Council of State Boards of Nursing (NCSBN).

RESPONSE 2: The board agrees that the NCSBN definition more clearly distinguishes LPN tasks from RN tasks in nursing assessment. The board is amending the definition in ARM 24.159.301 to better distinguish these tasks.

COMMENT 3: A commenter suggested adding "comprehensive" to the definition of "nursing assessment" in ARM 24.159.301 to differentiate the focused nursing assessment by LPNs from the comprehensive nursing assessment completed by RNs. The commenter also suggested using the NCSBN definition for "comprehensive nursing assessment."

RESPONSE 3: The board determined that the NCSBN definition for nursing assessment is unnecessarily detailed, but concurs that adding "comprehensive" helps distinguish the nursing assessment completed by RNs from the focused nursing assessment of LPNs. The board is amending the rule accordingly and is also adding the phrase "conducted by an RN" to the definition for "comprehensive nursing assessment" to further differentiate the two levels of nursing assessment.

COMMENT 4: One commenter suggested the definition of "practical nurse" include reference to the licensed vocational nurse.

RESPONSE 4: While some states recognize the vocational nurse as a subset licensing category of the LPN, Montana's nurse licensing scheme does not distinguish the vocational nurse from the practical nurse. Consequently, a person licensed as a vocational nurse in another state must meet the qualifications for licensure as a practical nurse to be licensed in Montana.

COMMENT 5: One commenter stated that the rules should clearly articulate that development of the strategy of care is solely the function of an RN.

RESPONSE 5: The LPN contributes to the development of the strategy of care by collecting data and conducting the focused nursing assessment of patients. While the responsibility for preparing the strategy of care rests with the RN, the LPN often plays an important role in the process, which typically involves other health care disciplines.

COMMENT 6: One commenter generally supported the rule changes but suggested amending ARM 24.159.1004 regarding the LPN's contributions to the nursing process to recognize that an LPN is often the only nurse caring for a patient.

RESPONSE 6: The board concluded that the commenter has confused direct patient care tasks with the responsibility for patient well-being. Registered nurses,

advance practice registered nurses, physicians, and many others share the responsibility for patient care. LPNs must work under supervision of other health care professionals and should never be the only nurse providing patient care.

COMMENT 7: Several commenters supported the amendments but asked where and when the LPN will be provided training in intravenous (IV) therapy. One commenter recommended a minimum of 40 hours of training for LPNs in IV therapy.

RESPONSE 7: The amendments clarify that certain IV therapies are within the scope of practice of LPNs. The board does not mandate that LPNs must perform IV therapies and does not set forth a prescriptive number of hours of necessary IV therapy training. Instead, the board has determined that it is the personal responsibility of the LPN to ensure competency prior to undertaking IV therapies. The board encourages employers to provide training for LPNs in IV therapies and leaves the responsibility for appropriate training to educators and employers.

COMMENT 8: Several commenters supported the amendments regarding the LPN's role in IV therapy. Commenters stated that the amendments reflect current practice as LPNs have been starting IVs and giving antibiotic IV therapy for years and that LPNs performing IV therapy have learned to recognize allergic reactions. Another commenter opined that poor patient care results when an LPN is not allowed to push IV medications and is forced to locate an RN to do so. The commenters stated that LPNs are qualified to administer push medications and that the amendments maintain appropriate restrictions for LPN practice in IV therapy.

RESPONSE 8: The rules are intended to acknowledge the LPN's responsibilities for IV therapy. The amendments merely clarify that IV therapy is within the scope of practice of LPNs trained and competent to administer IV therapies and that under the direct supervision of an RN, an LPN may administer certain IV push medications.

COMMENT 9: One commenter advocated for a national standard for LPNs to address the vast differences in state laws and regulations regarding IV therapies and use of blood products. Another commenter opined that the entry level education standard for all nursing should be a minimum of a four-year degree.

RESPONSE 9: The board supports national standards for LPN training and scope of practice, but recognizes that the promulgation of any national standard is beyond the board's jurisdiction. Each state has the right to set educational standards and define scope of practice for all healthcare providers. The board declines to change the minimum education requirements for LPNs at this time.

COMMENT 10: One commenter stated that the use of "appropriate supervision" in ARM 24.159.1010 for LPNs in administering IV therapies will lead to confusion. The commenter suggested that the rule clearly state the appropriate level of supervision for LPNs when performing IV therapies.



RESPONSE 10: Three levels of supervision are delineated by nursing rule: general, direct, and immediate supervision. When a rule states that a task may be performed under "appropriate supervision," the level of supervision will be determined by the supervisor based upon the training, experience, and competency of the LPN who is performing IV therapy. The "appropriate" level of supervision will be general, direct, or immediate supervision and is determined on a case-by-case basis and the board is amending the rule to clarify this.

COMMENT 11: A commenter suggested that the LPN's role in administering medication through a portacath should be clearly enunciated in rule.

RESPONSE 11: Because a portacath is considered a central line, the administration of certain medications through a portacath may be within the scope of practice of the LPN who has met the education and competency requirements, if otherwise permitted by rule to administer that particular therapy or medication.

COMMENT 12: One commenter suggested that the board provide a list of approved IV therapy courses to assist LPNs in gaining competency in administering IV bolus and in use of the PICC line.

RESPONSE 12: The board agrees that a list of approved IV therapy courses available to Montana's LPNs who are interested in enhanced training and increased competency would be useful. No such courses are currently offered in Montana, but when these courses are developed, the provider will be responsible for publicity, which could include notice of the course availability in the board's newsletter.

COMMENT 13: A commenter suggested that ARM 24.159.1010 be amended to include the LPN's administration of prescribed doses of normal saline via the dialysis machine to correct dialysis-induced hypotension and noted that unlicensed dialysis technicians are currently allowed to administer saline under immediate supervision. Another commenter suggested that the rule should explicitly allow LPNs to administer prescribed doses of vitamin D analogs and Erythropoietin-stimulating agents via the dialysis machine blood circuit. The commenter stated these drugs are given routinely to almost all dialysis patients and established protocols exist in all dialysis centers for their safe administration. A third commenter asked for additional clarification of the LPN's role in dialysis and recommended that specific allowance be made in rule for LPNs to pull Alltel's (TPA) out of dialysis catheters and to administer Epogen, Venofer (iron), and Hectoral IV (vitamin D analog).

RESPONSE 13: The board acknowledges the comments on the LPN's role in dialysis therapy, but determined that the suggestions for rule change are too substantive to incorporate in this final rule notice. The board plans to begin discussion with stakeholders on the LPN's role in dialysis therapy to consider additional rule changes to address the commenters' concerns.

COMMENT 14: Numerous commenters questioned how the board will ensure that LPNs receive proper training and gain competency in administration of IV therapies.

RESPONSE 14: The board does not accept responsibility for the training of LPNs in IV therapy or any other nursing task. The board oversees all prelicensure nursing education programs in Montana, and ensures that all LPN educational programs prepare students to perform IV therapies as allowed by rule. However, the board does not direct the process by which the individual LPN attains competency in IV therapies. Instead, it is the responsibility of the individual licensee and the licensee's employer to ensure competency prior to an LPN undertaking IV therapies.

COMMENT 15: One commenter objected to the amendments to ARM 24.159.1010 allowing LPNs to administer analgesics and antiemetics by IV push, stating that LPNs lack the requisite understanding of the physiological effects of these drugs and most Montana hospitals do not have the educational resources needed to ensure that LPNs competently administer these drugs. Other commenters oppose allowing LPNs to hang any IV antibiotics or start IVs. Another commenter predicted that due to financial pressures on hospitals, the amendments will result in more LPNs and fewer RNs being employed in acute care settings.

RESPONSE 15: The board is committed to evidence-based decision-making and notes that LPNs have been performing IV therapies for many years with minimal evidence of problems or reported practice errors. The board lacks jurisdiction over employers or hospital hiring decisions. Instead, the board directs all LPNs to ensure that they have the requisite education and the competency necessary to perform any IV therapy tasks undertaken.

COMMENT 16: A commenter suggested that the term "IV" should be added to ARM 24.159.1011(2) for consistency throughout the rule.

RESPONSE 16: The board agrees and is amending the rule accordingly.

COMMENT 17: One commenter stated that ARM 24.159.1011 should specify whether an LPN can access an intrathecal line to administer pain control medications, check an intraosseous monitor, change medication cartridges, or monitor pain control pumps.

RESPONSE 17: The proposed amendments do not alter the present and continuing prohibition against LPNs administering pain control medications through an intrathecal line, which is not an IV therapy. The intraosseous mechanism is a specialized procedure, and checking an intraosseous line also remains outside of the scope of practice for the LPN. The board is making no changes regarding these prohibited therapies. However, following amendment the rule will allow a LPN to change a medication cartridge and monitor a pain control pump, if administered intravenously. Both of these therapies are within the LPN's scope of practice in IV therapy. The board generally seeks to define prohibited IV therapies by delineating the prohibited medications and medication classifications rather than describing prohibited routes of medication administration.

COMMENT 18: A commenter questioned whether the amendments to ARM 24.159.1011 will restrict LPNs from drawing blood for the Red Cross.

RESPONSE 18: The administration of blood products is a completely different and unrelated action from the drawing of blood, within the context of the Red Cross's blood donation activities. The amendment that bars the LPN from initiating blood, blood components, and plasma volume expanders will have no impact upon the participation of LPNs in Red Cross blood drives.

4. The board has amended ARM 24.159.1003, 24.159.1004, 24.159.1005, and 24.159.1006 exactly as proposed.

5. The board has amended ARM 24.159.301, 24.159.1010, and 24.159.1011 with the following changes, stricken matter interlined, new matter underlined:

24.159.301 DEFINITIONS As used in Title 37, chapter 8, MCA, and this chapter, unless defined specifically in a particular subchapter, the following definitions apply:

(1) remains as proposed.

(2) "Charge nurse" means the nurse who is in charge of patient and/or resident care during a nursing shift. An LPN may serve as a charge nurse in the absence of an RN in a long term care facility, pursuant to 37-8-102, MCA.

(3) through (5) remain as proposed.

(6) "~~Focused nursing assessment" means an assessment conducted by an LPN and includes an appraisal of the client's current status, initial and ongoing data collection, and communication with other members of the health team as appropriate~~ is conducted by a licensed practical nurse and is an appraisal of an individual's status and situation at hand, contributing to the comprehensive assessment by the registered nurse, supporting ongoing data collection, deciding who needs to be informed of the information, and when to inform.

(7) and (8) remain as proposed.

(9) "~~Nursing Comprehensive nursing~~ assessment" means a systematic collection of data conducted by an RN to determine the patient's health status and to identify any actual or potential health problems.

(10) through (20) remain as proposed.

24.159.1010 STANDARDS RELATED TO INTRAVENOUS (IV) THERAPY

(1) remains as proposed.

(2) The practical nurse who has met the education and competency requirements of this rule may perform the following functions with venous access devices (central, midline, and peripheral) under the appropriate level of supervision:

(a) through (n) remain as proposed.

~~(3) The practical nurse may not perform any procedures or administer any fluids or medications prohibited by ARM 24.159.1011.~~

(4) remains as proposed but is renumbered (3).

24.159.1011 PROHIBITED INTRAVENOUS (IV) THERAPIES (1) through (1)(g) remain as proposed.

(2) The practical nurse may not administer the following IV medications or IV fluids:

(a) through (j) remain as proposed.

(k) medications or fluids via an epidural, intrathecal, ~~intraosseous~~ intraosseous, umbilical route, or ventricular reservoir; or

(l) remains as proposed.

BOARD OF NURSING  
SUSAN RAPH, R.N., PRESIDENT

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

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

Certified to the Secretary of State August 4, 2008

BEFORE THE BOARD OF OCCUPATIONAL THERAPY PRACTICE  
DEPARTMENT OF LABOR AND INDUSTRY  
STATE OF MONTANA

In the matter of the amendment of ARM     ) NOTICE OF AMENDMENT  
24.165.404 licensure and 24.165.509     )  
approved instruction                     )

TO: All Concerned Persons

1. On May 22, 2008, the Board of Occupational Therapy Practice (board) published MAR Notice No. 24-165-19 regarding the amendment of the above-stated rules, at page 997 of the 2008 Montana Administrative Register, issue no. 10.
2. On June 12, 2008, a public hearing was held on the proposed amendment of the above-stated rules in Helena. No comments or testimony were received.
3. The board has amended ARM 24.165.404 and 24.165.509 exactly as proposed.

BOARD OF OCCUPATIONAL THERAPY  
PRACTICE  
LYNN YOCUM, OTR, CHAIRPERSON

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

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

Certified to the Secretary of State August 4, 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<br>Subject | 1. Consult ARM Topical Index.<br>Update the rule by checking the accumulative table and the table of contents in the last Montana Administrative Register issued. |
| Statute          | 2. Go to cross reference table at end of each number and title which lists MCA section numbers and department corresponding ARM rule numbers.                     |



## ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through March 31, 2008. This table includes those rules adopted during the period April 1, 2008, through June 30, 2008, and any proposed rule action that was pending during the past six-month period. (A notice of adoption must be published within six months of the published notice of the proposed rule.) This table does not include the contents of this issue of the Montana Administrative Register (MAR or Register).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through March 31, 2008, this table, and the table of contents of this issue of the MAR.

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

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