

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 9

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 The Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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

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BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the proposed amendment) NOTICE OF PUBLIC HEARING
of ARM 2.4.401 through 2.4.411) ON PROPOSED AMENDMENT
pertaining to the Single Audit Act)

TO: All Concerned Persons

1. On May 30, 2007, at 10:00 a.m., a public hearing will be held in Room 342 of the Park Avenue Building, 301 S. Park, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Administration will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m. on May 18, 2007, to advise us of the nature of the accommodation that you need. Please contact Heather Voeller, Local Government Services Bureau, P.O. Box 200547, Helena, Montana 59620-0547; telephone (406) 841-2907; Montana Relay Service 711; facsimile (406) 841-2910; or e-mail to hvoeller@mt.gov.

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

2.4.401 ACCOUNTING AND FINANCIAL REPORTING STANDARDS

(1) All counties, cities, and towns shall adhere to the accounting and financial reporting standards adopted by the Governmental Accounting Standards Board (see ARM 2.4.411~~(1)~~).

(2) All counties, cities, and towns shall utilize the chart of accounts prescribed by the department in the budgetary, accounting, and reporting system for Montana cities, towns, and counties (see ARM 2.4.411~~(2)~~).

(3) and (4) remain the same.

AUTH: 2-7-504, 2-7-513, MCA

IMP: 2-7-504, 2-7-513, MCA

2.4.402 REPORT FILING FEE (1) As provided by 2-7-514~~(2)~~, MCA, each local government entity required to have an audit under 2-7-503, MCA, shall pay an annual filing fee to the department.

(2) remains the same.

(3) As required by 2-7-514~~(2)~~, MCA, the fee schedule shall be based upon the local government entity's annual revenue amounts.

(4) remains the same.

(5) Each local government entity except school districts shall pay the annual filing fee to the department at the time the entity files the annual financial report required by 2-7-503~~(4)~~, MCA, with the department.

- (6) For school districts and associated cooperatives:
 - (a) as required by 2-7-514(2), MCA, the Office of Public Instruction shall pay the annual filing fee;
 - (b) and (c) remain the same.
- (7) The annual filing fees for local government entities are as follows:

| <u>Annual Revenues Equal to or Greater Than:</u> | <u>Annual Revenues Less Than:</u> | <u>Fee</u> |
|--|---------------------------------------|-----------------------------|
| \$-0- | \$200,000 | \$-0- |
| \$200,000 | \$500,000 | \$175 <u>200</u> |
| \$500,000 | \$ 1,000,000 | \$375 <u>435</u> |
| \$1,000,000 | \$ 1,500,000 | \$525 <u>635</u> |
| \$1,500,000 | \$ 2,500,000 | \$600 <u>760</u> |
| \$2,500,000 | \$ 5,000,000 | \$675 <u>845</u> |
| \$5,000,000 | \$10,000,000 | \$725 <u>890</u> |
| \$10,000,000 | <u>\$50,000,000</u> | \$775 <u>965</u> |
| <u>\$50,000,000</u> | | <u>\$1,000</u> |

This filing fee schedule is effective for annual financial reports for years ended June 30, ~~1997~~ 2007, and after. For annual financial reports for years ended June 30, 2008, and after, the annual filing fee for local government entities with annual revenues less than \$500,000 is zero.

AUTH: 2-7-514, MCA
 IMP: 2-7-514, MCA

2.4.403 PENALTY FOR FAILING TO FILE ANNUAL FINANCIAL REPORT WITHIN PRESCRIBED TIME WITHOUT APPROVED EXTENSION (1) As provided by 2-7-517(4), MCA, if a local government entity, other than a school district or associated cooperative, is unable to file its annual financial report with the department within six months of the end of the local government entity's fiscal year as required by 2-7-503(4), MCA, the department may grant an extension of time in which to file the financial report if the local government entity can demonstrate to the department that it has good cause for not submitting the report within the prescribed time.

(a) Good cause will be deemed to exist if the local government entity has exercised ordinary business care and prudence and was nevertheless unable to prepare and properly submit the annual financial report within the prescribed time.

(b) The department will determine what constitutes the exercise of ordinary business care and prudence based on the facts of each case.

(2) and (3) remain the same.

AUTH: 2-7-517, MCA
 IMP: 2-7-517, MCA

2.4.404 PENALTY FOR FAILING TO PAY FILING FEE WITHIN 60 DAYS OF DUE DATE (1) As provided by 2-7-514(2), MCA, local government entities

required to submit an annual financial report to the department must pay to the department, at the time the report is submitted, a filing fee as prescribed by ARM 2.4.402.

(2) and (3) remain the same.

(4) In addition to imposing the late payment penalty established in (3) ~~above~~, the department may issue an order to all state agencies requiring each agency to withhold payment of any state financial assistance to the local government entity pending receipt of the required filing fee plus the late payment penalty.

(5) remains the same.

AUTH: 2-7-504, 2-7-517, MCA

IMP: 2-7-504, 2-7-517, MCA

2.4.405 AUDIT AND AUDIT REPORTING STANDARDS (1) All audits performed under 2-7-503, MCA, must be conducted in accordance with Government Auditing Standards, issued by the Comptroller General of the United States (see ARM 2.4.411~~(3)~~), that are applicable to financial audits. ~~These~~ These standards incorporate generally accepted auditing standards as adopted by the American Institute of Certified Public Accountants.

(2) Audits must conform to the requirements of the Federal Single Audit Act of 1984 as amended by the Single Audit Act Amendments of 1996 (P.L. 104-156) and the OMB Circular A-133 (see ARM 2.4.411~~(4)~~).

(3) All audit reports shall comply with the reporting standards for financial audits prescribed in Government Auditing Standards as established by the Comptroller General of the United States, which incorporate the standards of reporting for financial audits prescribed by the American Institute of Certified Public Accountants (see ARM 2.4.411~~(3)~~).

(4) For audits conducted under the provisions of the OMB Circular A-133, the audit reports must comply with the reporting requirements of that circular (see ARM 2.4.411~~(4)~~).

AUTH: 2-7-504, 2-7-505, 2-7-513, MCA

IMP: 2-7-504, 2-7-505, 2-7-513, MCA

2.4.406 ROSTER OF INDEPENDENT AUDITORS AUTHORIZED TO CONDUCT AUDITS OF LOCAL GOVERNMENT ENTITIES (1) Local government entity audits conducted under the provisions of Title 2, chapter 7, part 5, MCA, must be conducted by an independent auditor as defined by 2-7-501~~(6)~~, MCA. For purposes of this requirement, an "independent auditor" is:

(a) a federal, state, or local government auditor who meets the standards specified in Government Auditing Standards as established by the Comptroller General of the United States; or

(b) a licensed accountant who meets the standards specified in Government Auditing Standards as established by the Comptroller General of the United States (see ARM 2.4.411~~(3)~~).

(2) remains the same.

(3) In order to be placed on the roster, independent auditors must complete an application form prescribed by the department and meet the criteria set out in this section rule.

(4) through (6) remain the same.

(7) If an independent auditor is removed by the department from the roster as provided in (6) ~~above~~, the independent auditor must complete the application form prescribed by the department, meet the eligibility requirements set out in (5) ~~above~~, and pay the fee specified in (10) ~~below~~ in order to again be placed on the roster.

(8) and (9) remain the same.

(10) At the time of original application to the department for placement on the roster, and at the time the annual renewal form is submitted to the department, each independent auditor, including each office, shall pay to the department a fee of ~~\$50.00~~ 100.

(11) and (12) remain the same.

(13) Upon termination of a contract for a local government entity audit, if the local government entity fails to present a signed contract to the department for approval with the 90-day period in (12) ~~above~~, the department will designate an independent auditor to perform the audit as provided by 2-7-506~~(5)~~, MCA.

AUTH: 2-7-504, 2-7-506, MCA

IMP: 2-7-504, 2-7-506, MCA

2.4.407 CRITERIA FOR THE SELECTION OF THE INDEPENDENT AUDITOR (1) remains the same.

(2) The department may require the local government entity to demonstrate that the independent auditor selected is qualified to conduct the audit based on an evaluation of:

(a) the criteria established in (1) ~~above~~;

(b) and (c) remain the same.

AUTH: 2-7-506, MCA

IMP: 2-7-506, MCA

2.4.408 AUDIT CONTRACTS (1) As provided by 2-7-506~~(3)~~, MCA, an audit of a local government entity by an independent auditor must be pursuant to a contract entered into by the governing body or managing or executive officer of the local government and the independent auditor.

(2) through (5) remain the same.

AUTH: 2-7-506, MCA

IMP: 2-7-506, MCA

2.4.409 ACTIONS BY LOCAL GOVERNMENT ENTITY GOVERNING BODIES TO RESOLVE OR CORRECT AUDIT FINDINGS AND PENALTY FOR FAILURE TO DO SO (1) through (11) remain the same.

(12) If the department does not receive an acceptable response or corrective action plan within 30 days, it can request, pursuant to 2-7-515~~(3)~~, MCA, that state

agencies withhold payments of financial assistance from the local government entity pending receipt of an acceptable response or corrective action plan. The department, after consultation with the appropriate state agency or agencies, may designate the financial assistance payments to be withheld.

(13) and (14) remain the same.

AUTH: 2-7-515, MCA

IMP: 2-7-515, MCA

2.4.410 REVIEW OF FINANCIAL STATEMENTS (1) As provided by 2-7-503(3)(b), MCA, the governing body or managing or executive officer of a local government entity that is not required to have an audit based on the criteria established in 2-7-503(3)(a), MCA, shall at least once every four years, if directed by the department, or, in the case of a school district or associated cooperative, if directed by the department at the request of the Superintendent of Public Instruction, cause a financial review to be conducted of the financial statements of the entity for the preceding fiscal year.

(2) A "financial review" is defined as an agreed-upon procedures engagement in which ~~the~~ an independent auditor is engaged to issue a report of findings based on specific procedures performed on subject matter in accordance with standards established by the American Institute of Certified Public Accountants [(see ARM 2.4.411(5))]. The procedures to be performed during the financial review of a specific type of local government entity are prescribed by the department and are specified in the contract referred to in (4).

(3) Financial reviews of a local government entity conducted at the direction of the department must be performed by an independent auditor, as defined by 2-7-501(6), MCA, who is on the department's roster of independent auditors authorized to conduct audits of local government entities.

(4) and (5) remain the same.

(6) A fee of \$75 will be charged to each entity required to have a financial review. Entities required to have a financial review will be notified in writing and the fee is due 60 days from the date of the department's letter notifying the entity of the financial review requirement.

~~(6) (7)~~ The provisions of 2-7-517(2), MCA, regarding the penalty for failing to pay an audit fee ~~applies~~ apply to the failure to pay a financial review fee.

~~(7) (8)~~ Reports on financial reviews must be prepared in accordance with reporting standards established by the American Institute of Certified Public Accountants for agreed-upon procedures engagements [(see ARM 2.4.411)], and in addition must include any schedules specified in the contract referred to in (4).

(8) through (10) remain the same, but are renumbered (9) through (11).

AUTH: 2-7-503, 2-7-504, MCA

IMP: 2-7-503, 2-7-504, MCA

2.4.411 INCORPORATION BY REFERENCE OF VARIOUS STANDARDS, ACCOUNTING POLICIES, AND FEDERAL LAWS AND REGULATIONS (1) The department ~~hereby~~ adopts and incorporates by this reference the Codification of

Governmental Accounting and Financial Reporting Standards adopted by the Governmental Accounting Standards Board as required standards for counties, cities, and towns, as provided by ARM 2.4.401.

(a) The standards incorporated by reference in (1), ~~above~~, contain the generally accepted accounting principles to be followed by state and local governments and the financial reporting requirements to be utilized by those governments.

(b) The Codification of Governmental Accounting and Financial Reporting Standards adopted by reference in (1), ~~above~~, may be obtained from the Governmental Accounting Standards Board, P.O. Box 5116, Norwalk, CT 06856-5116.

(2) The department ~~hereby~~ adopts and incorporates by reference the chart of accounts prescribed by the department in the Budgetary, Accounting and Reporting System for Montana Cities, Towns and Counties for use by counties, cities, and towns, as provided by ARM 2.4.401.

(a) and (b) remain the same.

(3) The department ~~hereby~~ adopts and incorporates by ~~this~~ reference the Government Auditing Standards established by the Comptroller General of the United States for financial audits as required standards for independent auditors in conducting audits of local government entities, as provided by ARM 2.4.405.

(a) and (b) remain the same.

(4) The department ~~hereby~~ adopts and incorporates by ~~this~~ reference the Federal Single Audit Act of 1984 as amended by the Single Audit Act Amendments of 1996 (P.L. 104-156) and the OMB Circular A-133, "Audits of States, Local Governments and Non-Profit Organizations," as requirements to which local government audits must conform, as provided by ARM 2.4.405.

(a) The Federal Single Audit Act of 1984 as amended by the Single Audit Act Amendments of 1996 and the OMB Circular A-133 ~~incorporated by reference in (4)~~ relate to the following:

(i) through (xiv) remain the same.

(b) The Federal Single Audit Act of 1984 as amended by the Single Audit Act Amendments of 1996 ~~adopted by reference in (4)~~ is codified as chapter 75 of Title 31 of the United States Code. The code is available at many public libraries and at law offices, and can be accessed at the following web site address:

<http://www.access.gpo.gov/uscode/uscmain.html>

http://www.access.gpo.gov/uscode/title31/subtitlev_chapter75_.html.

(c) The circular ~~adopted by reference in (4)~~ is available from the Federal Office of Management and Budget. A hard copy can be obtained by calling (202) 395-3080. It can also be accessed at the following web site address:

<http://www.whitehouse.gov/omb/circulars/a133/a133.html>.

(5) The department ~~hereby~~ adopts and incorporates by ~~this~~ reference the standards established by the American Institute of Certified Public Accountants for agreed-upon procedures engagements under which financial reviews of local government entities must be conducted, as provided by ARM 2.4.410.

(a) The These standards ~~adopted by reference in (5)~~ contain standards regarding the:

(i) through (vi) remain the same.

(b) The standards for agreed-upon procedures engagements incorporated by reference in (5) are contained in Section 201 of the Codification of Statements on Standards for Attestation Engagements, which may be obtained from the American Institute of Certified Public Accountants by calling (888) 777-7077 or at the following web site address: ~~CPA2BIZ, Order Department, P.O. Box 2209, Jersey City, NJ 07311-2209~~ <https://www.cpa2biz.com>.

AUTH: 2-7-503, 2-7-504, 2-7-505, 2-7-506, MCA
IMP: 2-7-503, 2-7-504, 2-7-505, 2-7-506, MCA

REASON:

The rule amendments eliminate the section references, e.g., ARM 2.4.411(4) as these are not necessary to locate the referenced information.

The rule amendments eliminate redundant and unnecessary verbiage and update addresses, phone numbers, and URLs.

The proposed amendment to the fee schedule in ARM 2.4.402 provides for an increase in the report filing fees. The fees are set based on the requirements in 2-7-514, MCA. That section requires that the fees must be based upon the costs incurred by the department in the administration of Title 2, chapter 7, part 5, MCA, and upon local government entities' revenue amounts. The department has experienced an increase in program costs and anticipates a negative working capital balance in the Audit Review Section at the end of fiscal year 2009 under the current fee structure. As a result, an increase in report filing fees is required to meet the provisions of 2-7-514, MCA. The proposed amendment also specifies an effective date for the increased fee schedule.

The amendment also reflects the passage of HB 487 which raised the revenue threshold for requiring an annual audit from \$200,000 to \$500,000 which will be effective for June 30, 2008, annual financial reports.

The proposed amendment to ARM 2.4.406 provides for an increase in the roster fee. The roster fee is provided for by 2-7-506, MCA. The fee has remained the same since inception in 1991.

As required by 2-7-503, MCA fees for financial reviews must be charged based upon the costs incurred by the department in relation to the financial review. The proposed amendment to ARM 2.4.410 establishes a fee for financial reviews to comply with this requirement.

It is estimated that the approximately 500 entities will be affected by the change in the audit report filing fees, which will generate an estimated \$45,000 in annual revenue. The increase in the roster fee will affect approximately 55 entities and generate approximately \$2,750 in annual revenues. The fee for financial review is expected to affect approximately 50 entities and generate approximately \$3,750 in annual revenues.

4. Concerned persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Kay Gray, Bureau Chief, Local Government Services Bureau, P.O. Box 200547, Helena, Montana 59620-0547; faxed to the office at (406) 841-2910; e-mailed to kaygray@mt.gov, and must be received no later than June 7, 2007.

5. Kay Gray, Bureau Chief, Local Government Services Bureau, has been designated to preside over and conduct the hearing.

6. The Local Government Services Bureau maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this division. Persons who wish to have their name added to the mailing list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding division rulemaking actions. Such written requests may be mailed or delivered to Heather Voeller, Local Government Services Bureau, 301 South Park Avenue – Room 340, P.O. Box 200547, Helena, Montana 59620-0547; faxed to the office at (406) 841-2910; e-mailed to hvoeller@mt.gov, or may be made by completing a request form at any rules hearing held by the department.

7. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled.

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

BY: /s/ David L. Ohler
David L. Ohler, Rule Reviewer
Department of Administration

Certified to the Secretary of State April 30, 2007.

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

In the matter of the amendment of ARM) NOTICE OF PUBLIC HEARING ON
12.6.2203, 12.6.2205, 12.6.2210, and) PROPOSED AMENDMENT
12.6.2215 pertaining to exotic species)

TO: All Concerned Persons

1. On May 30, 2007, the Fish, Wildlife, and Parks Commission (commission) will hold a public hearing at the Department of Fish, Wildlife, and Parks, 1420 East Sixth Avenue, Helena, Montana to consider the amendment of the above-stated rules.

2. The commission will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the commission no later than 5:00 p.m. on May 17, 2007, to advise us of the nature of the accommodation that you need. Please contact Eileen Ryce, P.O. Box 200701, Helena, Montana 59620-0701; telephone (406) 444-2448; fax (406) 444-4952; or e-mail FWPExotics@mt.gov.

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

12.6.2203 REQUIREMENTS FOR CARE AND HOUSING OF EXOTIC WILDLIFE HELD IN CAPTIVITY (1) remains the same.

(2) Specific conditions for the housing of exotic wildlife may be required by the department. Requirements for ~~mammals~~ will be consistent with those under 9 CFR, Ch. 1, Part 3 "Standards for Humane Handling, Care, Treatment and Transportation:" and consistent with ARM 12.6.1302.

(3) and (4) remain the same.

AUTH: 87-5-702, 87-5-704, 87-5-705, 87-5-712, MCA

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

12.6.2205 EXOTIC WILDLIFE: LIST OF NONCONTROLLED SPECIES

(1) The following mammals are classified as noncontrolled species:

(a) African pygmy hedgehog - *Atelerix albiventris* and *Atelerix algirus*;

~~(b)~~ (g) Wallaby (Bennets) - *Macropus rufogriseus*; and

~~(c)~~ (h) Wallaby (Tammars) - *Macropus eugenii*;

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

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

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

~~(g)~~ (c) Jungle cat - *Felis chaus*; and

~~(h)~~ (b) Degu (bush-tailed rat) - *Octodon degus*;

(2) The following amphibians are classified as noncontrolled species:

- (a) Hyperoliidae family; and
- (b) Leptodactylidae family.
- (3) The following arachnids are classified as noncontrolled species:
 - (a) Emperor scorpion - *Pandinus imperator*, and
 - (b) Tanzanian redclaw scorpion - *Pandinus cavimanus*.

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

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

12.6.2210 CONTROLLED SPECIES PERMITS (1) The department may authorize a permit for to possession possess sale, purchase, or exchange of a controlled species in Montana. The department may also authorize a permit to sell, purchase, breed, or exchange a controlled species in Montana. A controlled species permit must require the permittee:

- (a) to provide annual reports on forms provided by the department, unless the department has given written authorization for a different format concerning births, deaths, sales, and purchases of any controlled species;
- (b) to provide a viable bio-security plan to control the spread of disease and an emergency response plan to protect emergency personnel and the species involved;
- (c) to report the escape of any controlled species to the department within 24 hours of the escape and accept responsibility and liability for recapture costs;
- (d) to report any injuries to humans inflicted by the controlled species to local public health officials within 24 hours of infliction of the injury;
- (e) to report injuries inflicted by the exotic species on domestic animals to the Department of Livestock within 24 hours of infliction of the injury; and
- (f) to report injuries inflicted by the exotic species on Montana wildlife to the department within 24 hours of infliction of the injury.

(a) The department shall assess a fee of \$25 to obtain or renew a permit to possess a controlled species. The permit must be renewed annually. Renewal is contingent upon submission of the annual fee plus submission of any required reporting of current inventory and any changes to inventory during the preceding year; and

(b) the department shall assess a fee of \$100 to obtain or renew a permit to sell, breed, or exchange a controlled species. The permit must be renewed annually. Renewal is contingent upon submission of the annual fee plus submission of any required annual reporting of current inventory and any changes to the inventory during the preceding year.

(2) A controlled species permit must require the permittee:

- (a) to provide annual reports on forms provided by the department, unless the department has given written authorization for a different format concerning births, deaths, sales, and purchases of any controlled species;
- (b) to provide a viable bio-security plan to control the spread of disease and an emergency response plan to protect emergency personnel and the species involved;
- (c) to report the escape of any controlled species to the department within 24 hours of the escape and accept responsibility and liability for recapture costs;

(d) to report any injuries to humans inflicted by the controlled species to local public health officials within 24 hours of infliction of the injury;

(e) to report injuries inflicted by the exotic species on domestic animals to the Department of Livestock within 24 hours of infliction of the injury; and

(f) to report injuries inflicted by the exotic species on Montana wildlife to the department within 24 hours of infliction of the injury.

~~(2)~~(3) The department may require additional conditions on a permit to protect Montana's native wildlife and plant species, livestock, horticultural, forestry, agricultural production, and human health and safety. Permit conditions may include, but are not limited to, individual identification of animals. A person must comply with all permit conditions in order to receive or retain a permit. The department may suspend or cancel a permit if the permittee violates or fails to comply with a permit condition or is convicted of violating a federal or state law, or county or city ordinance associated with possession of the exotic wildlife species.

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

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

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

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

AUTH: 87-5-702, 87-5-704, 87-5-705, 87-5-712, MCA

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

12.6.2215 LIST OF PROHIBITED SPECIES (1) and (2) remain the same.

(3) The following fish are classified as prohibited species:

(a) Bighead carp - *Hypophthalmichthys nobilis*;

(b) remains the same.

(c) Eurasian Ruffe - *Gymnocephalus cernuus*;

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

(e) Round goby - *Neogobius melanostomus*;

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

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

~~(f)~~ (j) Zander (European pikeperch) - *Sander lucioperca*; and

~~(g)~~ (h) Walking catfish - *Clarias batrachus*;

(i) White perch - *Morone Americana*; and

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

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

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

~~(c)~~ (i) Virginia opossum - *Didelphis virginiana*;

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

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

~~(f)~~ (c) Primates in the family Cebidae (new world primates);

(d) primates in the family Cercopithecidae (old world monkeys);

(e) primates in the family Hylobatidae (gibbons);

(f) primates in the family Pongidae (apes);

(5) The following mollusks are classified as prohibited species:

(a) New Zealand mudsnail - *Potamopyrgus antipodarum*; and

(b) Quagga mussel - *Dreissena bugensis*; and

- (b) remains the same but is renumbered (c).
- (6) The following reptiles are classified as prohibited:
 - (a) African rock python - *Python sebae*;
 - (b) Alligatoridae family;
 - (c) Amethystine python - *Morelia amethystina*;
 - (h) Crocodylidae family;
 - (i) Green Anaconda - *Eunectes marinus*;
 - (j) Indian python (including the Burmese python) - *Python molurus*;
 - (a) remains the same but is renumbered (d).
 - (b) remains the same but is renumbered (e).
 - (c) remains the same but is renumbered (f).
 - (d) remains the same but is renumbered (g).
 - (e) remains the same but is renumbered (k).
 - (f)(l) Mambas (all species in family Elapidae); and
 - (g)(m) Pit vipers and true vipers (all species in family Viperidae except species indigenous to Montana); and
 - (n) Reticulated python - *Python reticulatus*.

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

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

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

The function of the committee created by SB 442 is to recommend classification of individual exotic animal species to the commission. The committee may recommend that a species be classified as noncontrolled, controlled, or prohibited for importation, possession, and sale. If the commission approves the committee's recommendations, the commission begins administrative rulemaking to incorporate the recommendations into these classification lists: noncontrolled species, controlled species, and prohibited species.

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

The committee recommended the addition of two species and two families of exotic wildlife to the list of noncontrolled species. These additions made revisions to ARM 12.6.2205 necessary. After evaluating these species and finding that potential impacts of private ownership would be minimal, the committee recommended classification of these species as noncontrolled.

Revisions to ARM 12.6.2210 provide for fees associated with controlled species permits. The committee recommended that a \$25 fee be required for a controlled species permit when breeding and/or sale of the controlled species will not occur. When breeding and/or sale is intended the required fee has been recommended to be \$100. The recommended fees are intended to cover the administrative costs of issuing permits, reviewing permit applications and annual reports, and supplying report forms. The fee associated with the breeding and/or sale of exotic wildlife is higher because of the increased costs associated in administering those permits.

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

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 Beth Giddings, P.O. Box 200701, Helena, Montana 59620-0701; or e-mailed to FWPExotics@mt.gov and must be received no later than June 7, 2007.

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

7. 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 which includes the name and mailing address of the person to receive the notice and specifies the subject or subjects about which the person wishes to receive notice. Such written request may be mailed or delivered to Fish, Wildlife and Parks, Legal Unit, P.O. Box 200701, 1420 East Sixth Avenue, Helena, MT 59620-0701, faxed to the office at (406) 444-7456, or may be made by completing the request form at any rules hearing held by the department.

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

/s/ Steve Doherty
Steve Doherty
Chairman, Fish, Wildlife and
Parks Commission

/s/ Bill Schenk
Bill Schenk
Rule Reviewer

Certified to the Secretary of State April 30, 2007

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

In the matter of the amendment of) NOTICE OF PROPOSED
ARM 12.3.185 pertaining to adding) AMENDMENT
three new species to the annual)
lottery of hunting licenses) NO PUBLIC HEARING
) CONTEMPLATED

TO: All Concerned Persons

1. On June 14, 2007, the Fish, Wildlife, and Parks Commission (commission) proposes to amend the above-stated rule.

2. The commission will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, please contact the commission no later than May 18, 2007, to advise us of the nature of the accommodation that you need. Please contact Hank Worsch, Fish, Wildlife, and Parks, P.O. Box 200701, Helena, MT 59620-0701; telephone (406) 444-2663; fax (406) 444-3707; e-mail hworsch@mt.gov.

3. The proposed amendment provides as follows, stricken matter interlined, new matter underlined:

12.3.185 SUPER-TAG HUNTING LICENSES (1) The department will issue one deer, one elk, one Shiras moose, one mountain sheep, ~~and~~ one mountain goat, one wild buffalo or bison, one antelope, and one mountain lion hunting license each year through a lottery. These hunting licenses are known as "super-tags."

(2) through (7) remain the same.

AUTH: 87-1-271, 87-1-301, MCA

IMP: 87-1-271, MCA

4. The rule amendment is being proposed to implement SB 44 passed in the 2007 legislative session. This legislation allows the commission to add three species to the super-tag lottery. Under SB 44, the Department of Fish, Wildlife, and Parks may sell through lottery one each of the following licenses: antelope, bison (wild buffalo), and mountain lion. These super-tag licenses are in addition to the super-tag licenses already sold through lottery and allowed under HB 235 in the 2005 legislative session. HB 235 was presented to the 2005 legislature as a recommendation from the Private Lands Public Wildlife Council (PLPWC) to create additional funding for the hunting access enhancement program and law enforcement.

The recommendation to add one antelope, one bison, and one mountain lion license to the annual super-tag lottery also came from the PLPWC. The purpose of adding

the species was to create additional funding for the hunting access enhancement program. All proceeds from the annual lottery of these hunting licenses are dedicated to hunting access enhancement and law enforcement. It is necessary to amend ARM 12.3.185 to make the rule consistent with statute and carry out legislative intent.

5. Concerned persons may submit their data, views, or arguments concerning the proposed amendment in writing to Hank Warsech, License Bureau Chief, P.O. Box 200701, Helena, MT 59620-0701, or e-mail them to hwarsech@mt.gov. Any comments must be received no later than June 8, 2007.

6. If persons who are directly affected by the proposed amendment wish to express their data, views, and arguments orally or in writing at a public hearing, they must make written request for and submit this request along with any written comments they have to Hank Warsech, License Bureau Chief, P.O. Box 200701, Helena, MT 59620-0701, or e-mail them to hwarsech@mt.gov. A written request for a hearing must be received no later than June 8, 2007.

7. If the commission receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action; from the appropriate administrative rule review committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 649 based on the number of super-tags sold in 2006.

8. The department maintains a list of interested persons who wish to receive notice of rulemaking actions proposed by this department or commission. Persons who wish to have their name added to the list shall make written request which 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, apply and have been fulfilled.

/s/ Steve Doherty
Steve Doherty, Chairman
Fish, Wildlife and Parks
Commission

/s/ Rebecca Dockter
Rebecca Dockter
Rule Reviewer

Certified to the Secretary of State April 30, 2007

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

| | | |
|---|---|--------------------------|
| In the matter of the proposed |) | NOTICE OF PUBLIC HEARING |
| amendment of 23.16.209, 23.16.401, |) | ON PROPOSED AMENDMENT |
| 23.16.406, 23.16.410, 23.16.1101, |) | |
| 23.16.1224, 23.16.1225, 23.16.1231, |) | |
| and 23.16.3103 concerning display of |) | |
| antique illegal gambling devices, dealer |) | |
| license application process, temporary |) | |
| dealer licenses, possession of dealer |) | |
| license, card game tournament rules, |) | |
| card dealer restrictions, house player |) | |
| restrictions, rake restrictions, and casino |) | |
| night requirements |) | |

TO: All Concerned Persons

1. On May 31, 2007, at 9:00 a.m., the Montana Department of Justice will hold a public hearing in the conference room at the Gambling Control Division, 2550 Prospect Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Justice will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m. on May 25, 2007, to advise us of the nature of the accommodation that you need. Please contact Rick Ask, Gambling Control Division, 2550 Prospect Avenue, P.O. Box 201424, Helena, MT 59620-1424; (406) 444-1971; Fax (406) 444-9157; Montana Relay Service 711; or e-mail rask@mt.gov.

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

23.16.209 DISPLAY OF ILLEGAL GAMBLING DEVICES AND ANTIQUE SLOT MACHINES ILLEGAL GAMBLING DEVICES (1) If an illegal gambling device as defined in 23-5-112, MCA, ~~or an antique slot machine~~ is displayed in a public place other than a museum, it must be:

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

(2) A licensed gambling operator shall notify the department in writing before displaying an illegal gambling device or an antique illegal gambling device on his the licensed premises.

(3) Except as provided in (4), public display of an antique illegal gambling device must comply with the requirements of (1).

(4) An antique illegal gambling device, as defined in 23-5-153, MCA, may be:

(a) displayed only and not operated in a public or private museum;

(b) possessed and operated for private use only in a private residential dwelling; or

(c) displayed only and not operated in a retail business establishment if the device is being offered for resale.

AUTH: 23-5-115, MCA
IMP: 23-5-152, 23-5-153, MCA

RATIONALE AND JUSTIFICATION: These proposed amendments generally conform the rule to the requirements of SB 540 which authorizes the possession and display of antique illegal gambling devices under circumstances similar to the prior law relating to possession and display of antique slot machines. The proposed amendment to (2) requires licensed gambling operators to notify the department prior to displaying either illegal gambling devices or antique illegal gambling devices on the licensed premises. New sections (3) and (4) are proposed to clarify the manner and means by which antique illegal gambling devices, as distinguished from nonantique illegal gambling devices, may be lawfully possessed and displayed, in compliance with SB 540.

23.16.401 APPLICATION FOR DEALER LICENSE (1) ~~The application for a dealer license must contain a temporary dealer license form which, when accompanied by a receipt for certified mail, will serve as a temporary dealer license pending the issuance of an annual dealer license.~~

~~(2) Applications for dealer licenses are available only at driver examination stations from a local gambling control office, local motor vehicle division office, or other public location designated by the department. At the time an application for a dealer license is obtained by an applicant, the~~ An applicant for a dealer license must appear in person and present photographic verifications of his identity to an authorized representative of the driver services bureau Motor Vehicle Division. The authorized representative of the driver services bureau Motor Vehicle Division must:

~~(a) record the verified identity of the applicant on the temporary dealer license form portion of the application and sign and date said form;~~

~~(b) assign an identification number to the applicant and record this number in the proper locations on the application;~~

~~(c) obtain a photograph of the applicant utilizing the assigned identification number in a manner which will identify the applicant for future issuance of an annual dealer license as described by these rules; and~~

~~(d) receive a complete set of fingerprints, on a form (Form FD-258) provided by the department, obtained and certified by a local law enforcement agency, the department or a private security company approved by the department for each person required to complete a personal history statement.~~

(b) provide a card dealer application packet which shall include:

(i) Form 4, Montana card dealer application;

(ii) duplicate Forms FD-258 for two sets of fingerprints to be obtained and certified by a local law enforcement agency; and

(iii) Forms 1 and 10 for personal history statements.

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

~~(4)~~(3) The application for a dealer license is incorporated in these rules by reference as Forms 4 and FD-258, as those forms read on ~~December 1, 2005~~ June 22, 2007, and are available from the Gambling Control Division, 2550 Prospect Ave., P.O. Box 201424, Helena, MT 59620-1424.

AUTH: 23-5-115, MCA
IMP: 16-4-414, 23-5-308, MCA

RATIONALE AND JUSTIFICATION: The proposed amendment to (1) deletes the current method of obtaining a temporary card dealer license directly from the license application form. To conform the rule to HB 190, the new process to obtain a temporary card dealer license is detailed in ARM 23.16.406. The proposed amendment also allows card dealer license application packets to be obtained from a Gambling Division field office or a Motor Vehicle Division representative. The proposed amendment corrects reference to Motor Vehicle Division from previously named Driver Services Bureau. Amendment to (3) is to reference current license application and fingerprint forms.

23.16.406 TEMPORARY DEALER LICENSE (1) A temporary dealer license application packet may be obtained by an applicant pursuant to these rules is valid only when attached to a receipt for certified mail which has been postmarked by the United States postal service at the time the application for dealer license is sent to the department from a local gambling control office, local Motor Vehicle Division office, or other public location designated by the department.

(2) An applicant for a temporary dealer license must first appear in person before an authorized representative of the Motor Vehicle Division and present photographic verification of applicant's identity. The authorized representative of the Motor Vehicle Division must obtain a photograph of the applicant.

(3) The applicant must then appear in person and submit to an investigator for the department:

(a) a completed application;

(b) payment of a first year license fee and fingerprint processing fees;

(c) valid photo identification and social security card or birth certificate;

(d) two complete sets of fingerprints obtained from and certified by a local law enforcement agency, the department, or a private security company approved by the department; and

(e) verifiable evidence that the applicant has an offer of employment as a card dealer, or a reasonable prospect for employment as a card dealer, and that such employment is expected to commence within 14 days of making application.

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

AUTH: 23-5-115, MCA
IMP: 23-5-308, MCA

RATIONALE AND JUSTIFICATION: To conform the rule to HB 190, the proposed amendment to (1) deletes the current method of obtaining a temporary card dealer license directly from the license application form. The department is given authority

to adopt rules to implement temporary licensing of card dealers. Consistent with HB 190, these rules provide that temporary licenses may be obtained from a gambling division field office, or other public location designated by the department. Additionally, new section (2) is amended to provide that the applicant for a temporary license must have a photo taken by a motor vehicle representative. The proposed amendment to new section (3) requires the applicant to appear before a gambling investigator with a completed application, the necessary fees, identification, completed fingerprint cards, and verifiable evidence that the applicant has a reasonable prospect for employment within 14 days of making application.

23.16.410 POSSESSION OF DEALER LICENSE (1) remains the same.

(2) Every person in possession of a dealer license must ~~surrender~~ produce upon request such license ~~to for any player or peace officer of the State of Montana upon request~~ for the purpose of inspecting said license and identifying the licensee.

AUTH: 23-5-115, MCA
IMP: 23-5-308, MCA

RATIONALE AND JUSTIFICATION: The proposed amendment to (2) is intended to require a person in possession of a card dealer license to produce the license whenever requested by a player or peace officer for purposes of inspection of the license or identification of the licensee.

23.16.1101 CARD GAME TOURNAMENTS (1) Card game tournaments which involve consideration in order to play and the chance of winning something of value are gambling activities. Publicly played card game tournaments involving gambling activity are limited to the card games known as ~~bridge, cribbage, hearts, panguingue and, pinochle, pitch, poker, rummy, solo, and whist~~ as described by ARM 23.16.1202.

(2) through (4) remain the same.

~~(5)(a) In a card game tournament involving card games other than panguingue or poker, a licensed dealer is not required to personally conduct the games. However, a designated person must be present on the premises to oversee the conduct of the games and settle disputes.~~

~~(b) In a card game tournament involving poker or panguingue, each card game must be conducted by a licensed dealer as required in 23-5-309, MCA. In addition, a designated person, who may be one of the licensed dealers, must be present on the premises to oversee the conduct of the games and settle disputes.~~

(6) remains the same.

(7) Under no circumstances may the total amount paid by an individual, including entry and reentry fees, exceed \$2,500 for tournament play.

(8) A card game tournament permitted under these rules may be part of a progressive card game tournament in which the ultimate prize is not awarded until completion of the final round of the progressive tournament.

(a) The tournament must be publicly identified as being part of a progressive tournament prior to initiation of the tournament.

(b) Each location that participates in the progressive tournament must obtain a card game tournament permit.

(c) If the tournament is part of a progressive tournament, prize(s) may include the right to participate in the higher level of tournament play, so long as the value of the higher level tournament is equal to the value of the expected top prize in the tournament.

(7) through (9) remain the same but are renumbered (9) through (11).

(12) For any card game tournament that is represented as a charitable tournament, no less than 50% of the total of all entry and reentry fees must be paid to charitable, educational, or recreational nonprofit organization(s).

(13) For each card game tournament, the location operator shall maintain for a period of 12 months and must provide to the department upon request a record of all entry fees and reentry fees paid by each participant. In addition, if the tournament was represented as a charitable tournament, the location operator shall also maintain for a period of 12 months, and provide to the department upon request, a record of the distribution of the tournament proceeds.

(14) No card game tournament may be part of a casino night.

(10) remains the same but is renumbered (15).

AUTH: 23-5-115, MCA

IMP: 23-5-115, 23-5-311, 23-5-317, MCA

RATIONALE AND JUSTIFICATION: The proposed amendments to (1) and (5) reflect statutory changes in HB 190 which provides that a permit for social card games is no longer required. The proposed amendment to new section (7) also reflects statutory changes in HB 190 which limits the maximum amount of money a person may pay for entry fees and reentry fees to participate in a card game tournament. Proposed amendments to new section (8) conform the rule to changes in HB 190 which makes clear that card game tournaments may be part of a progressive tournament where the ultimate winner is not known until completion of the final level tournament. The proposed amendment also requires that if the tournament is to be part of a progressive tournament, it must be so identified prior to start of the tournament, and clarified that the prize in a progressive tournament may be the right to participate in the higher level of tournament play, but that the value of that right must be equal to what would be the value of the top prize in the tournament. Proposed new section (12) implements HB 190 by requiring a minimum of 50% of entrance fees from charitable tournaments be paid to charities. The proposed amendments in new section (13) require maintenance of entrance fee records for card game tournaments, and records of the distribution of entrance fees to the charitable organizations. The proposed amendment in new section (14) clarifies that casino nights may not include card game tournaments.

23.16.1224 DEALER RESTRICTIONS (1) In authorized card games using licensed dealers, licensed dealers shall have no financial interest, directly or indirectly, in the outcome of any game which they deal.

(2) Except as provided in (3), card dealers shall receive no share of the rake and must be employees of the licensed operator or card room contractor.

(3) This rule does not prevent licensed operators or card room contractors who are licensed dealers from dealing their own games or receiving a share of the rake.

AUTH: 23-5-115, MCA
IMP: 23-5-311, 23-5-324, MCA

RATIONALE AND JUSTIFICATION: The proposed amendments of new section (2) and amendment of (3) serve to clarify that card dealers, unless they also have an ownership interest in the operator's license or the card room contractor's license, must be employees of the operator or card room contractor and may not share in, or have their wages or salary based on a percentage of the rake of a card game, since to do so constitutes an undisclosed and prohibited ownership interest in the license.

23.16.1225 HOUSE PLAYERS (1) and (2) remain the same.

AUTH: 23-5-115, 23-5-710, MCA
IMP: 23-5-311, 23-5-324, MCA

RATIONALE AND JUSTIFICATION: The proposed amendment reflects the express authorization in HB 190 for the department to implement rules for the regulation of house players, or skills.

23.16.1231 RAKE (1) through (3) remain the same.

(4) A card dealer who has no interest in the operator's license or card room contractor's license may not receive a share of a rake.

AUTH: 23-5-115, 23-5-313, MCA
IMP: 23-5-311, MCA

RATIONALE AND JUSTIFICATION: The proposed amendment to (4) clarifies that that card dealers may not share in the rake of a card game, because sharing the rake of a card game is prohibited as an undisclosed ownership interest in the license.

23.16.3103 GENERAL REQUIREMENTS (1) through (1)(i) remain the same.

(j) No card game tournament may be part of a casino night.

(j) remains the same but is renumbered (k).

AUTH: 23-5-715, MCA
IMP: 23-5-702, 23-5-705, 23-5-706, 23-5-710, 23-5-711, MCA

RATIONALE AND JUSTIFICATION: The proposed amendment in new subsection (1)(j) clarifies that casino nights may not include card game tournaments.

4. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Rick Ask, Gambling Control Division, 2550 Prospect Avenue, P.O. Box 201424, Helena, MT 59620-1424; Fax (406) 444-9157; or e-mail rask@mt.gov, and must be received no later than June 7, 2007.

5. Cregg Coughlin, Assistant Attorney General, Gambling Control Division, has been designated to preside over and conduct the hearing.

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

7. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled.

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

/s/ Jon Ellingson
JON ELLINGSON
Rule Reviewer

Certified to the Secretary of State April 30, 2007.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
AND THE BOARD OF RESPIRATORY CARE PRACTITIONERS
STATE OF MONTANA

In the matter of the proposed amendment) NOTICE OF PUBLIC HEARING
of ARM 24.101.413 renewal dates and) ON PROPOSED AMENDMENT
requirements, 24.213.401 fee schedule,) AND REPEAL
24.213.402 application for licensure,)
24.213.412 renewals, 24.213.415 inactive)
status, 24.213.2101 continuing education)
requirements, 24.213.2107 traditional)
education by nonsponsored organizations,)
24.213.2121 waiver of continuing)
education requirement, and the proposed)
repeal of 24.213.405 temporary permit)

TO: All Concerned Persons

1. On June 5, 2007, at 10:00 a.m., a public hearing will be held in room 439, 301 South Park Avenue, Helena, Montana to consider the proposed amendment 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 Respiratory Care Practitioners (board) no later than 5:00 p.m., on June 1, 2007, to advise us of the nature of the accommodation that you need. Please contact Helena Lee, Board of Respiratory Care Practitioners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2385; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail dlibsdrpc@mt.gov.

3. GENERAL STATEMENT OF REASONABLE NECESSITY: The department and board are proposing to modify rules pertaining to renewal within one notice to reduce costs associated with rulemaking and to ensure the changes are more efficient and timely. In addition, consolidating the rule changes into one notice will avoid a conflict between department and board rules on renewal frequency.

The 2005 Montana Legislature enacted Chapter 467, Laws of 2005 (House Bill 182), an act revising and consolidating professional and occupational licensing laws and distinguishing between department and board or program duties regarding licensure, examination, and fees. The board is amending the rules throughout to update board processes and revise terminology in compliance with the 2005 statutory changes and to further implement the legislation.

The board is proposing amendments throughout that are technical in nature such as substituting modern language for archaic phrasing, updating grammar and language choices, eliminating repetitive language, and substituting gender neutral for gender specific terms. Authority and implementation cites are also being

amended throughout to accurately reflect all statutes implemented through the rule, to provide the complete sources of the board's rulemaking authority, and to delete references to repealed statutes. Where additional specific bases for a proposed action exist, the board will identify those reasons immediately following that rule.

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

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

| | | | | |
|------|--------------------------------|--------------------------------|--|-------|
| (ah) | Respiratory Care Practitioners | Respiratory Care Practitioners | Biennially, Even Numbered Years <u>Annually</u> | May 1 |
|------|--------------------------------|--------------------------------|--|-------|

(ai) through (7) remain the same.

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

REASON: The department determined that there is reasonable necessity to amend this rule to change the renewal frequency from biennially to annually to coincide with amendments to ARM 24.213.412, the board's renewal rule. Annual collection of license revenue complies with the Department of Administration's new fiscal guidelines regarding recording revenue. Entities that renew on a biennial schedule and receive their entire renewal revenue in one year must hold half of the revenue and record it in the second year of the renewal cycle in order to avoid budget shortfalls. Annual renewal will eliminate the need to defer half the revenue until the following year, thereby simplifying the accounting process.

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

24.213.401 FEE SCHEDULE (1) The following fees are hereby adopted:

- (a) and (b) remain the same.
- (c) Renewal fee (annual) 100
- ~~(d) Temporary permit~~ 50
- ~~(e)~~ (d) Inactive license fee 50 ~~30~~
- (f) remains the same but is renumbered (e).

AUTH: ~~37-1-131~~, 37-1-134, 37-28-104, MCA
IMP: 37-1-134, 37-1-141, 37-28-104, 37-28-202, MCA

REASON: The board determined it is reasonably necessary to amend the rule changing from a biennial to annual renewal cycle. Annual collection of license revenue complies with the Department of Administration's new fiscal guidelines regarding recording revenue. Boards that renew on a biennial schedule and receive

their entire renewal revenue in one year must hold half of the revenue and record it in the second year of the renewal cycle in order to avoid budget shortfalls. Annual renewal will eliminate the need to defer half the revenue until the following year, thereby simplifying the accounting process.

The board is proposing to delete the temporary permit fee to coincide with the repeal of ARM 24.213.405 in this notice. Following the repeal, the board will no longer issue temporary permits.

The board is also proposing to maintain the renewal fee of \$100 for the new annual renewal period. This \$50 increase will affect approximately 454 licensees and increase annual revenue by \$22,700. The board is also increasing the inactive license fee from \$30 to \$50. This \$20 increase will affect approximately 20 licensees and increase annual revenue by \$400. The fee increases are needed to avoid a budgetary shortfall and to maintain fees that are commensurate with program costs as required by 37-1-134, MCA.

24.213.402 APPLICATION FOR LICENSURE (1) An application for a license ~~or temporary practice permit~~ must be made on a form provided by the ~~board~~ department and completed and signed by the applicant ~~with the signature acknowledged before a notary public.~~

(2) through (8) remain the same.

AUTH: 37-1-131, 37-28-104, MCA

IMP: 37-1-101, 37-28-201, 37-28-202, MCA

REASON: The department has determined and the board agrees that the requirement for notarized applications is not necessary. In anticipation of and to further facilitate the online submission of applications, the board will no longer require notarization of applications. The board is deleting the language regarding temporary practice permits to coincide with the repeal of ARM 24.213.405.

24.213.412 RENEWALS (1) remains the same.

(2) Licenses must be renewed ~~every even numbered year~~ on or before the renewal date set by ARM 24.101.413.

(3) remains the same.

AUTH: 37-1-131, ~~37-1-141~~, 37-28-104, MCA

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

REASON: It is reasonably necessary to amend this rule to change renewal frequency from biennially to annually to coincide with ARM 24.101.413, the department renewal rule, and to comply with the Department of Administration's new fiscal guidelines regarding recording revenue.

24.213.415 INACTIVE STATUS (1) A licensee who wishes to retain a license but who will not be practicing respiratory care may obtain inactive status by indicating this intention on the ~~biennial~~ annual renewal form or by submission of an application and payment of the appropriate fee. An individual licensed on inactive

status may not practice respiratory care during the period in which ~~he or she~~ the licensee remains on inactive status.

(2) An individual licensed on inactive status may convert ~~his or her~~ this license to active status by submission of an appropriate application and payment of the renewal fee for the year in question. The application must contain evidence of one of the following:

(a) remains the same.

(b) completion of a minimum of ~~24~~ 12 continuing education units within ~~two years~~ one year prior to application for reinstatement.

(3) In no case may an individual remain on inactive status for more than ~~three~~ two years. Documentation of the continuing education that would have been submitted had the license been renewed in a timely manner shall be required.

AUTH: 37-1-131, 37-1-319, ~~37-1-141~~, 37-28-104, MCA

IMP: 37-1-131, 37-1-141, 37-1-319, MCA

REASON: It is reasonably necessary to amend this rule to comply with the board's change to annual renewal periods. The amendment will limit the permissible time on inactive status to two years to be consistent with the timeframe for license termination set forth in 37-1-141, MCA.

24.213.2101 CONTINUING EDUCATION REQUIREMENTS (1) Upon ~~biennial~~ renewal of licensure, each respiratory care practitioner must affirm on the renewal form in each even numbered year beginning in 2008 that ~~he/she has the licensee will have~~ completed 24 continuing education units in the preceding 24 months. One continuing education unit is equivalent to 50 minutes in length.

(2) It is the sole responsibility of each licensee to meet the continuing education requirement, and to provide documentation of ~~his/her~~ this compliance if so requested during a random audit. The random audit will be conducted on a biennial basis. ~~The board will not permit excess units to be carried over from one licensing renewal cycle to the next.~~

(3) A licensee who fails to obtain a sufficient number of continuing education units may satisfy the requirement by taking and passing the National Board of Respiratory Care entry level exam ~~certified respiratory therapy technician examination~~ or the registered respiratory therapy advanced practitioner examination during the preceding 24 months.

(4) through (6) remain the same.

(7) If documentation of the continuing education requirement is improper or inadequate, the respiratory care practitioner shall correct the deficiency. If the requirement is not completed within 90 days, the license shall be ~~revoked~~ expired and the renewal fee forfeited. Misrepresentation of compliance shall constitute grounds for disciplinary action.

AUTH: 37-1-131, 37-1-319, 37-28-104, MCA

IMP: 37-1-131, 37-1-141, 37-1-306, 37-1-319, 37-28-104, ~~37-28-203~~, MCA

REASON: The board determined it is reasonably necessary to amend this rule to align language with the board's shift to annual renewals and avoid confusion by clarifying that continuing education reporting will remain on a biennial basis beginning in 2008. The board does not permit the carryover of continuing education credits and is striking language regarding carryover as no longer necessary. The amendment also corrects reference to a 90-day nonrenewed license as expired rather than revoked. The board is updating the names of two examinations to the currently used titles.

24.213.2107 TRADITIONAL EDUCATION BY NONSPONSORED ORGANIZATIONS -- CATEGORY II (1) Continuing education activities which do not meet the definition of ARM 24.213.2104 may be submitted for review by the Montana Board of Respiratory Care Practitioners for prior approval.

(2) Approved activities in this category may include seminars, workshops, conferences, in-service programs, and correspondence courses accompanied by a study guide, syllabus, bibliography, and examination.

~~(3) All credit units derived from continuing education activities in this section must be attached to the renewal form. Documentation must include a statement of the activity, its title, name of instructor, the instructor's credentials and length of course.~~

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

AUTH: 37-1-131, 37-1-319, 37-28-104, MCA

IMP: 37-1-131, 37-1-306, 37-1-319, 37-28-104, 37-28-203, MCA

REASON: It is reasonably necessary to amend this rule to delete the requirement for licensees to submit proof of continuing education at renewal. The board audits licensees for documentation of meeting the requirement and this step is no longer necessary. Furthermore, elimination of this requirement will facilitate online renewal.

24.213.2121 WAIVER OF CONTINUING EDUCATION REQUIREMENT

(1) In the event of hardship such as a disabling illness or other personal emergency which substantially interferes with a licensee's ability to meet the minimum requirement of ~~12 credit~~ 24 continuing education units prior to the deadline, the board may approve a waiver of the continuing education requirement. There must be a written request submitted to the board by before the renewal next continuing education reporting date set by ARM 24.401.413. Such request for approval for a waiver shall be in writing and shall set forth the reasons why the licensee was unable to earn the minimum number of credit units required prior to the deadline.

AUTH: 37-1-131, 37-1-319, 37-28-104, MCA

IMP: 37-1-131, 37-1-306, 37-1-319, 37-28-104, MCA

REASON: The board determined it is reasonably necessary to amend this rule to align language with the requirement of biennial continuing education reporting and to correct from 12 to 24 the minimum number of continuing education units required.

The board has always required licensees obtain 24 credits over a two-year period and is amending the rule accordingly.

6. The rule proposed to be repealed is as follows:

24.213.405 TEMPORARY PERMIT found at ARM page 24-24524.

AUTH: 37-28-104, MCA

IMP: 37-1-305, 37-28-206, MCA

REASON: The board determined it reasonably necessary to repeal the rule for temporary permits. Graduates from accredited respiratory care programs take the National Board for Respiratory Care (NBRC) national exam as part of their graduation requirement; therefore, the need for the board to issue a temporary permit in order to give graduates an opportunity to schedule, take, and await exam results is not necessary. Additionally the exam is computerized and examinees know when they leave the test site if they passed or failed the exam.

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 Respiratory Care Practitioners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to dlibsdrpc@mt.gov, and must be received no later than 5:00 p.m., June 13, 2007.

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.respcare.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 and department maintain a list of interested persons who wish to receive notices of rulemaking actions proposed by this board and the department. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all Board of Respiratory Care Practitioners or department administrative rulemaking proceedings or other administrative proceedings. Such written request may be mailed or delivered to the Board of Respiratory Care Practitioners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2305, e-mailed to

dlibsdrpc@mt.gov, or made by completing a request form at any rules hearing held by the agency.

10. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was notified on April 16, 2007, by regular mail. For previous rule projects involving the same bill, the primary sponsor was given appropriate notice.

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

BOARD OF RESPIRATORY CARE
PRACTITIONERS
EILEEN CARNEY, BOARD CHAIRPERSON

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

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

DEPARTMENT OF LABOR AND INDUSTRY

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

Certified to the Secretary of State April 30, 2007

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

| | | |
|---------------------------------------|---|--------------------|
| In the matter of the amendment of ARM |) | NOTICE OF PROPOSED |
| 37.12.401 pertaining to laboratory |) | AMENDMENT |
| testing fees |) | |
| |) | NO PUBLIC HEARING |
| |) | CONTEMPLATED |

TO: All Interested Persons

1. On June 10, 2007, the Department of Public Health and Human Services proposes to amend the above-stated rule.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice. If you need to request an accommodation, contact the department no later than 5:00 p.m. on May 28, 2007, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, 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.

2. The rule as proposed to be amended provides as follows. Matter to be added is underlined. Matter to be deleted is interlined.

37.12.401 LABORATORY FEES FOR ANALYSES (1) Fees for clinical and environmental analyses performed by the laboratory of the Department of Public Health and Human Services are set to reflect the actual costs of the tests and services provided.

(2) The Department of Public Health and Human Services shall maintain a list of all tests available from the lab and the price of each test. The department adopts and incorporates by reference the Laboratory Test Fee List effective July 1, ~~2006~~ 2007, which shall be available on the web site of the Department of Public Health and Human Services at www.dphhs.mt.gov, and by mail upon request to the lab at the Department of Public Health and Human Services, Public Health and Safety Division, P.O. Box 6489, Helena, MT 59604-6489.

(3) The fee for a specific lab test will be lowered by the Department of Public Health and Human Services to a level not exceeding the cost to the department of the test in question whenever a change of analysis method warrants lower fees.

(4) Fees for analyses other than those listed will be established at the level of comparable analyses.

AUTH: 50-1-202, MCA

IMP: 50-1-202, MCA

3. ARM 37.12.401 provides information regarding the fees charged for biological and environmental tests performed by the Montana state laboratory, in conformity with state statute. The Department of Public Health and Human Services (the department) proposes to modify the rules to reference the new version of the state laboratory fee list, which provides an average increase of 9.7% in the cost of lab services, though fee increases on a test-by-test basis vary. The revised fees are necessary to keep the fees charged for lab service in line with the actual current cost associated with providing that service.

The proposed fee increases will result in a cumulative increase in fees for all laboratory services of approximately \$400,000, affecting the approximately 1,000 annual customers of the state laboratory. The fee increases proposed represent the minimum increases necessary to maintain the state laboratory's current level of services, and are reasonably necessary to allow the state laboratory to fulfill its obligations as an adjunct to public health and health care functions in the state of Montana. The proposed fees account for the increased costs incurred by the laboratory since the last fee increase, including increased personnel costs, increased costs of supplies, and increased costs of new and replacement testing equipment.

The department considered not increasing its testing fees, but concluded that not doing so would result in the laboratory spending more to provide services than it would recover in service fees, and would result in the laboratory having to discontinue services.

The department will post the proposed revised fee list along with a copy of this notice in the rules notices section of the DPHHS web site at www.dphhs.mt.gov/legalresources/ruleproposals/index.shtml.

4. Interested persons may submit their data, views, or arguments concerning the proposed action in writing 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 June 7, 2007. Data, views, or arguments may also be submitted by facsimile (406)444-9744 or by electronic mail via the Internet to dphhslegal@mt.gov. The department also maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. For placement on the mailing list, please write the person at the address above.

5. If a person who is directly affected by the proposed action wishes to express data, views, and arguments orally or in writing at a public hearing, that person must make a written request for a public hearing and submit such request, along with any written comments to Gwen Knight, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 202951, Helena, MT 59620-2951, by facsimile (406)444-9744 or by electronic mail via the Internet to dphhslegal@mt.gov no later than 5:00 p.m. on June 7, 2007.

6. If the Department of Public Health and Human Services receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of those who are directly affected by the proposed action, from the administrative rule review committee of the legislature, from a governmental agency or subdivision, or from an association having no less than 25 members who are directly affected, a hearing will be held at a later date and a notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 100 based on the 1000 customers affected by rules covering state laboratory fees and services.

/s/ Denise Pizzini
Rule Reviewer

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

Certified to the Secretary of State April 30, 2007.

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

| | | |
|---------------------------------------|---|--------------------------|
| In the matter of the amendment of ARM |) | NOTICE OF PUBLIC HEARING |
| 37.70.305, 37.70.311, 37.70.312, |) | ON PROPOSED AMENDMENT |
| 37.70.401, 37.70.406, 37.70.408, |) | |
| 37.70.601, 37.70.602, and 37.71.601 |) | |
| pertaining to Low Income Energy |) | |
| Assistance Program (LIEAP) and Low |) | |
| Income Weatherization Assistance |) | |
| Program (LIWAP) |) | |

TO: All Interested Persons

1. On May 30, 2007, at 1:30 p.m., a public hearing will be held in the Wilderness Conference Room of the Department of Public Health and Human Services Colonial Building, 2401 Colonial Drive, Helena, Montana to consider the proposed amendment of the above-stated rules.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice or provide reasonable accommodations at the public hearing site. If you need to request an accommodation, contact the department no later than 5:00 p.m. on May 21, 2007 to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, 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.

2. The rules as proposed to be amended provide as follows. Matter to be added is underlined. Matter to be deleted is interlined.

37.70.305 MAKING APPLICATION (1) A new application for low income energy assistance must be made for each new heating season, ~~or~~ and when a household changes residence during the heating season. An application is initiated by filing a signed written application on the form prescribed by the department at the office of the local contractor in the area where the applicant lives. If necessary, the contractor will provide assistance in completing the application form.

(2) remains the same.

(3) An application for low income energy assistance generally must be filed during the heating season for which assistance is being sought, that is, between October 1 and April 30. If April 30 falls on a weekend or legal holiday, the contractor must accept applications on the next business day after the weekend or legal holiday. However, at the option of the department, applicants who use certain types of heating fuel which are sold at lower prices during the summer months or applicants for emergency services ~~between May 1 and September 30~~ may be permitted to file their applications prior to October 1 of the heating season for which

they are seeking assistance. In the case of applicants who use other types of fuel and who are not seeking emergency services, the contractor may in its discretion accept applications prior to October 1, but the date of application will be deemed to be October 1.

~~(4) After the application is filed, the contractor may request any additional information or documentation required to verify whether the applicant is eligible for assistance. The contractor may also, at its option, conduct an interview with the applicant in person or by telephone if necessary to determine eligibility. In cases where the contractor considers an interview to be necessary and neither the contractor's office nor a telephone is reasonably accessible to the applicant, the contractor will conduct the interview at some place which is reasonably convenient for both the applicant and the contractor.~~

~~(5) The applicant has the burden of proving that the applicant meets all requirements for eligibility, and the application will be denied if the applicant fails to provide necessary information or documentation when requested to do so.~~

~~(6) remains the same but is renumbered (4).~~

AUTH: 53-2-201, MCA

IMP: 53-2-201, MCA

37.70.311 PROCEDURES FOLLOWED IN PROCESSING APPLICATIONS

~~(1) Procedures followed in The procedure for determining eligibility for low income energy assistance are is:~~

~~(a) An application is filed by the applicant together with all necessary verification for determining financial eligibility and benefit award. After an application is filed, the contractor may request any additional information or documentation needed to determine eligibility and/or benefit amount. If an An applicant who willfully fails to provide information or documentation necessary for a determination of eligibility within 45 days of the date of initial application the application shall be denied, determined ineligible but the household may reapply for assistance. The staff member of the local contractor accepts the application and determines financial eligibility and amount of benefit. The client is notified of the reasons for approval or disapproval of his application. Eligible applicants shall be notified that benefits are computed for heating costs only for the period October 1 through April 30.~~

~~(b) (i) Eligibility requirements that must be verified include but are not limited to:~~

~~(i) (A) current receipt of benefits under supplemental security income or cash assistance funded by temporary assistance for needy families (TANF);~~

~~(ii) (B) income/resources;~~

~~(iii) (C) lack of tax dependency status for individuals enrolled at least half time in an institution of higher education;~~

~~(iv) (D) primary heating fuel; and~~

~~(v) (E) receipts to support paid eligible energy costs when a household seeks direct reimbursement for paid eligible energy costs as provided in ARM 37.70.607. Failure to provide receipts to the local contractor within 45 days of the heating season's end will result in forfeiture of any remaining benefits for that heating season.~~

(e) (ii) If reasonable doubt exists as to the accuracy of the information provided by the client, the type of dwelling, ~~including the number of bedrooms,~~ and/or the primary heating fuel/vendor must also be verified.

(b) The contractor may at its option conduct an interview with the applicant in person or by telephone if necessary to determine eligibility. In cases where the contractor considers an interview to be necessary and neither the contractor's office nor a telephone is reasonably accessible to the applicant, the contractor will conduct the interview at some place which is reasonably convenient for both the applicant and the contractor.

(c) After eligibility and benefit amount has been determined, notice of the decision will be given to the applicant as provided in ARM 37.70.312.

(2) A household's eligibility and benefit amount will be determined based on the household's circumstances at the time the application is filed, including, but not limited to, the type of the household's dwelling, the number of bedrooms in the dwelling, the dwelling's primary heating fuel, the heating district in which the dwelling is located, who is residing in the household, and the household's resources. Eligibility in regard to income, however, is based on the household's income in the 12 months immediately preceding the month of application, as provided in ARM 37.70.401(1) and 37.70.406(1).

(3) The applicant has the burden of proving that the household meets all requirements for eligibility.

AUTH: 53-2-201, MCA

IMP: 53-2-201, MCA

37.70.312 NOTIFICATION OF ELIGIBILITY (1) An individual who makes application for low income energy assistance will be notified in writing whether the application has been approved or denied and, if the application is approved, of the benefit amount. If the application is denied, the notice shall state the reason for the denial. A notice approving or denying an application shall advise the applicant of the right to a fair hearing as provided in ARM 37.5.307. and weatherization will receive written notice of eligibility. If the applicant is determined ineligible, notification shall include the reasons for nonapproval.

AUTH: 53-2-201, MCA

IMP: 53-2-201, MCA

37.70.401 DEFINITIONS (1) "Annual gross income" means all nonexcluded income including but not limited to wages, salaries, commissions, tips, profits, gifts, interest or dividends, retirement pay, workers' compensation, unemployment compensation, social security retirement and disability payments, supplemental security income payments, cash public assistance benefits such as temporary assistance for needy families or tribal, state, or county general relief, and capital gains received by the members of the household in the 12 months immediately preceding the month of application.

(a) through (4) remain the same.

(5) "Eligible energy costs" means costs of the various types of energy

supplied by the household's fuel vendors. Energy delivered by the household's fuel vendors prior to October 1 are ineligible for payment ~~under~~ in the current year's program heating season, except that charges incurred from July 1 through September 30 for propane to heat a residence are eligible for payment in the current heating season. Provided, however, that eligible energy costs may include energy delivered prior to October 1 for applications filed after September 30, when the type of fuel and the vendor's normal billing procedures make the above definition impracticable.

(6) "Heating season" means the period from October 1 to April 30 of the following year. For example, the 1999 through 2000 heating season is the period from October 1, 1999, through April 30, 2000. The department may, however, in its sole discretion, extend the heating season beyond April 30. If the heating season is extended beyond April 30, LIEAP benefits may be applied against energy costs incurred in the additional months of the heating season, but no applications for benefits may be filed after April 30 except as provided in ARM 37.70.305.

(7) through (14) remain the same.

(15) "Paid eligible energy costs" means out-of-pocket expenditures paid by an eligible household in the form of rent payments or direct payments to a fuel vendor or person responsible for the fuel account for energy costs incurred during the heating season, for the dwelling in which the household resides at the time of application.

(16) through (23) remain the same.

AUTH: 53-2-201, MCA

IMP: 53-2-201, MCA

37.70.406 INCOME STANDARDS (1) Households with annual gross income at or below 150% of the ~~2005~~ 2006 U.S. Department of Health and Human Services poverty guidelines are eligible for low income energy assistance on the basis of income. Households with an annual gross income above 150% of the ~~2005~~ 2006 poverty guidelines are ineligible for low income energy assistance, unless the household is automatically financially eligible for LIEAP benefits as provided in ARM 37.70.402 because all members of the household are receiving SSI, TANF-funded cash assistance, or county or tribal general assistance.

(2) The table of income standards for households of various sizes for the ~~2005~~ 2006 heating season may be accessed at the department's web site at www.dphhs.mt.gov, or a copy may be obtained from the Department of Public Health and Human Services, Human and Community Services Division, Intergovernmental Human Services Bureau, P.O. Box 202956, Helena, MT 59620.

AUTH: 53-2-201, MCA

IMP: 53-2-201, MCA

37.70.408 RESOURCES (1) through (3) remain the same.

(4) In state fiscal year 2006, a household will be eligible if its total countable nonbusiness resources do not exceed ~~\$8,840~~ \$9,105 for a single person, ~~\$13,263~~ \$13,661 for two persons and an amount equal to ~~\$13,262~~ \$13,661 plus ~~\$884~~ \$911

for each additional household member, up to a maximum of ~~\$17,683~~ \$18,213 per household. In addition, the household may have business assets whose equity value does not exceed \$12,500.

(5) through (5)(b) remain the same.

AUTH: 53-2-201, MCA

IMP: 53-2-201, MCA

37.70.601 BENEFIT AWARD (1) The benefit matrices in (1)(c) and (1)(d) are used to establish the benefit payable to an eligible household for a full heating season (~~October through April~~). The benefit varies by household income level, type of primary heating fuel, the type of dwelling (single family unit, multi-family unit, mobile home), the number of bedrooms in the dwelling, and the heating districts in which the household is located, to account for climatic differences across the state.

(a) and (b) remain the same.

(c) The following table of base benefit levels takes into account the number of bedrooms in a house, the type of dwelling structure, and the type of fuel used as a primary source of heating:

TABLE OF BENEFIT LEVELS

(i) SINGLE FAMILY

| # BEDROOMS | NATURAL | | | | | |
|------------|---------|----------|---------|----------|-------|-------|
| | GAS | ELECTRIC | PROPANE | FUEL OIL | WOOD | COAL |
| ONE | \$362 | \$ 407 | \$ 469 | \$ 374 | \$251 | \$166 |
| TWO | 526 | 592 | 683 | 544 | 365 | 241 |
| THREE | 717 | 806 | 930 | 742 | 497 | 328 |
| FOUR | 987 | 1,109 | 1,279 | 1,020 | 684 | 451 |

| # BEDROOMS | NATURAL | | | | | |
|--------------|---------------|---------------|---------------|---------------|---------------|---------------|
| | GAS | ELECTRIC | PROPANE | FUEL OIL | WOOD | COAL |
| <u>ONE</u> | <u>\$ 382</u> | <u>\$ 417</u> | <u>\$ 549</u> | <u>\$ 710</u> | <u>\$ 297</u> | <u>\$ 169</u> |
| <u>TWO</u> | <u>555</u> | <u>606</u> | <u>798</u> | <u>1,032</u> | <u>432</u> | <u>246</u> |
| <u>THREE</u> | <u>756</u> | <u>825</u> | <u>1,087</u> | <u>1,406</u> | <u>588</u> | <u>335</u> |
| <u>FOUR</u> | <u>1,040</u> | <u>1,135</u> | <u>1,495</u> | <u>1,934</u> | <u>809</u> | <u>461</u> |

(ii) MULTI-FAMILY

| # BEDROOMS | NATURAL | | | | | |
|------------|---------|----------|---------|----------|-------|-------|
| | GAS | ELECTRIC | PROPANE | FUEL OIL | WOOD | COAL |
| ONE | \$ 306 | \$ 344 | \$ 397 | \$ 398 | \$212 | \$140 |
| TWO | 461 | 518 | 598 | 599 | 319 | 211 |
| THREE | 677 | 761 | 877 | 879 | 469 | 309 |
| FOUR | 790 | 889 | 1,025 | 1,028 | 547 | 361 |

| # BEDROOMS | NATURAL | | | | | |
|--------------|---------------|---------------|---------------|---------------|---------------|---------------|
| | GAS | ELECTRIC | PROPANE | FUEL OIL | WOOD | COAL |
| <u>ONE</u> | <u>\$ 323</u> | <u>\$ 352</u> | <u>\$ 464</u> | <u>\$ 754</u> | <u>\$ 251</u> | <u>\$ 143</u> |
| <u>TWO</u> | <u>486</u> | <u>530</u> | <u>699</u> | <u>1,136</u> | <u>378</u> | <u>215</u> |
| <u>THREE</u> | <u>714</u> | <u>778</u> | <u>1,025</u> | <u>1,667</u> | <u>554</u> | <u>316</u> |
| <u>FOUR</u> | <u>834</u> | <u>909</u> | <u>1,198</u> | <u>1,947</u> | <u>647</u> | <u>369</u> |

(iii) MOBILE HOME

| # BEDROOMS | NATURAL | | | | | |
|------------|---------|----------|---------|----------|-------|-------|
| | GAS | ELECTRIC | PROPANE | FUEL OIL | WOOD | COAL |
| ONE | \$ 305 | \$ 343 | \$ 396 | \$331 | \$212 | \$140 |
| TWO | 446 | 501 | 578 | 484 | 309 | 204 |
| THREE | 591 | 665 | 767 | 641 | 410 | 270 |
| FOUR | 660 | 742 | 856 | 715 | 458 | 302 |

| # BEDROOMS | NATURAL | | | | | |
|--------------|---------------|---------------|---------------|---------------|---------------|---------------|
| | GAS | ELECTRIC | PROPANE | FUEL OIL | WOOD | COAL |
| <u>ONE</u> | <u>\$ 322</u> | <u>\$ 351</u> | <u>\$ 462</u> | <u>\$ 627</u> | <u>\$ 250</u> | <u>\$ 143</u> |
| <u>TWO</u> | <u>470</u> | <u>513</u> | <u>676</u> | <u>917</u> | <u>366</u> | <u>208</u> |
| <u>THREE</u> | <u>624</u> | <u>680</u> | <u>896</u> | <u>1,215</u> | <u>485</u> | <u>276</u> |
| <u>FOUR</u> | <u>696</u> | <u>759</u> | <u>1,000</u> | <u>1,356</u> | <u>541</u> | <u>308</u> |

(d) remains the same.

~~(2) For households that applied for benefits for the 2004-2005 heating season prior to April 30, 2005 and were determined eligible, the heating season shall be extended until June 30, and they shall receive a supplemental benefit in addition to the benefit described in (1)(a). The supplemental benefit shall be equal to 27.95472% of the benefit provided in (1)(a) rounded to the nearest whole dollar or a minimum of \$20, whichever is greater. This supplemental benefit will be paid for the 2004-2005 heating season only.~~

AUTH: 53-2-201, MCA

IMP: 53-2-201, MCA

37.70.602 BENEFIT AWARDS: MISCELLANEOUS (1) and (2) remain the same.

(3) When a household changes residence or type of primary fuel during the heating season, the household ~~may request to have its benefit award recomputed for the new circumstances. When the household changes residence, a new application must be filed. The benefit award for the new circumstances must file a new application.~~ The household's benefit award will then be recomputed based on its new circumstances, and the new benefit will be equal to the benefit award the household would have received had its original application been for the new circumstances prorated from the date of the change of residence or type of primary fuel. The Any unused portion of the original benefit award reverts to the department. When a household changes type of primary heating fuel during the heating season, the household is not required to file a new application but must have its benefit award recomputed based on the new type of fuel. The new benefit will be prorated from the date of the change of type of fuel. Any unused portion of the original benefit reverts to the department.

(4) remains the same.

(5) When a household changes fuel vendors, establishes an account with a fuel vendor, or has other vendor related changes in circumstances without changing residence, any remaining LIEAP attributable credit balance will be returned to the department by the original fuel vendor. The unused portion of the benefit award may be forwarded to the new fuel vendor or reimbursed to the household as outlined in ARM 37.70.607.

AUTH: 53-2-201, MCA

IMP: 53-2-201, MCA

37.71.601 ELIGIBILITY FOR SERVICE, PRIORITIES (1) and (2) remain the same.

(3) In determining which eligible households will receive weatherization services and in what order, households in each of the governor's substate planning districts shall be ranked according to energy burden. Households with the highest energy burden shall be given the highest priority and households with the lowest energy burden shall be given the lowest priority.

(a) The energy burden, as defined in ARM 37.71.401, of households containing a member who is either 60 years of age or older or ~~handicapped~~ who has a disability as determined by the federal Social Security Administration under Title II or Title XVI of the Social Security Act will be multiplied by 1.25 for purposes of prioritization.

(4) through (7) remain the same.

(8) When a dwelling is prioritized high enough to be scheduled for weatherization work, the delivery of services will be deferred until a later date if providing the services would pose a threat to the health or safety of either a person who lives in the dwelling or of the weatherization installers. In such cases the

delivery of services will be postponed until the conditions that pose a threat to health or safety have been resolved. Circumstances that justify the deferral of weatherization services include but are not limited to the following:

(a) A person who lives in the dwelling has known health conditions that prohibit the installation of insulation and other weatherization materials.

(b) The building structure or its mechanical systems, including electrical and plumbing, are in such a state of disrepair that failure is imminent and the conditions cannot be resolved cost-effectively.

(c) The house has sewage or other sanitary problems that would further endanger persons who live in the dwelling or weatherization installers if weatherization work were performed.

(d) The house has been condemned or electrical, heating, plumbing, or other equipment has been "red tagged" by local or state building officials or utilities.

(e) Moisture problems are so severe they cannot be resolved under existing health and safety measures and with minor repairs.

(f) Dangerous conditions exist due to high carbon monoxide levels in combustion appliances, and cannot be resolved under existing health and safety measures.

(g) A person who lives in the dwelling is uncooperative, abusive, or threatening to the crew, subcontractors, auditors, inspectors, or others who must work on or visit the house.

(h) The extent and condition of lead-based paint in the house would potentially create further health and safety hazards.

(i) In the judgment of the department, any condition exists which may endanger the health and/or safety of the work crew or subcontractor.

AUTH: 53-2-201, 90-4-201, MCA

IMP: 53-2-201, 90-4-201, 90-4-202, MCA

3. The Low Income Energy Assistance Program (LIEAP) is a federally funded program to help low income households pay their home heating costs. The maximum income standards used to determine whether a household is eligible for LIEAP benefits are contained in ARM 37.70.406. These income standards are computed as a specified percentage of the federal poverty guidelines issued annually by the U.S. Department of Health and Human Services (HHS). The standards currently in ARM 37.70.406 are based on the HHS poverty guidelines for 2005.

HHS updates the poverty guidelines each year to take into account increases in the cost of living. It has been the long standing practice of the department to amend ARM 37.70.406 annually to provide that the updated version of the poverty guidelines will be used to set the income standards and benefit amounts for the current heating season. The department uses the updated version of the guidelines because they are higher than the guidelines for the previous year. If the department did not use the updated guidelines, some households might be ineligible for benefits or receive a smaller benefit due to inflationary increases in the household's income which do not reflect an increase in actual buying power. Thus, ARM 37.70.406 is

now being amended to provide that the 2006 rather than the 2005 poverty guidelines will be used for the 2006-2007 heating season.

ARM 37.70.305 specifies when a new application for LIEAP benefits must be filed and provides other information about the filing of a LIEAP application. Section (1) of ARM 37.70.305 currently provides that a household must file a new application for each heating season or when the household changes residence during the heating season. Previously the rule stated only that a household must file a new application for each new heating season, but in 2005 the provision was added requiring the filing of a new application when the household changes residence. A new application is necessary when the household moves because the household is entitled to have its benefit amount recomputed based on the household's circumstances at the new residence, such as type of primary heating fuel, dwelling type, and number of bedrooms. A new application provides the department's LIEAP contractor with information about the household's new circumstances necessary to determine accurately what the recomputed benefit will be.

When the rule was amended in 2005, however, it erroneously stated that a new application must be filed for each heating season or whenever the household changes its residence during the heating season rather than stating that a new application must be filed for each heating season and whenever the household changes its residence. Since a new application is necessary in both cases, the word "or" is being replaced by "and" to correct this error.

The department also proposes several amendments to section (3) of ARM 37.70.305, which currently provides that a LIEAP application must be filed during the heating season for which assistance is being sought, that is, between October 1 and April 30, except in the case of households who heat their homes with fuels that are sold at lower prices during the summer months (such as propane). The rule provides that the department may accept applications from such households prior to October 1 and may accept applications for LIEAP emergency services (as provided in ARM 37.70.901) at any time of the year. The department proposes to add a provision stating that households that are not seeking emergency services or do not use fuel that is less expensive in the summer may also be allowed to file their applications prior to October 1, but such applications will be deemed to be filed on October 1.

This provision is being added because it has been the practice of the department for a number of years to accept applications prior to October 1 from households with fixed incomes such as Social Security benefits that received benefits for the previous heating season regardless of the type of heating fuel the household uses. LIEAP contractors may not have enough employees to process these applications when they come in before October 1, because LIEAP contractors typically hire extra personnel beginning in October to handle the influx of LIEAP applications. Priority is given to the applications of households that heat with fuels like propane that are less expensive in the summer, so that benefits can be paid to eligible households while the cost to them of buying fuel is less. It is necessary to amend the rule to clarify

that households that use other types of fuel may file their applications before October 1 but they are not entitled to have their applications processed and to receive benefits before the official start of the heating season on October 1.

Section (4) of ARM 37.70.305 provides that the LIEAP contractor may request information or documentation and may conduct an interview with an applicant if necessary to determine eligibility. Section (5) provides that an applicant has the burden of proving that the applicant meets the requirements for eligibility. These sections are being deleted from ARM 37.70.305 and added to 37.70.311 governing the processing of LIEAP applications because these provisions relate to the procedure for processing applications rather than to the subject of when applications must be filed.

In addition to the insertion of provisions about interviews and the burden of proving eligibility that formerly were in ARM 37.70.305, a new provision is being added to ARM 37.70.311 to specify that a household's eligibility and benefit amount are based on the household's circumstances at the time the application is being processed, such as the number of household members, their income and resources, and characteristics of the dwelling. This is being added to the rule merely for clarification and does not represent a change in policy. A provision is also being added to state that the household will receive written notice as provided in ARM 37.70.312 after eligibility has been determined. This is not a new policy as ARM 37.70.312 already requires that written notice be given, but this is being added to ARM 37.70.311 because notice of eligibility is part of the application process. ARM 37.70.311 is also being reorganized and rewritten for reasons of style.

ARM 37.70.401 defines terms used in the LIEAP rules. Section (1), which defines "annual gross income," contains a list of types of income, such as wages, salaries, and commissions, but it specifically states that the list is not all inclusive. The department was recently involved in litigation in which a LIEAP applicant asserted that his Social Security retirement benefits should not be counted as income in determining his eligibility because such benefits currently are not listed in the rule. Although the department prevailed in the litigation, the department in the interest of avoiding further litigation is now adding other types of income to the list, such as Social Security retirement and disability benefits, and public assistance benefits like Supplemental Security Income (SSI) and Temporary Assistance for Needy Families (TANF) payments. This does not represent a change in policy as these payments have always been considered income.

The definition of "heating season" in section (6) currently provides that the heating season runs from October 1 of one year through April 30 of the next year. ARM 37.70.401(6) is now being amended because the department has discretion to extend the heating season beyond April 30. In 2005, the department amended ARM 37.70.608, which governs adjustment of payments to match available funds, to provide that the department may extend the duration of the heating season past April 30 when additional LIEAP funds become available. This provision was added because occasionally the department receives, in addition to its regular federal

LIEAP appropriation, other funding for LIEAP later in the heating season. For example, in 2005 the department received supplemental LIEAP funds of approximately \$2,000,000 late in the heating season. The department extended the heating season until June 30, 2005 in order to allow these additional funds to be distributed.

The extension of the heating season was necessary because LIEAP benefits are generally paid to the household's fuel vendor rather than directly to the household, and the benefit is applied to unpaid energy costs as provided in ARM 37.70.607. Some LIEAP households had paid their fuel vendor in full as of April 30 and had no unpaid energy costs as of that date. ARM 37.70.607 provides that fuel vendors must return an unpaid credit balance of more than \$50 remaining after April 30 to the department. By extending the end of the heating season to June 30, the supplemental benefit could be applied against energy costs incurred in May and June. Thus, payment of the supplemental benefit did not result in a credit balance of over \$50 which would have been returned to the department instead of benefiting the LIEAP household.

Since ARM 37.70.608(2)(b) now provides that the heating season may be extended past April 30, the definition of the term "heating season" is being amended to reflect the possibility that the heating season will not always end on April 30. This is more accurate than the current definition.

A provision is being added to specify that applications for LIEAP benefits cannot be filed after April 30 even when the department opts to extend the heating season beyond that date. The reason for not allowing new applications after April 30 is that the department's formula for prorating benefits when a benefit award is for less than the entire heating season is based on a seven month heating season from October through April. This formula would not work if applications were accepted after April 30.

Additionally the definition of "paid eligible energy costs" in ARM 37.70.401(15) is being amended. ARM 37.70.607(2) provides that the department will reimburse a household for its paid eligible energy costs if the household is not billed directly by the fuel vendor because the fuel account is not in the name of a member of the household. The definition of "paid eligible energy costs" is now being amended to specify that the term means only out of pocket expenditures made by the household for the dwelling in which the household resides at the time of LIEAP application. This is being added merely as a clarification and does not represent a change in policy.

In determining eligibility for LIEAP, the department considers not only income but also what assets (known as "resources") the household has that can be used to pay heating costs. ARM 37.70.408 specifies the rules relating to resources. Section (4) currently specifies the maximum amount of nonbusiness resources that households of varying sizes can have and still qualify for LIEAP in state fiscal year 2006. Since section (5) states that the dollar limits on nonbusiness resources will be revised

annually to adjust for inflation, it is necessary to amend section (4) to increase the dollar amounts for fiscal year 2007, that is, the year that runs from July 1, 2006 through June 30, 2007. Section (5) provides that the revised nonbusiness resource limits shall be computed by multiplying the current dollar limits by the percentage increase in the national consumer price index (CPI) for the previous calendar year or by 3%, whichever is less. The CPI for 2005 was 3.4%, so the department is increasing the dollar amounts in section (4) by 3%.

ARM 37.70.601 contains tables of benefit amounts which are used to establish the amount of benefits an eligible household will receive. As previously discussed, the amount of the household's benefit depends on multiple factors, including income level, type of primary heating fuel, the type of dwelling and number of bedrooms, and the heating district in which the household is located. The benefit amounts in the table have been revised based on the amount of LIEAP funds available to pay LIEAP benefits for the 2006-2007 heating season, which is \$13,660,738, as well as fuel cost projections and an estimate of the number of households that will apply and be found eligible for LIEAP for the 2007 heating season.

The benefit amounts currently in the table were based on expected available funding of \$11,824,912 for the 2005-2006 heating season (although total funding for the 2005-2006 heating season came to \$19,931,106 after the federal government released additional LIEAP funds in March 2006). Thus, the cumulative increase in benefits for the 2006-2007 heating season is \$1,836,000. This increase will affect approximately 22,700 LIEAP households.

The Low Income Weatherization Assistance Program (LIWAP) is a federally funded program that provides energy conservation measures such as the installation of insulation and the sealing of ducts for dwellings of low income families. Since LIWAP funds are limited and weatherization services cannot be provided to every eligible dwelling, ARM 37.71.601 sets forth priorities for providing weatherization services. In general, households with the highest energy burden have the highest priority to receive weatherization services, although the fact that a household contains a member who has a disability or is over the age of 60 also is considered in determining priorities.

The department proposes to amend ARM 37.71.601 to provide that delivery of weatherization services may be deferred to a later date if providing the services would pose a threat to the health or safety of either a person who lives in the dwelling or of the persons who would provide the weatherization services. It is necessary to add this provision because the department's weatherization contractors sometimes encounter situations where it would be dangerous to provide services. For example, a household member might have a health condition such as respiratory problems or allergies that would be exacerbated by the installation of insulation or other weatherization materials, or the dwelling might have sewage or other sanitary problems that would endanger residents of the home and the weatherization installers if weatherization work was performed.

The amendment of ARM 37.71.601 is therefore necessary to authorize the department to defer weatherization work until the problem that creates a threat to health or safety is resolved and to describe what types of situations would be considered a health or safety threat.

Additionally subsection (3)(a) of ARM 37.71.601, which provides that age over 60 or disability of a household member is considered in determining priorities, currently uses the term "handicapped". This term is no longer considered an appropriate description of persons who have disabilities, and therefore "member who has a disability" is being substituted for "handicapped" in this part of the rule.

4. The department intends that the amendments to the LIEAP rules be applied retroactively to August 1, 2006. The department was unable to file this rule at an earlier date due to the pressing nature of other business. No detrimental effects are anticipated as a result.

5. 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 Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210, no later than 5:00 p.m. on June 7, 2007. Data, views, or arguments may also be submitted by facsimile (406)444-1970 or by electronic mail via the Internet to dphhslegal@mt.gov. The department also maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. For placement on the mailing list, please write the person at the address above.

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

/s/ Barbara Hoffmann
Rule Reviewer

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

Certified to the Secretary of State April 30, 2007.

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

| | | |
|--|---|--------------------------|
| In the matter of the amendment of ARM |) | NOTICE OF PUBLIC HEARING |
| 37.78.102, 37.78.103, 37.78.202, |) | ON PROPOSED AMENDMENT |
| 37.78.206, 37.78.207, 37.78.216, |) | |
| 37.78.228, 37.78.425, 37.78.430, |) | |
| 37.78.801, 37.78.806, 37.78.807 |) | |
| pertaining to Temporary Assistance for |) | |
| Needy Families (TANF) |) | |

TO: All Interested Persons

1. On May 30, 2007, at 2:30 p.m., a public hearing will be held in the Wilderness Room, 2401 Colonial Drive, Helena, Montana to consider the proposed amendment of the above-stated rules.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice or provide reasonable accommodations at the public hearing site. If you need to request an accommodation, contact the department no later than 5:00 p.m. on May 21, 2007, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, 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.

2. The rules as proposed to be amended provide as follows. Matter to be added is underlined. Matter to be deleted is interlined.

37.78.102 TANF: FEDERAL REGULATIONS ADOPTED BY REFERENCE

(1) remains the same.

(2) The "Montana TANF Cash Assistance Manual" dated ~~January 4~~ July 1, 2007 is adopted and incorporated by this reference. A copy of the Montana TANF Cash Assistance Manual is available for public viewing at each local Office of Public Assistance, and at the Department of Public Health and Human Services, Human and Community Services Division, 111 N. Jackson St., 5th Floor, P.O. Box 202925, Helena, MT 59620-2925. Manual updates are also available on the department's web site at www.dphhs.mt.gov.

AUTH: 53-4-212, MCA

IMP: 53-4-211, 53-4-601, MCA

37.78.103 TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (TANF): DEFINITIONS The following definitions apply to this chapter:

(1) "Allowable work activities" means all activities defined in federal regulation that are countable toward the calculation of the TANF work participation

rate and used to meet federal participation requirements at 45 CFR 261.30. These activities are contained in the Family Investment Agreement/WoRC Employability Plan (FIA/EP) for individuals who are required to negotiate and comply with a FIA/EP as a condition of eligibility for TANF cash assistance. These allowable work activities are identified in ARM 37.78.807.

(1) through (5) remain the same but are renumbered (2) through (6).

~~(6)~~ (7) "Case management" means the process of formulating and developing and maintaining a Family Investment Agreement/WoRC Employability Plan (FIA/EP) for a participant.

(7) through (16) remain the same but are renumbered (8) through (17).

~~(17) "Employment and training activities" means the activities in the family investment agreement/WoRC employability plan for all participants.~~

(18) through (38) remain the same.

(39) "Participation hours" means the number of hours which a TANF cash assistance participant must perform employment and training allowable work activities as specified in the participant's Family Investment Agreement/WoRC Employability Plan.

(40) remains the same.

(41) "Screening guide" means the tool by which the WoRC case manager in conjunction with the participant determines appropriate employment and training allowable work activities for the participant.

(42) through (44) remain the same.

(45) "Supportive services" means expenses and services necessary for a TANF Cash Assistance participant to participate in training allowable work activities or accept a job.

(46) through (54) remain the same.

(55) "Two-parent household" means a household in which two parents reside, regardless of whether the two parents are parents of the same minor child or two or more different children, except that a household in which two parents reside is considered a single-parent household for employment and training work participation hours if one or both of the parents receives Supplemental Security Income (SSI) benefits or is incapacitated. For purposes of this definition, a biological or adoptive parent or a stepparent is considered a parent.

(56) through (59) remain the same.

(60) "WoRC employability plan" means a negotiated document listing employment and training allowable work activities, and mutual obligations of the WoRC program and the participant regarding the course of action leading to the individual's employment and the number of hours and the time limits within which such activities and obligations shall be performed.

~~(61) "Work activities" means all activities used to meet federal participation requirements at 45 CFR 261.30. "Work-eligible individual" means an individual whose participation in allowable work activities contributes to determining whether the family counts in the calculation of the work participation rate. These individuals include:~~

(a) all adults receiving assistance;

(b) all minor children receiving assistance who are the head of a household;

(c) all sanctioned individuals who are a natural or biological parent of a minor

child living in the household; and

(d) all nonrecipient or disqualified individuals who are a natural or biological parent of a minor child living in the household unless the nonrecipient or disqualified individual is:

(i) a minor parent who is not the head of a household or the spouse of the head of the household;

(ii) an ineligible alien; or

(iii) a recipient of Supplemental Security Income (SSI) benefits.
(62) and (63) remain the same.

AUTH: 53-4-212, MCA

IMP: 53-4-211, 53-4-601, MCA

37.78.202 TANF: CASH ASSISTANCE EXEMPTIONS EXTENSIONS TO TIME LIMITS (1) through (4) remain the same.

AUTH: 53-2-201, 53-4-211, 53-4-212, MCA

IMP: 53-4-211, 53-4-212, 53-4-231, 53-4-601, 53-4-607, MCA

37.78.206 TANF: GENERAL ELIGIBILITY REQUIREMENTS (1) Except as provided in (2)(e), an application for TANF Cash Assistance must be made on behalf of a minor child as defined in ARM 37.78.103.

(2) remains the same.

(3) The following are not eligible for TANF cash assistance:

(a) through (g) remain the same.

(h) all members of a family the assistance unit which includes an adult who has received assistance for 60 months or more, as prescribed in ARM 37.78.201;

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

~~(k) all members of the assistance unit which includes a specified caretaker relative or minor child who fails or refuses without good cause to negotiate and sign a family investment agreement; or~~ all members of the assistance unit if any member of the assistance unit who is required by ARM 37.78.806 to participate in allowable work activities as defined in ARM 37.78.103 and 37.78.807 fails or refuses without good cause to negotiate and sign a Family Investment Agreement/WoRC Employability Plan (FIA/EP);

~~(l) all members of the assistance unit if any member of the assistance unit who is required by ARM 37.78.806 to participate in employment and training fails or refuses without good cause to negotiate and sign a WoRC employability plan;~~

~~(m) (l) an individual who is sanctioned for noncompliance in employment and training activities~~ allowable work activities as defined in ARM 37.78.103 and 37.78.807 negotiated in the Family Investment Agreement and/or WoRC Employability Plan (FIA/EP) or sanctioned for failure to accept and maintain employment without good cause; and

~~(n) (m) an individual who is serving an intentional program violation as outlined in ARM 37.78.505-; and~~

(n) an individual who is incarcerated and does not meet the temporary absence criteria as outlined in ARM 37.78.207.

(4) through (6)(a)(i) remain the same.

AUTH: 53-2-201, 53-4-212, MCA

IMP: 53-2-201, 53-4-211, 53-4-231, MCA

37.78.207 TANF: LIVING WITH A SPECIFIED RELATIVE (1) through (1)(b) remain the same.

(2) A child may still be considered to be living with a specified relative even though either the child or the caretaker relative is temporarily absent from the home, providing that the temporary absence does not exceed 90 consecutive days and subject to the following conditions:

(a) through (c) remain the same.

(d) The caretaker relative cannot be temporarily absent due to incarceration.

(3) through (6) remain the same.

AUTH: 53-4-212, MCA

IMP: 53-2-201, 53-4-211, 53-4-601, MCA

37.78.216 TANF: TANF CASH ASSISTANCE FIA/WORC EMPLOYABILITY PLAN (FIA/EP) (1) The FIA/WoRC Employability Plan (FIA/EP) is a negotiated document listing eligibility requirements, ~~employment and training activities~~ allowable work activities as defined in ARM 37.78.103 and 37.78.807, and mutual obligations of the state and the participant regarding the course of action leading to the individual's employment and the number of hours and the time limits within which such activities and obligations shall be performed.

~~(a) All participants in the TANF cash assistance programs are required to negotiate and comply with their FIA/WoRC employability plan as a condition of eligibility in the TANF cash assistance program. A participant who is exempt from time limits as specified in ARM 37.78.202 must enter into a FIA/WoRC employability plan. The FIA/WoRC employability plan activities for a participant who is eligible for TANF extended benefits will take into consideration any limitations which are the basis for the extension.~~

(a) The following individuals are required to negotiate and comply with a FIA/EP as a condition of eligibility in the TANF Cash Assistance program:

(i) natural or adoptive adult parents of a minor child in the household;

(ii) nonrecipient or disqualified individuals who are a natural or adoptive parent of a minor child in the household unless the nonrecipient or disqualified individual is:

(A) a minor parent who is not the head of a household or the spouse as a head of the household;

(B) an ineligible alien; or

(C) a recipient of Supplemental Security Income (SSI) benefits.

(iii) adult spouse of a natural or adoptive parent of a minor child in the household;

(iv) adult specified caretaker relative who has requested to be included in the assistance unit;

(v) minor children age 16 or 17 not attending school full-time;

- (vi) teen parents not living independently and not attending school full-time;
- (vii) teen parents who have been approved to live independently; and
- (viii) minor parents.

(b) A participant who is receiving extended benefits as specified in ARM 37.78.202 must enter into a FIA/EP. The FIA/EP activities for a participant who is eligible for TANF extended benefits will take into consideration any limitations which are the basis for the extension.

~~(b) (c) The FIA/WoRC Employability Plan FIA/EP will be reviewed at least once every 12 months by the eligibility case manager and at least monthly by the WoRC case manager. They may also be renegotiated as needed or at the request of either the participant, the eligibility case manager, or the WoRC case manager.~~

~~(c) (d) Once the FIA/WoRC Employability Plan FIA/EP is completed, it is signed by the participant, the eligibility case manager and the WoRC case manager. The participant receives a signed copy.~~

~~(d) (e) Failure to perform the activities required in the FIA/WoRC Employability Plan FIA/EP and/or to provide verification and/or documentation of participation in the activities on a timely basis will result in sanctions in accordance with ARM 37.78.506.~~

~~(2) Because entering into a FIA/WoRC Employability Plan FIA/EP is a condition of eligibility for TANF Cash Assistance, failure or refusal without good cause to enter into a FIA/WoRC Employability Plan FIA/EP initially or to renegotiate and/or sign a new FIA/WoRC Employability Plan FIA/EP when requested will result in the denial of or termination of assistance for the entire assistance unit.~~

AUTH: 53-4-212, MCA

IMP: 53-4-211, 53-4-601, 53-4-606, 53-4-608, MCA

37.78.228 TANF: TANF CASH ASSISTANCE; INITIAL PAYMENT AND REDETERMINATION OF ELIGIBILITY (1) The initial assistance payment will be issued in a prorated amount which includes the day upon which application was made and the remaining days of that month: if the following criteria are met:

(a) the assistance unit does not include an individual as defined in ARM 37.78.216 who is required to negotiate and comply with a Family Investment Agreement/WoRC Employability Plan (FIA/EP) as a condition of eligibility;

(b) the assistance unit includes an individual(s) as defined in ARM 37.78.216 who is required to negotiate and comply with a FIA/EP and the negotiation of the FIA/EP indicates the required individual(s) has been referred to a Tribal NEW program for case management; or

(c) the assistance unit includes an individual(s) as defined in ARM 37.78.216 who is required to negotiate and comply with a FIA/EP as a condition of eligibility, the individual(s) has been referred to the WoRC program for case management and the individual(s) has negotiated a WoRC Employability Plan within three working days from being referred to the WoRC program or has good cause as outlined in ARM 37.78.508 for failing to negotiate a WoRC employability plan within three working days of referral.

(2) The initial assistance payment will be issued in a prorated amount which includes the day upon which the individual(s) negotiated a WoRC Employability Plan

and the remaining days of the month if the individual(s) who is required to negotiate and comply with a FIA/EP as defined in ARM 37.78.216 and who has been referred to the WoRC program for case management does not negotiate a WoRC Employability Plan within three working days from being referred to the WoRC program and does not have a good cause as defined in ARM 37.78.508 for failing to negotiate a WoRC Employability Plan within three working days of referral.

(3) If the assistance unit contains more than one individual who is required to negotiate and comply with a FIA/EP as defined in ARM 37.78.216, the initial assistance payment will be prorated based on the latter of the application date or the date that all required individuals have negotiated the FIA/EP.

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

AUTH: 53-2-201, 53-4-212, MCA

IMP: 53-2-201, 53-4-211, MCA

~~37.78.425 TANF: NONFINANCIAL ASSISTANCE PAYMENT (1) A PES payment may be provided to assist a family with emergency needs related to maintaining employment of training needs necessary to advance in employment provided the family meets all financial and nonfinancial eligibility requirements set forth in ARM 37.78.206(4) through (6), 37.78.207(6), and 37.78.420(5) and (6). Issuance of a PES payment is dependent on available funding in the family's county of residence. The payment may be made at the department's discretion for a variety of employment related expenses, including:~~

~~(a) transportation, including vehicle repairs, tires, insurance, driver's license fee, gas, etc.;~~
~~(b) clothing, such as uniforms and other specialized clothing and footwear or other employment required apparel;~~
~~(c) tools and equipment;~~
~~(d) union dues, special fees, licenses, or certificates; or~~
~~(e) relocation expenses to permit a participant to accept verified employment in another county or state.~~

~~(2) A PES payment may not be used to pay for:~~

~~(a) any medical service or item; or~~
~~(b) fines of any type, including traffic or criminal.~~

~~(3) A PES payment will be provided only if:~~

~~(a) all other resources have been exhausted including but not limited to the family's personal resources;~~

~~(b) the department may require verification of expenses for which the payment is requested; and~~

~~(c) one cost estimate for major expenses.~~

~~(4) Payments cannot duplicate funds available through supportive services provided by other agencies or programs.~~

~~(5) Payments will be made to the individual or to the vendor.~~

~~(6) The maximum amount of the payment will be the amount necessary to alleviate the emergency, up to but not in excess of \$1,000 per family per year.~~

~~(7) A PETE payment may be provided to assist a family with necessary expenses, while the parent is attending a training or education program necessary to~~

advance in employment and is directly intended to promote improved wages. Issuance of a PETE payment is dependent on available funding in the family's county of residence. A PETE payment is \$494 per month per household, without regard to the number of parents approved for PETE. The payment may be made at the department's discretion.

~~(8) To be eligible a household must meet all financial and nonfinancial eligibility requirements as stated in ARM 37.78.206(4) through (6), 37.78.207(6) and 37.78.420(5) and (6). The parent applying for PETE must also meet the following eligibility criteria:~~

~~(a) must be working an average of 10 hours per week in paid employment;~~
~~(b) must have worked at least 30 hours per week for 10 or more of the 16 weeks preceding application for a PETE or enrollment in the current semester/quarter or training program;~~

~~(c) must not currently receive TANF cash assistance for themselves or any member of the filing unit;~~

~~(d) must have received TANF cash assistance sometime in the two years prior to application for PETE; and~~

~~(e) must pass a local community screening by submitting the following documentation:~~

~~(i) level of training or education being sought may not extend beyond a bachelor's level;~~

~~(ii) proof of acceptance to or enrollment in a training program or educational institution;~~

~~(iii) a written plan detailing career advancement goal and training/course/class schedule to ensure program completion by June 30, 2003 and if the program extends beyond June 30, 2003, the plan must include an explanation of how the parent will complete the program once PETE assistance ends; and~~

~~(iv) proof of current paid employment.~~

~~(9) Once a parent is approved for PETE the parent will continue to be eligible as long as the parent has an eligible minor child in the home and the parent verifies monthly that:~~

~~(a) the parent is following the PETE career advancement plan; and~~

~~(b) the parent continues to work an average of 10 hours per week.~~

~~(10) (1) A work support payment may be provided to a TANF cash assistance household to assist with employment related needs, the month following the month of case closure. Issuance of a work support payment is dependent on available funding. A work support payment is equal to the TANF cash assistance benefit standard for a household of three as defined in ARM 37.78.420. A work support payment is limited to the amount of \$375.~~

~~(11) (2) An assistance unit is eligible to receive a work support payment when:~~

~~(a) the assistance unit is losing TANF cash assistance eligibility due to new or increased earnings from employment and the new or increased earned income was:~~

~~(i) reported within ten calendar days of the participant's knowledge of the change; and~~

~~(ii) verified within ten calendar days from the request for verification; and~~

(b) remains the same.

AUTH: 53-4-212, MCA

IMP: 53-4-211, 53-4-601, 53-4-603, MCA

37.78.430 TANF: UNDERPAYMENTS AND OVERPAYMENTS (1) and (2) remain the same.

(3) Recovery of TANF cash assistance shall be made as follows:

(a) and (b) remain the same.

(c) The department is entitled to recover an overpayment regardless of whether any or all of the members of the overpaid assistance unit are currently receiving assistance.

(i) In the case of an individual or assistance unit currently receiving assistance, the department may recover an overpayment by reducing the current cash assistance amount by 10% or \$10 whichever is higher, and retaining the sum by which the cash assistance has been reduced to repay the overpayment. At the department's option, recovery may also be made by voluntary payments by a member of the overpaid assistance unit or any other legal means available to collect a debt, including the use of offset against any monies which the state of Montana owes or may owe to a member of the filing unit.

(ii) In the case of an individual or assistance unit currently receiving assistance, and the overpayment is due to the receipt of continued benefits pending a fair hearing regarding a sanction, which was ruled in favor of the department, the department may recover an overpayment by reducing the current cash assistance amount by 25% or \$25 whichever is higher, and retaining the sum by which the cash assistance has been reduced to repay the overpayment. At the department's option, recovery may also be made by voluntary payments by a member of the overpaid assistance unit or any other legal means available to collect a debt, including the use of offset against any monies which the state of Montana owes or may owe to a member of the filing unit.

~~(ii)~~ (iii) In the case of individuals who are not currently receiving assistance, recovery may be made by voluntary payments by a member of the overpaid assistance unit or any other legal means available to collect a debt, including the use of offset against any monies which the state of Montana owes or may owe to a member of the filing unit.

(4) and (4)(a) remain the same.

AUTH: 53-2-201, 53-4-212, MCA

IMP: 53-2-108, 53-2-201, 53-4-211, MCA

37.78.801 TANF CASH ASSISTANCE EMPLOYMENT AND TRAINING:
PURPOSE (1) These rules govern TANF cash assistance employment and training for persons who are recipients of participants in the TANF Cash Assistance program and/or required to negotiate and comply with a FIA/WoRC Employability Plan (FIA/EP) as a condition of eligibility in the TANF Cash Assistance programs as defined in ARM 37.78.216.

AUTH: 53-4-212, MCA

IMP: 53-2-201, 53-4-211, 53-4-601, 53-4-613, MCA

37.78.806 TANF CASH ASSISTANCE EMPLOYMENT AND TRAINING: PARTICIPATION (1) ~~A person who is eligible for the TANF cash assistance program is~~ All participants in the TANF Cash Assistance program who are required to negotiate and comply with their FIA/WoRC Employability Plan (FIA/EP) as outlined in ARM 37.78.216 are required to participate in employment and training allowable work activities as defined in ARM 37.78.103 and 37.78.807 and as provided in these rules. All adults, minor parents, teen parents, and minor children 16 or 17 who are not attending school or an equivalency program full-time The above-named individuals must participate in employment and training allowable work activities as indicated in the FIA/WoRC Employability Plan FIA/EP if they are referred to the WoRC program for case management, or as indicated in their tribal NEW plan if they are referred to the tribal NEW program for case management.

(2) Some TANF employment and training allowable work activities may differ from community to community based on available resources. Participants may be placed in any activities available in their community.

(3) remains the same.

AUTH: 53-4-212, MCA

IMP: 53-2-201, 53-4-211, 53-4-601, 53-4-613, MCA

37.78.807 TANF CASH ASSISTANCE EMPLOYMENT AND TRAINING-ALLOWABLE WORK ACTIVITIES (1) Participants in TANF Cash Assistance, regardless of whether they are members of a single-parent or two-parent family, may, in accordance with their WoRC Employability Plan, subject to availability in their community, participate in the following allowable work activities:

(a) through (2) remain the same.

AUTH: 53-4-212, MCA

IMP: 53-2-201, 53-4-211, 53-4-601, 53-4-613, MCA

3. ARM 37.78.102

ARM 37.78.102 currently adopts and incorporates by reference the TANF policy manual effective January 1, 2007. The department proposes to make some revisions to this manual that will take effect on July 1, 2007, based in part on the TANF Reauthorization regulations contained in the Deficit Reduction Act of 2005, P.L. 109-171 (hereinafter, "TANF Reauthorization"). The proposed amendments to ARM 37.78.102 are necessary in order to incorporate into the Administrative Rules of Montana the revised versions of the policy manuals and to permit all interested parties to comment on the department's policies and to offer suggested changes. It is estimated that changes to the TANF manual could affect approximately 8,437 TANF recipients. Manuals and draft manual material are available for review in each local Office of Public Assistance and on the department's web site at www.dphhs.mt.gov.

ARM 37.78.103

This ARM has been updated to reflect definitions in the TANF Reauthorizations regulations of "allowable work activities" as activities which count toward the calculation of the work participation rate, and "work-eligible" individuals as individuals whose verified participation in allowable work activities is used when calculating the work participation rate.

ARM 37.78.202

This ARM has been updated to reflect more accurately that households may receive an extension to the time limit, not an exemption as the current title to the ARM erroneously refers. The only change in this ARM is in the title.

ARM 37.78.206

This ARM has been updated to reflect a decision of the department that individuals who are incarcerated will no longer be eligible for assistance. Previously, incarcerated individuals who were to be absent for a period less than 90 days were considered temporarily absent but nevertheless eligible for continued TANF benefits.

The TANF Reauthorization regulations are very specific in requiring work activity and verification of work activity, as well as in defining allowable work activity and the type of verification and documentation regarding participation in work activities. Individuals who are incarcerated are not able to participate in allowable work activities and are unable to provide verification and documentation of work activities. Allowing these individuals to continue to receive TANF cash assistance would decrease the work participation rate. The department does not feel it can justify the negative impact to the work participation rate by allowing incarcerated individuals to continue to receive TANF cash assistance.

This change will apply to an average of approximately 2310 TANF participants who currently are mandated to participate in work activities although it will impact fewer than 50 that are incarcerated in any given month. There will be no additional cost to the state unless a penalty is imposed for failure to meet the work participation rate.

Other changes were made to the rule so as not to change its substance but to render its language more uniform and consistent.

ARM 37.78.207

This ARM has been updated to reflect a decision of the department that incarceration is no longer an allowable reason for a specified caretaker relative to be considered temporarily absent from the household but nevertheless eligible for continued TANF benefits.

The TANF Reauthorization regulations are very specific in requiring work activity and verification of work activity, as well as in defining allowable work activity and the type of verification and documentation regarding participation in work activities. Individuals who are incarcerated are not able to participate in allowable work activities and are unable to provide verification and documentation of work activities. Allowing these individuals to continue to receive TANF cash assistance would decrease the work participation rate. The department does not feel it can justify the negative impact to the work participation rate by allowing incarcerated individuals to continue to receive TANF cash assistance.

This change will apply to an average of approximately 2310 TANF participants who currently are mandated to participate in work activities although it will impact fewer than 50 that are incarcerated in any given month. There will be no additional cost to the state unless a penalty is imposed for failure to meet the work participation rate.

ARM 37.78.216

This ARM has been updated to outline more specifically individuals who are required to negotiate and comply with a Family Investment Agreement/WoRC Employability Plan (FIA/EP) in order to be eligible for TANF cash assistance. The TANF Reauthorization outlined those individuals who are considered "work-eligible" individuals and whose verified and documented participation in work activities is used in calculating the work participation rate for the state. As well, state policy requires other individuals who may not be considered a "work-eligible" individual to participate in work activities as a requirement for cash assistance.

The ARM has also been updated to specify that pursuant to TANF Reauthorization, a sanction will result not only from a failure to perform the activities required in the FIA/WoRC Employability Plan, but also from a failure to provide timely verification and documentation of participation in such activities.

ARM 37.78.228

This ARM has been updated to reflect a decision of the department that the initial assistance payment will be prorated from the date of application if the household does not include individuals who are required to negotiate a FIA/EP, the individuals who are required to negotiate a FIA/EP are being referred to the Tribal NEW program for case management services, or the individuals who are required to negotiate a FIA/EP and who are being referred to the WoRC program for case management services have negotiated a FIA/EP within three days of referral to the WoRC program or have good cause for failing to negotiate the FIA/EP within three days of referral. The initial assistance payment will be prorated from the date of negotiation of the FIA/EP with the WoRC program if the individuals who are required to negotiate a FIA/EP and have been referred to the WoRC program for case management services have not negotiated the FIA/EP within three days of referral and do not have good cause for failing to negotiate the FIA/EP within three days of referral.

TANF Reauthorization regulations contain strict definitions of allowable work activities as well as criteria for verification and documentation of such work activities. TANF Reauthorization limits those activities states may claim as allowable work activities for purposes of meeting the work participation rate mandated by the Administration for Children and Families. Failure to meet this work participation rate will result in monetary penalties to the state. As well, work activities that cannot be verified and documented cannot be used as an allowable work activity for purposes of meeting the work participation rate. The changes in the rule prompt participants to engage in allowable work activities in order to meet the mandated work participation rate and avoid monetary penalties for failing to meet the work participation rate.

This change will impact an average of approximately 2310 TANF participants who currently are mandated to participate in work activities. There will be no additional cost to the state unless a penalty is imposed for failure to meet the work participation rate.

ARM 37.78.425

This ARM has been updated to remove information on the Post Employment Services (PES) and Post Employment Training and Education (PETS) payments as those payments are no longer available due to lack of funding. The ARM was updated to clarify existing policy that indicates in order to be eligible for a work support payment the household must be losing cash assistance due to new or increased earnings from employment and the new or increased income was reported within ten days of the participant's knowledge of the change and verified within ten days from request for verification, if appropriate. The ARM was also updated to reflect that the work support payment is limited to a specific amount of \$375, not subject to fluctuation.

ARM 37.78.430

This ARM has been updated to reflect that individuals who request a fair hearing to dispute a sanction and who receive an overpayment when they continue to receive benefits pending the fair hearing at which the department prevails, are subject to recovery of the overpayment by reduction of their cash assistance grant by 25% or \$25 whichever is higher, as opposed to the current policy which allows for reduction of their cash assistance grant by 10% or \$10 whichever is higher.

Individuals sanctioned for noncompliance with work activities may request a fair hearing and receive continued benefits during the fair hearing process. With the issuance of continued benefits, such individuals are not required to participate in work activities pending the fair hearing; however, they continue to count as a work-eligible individual and therefore have a negative impact on the work participation rate.

If these individuals subsequently lose the fair hearing, the department establishes an overpayment for the full amount of the TANF grant that was issued as a continued benefit. This overpayment amount is subject to all the long term collection practices currently in place. The department feels that increasing the rate at which overpayments can be recovered will reduce the incentive for individuals to request a fair hearing solely for the purpose of retaining cash assistance and having a negative impact on the work participation rate; thus saving the state from potential monetary penalties. As well, such individuals may have less of an incentive to incur a debt to the department that may impact their future financial benefits, i.e., garnishment from or recoupment from income tax offsets.

This change will impact an average of approximately 2310 TANF participants. There will be no additional cost to the state unless a penalty is imposed for failure to meet the work participation rate based on nonparticipation of those individuals who are required to participate in work activities during the fair hearing process.

ARM 37.78.801

This ARM is being updated to clarify that currently TANF Cash Assistance employment and training purpose/rules govern participants who are required to negotiate and comply with a FIA/EP as a condition of eligibility for TANF Cash Assistance. This is a clarification only.

ARM 37.78.806

This ARM is being updated to clarify current department policies that all participants who are required to negotiate and comply with a Family Investment Agreement/WoRC Employability Plan are required to participate in allowable work activities. A reference to ARM 37.78.216 was added as that ARM specifies the individuals who are required to negotiate and comply with a Family Investment Agreement/WoRC Employability Plan. The ARM is being updated to reflect the change to the wording and concept of "allowable work activities" pursuant to TANF Reauthorization.

No controversy is anticipated over this change as this is current policy and a clarification.

ARM 37.78.807

This ARM is being updated to reflect the replacement of "Employment and Training Activities" with "Allowable Work Activities" pursuant to TANF Reauthorization. This reflects changes made to ARM 37.78.103.

No controversy is anticipated over this change as it is a clarification.

Following is a brief overview of the TANF manual sections with substantive changes related to the above ARM changes.

TANF 302-1

Residence/Home/Temporary Absence

TANF 302-1 is being updated to reflect that individuals who are incarcerated are no longer considered temporarily absent from the home, even if the incarceration is expected to last less than 90 days.

TANF 103-5

Processing

TANF 103-5 is being updated to reflect the changes to the proration of benefits. The proration will be based on whether or not the assistance unit includes individuals who are required to negotiate and comply with a Family Investment Agreement/WoRC Employability Plan (FIA/EP).

Assistance units with no individuals required to negotiate a FIA/EP or with individuals who are required to negotiate a FIA/EP but who are being referred to Tribal NEW for case management services will have their cash assistance benefits prorated to the date of application.

Assistance units with individuals who are required to negotiate a FIA/EP who are being referred to WoRC for case management services will have their benefits prorated to the date of application if they have negotiated their FIA/EP within three days of referral to WoRC or have good cause for failing to negotiate the FIA/EP within three days of referral. Otherwise the benefits will be prorated to the date they negotiate the FIA/EP with WoRC. If the assistance unit contains more than one individual who is required to negotiate a FIA/EP and the individuals have been referred to WoRC for case management services, the benefits will be prorated based on the latter of the application date or the date that all required individuals have negotiated the FIA/EP with WoRC.

TANF 1504-1

Overpayments

TANF 1504-1 is being updated to reflect the change to the overpayment process when the overpayment is due to receipt of continued benefits pending a fair hearing regarding a sanction which was ruled in favor of the department. These individuals are subject to recovery of the overpayment by reduction of their cash assistance grant by 25% or \$25 whichever is higher.

4. The department intends that the amendments to ARM 37.78.102, 37.78.103, 37.78.202, 37.78.206, 37.78.207, 37.78.216, 37.78.228, 37.78.425, 37.78.430, 37.78.801, 37.78.806, 37.78.807 be applied retroactively to January 1,

2007. No detrimental effects are anticipated as a result.

5. 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 June 7, 2007. Data, views, or arguments may also be submitted by facsimile (406)444-1970 or by electronic mail via the Internet to dphhslegal@mt.gov. The department also maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. For placement on the mailing list, please write the person at the address above.

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

/s/ Francis X. Clinch
Rule Reviewer

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

Certified to the Secretary of State April 30, 2007.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

| | | |
|---------------------------------------|---|---------------------|
| In the matter of the amendment of |) | NOTICE OF AMENDMENT |
| ARM 2.21.6605, 2.21.6606, |) | AND REPEAL |
| 2.21.6608, and 2.21.6611 and the |) | |
| repeal of 2.21.6610 pertaining to the |) | |
| Employee Record Keeping policy |) | |

TO: All Concerned Persons

1. On February 8, 2007, the Department of Administration published MAR Notice No. 2-2-378 regarding the proposed amendment of the above-stated rules, at page 165 of the 2007 Montana Administrative Register, Issue No. 3.

2. The department has amended ARM 2.21.6606, 2.21.6608, and 2.21.6611 as proposed, but with the following changes.

3. In addition, the department has also amended ARM 2.21.6605 and, instead of amending, is repealing ARM 2.21.6610. Matter to be added is underlined; matter to be deleted is interlined.

2.21.6605 SHORT TITLE (1) This ~~sub-chapter~~ subchapter may be cited as the ~~employee record-keeping policy~~ Employee Records Management Policy.

AUTH: 2-18-102, MCA
IMP: 2-18-102, MCA

2.21.6606 POLICY AND OBJECTIVES (1) remains as proposed.

(a) collect and maintain employee personnel records while protecting an employee's right of privacy pursuant to Article II, section 10 of the Constitution of the State of Montana; and

(b) ~~to ensure~~ ensure employee awareness of records held, provide employees access to their personnel records, and allow ~~employees~~ agencies to correct ~~their~~ employee personnel records; ~~and~~ and

~~(c) restrict access to confidential employee personnel records to:~~

~~(i) the employee;~~

~~(ii) those persons with a job-related purpose for viewing or using the records;~~

~~(iii) persons whom the employee has granted written permission to view or use; or~~

~~(iv) pursuant to a valid court order.~~

(2) It is the objective of this policy to provide minimum standards for employee records keeping management and ~~to require the adoption of a policy on employee record keeping by each department. The department policy must be adopted in compliance with this policy and in accordance with Title 2, chapter 6, Montana Code Annotated, related to records management.~~ allow agencies to adopt supplemental employee records management procedures.

AUTH: 2-18-102, MCA
IMP: 2-18-102, MCA

2.21.6608 DEFINITIONS As used in this subchapter the following definitions apply:

- (1) remains as proposed.
- (2) "Agency" has the same meaning as defined in 2-18-101(1), MCA.
- (2) and (3) remain as proposed, but are renumbered (3) and (4).
- ~~(4)~~ (5) "Employee personnel record" means information relating to an

employee's employment with the state of Montana that is appropriate for preservation as an official record of employment policies, practices, and decisions. An employee personnel record may be a paper document or it may be information maintained in an information system such as the Statewide Accounting Budgeting and Human Resource ~~(SABHRS) system~~ System (SABHRS). Other programs including, but not limited to, Montana Public Employee Retirement Administration (MPERA), workers' compensation, or unemployment insurance, develop records relating to an employee which are not an employee personnel record as defined in this policy.

- (5) and (6) remain as proposed, but are renumbered (6) and (7).

AUTH: 2-18-102, MCA
IMP: 2-18-102, MCA

2.21.6611 ACCESS TO EMPLOYEE PERSONNEL RECORDS (1) All employee personnel records are confidential and access is restricted, except an employee's position title, dates and duration of employment, salary, and claims for vacation, holiday, or sick leave pay, which are public information and must be released on request. ~~An department~~ agency may require that the request be in writing. ~~An department~~ agency may not require justification for the request.

- (2) remains as proposed.

(3) In addition to access provided in this ~~chapter~~ subchapter and an ~~department~~ agency procedure, the following provisions ~~will~~ apply to employee personnel records:

(a) The employee has access to all of his or her employee personnel records. An employee may file a written response to information contained in employee personnel records which becomes a permanent part of the record. The response must be filed within ten working days of the date on which an employee is made aware of the information by the ~~department~~ agency.

- (b) through (b)(iii) remain as proposed.

(c) Nothing in this rule prohibits those having authorized access to employee personnel records as provided in this rule or in any ~~department policy,~~ agency procedures from relying on the content of those records when responding to a request for employment information from organizations to which the employee has applied for employment.

- (d) through (e) remain as proposed.

(f) The professional staff at the State Personnel Division has access to confidential records when gathering summary data on personnel programs or systems or to provide technical assistance at the request of ~~a department~~ an agency.

(g) Employee personnel records, as defined in this policy, do not include documents, information, or other evidence developed as part of an investigation. Investigations may include, but are not limited to, grievance investigations, violation of ~~department~~ agency rules, policies, and procedures, or matters which may result in civil or criminal prosecution. Access to such documents will be determined on a case-by-case basis, balancing the constitutional guarantees of The Right to Privacy, Article II, section 10, and The Public's Right to Know, Article II, section 9.

(h) ~~Some~~ Certain governmental entities have authority pursuant to state or federal law to access an employee's personnel record.

(i) ~~Others~~ Other persons may access an employee's personnel record only ~~with the employee's if there is a job-related purpose, the employee has granted~~ written permission, or ~~with~~ pursuant to a valid court order. ~~A department~~ An agency will inform an employee when a valid court order has been received directing access be provided to an employee's personnel record.

(i) remains as proposed, but is renumbered (j).

AUTH: 2-18-102, MCA

IMP: 2-18-102, MCA

2.21.6610 ADOPTION OF DEPARTMENT POLICY found on ARM page 2-1512 is repealed.

AUTH: 2-18-102, MCA

IMP: 2-18-102, MCA

4. No requests to hold a public hearing were received. The department received several comments requesting changes and clarity to the proposed amendments. A summary of the comments and the department's responses follow.

Comment No. 1: The department received five comments about ARM 2.21.6606(1)(b) pertaining to the correction of records. The proposed rule states, in part, "...and allow employees to correct their personnel records..." Those that commented had concern about clarification as to when this is allowed, and what type of corrections employees could make.

Response No. 1: The department agrees that the proposed wording does not clarify "who" is managing, correcting, accessing the records. Therefore, the language has been changed to clarify this matter. Further, the department will develop a model procedure, for agency use, that will assist agencies if they want to clarify this further.

Comment No. 2: The department received four comments pertaining to ARM 2.21.6608, specifically, (1) "employee personnel record" and (4) "access."

Regarding ARM 2.21.6608(1), the commenters felt in general that the existing definition of "employee personnel record" is not specific enough, and could, for example, include any informal notes and drafts. One comment also suggested adding the word "secure" to the definition; another suggested adding the word "official." Other comments questioned why WC, MPERA, and UI records are not considered an employee personnel record, according to the definition.

Regarding ARM 2.21.6608(4), commenters requested further clarification on the meaning of "access" and "using."

Response No. 2: The department does not believe it is necessary to add the word "secure" to the definition of "employee personnel record." ARM 2.21.6606(2) defines "confidential records." This definition clarifies that employee records are secure because they have restricted access. However, the department agrees that adding the word "official" has merit. The department has added the word official to the definition of "employee personnel record" and believes it addresses the difference between informal notes and formal documents in the employee personnel record.

The department disagrees that WC, MPERA, and UI records are part of an "employee personnel record." These programs operate independent of agency management. Agency management cannot dictate the disposition of programmatic records maintained by these organizations.

The department disagrees with the need to further clarify the words "access" and "using." As mentioned previously, the department will produce model procedures that agencies may use to further clarify these terms.

Comment No. 3: The department received three comments pertaining to ARM 2.21.6610(1). As proposed, the rule states: "All departments must adopt a procedure which is consistent with this subchapter and which contains, at a minimum, the following provisions:". The commenters believe it is a burden to require agencies to create another policy or procedure. Furthermore, it was pointed out that the proposed language interchanges the terms "policy" and "procedure," which is inconsistent.

Response No. 3: The department agrees on both points and has repealed ARM 2.21.6610 in its entirety.

Comment No. 4: The department received one comment on ARM 2.21.6611(3)(h). The comment suggests further defining department procedure, clarifying "some", as well as adding a notification procedure that would alert employees should their records be accessed.

Response No. 4: Procedures are addressed in agency adopted procedures; therefore, the department disagrees with the need to further define "department

procedure." As mentioned earlier, the department will create a model procedure that relates to this policy. Agencies may use it to further clarify such items as when and how employees are notified.

The department agrees with the need to clarify the word "some" as used in (3)(h). The department has changed the language from "some" to "certain."

Comment No. 5: The department received two comments regarding the name of the policy, "employee record keeping." Comment suggests changing the name of the policy. As it reads now, it implies the employees are "keeping" their records.

Response No. 5: The department agrees and has changed the name and all subsequent references from "employee record keeping" to "employee records management." This is a standard term used in many organizations.

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

BY: /s/ Dal Smilie
Dal Smilie, Rule Reviewer
Department of Administration

Certified to the Secretary of State April 30, 2007

BEFORE THE DEPARTMENT OF COMMERCE
OF THE STATE OF MONTANA

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

TO: All Concerned Persons

1. On March 22, 2007 the Department of Commerce published MAR Notice No. 8-119-56 pertaining to the proposed amendment of the above-stated rule at page 323 of the 2007 Montana Administrative Register, Issue Number 6.
2. The department has amended ARM 8.119.101 as proposed.
3. No comments or testimony were received.

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

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

Certified to the Secretary of State April 30, 2007.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
rules 23.4.201, definitions, 23.4.213,)
field certification-breath analysis)
instruments, 23.4.214, lab certification,)
23.4.215, qualification-breath analysis)
location, 23.4.216, personnel)
qualifications, 23.4.217, recertification-)
breath test personnel, 23.4.220, blood)
sample collections, and 23.4.225,)
preliminary alcohol screening tests)

TO: All Concerned Persons

1. On March 22, 2007, the Department of Justice published MAR Notice 23-4-185 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 330 of the 2007 Montana Administrative Register, Issue Number 6.

2. The department has amended the following rules as proposed: ARM 23.4.201, 23.4.214, 23.4.215, 23.4.216, 23.4.217, 23.4.220, and 23.4.225.

3. The department has adopted ARM 23.4.213 with the following revisions, new matter underlined, deleted matter interlined:

23.4.213 FIELD CERTIFICATION OF BREATH ANALYSIS INSTRUMENTS AND ASSOCIATED EQUIPMENT (1) through (1)(d) remain as proposed.

(e) A field certification shall be performed whenever a new breath analysis instrument is placed in service or when a breath analysis instrument is returned to service. In addition, whenever a breath analysis instrument is placed in a mobile service capacity, a field certification shall be done prior to ~~the day's~~ mobile use and again at the end of ~~the day's~~ mobile use. The field certification results must be on file at the testing location before the breath analysis instrument can be used for subject testing.

(f) through (2)(f) remain as proposed.

4. The department has thoroughly considered the comment and testimony received. A summary of the comment received and the department's response is as follows:

COMMENT: A suggestion was made that the phrase "the day" would lead to confusion as to how that was defined.

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

In the matter of the adoption of)
NEW RULES I-VII pertaining to match) NOTICE OF ADOPTION
bronc rides under the parimutuel system)

TO: All Concerned Persons

1. On March 22, 2007, the Board of Horse Racing, Department of Livestock, published MAR Notice No. 32-7-186 regarding the proposed adoption of the above-stated rules at page 340 of the 2007 Montana Administrative Register, Issue Number 6.

2. The Board of Horse Racing has adopted New Rules I (32.28.1901), II (32.28.1902), III (32.28.1903), IV (32.28.1904), V (32.28.1905), VI (32.28.1906), and VII (32.28.1907) exactly as proposed.

3. No comments or testimony were received.

BOARD OF HORSE RACING
DEPARTMENT OF LIVESTOCK

/s/ George H. Harris
George H. Harris
Acting Executive Officer
Department of Livestock

/s/ Carol Grell Morris
Carol Grell Morris
Rule Reviewer

Certified to the Secretary of State April 30, 2007

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 PO Box 201706, Helena, MT 59620-1706.

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

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

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

Use of the Administrative Rules of Montana (ARM):

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

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through December 31, 2006. This table includes those rules adopted during the period January 1 through March 31, 2007, and any proposed rule action that was pending during the past six-month period. (A notice of adoption must be published within six months of the published notice of the proposed rule.) This table does not include the contents of this issue of the Montana Administrative Register (MAR or Register).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through December 31, 2006, 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 2006 and 2007 Montana Administrative Register.

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