

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 17

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 The Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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

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BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the proposed) NOTICE OF PROPOSED
amendment of ARM 4.12.1410 through) AMENDMENT
4.12.1420 relating to the virus-indexing)
program) NO PUBLIC HEARING
) CONTEMPLATED

TO: All Concerned Persons

1. On October 6, 2007, the Montana Department of Agriculture proposes to amend the above-stated rules.

2. The Department of Agriculture will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Agriculture no later than 5:00 p.m. on September 20, 2007, to advise us of the nature of the accommodation that you need. Please contact Gregory H. Ames at the Montana Department of Agriculture, 303 North Roberts, P.O. Box 200201, Helena, MT 59620-0201; Phone: (406) 444-3144; Fax: (406) 444-5409; or e-mail: agr@mt.gov.

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

4.12.1410 GENERAL (1) ~~Trees~~Plants and plant parts may be registered as rootstock and top-stock sources free from viruses, virus-like agents, viroids, phytoplasmas, and bacterial pests for the propagation of certified nursery stock when inspected, tested, and found to be true-to-name and discernibly free from harmful virus and virus-like diseases by procedures outlined in this program.

(2) Certification verifies that ~~proper field sampling procedures were followed and that the indexing results indicated are those determined by an approved governmental agency designated to test for virus diseases in nursery stock.~~ "International Standards for Phytosanitary Measures" were implemented by an official certifying agency to ensure that the probability of the introduction of regulated pests is reduced to an acceptable level, reducing economic impacts and providing for equitable and orderly trade.

(3) This standard does not include certification of nonpest related items such as trueness-to-type and quality grades and standards.

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

AUTH: ~~80-7-112~~ 80-7-402, MCA

IMP: ~~80-7-112~~ 80-7-402, MCA

REASON: This rule change will expand the types of diseases from viruses and virus-like diseases to include virus-like agents, viroids, phytoplasmas, and

bacterial pests and includes plants and plant parts rather than just trees. The rule also amends procedures to be in conformance with internationally recognized standards and phytosanitary measures to be followed. These changes are necessary to meet changing global market and export requirements. The Montana virus indexing program no longer meets the international standards for phytosanitary measures.

4.12.1411 DEFINITIONS (1) "Blue Tag Certification" means an official certification tag issued by the department indicating that the plant or plant part has been inspected and tested in accordance with the provisions of this program.

(2) "Department" means the Montana Department of Agriculture.

(3) "Good horticultural condition" means a condition that reduces the risk of infestation by a quarantined pest, including good sanitary practices.

(4) "Indicator plant" means any herbaceous or woody plant used to index or determine virus infection. "Import permit" means an official document issued by a national or regional plant protection organization of the importing country authorizing importation of a commodity in accordance with specified phytosanitary measures.

(4) (5) "Virus-infected Infected (affected)" means the presence of a harmful virus(es) or virus-like disorders, viroids, phytoplasmas, and bacteria in a plant or plant part.

(6) "Inspection" means official visual and/or diagnostic examination of plants, plant products, or other regulated articles to determine if pests are present and/or to determine compliance with phytosanitary regulations.

(7) "International Standard for Phytosanitary Measures (ISPM)" means an international standard adopted by the Conference of FAO, the Interim Commission on Phytosanitary Measures or the Commission on Phytosanitary Measures, established under the International Plant Protection Convention.

(40) (8) "Montana certified fruit tree nursery stock" means nursery grown seedlings, or clonal rootstocks originating from registered trees plants or plant parts and nursery grown trees plants propagated by using top-stock from registered trees and rootstock originating from registered trees except as herein provided for certain rootstocks.

(44) (9) "Montana certified fruit tree seed" means seed produced on registered seed trees or commercial seed having been tested and found to have a transmissible virus content that does not exceed five-percent 5% for ilarviruses and is found negative for Plum Pox Virus.

(10) "Mother trees" means base plant material used for the production of certified plant material, which is tested at a rate of 10% each year and maintained under continuous surveillance.

(11) "NAPPO" means North American Plant Protection Organization.

(12) "National Plant Protection Organization (NPPO)" means official service established by a government to discharge the functions specified by the International Plant Protection Convention.

(13) "Official" means established, authorized, or performed by a national plant protection organization.

(3) remains the same, but is renumbered (14).

(15) "Pest" means any species, strain, or biotype of plant, animal or pathogenic agent injurious to plants or plant products.

(16) "Phytosanitary Certificate" means the use of phytosanitary measures that prevent the introduction or spread of a quarantined pest, which leads to the issuance of a certificate attesting to those measures.

(17) "Prohibited" means a phytosanitary regulation forbidding the importation or movement of specific pests or commodities.

(6) (18) "Registered tree" means that a registration number, approved by the department, has been assigned by the department to a tree or clonal planting that has been inspected and tested in accordance with the provisions of this program.

(19) "Regulated Pest" means a quarantine pest or a regulated nonquarantine pest.

(7) through (9) remain the same, but are renumbered (20) through (22).

(23) "Test" means official examination, other than visual, to determine if pests are present or to identify pests.

(5) (24) "Virus Index indexing" means to determine virus infection by means of inoculation from the plant to be tested to an indicator plant or by any other an approved method.

(2) (25) "Virus-like" means a disorder of genetic or non-transmissible origin and also includes mycoplasma-like organisms and rickettsia-like organisms. manifest on the plant as disease symptoms, as a result of suspected graft transmissible diseases of an unknown type.

AUTH: ~~80-7-112~~ 80-7-402, MCA

IMP: ~~80-7-112~~ 80-7-402, MCA

REASON: These new changes are necessary to add new definitions, update definitions, and delete one definition to provide clarity to terminology used in the rules, and to meet international requirements for virus indexing standards and phytosanitary measures.

4.12.1412 REQUIREMENTS (1) All plant material susceptible to Plum Pox Virus (PPV) must come from an area declared to be free of PPV based on official surveys and protocols as recommended by the NAPPO.

(2) To prevent the introduction or spread of regulated pests, the importation and movement of host materials will be either prohibited or restricted.

(3) An import permit must be obtained by the importer if required.

(4) The department may issue a phytosanitary certificate if required by the importing NPPO.

(4) (5) Eligibility will be conferred if the nursery has met program conditions. The applicant nurseryman shall be responsible, subject to the approval of the department, for the selection of the location and the proper maintenance of registered plantings being grown under the provisions of this program. The applicant nurseryman shall be responsible and for maintaining the identity of all nursery stock entered in this program in a manner approved by the department. Any planting entered in this program shall be kept in a thrifty growing good horticultural condition and free of plant pests.

(6) Detailed records of all related paperwork, including species, variety, source of plant material, year of propagation, and areas of distribution in the nursery or plantation must be kept by the participant and made available upon request to the department.

(2) (7) There shall be no budding, grafting, or top-working of registered trees in any scion-block, seed-block, or stool-bed, unless under the supervision of the department for the purpose of virus indexing.

(3) (8) Any plant found to be affected by a virus or virus-like disease or if off-type shall be removed and destroyed immediately, by a method approved of by the department, from any planting following notification by the department.

(9) Approved management strategies for vector control shall be maintained by the applicant, which may include site selection, crop rotation, soil disinfections, cleanliness of equipment, selection of stock, biological antagonists, and postplanting management.

(10) Registered material must originate from National Research Support Project 5 (NRSP-5) registered stock, or from foundation trees in the case of scion-blocks, and certified stock in the case of seed-blocks and stool-beds. The following nomenclature shall apply to all registered material, as recommended in the NAPPO's Regional Phytosanitary Standards Measures #25:

(a) Generation 1 (formerly Nuclear);

(b) Generation 2 (formerly Elite);

(c) Generation 3 (formerly Foundation); and

(d) Generation 4 (or Certified).

AUTH: ~~80-7-112~~ 80-7-402, MCA

IMP: ~~80-7-112~~ 80-7-402, MCA

REASON: This rule change describes the conditions and requirements that companies involved in virus indexing must meet in order to meet export market conditions and requirements. All plant material must be imported from a Plum Pox Virus-free area and all registered materials must come from registered stock, foundation trees, or certified stock. Movement of imported materials is restricted or prohibited to prevent the introduction or spread of disease, must be grown and maintained in good horticultural conditions using approved management strategies, and must meet internationally accepted standards. If plant materials are found to be affected by viruses or virus-like diseases, they must be removed and destroyed using department approved methods. Scion-block, seed-block, and stool-bed plant materials may only be propagated for virus indexing purposes and must be done under the supervision of the department. Applicants must maintain detailed records related to virus indexing. Such records must be available to the department upon its request. This rule was updated to meet new international standards and phytosanitary measures.

4.12.1413 SCION-BLOCKS (1) A registration number approved by the department will be assigned to each registered scion tree.

(2) Only registered trees are permitted in a registered scion-block.

~~(1)~~ (3) Location. Registered *Prunus* trees A scion-block shall be located ~~not less than at least~~ 100 feet from any nonregistered cultivated plant of the Rosaceae family. *Prunus* tree. *Chaenomeles*, *Cydonia*, *Crataegus*, *Malus*, *Pyrus*, and *Sorbus* trees must be located at least 60 feet from any nonregistered plant of the Rosaceae family, and known or potential host plants in the field, under protected cultivation, or in the wild. The ground in a scion-block and for a distance of 20 feet surrounding it shall be kept either clean cultivated or in an approved, properly controlled ground cover. Registered scion-block trees shall be planted and maintained in a manner and at sufficient distance that branches of different varieties do not overlap. Care shall be taken in the use of ~~pollinizing~~ pollinating insects and pollen application to prevent the transmission and spread of virus diseases through the use of infected pollen and/or its application. Registered scion-block trees shall not be used for propagation purposes until trueness-to-name has been established. Each tree shall bear a permanent registration number.

~~(2)~~ (4) Acceptability. The rootstock and top-stock sources of the scion-block trees shall have originated from ~~foundation~~ Generation 3 trees established under this program or from virus-tested trees originating through the Inter-regional Project No. 2 (IR-2), now known as National Research Support Project-5 (NRSP-5) or other departmentally approved virus-tested sources. If the tree is scion-rooted, its source shall have met the above requirements. ~~Only registered trees shall be permitted in the scion-block.~~

AUTH: ~~80-7-112~~ 80-7-402, MCA

IMP: ~~80-7-112~~ 80-7-402, MCA

REASON: This rule describes requirements for scion trees. Each tree must be assigned a department approved registration number. This rule updates the list of known and potential disease host plants and specifies the distances these plants must be from single or blocks of registered scion trees. This rule also updates terminology and standards. This rule is being updated to meet current importing country requirements and international standards.

4.12.1414 SEED-BLOCKS (1) A registration number approved by the department will be assigned to each registered seed tree.

(2) Only registered trees are permitted in a registered seed-block.

~~(1)~~ (3) Location. A ~~Prunus~~Registered *Prunus* seed-blocks shall be located ~~not less than at least~~ 300 feet from any nonregistered ~~flowering plant of the *Prunus* species~~ *Prunus* plants. The ground in a seed-block and for a distance of 20 feet surrounding the seed-block shall be kept clean cultivated or in an approved, controlled ground cover. Care shall be taken in the use of ~~pollinizing~~ pollinating insects and pollen application to prevent the transmission and spread of virus diseases through the use of infected pollen and/or its application. Each tree shall bear a permanent registration number.

~~(2)~~ (4) Acceptability. The rootstock and top-stock sources of the seed-tree shall have originated from ~~foundation~~ Generation 4 trees, ~~established under this program or from virus-tested trees originating through the Inter-regional Project No. 2 (IR-2)~~ NRSP-5, or other departmentally approved virus-tested sources. If the tree

is scion-rooted, its source shall have met the above requirements. ~~Only registered trees shall be permitted in the seed-block.~~

AUTH: ~~80-7-112~~ 80-7-402, MCA

IMP: ~~80-7-112~~ 80-7-402, MCA

REASON: This rule requires that only registered trees are permitted in a registered seed-block and specifies the distance that known or potentially known disease host plants must be from a registered seed-block. This rule has been updated to meet current import country requirements and international standards.

4.12.1415 STOOL-BEDS (1) Only registered trees are permitted in the registered stool-bed.

~~(1) (2) Location. A Registered stool-beds shall be located not less than at least 50 feet from any nonregistered cultivated plant of the Rosaceae family. The following exception will apply. Nonregistered stool-beds may be located no less than 10 feet from registered stool-block plantings. known or potential host plants in the field, under protected cultivation, or in the wild. The ground in a stool-bed and for a distance of ten feet surrounding it shall be kept clean cultivated, or in an approved, controlled ground cover.~~

~~(2) (3) Acceptability. Existing stool-beds that index clean on the commonly used virus indicators will qualify as Registered Stool-beds. New stool Stool-beds (those planted after effective date of these rules) shall have originated from foundation Generation 4 stock established under this program, or from virus-tested plants originating through the Inter-regional Project No. 2 (IR-2). NRSP-5 or other departmentally approved virus-tested sources. If the tree is scion-rooted, its source shall have met the above requirements. Only registered trees shall be permitted in the stool-bed.~~

AUTH: ~~80-7-112~~ 80-7-402, MCA

IMP: ~~80-7-112~~ 80-7-402, MCA

REASON: This rule requires that only registered trees are permitted in a registered stool-bed and specifies the distance that known or potentially known disease host plants must be from a registered stool-bed. This rule has been updated to meet current import country requirements and international standards.

4.12.1416 NURSERY STOCK (1) Rootstocks. All stone and pome fruit nursery stock being grown for Blue Tag Certification shall be produced on certified rootstocks, from registered trees except for stone fruit trees grown on peach seedlings and pome fruit trees grown on apple and pear seedlings. These seedling rootstocks, when grown from commercial seed, will be acceptable if seed transmissible virus content does not exceed five percent. Clonal rootstocks used in the production of Montana Certified Blue Tag Nursery Stock must originate from Registered Stool registered stool-beds. Certified rootstock may be produced in any one of the following manners:

(a) rootstock grown from seed produced on registered trees;

(b) clonal rootstock produced from registered stool-beds;
(c) rootstock originating from other approved certification programs; or
(d) rootstock from seed of U.S. origin having been tested and found to have a transmissible virus content that does not exceed 5%.

~~(2) Location.~~ Nursery stock being grown for certification shall be at least 50 feet from nonregistered known or potential host plants in the field, under protected cultivation, or in the wild, and at least 20 feet from other noncertified nursery stock, and planted sufficiently apart to maintain its identity and shall be kept clean cultivated; or in an approved, controlled ground cover. Such nursery stock ~~it~~ shall be designated as to rootstock, top-stock, and interstock sources. There shall be no rebudding or regrafting of nursery row stock unless such stock is reworked with scions from the original registered scion-tree.

~~(3) Seed.~~ Certified seed shall have been produced on ~~Registered Seed Trees~~ registered mother trees, or grown from commercial seed having been tested and found to have a transmissible virus content of ilarviruses that does not exceed five percent 5%.

~~(4) Tagging.~~ A Blue Tag shall designate trees produced from ~~Registered Scion~~ registered scion-source trees and which have been propagated on rootstocks produced from ~~Registered Seed~~ registered seed sources ~~or Stool stool-bed trees bed trees;~~ or which are self-rooted.

(5) All nursery stock meeting the requirements of this program when sold shall have the variety, interstock, and rootstock designated where applicable as follows:

- (i) √ variety/interstock/rootstock; and
- (ii) Blue Tag Certificate.

AUTH: ~~80-7-112~~ 80-7-402, MCA

IMP: ~~80-7-112~~ 80-7-402, MCA

REASON: This rule requires that all nursery stock grown for Blue Tag Certification be produced on certified rootstock. This rule describes the methods by which certified rootstock may be produced and the distance requirements such stock must be from known or potential disease host plants and the distance from other noncertified nursery stock. This rule clarifies requirement of certification and updates language to meet international requirements.

4.12.1417 INSPECTION PROCEDURE (1) Inspections will be made only by the ~~Montana~~ department of agriculture and at times when specific diseases are most likely to be expressed.

~~(2) Inspection of Nursery Stock for Certification.~~ At the request of the department, any undesirable rootstock shall be rogued before propagation. At least one visual inspection shall be made of nursery rootstock in a planting for certification during the first growing season. At least two visual inspections shall be made during the growing season following bud or graft placement and for transplants or second and third year seedlings for all certified nursery stock. ~~At the request of the department any undesirable rootstock shall be rogued before propagation. At least~~

~~two visual inspections shall be made of nursery stock during the growing season following bud or graft placement.~~

(3) The department shall refuse certification in part or all of a planting if plants have been propagated from registered trees determined to be affected by a virus or virus-like disease or if other requirements of this program have not been met.

AUTH: ~~80-7-112~~ 80-7-402, MCA

IMP: ~~80-7-112~~ 80-7-402, MCA

REASON: This rule requires the rouging of undesirable rootstock prior to propagation and describes the type, number, and timing of visual inspections for certified nursery stock. Changes to this rule allow the virus indexing to meet new international standards.

4.12.1418 TESTING PROCEDURES (1) Testing procedures prescribed in this program shall conform to ~~IR-2~~ NRSP-5 standards or to any other acceptable and approved procedures developed and used for determining the presence of virus diseases in nursery stock.

(2) Sample collection and submission for testing will be done under the direct supervision of the department.

(3) Transmissible virus testing of *Prunus* material will be conducted once every three years on all registered mother trees and all registered stool-beds for Plum Pox Virus, for ilarvirus every year, and any other testing on an ad hoc basis resulting from symptoms observed during inspection, traceback results, or other just causes for concern. Monitoring will include surveys of the rootstock, budwood, seeds, and fruit.

(4) Upon request, diagnostic test results, test methodologies, and a list of pests will be provided to the department and the importing NPPO. Tests should be approved by the NPPO of the importing country.

AUTH: ~~80-7-112~~ 80-7-402, MCA

IMP: ~~80-7-112~~ 80-7-402, MCA

REASON: This rule identifies the updated standards that govern testing procedures. It requires testing once every three years for all registered trees and stool-beds for Plum Pox Virus, testing every year for ilarvirus, and other testing as needed based on disease symptoms noted during inspections, for traceback results or other just causes. Tests should meet National Plant Protection Organization requirements of the importing country. A list of pests, diagnostic test methodologies, and diagnostic results must be made available to the department upon its request. The current virus indexing program does not meet the March 2002 international standards for phytosanitary measures.

4.12.1419 CERTIFICATION OF GROWING SITES (1) ~~Application.~~

~~(a)~~ Application forms will be provided by the ~~Montana~~ department of agriculture.

(a) The applicant ~~nurseryman~~ shall furnish to the department all information pertinent to the operation of this program and shall give ~~his~~ their consent to the department to take ~~propagating wood plant parts~~ from any tree for testing purposes.

(b) Application for inspection and testing of registered scion, seed, and stool-bed trees, and for inspection of nursery stock for certification shall be filed by June 1 of each year with the ~~Montana~~ department of agriculture.

~~(2) Fees.~~

~~(a) (2)~~ The application fee shall be ~~\$100.~~ \$250, with a late fee of \$25 if filed after June 1 of each year.

(a) Inspection fees will be charged according to the actual costs incurred on a per inspection basis, including but not limited to mileage, per diem, and an hourly rate as determined by rule.

(b) remains the same.

AUTH: ~~80-7-112, 80-1-102, 80-7-402,~~ MCA

IMP: ~~80-7-111, 80-7-122, 80-7-402,~~ MCA

REASON: This rule changes the application fee from \$100 to \$250 and provides for a late fee of \$25 if filed after June 1 of each year. This rule adds an inspection fee based on actual costs incurred. Inspection costs include mileage, per diem, and an hourly rate determined by Administrative Rule. The hourly charge is currently \$20 per hour with a one hour minimum as set in ARM 4.12.1405(1)(c) and (c)(v). Fees are necessary to support services required for virus indexing activities and certification.

Economic Impact Statement: The expected revenue the department expects to receive is \$250 per year total. The number of persons affected is one, Lawyer Nursery. Economic impact to Lawyer Nursery due to increased fee is \$150 per year. The expected benefit to Lawyer Nursery is over \$2 million in sales per year.

Lawyer Nursery, the primary beneficiary of a rule change, has reviewed the recommended revisions to the Virus Indexing Program. Most of their comments have been incorporated into the revision of the ARM.

The revisions have been reviewed by the USDA and the Canadian Food Inspection Agency (CFIA). The Canadian Food Inspection Agency must approve the revisions. Canadian approval is contingent upon having an "approved virus certification program" if our growers ship *Prunus* spp. to Canadian customers.

4.12.1420 TAGGING AND IDENTITY (1) ~~Tagging.~~ The department will authorize the use of official certification tags for the identification of nursery stock or seed that meet the requirements of this program. Each tree, seedling, bundle, or seed lot must have affixed one of these tags. These tags will be supplied by the ~~Montana~~ department of agriculture to all members participating in this program. Participating members will reimburse the department of agriculture for all certification tags supplied. This reimbursement will be based on the actual cost incurred by the ~~Montana~~ department of agriculture.

(2) ~~Identity.~~ Any person selling Montana certified fruit tree nursery stock is responsible for the identity of the stock bearing each tag and for such nursery stock

meeting the requirements of this program. Persons issued tags authorized by the program shall account for stock produced and sold and keep such records as may be necessary.

AUTH: ~~80-7-112~~ 80-7-402, MCA

IMP: ~~80-7-119~~ 80-7-402, MCA

REASON: This rule requires an identification tag be affixed to each tree, seedling, bundle, or seed lot in the virus indexing program. The rule amends this section to meet 2002 international standards for phytosanitary measure.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to Gregory H. Ames at the Montana Department of Agriculture, 303 North Roberts, P.O. Box 200201, Helena, MT 59620-0201; Fax: (406) 444-5409; or e-mail: agr@mt.gov. Any comments must be received no later than October 4, 2007.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments they have to Gregory H. Ames at the Montana Department of Agriculture, 303 North Roberts, P.O. Box 200201, Helena, MT 59620-0201; Fax: (406) 444-5409; or e-mail: agr@mt.gov. A written request for hearing must be received no later than October 4, 2007.

6. If the department 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. Less than 10% of the public is directly affected, based on the fact that only one nursery exports virus indexed nursery stock.

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

8. An electronic copy of this Notice of Proposed Amendment is available through the department's web site at www.agr.mt.gov, under the Administrative Rules section. The department strives to make the electronic copy of the Notice

conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

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

DEPARTMENT OF AGRICULTURE

/s/ Joel A. Clairmont
Joel A. Clairmont, Acting Director

/s/ Gregory H. Ames
Gregory H. Ames
Rule Reviewer

Certified to the Secretary of State, August 27, 2007.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the proposed amendment) NOTICE OF PUBLIC HEARING
of ARM 24.11.445, 24.11.452A, 24.11.457,) ON PROPOSED AMENDMENT
24.11.2201, 24.11.2221, and 24.11.2511,)
related to unemployment insurance matters)

TO: All Concerned Persons

1. On October 2, 2007, at 10:00 a.m., the Department of Labor and Industry (department) will hold a public hearing to be held in the first floor conference room (Room 104), Walt Sullivan Building, 1327 Lockey Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., on September 25, 2007, to advise us of the nature of the accommodation that you need. Please contact the Unemployment Insurance Division, Department of Labor and Industry, Attn: Don Gilbert, P.O. Box 8020, Helena, MT 59604-8020; telephone (406) 444-4336; fax (406) 444-2993; TDD (406) 444-0532; or e-mail dgilbert@mt.gov.

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

24.11.445 INACTIVE CLAIMS--REACTIVATING A CLAIM (1) remains the same.

(2) To reactivate an inactive claim, the claimant must:

(a) call the claims processing center during the center's published business hours and request that the claim be reactivated; or

(b) access the department's internet claims application.

(3) A reactivated claim is effective on the first day of the calendar week in which the claimant reactivates the claim. A claimant may request that the department backdate the claim to an earlier effective date. If the department finds that the claimant had good cause for the delay in reactivating the claim, the claim will be backdated.

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

AUTH: 39-51-301, 39-51-302, MCA

IMP: 39-51-2103, 39-51-2104, ~~39-51-2201~~ 39-51-2401, MCA

Reason: There is reasonable necessity to amend ARM 24.11.445 in order to clarify that a claim can be reactivated via the department's internet-based claims system while the unemployment insurance claims rules were otherwise being proposed for amendment. The need to clarify the rule was recently noted by staff while reviewing

the unemployment insurance claims rules. In addition, there is reasonable necessity to amend the implementation authority to correct an apparent typographic error in the citation.

24.11.452A ELIGIBILITY FOR BENEFITS (1) and (2) remain the same.

(a) the medical condition and the resultant limitation are verified by a licensed and practicing ~~physician~~ health care provider;

(b) through (d) remain the same.

(3) A claimant is not available for work within the meaning of 39-51-2104, MCA, if the claimant:

(a) ~~is, for reasons including, but not limited to, lack of transportation, lack of child or other dependant care, incarceration, vacation or travel,~~ unwilling or unable to accept an offer of new work for more than two days in a benefit week if those days are normal days of work in the claimant's customary occupation or in an occupation determined by the department to be suitable for the claimant under 39-51-2304, MCA, for reasons including, but not limited to:

(i) lack of transportation;

(ii) lack of child or other dependent care;

(iii) incarceration;

(iv) vacation; or

(v) travel;

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

(b) not incarcerated for more than two days in a benefit week if those days are normal work days:

(i) in the claimant's occupation; or

(ii) in a suitable occupation as determined by the department under 39-51-2304, MCA;

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

AUTH: 39-51-301, 39-51-302, MCA

IMP: 39-51-2101, 39-51-2104, 39-51-2304, MCA

Reason: There is reasonable necessity to amend ARM 24.11.452A in order to implement those provisions of Chapter 52, Laws of 2007 (House Bill 111), which changed the term "licensed and practicing physician" to "licensed and practicing health care provider". In addition, there is reasonable necessity to clarify subsection (3)(a) by earmarking the various examples while the rule is otherwise being amended.

24.11.457 LEAVING WORK WITH OR WITHOUT GOOD CAUSE
ATTRIBUTABLE TO THE EMPLOYMENT (1) remains the same.

(a) the claimant:

~~(a)~~(i) had compelling reasons arising from the work environment that caused the claimant to leave; and

(ii) ~~the claimant~~ attempted to correct the problem in the work environment;
and

(iii) ~~the claimant~~ informed the employer of the problem and gave the employer a reasonable opportunity to correct it; or

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

(c) a condition underlying a workers' compensation or occupational disease claim for which liability has been accepted by a workers' compensation insurer. If the condition is one for which liability has not been accepted by the workers' compensation insurer, the department will independently evaluate the condition to determine whether the condition appears to result from the claimant's employment. If the condition appears to the satisfaction of the unemployment insurance division to be work related, the condition will be considered to provide a compelling reason for the purpose of this rule. However, upon recovery from that condition, as certified by a licensed and practicing ~~physician or chiropractor~~ health care provider, the claimant must offer to return to work or be disqualified for leaving work without good cause attributable to the employment, unless there is substantial evidence concerning the nature, severity, duration, and prognosis of the illness or injury, verified by a licensed and practicing ~~physician or chiropractor~~ health care provider, to establish that the claimant's health would be substantially jeopardized by returning to the claimant's regular or comparable suitable work; or

(d) remains the same.

AUTH: 39-51-301, 39-51-302, MCA

IMP: 39-51-2302, MCA

Reason: There is reasonable necessity to amend ARM 24.11.457 in order to implement those provisions of Chapter 52, Laws of 2007 (House Bill 111), which changed the term "licensed and practicing physician" to "licensed and practicing health care provider". The department notes that chiropractors are covered by the new terminology.

24.11.2201 EXPERIENCE-RATED EMPLOYERS (1) through (9) remain the same.

(10) Beginning in the first quarter of ~~2000~~ 2008, an assessment in the amount of ~~.13~~ .18 percent of taxable wages, as provided by 39-51-404, MCA, must be paid by all experience-rated employers and deposited in the employment security account provided for in 39-51-409, MCA. The ~~.13-percent assessment amount~~ amount is not considered as "contributions" for the purposes of 39-51-401, MCA, and for purposes of reporting on form 940 Employer's Annual Federal Unemployment (FUTA) Tax Return.

AUTH: 39-51-301, 39-51-302, MCA

IMP: 39-51-301, 39-51-404, 39-51-1103, 39-51-1121, 39-51-1123, 39-51-1213, MCA

Reason: There is reasonable necessity to amend ARM 24.11.2201 in order to implement those provisions of Chapter 362, Laws of 2007 (House Bill 790), which changed assessment and contribution rates for certain employers.

24.11.2221 STATE AND LOCAL GOVERNMENT EXPERIENCE RATING

(1) remains the same.

(2) For wages paid through June 30, 2008:

(a) Governmental entities are assessed for purposes of 39-51-404, MCA, at the rate of .05 percent of total quarterly wages.

(3)(b) The following is the rate schedule used for governmental entities.

RATE FOR GOVERNMENTAL ENTITIES
EXPERIENCE RATING SYSTEM

Individual Employer's Benefit Cost Ratio	*Median Benefit Cost Ratio												
	.3	.4	.5	.6	.7	.8	.9	1.0	1.1	1.2	1.3	1.4	1.5
.1 or less	.1	.1	.2	.3	.4	.5	.6	.7	.8	.9	1.1	1.3	1.5
.2	.1	.1	.2	.3	.4	.5	.6	.7	.8	.9	1.1	1.3	1.5
.3	.1	.2	.3	.4	.5	.6	.7	.8	.9	1.0	1.1	1.3	1.5
.4	.2	.2	.3	.4	.5	.6	.7	.8	.9	1.0	1.2	1.3	1.5
.5	.2	.3	.4	.5	.6	.7	.8	.9	1.0	1.1	1.2	1.4	1.5
.6	.2	.3	.4	.5	.6	.7	.8	.9	1.0	1.1	1.3	1.4	1.5
.7	.3	.4	.5	.6	.7	.8	.9	1.0	1.1	1.2	1.3	1.4	1.5
.8	.3	.4	.5	.6	.7	.8	.9	1.0	1.1	1.2	1.3	1.4	1.5
.9	.3	.4	.5	.6	.7	.8	.9	1.0	1.1	1.2	1.3	1.4	1.5
1.0	.4	.5	.6	.7	.8	.9	1.0	1.1	1.2	1.3	1.3	1.4	1.5
1.1	.4	.5	.6	.7	.8	.9	1.0	1.1	1.2	1.3	1.4	1.4	1.5
1.2	.4	.6	.7	.8	.9	1.0	1.1	1.2	1.3	1.4	1.4	1.5	1.5
1.3	.5	.6	.7	.8	.9	1.0	1.1	1.2	1.3	1.4	1.4	1.5	1.5
1.4	.5	.7	.8	.9	1.0	1.1	1.2	1.3	1.4	1.5	1.5	1.5	1.5
1.5	.5	.7	.8	.9	1.0	1.1	1.2	1.3	1.4	1.5	1.5	1.5	1.5

*Total benefits charged to all governmental entities for all past periods divided by total wages paid by all governmental entities for all past periods. This percentage is used as a median rate. The column headed by that percent is used when the past experience computes to that figure.

(3) For wages paid on or after July 1, 2008:

(a) Governmental entities are assessed for purposes of 39-51-404, MCA, at the rate of .09 percent of total quarterly wages.

(b) The following is the rate schedule used for governmental entities.

RATE FOR GOVERNMENTAL ENTITIES
EXPERIENCE RATING SYSTEM

<u>Individual</u> <u>Employer's</u> <u>Benefit</u> <u>Cost</u> <u>Ratio</u>	<u>*Median Benefit Cost Ratio</u>												
	.3	.4	.5	.6	.7	.8	.9	1.0	1.1	1.2	1.3	1.4	1.5
<u>.06 or</u> <u>less</u>	.06	.06	.16	.26	.36	.46	.56	.66	.76	.86	1.06	1.26	1.46
<u>.16</u>	.06	.06	.16	.26	.36	.46	.56	.66	.76	.86	1.06	1.26	1.46
<u>.26</u>	.06	.16	.26	.36	.46	.56	.66	.76	.86	.96	1.06	1.26	1.46
<u>.36</u>	.16	.16	.26	.36	.46	.56	.66	.76	.86	.96	1.16	1.26	1.46
<u>.46</u>	.16	.26	.36	.46	.56	.66	.76	.86	.96	1.06	1.16	1.36	1.46
<u>.56</u>	.16	.26	.36	.46	.56	.66	.76	.86	.96	1.06	1.26	1.36	1.46
<u>.66</u>	.26	.36	.46	.56	.66	.76	.86	.96	1.06	1.16	1.26	1.36	1.46
<u>.76</u>	.26	.36	.46	.56	.66	.76	.86	.96	1.06	1.16	1.26	1.36	1.46
<u>.86</u>	.26	.36	.46	.56	.66	.76	.86	.96	1.06	1.16	1.26	1.36	1.46
<u>.96</u>	.36	.46	.56	.66	.76	.86	.96	1.06	1.16	1.26	1.26	1.36	1.46
<u>1.06</u>	.36	.46	.56	.66	.76	.86	.96	1.06	1.16	1.26	1.36	1.36	1.46
<u>1.16</u>	.36	.56	.66	.76	.86	.96	1.06	1.16	1.26	1.36	1.36	1.46	1.46
<u>1.26</u>	.46	.56	.66	.76	.86	.96	1.06	1.16	1.26	1.36	1.36	1.46	1.46

1.36	.46	.66	.76	.86	.96	1.06	1.16	1.26	1.36	1.46	1.46	1.46	1.46
1.46	.46	.66	.76	.86	.96	1.06	1.16	1.26	1.36	1.46	1.46	1.46	1.46

*Total benefits charged to all governmental entities for all past periods divided by total wages paid by all governmental entities for all past periods. This percentage is used as a median rate. The column headed by that percent is used when the past experience computes to that figure.

AUTH: 39-51-302, MCA
IMP: 39-51-404, 39-51-1212, MCA

Reason: There is reasonable necessity to amend ARM 24.11.2221 in order to implement those provisions of Chapter 362, Laws of 2007 (House Bill 790), which changed assessment and contribution rates for certain employers. The proposed new rates do not get used or applied until July 1, 2008. The department is proposing the changes at this time in order that employers, bookkeepers, and accountants have sufficient advance notice of the proposed new rates and so they can make appropriate changes to computerized accounting and payroll systems in a timely manner.

24.11.2511 PAYMENTS THAT ARE NOT WAGES--EMPLOYEE EXPENSES (1) through (1)(e)(i) remain the same.
(ii) a flat rate for meals and lodging, no greater than the amount allowed to employees of the state of Montana under 2-18-501(1)(b) and (2)(b), MCA for meals, and 2-18-501(5), MCA for lodging, unless, through documentation, the employer can substantiate a higher rate;
(iii) through (v) remain the same.

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-201, 39-51-1103, MCA

Reason: There is reasonable necessity to amend ARM 24.11.2511 in order to correct and streamline an internal citation to a statute while the unemployment insurance contributions rules were otherwise being proposed for amendment. The need to clarify the rule was recently noted by staff while reviewing the unemployment insurance contributions rules.

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: Don Gilbert, Unemployment Insurance Division, Department of Labor and Industry, P.O. Box 8020, Helena, Montana 59604-8020; by facsimile to (406) 444-4336; or by e-mail to dgilbert@mt.gov, and must be received no later than 5:00 p.m., October 9, 2007.

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

6. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all Department of Labor and Industry administrative rulemaking proceedings or other administrative proceedings. Such written request may be mailed or delivered to the Department of Labor and Industry, attention: Mark Cadwallader, 1327 Lockey Avenue, P.O. Box 1728, Helena, Montana 59624-1728, faxed to the department at (406) 444-1394, e-mailed to mcadwallader@mt.gov, or may be made by completing a request form at any rules hearing held by the agency.

7. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled. The primary sponsor of House Bill 111 was notified on July 30, 2007, by regular mail. The primary sponsor of House Bill 790 was notified on July 30, 2007, by regular mail.

8. The department's Hearings Bureau has been designated to preside over and conduct this hearing.

/s/ MARK CADWALLADER
Mark Cadwallader
Alternate Rule Reviewer

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

Certified to the Secretary of State August 27, 2007

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the proposed amendment	)	NOTICE OF PUBLIC HEARING
of ARM 24.29.207, 24.29.1404,	)	ON PROPOSED AMENDMENT
24.29.1426, 24.29.1504, 24.29.1521,	)	AND ADOPTION
24.29.1532, 24.29.1536, 24.29.1541,)	
24.29.1551, 24.29.1561, 24.29.1566,)	
24.29.1572, 24.29.1573, 24.29.1582,)	
24.29.1583, and 24.29.1584, and the)	
proposed adoption of NEW RULES I)	
through VIII, related to the workers')	
compensation medical fee schedule for)	
nonfacilities, the workers' compensation)	
medical treatment and utilization guidelines)	
for occupational therapists, physical)	
therapists, and chiropractors, and other)	
matters related to workers' compensation)	
claims)	

TO: All Concerned Persons

1. On September 28, 2007, at 10:00 a.m., the Department of Labor and Industry (department) will hold a public hearing to be held in the DPHHS Auditorium, 111 North Sanders, Helena, Montana to consider the proposed amendment and adoption of the above-stated rules.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., on September 21, 2007, to advise us of the nature of the accommodation that you need. Please contact the Workers' Compensation Regulations Bureau, Employment Relations Division, Department of Labor and Industry, Attn: Jeanne Johns, P.O. Box 8011, Helena, MT 59624-8011; telephone (406) 444-7710; fax (406) 444-3465; TDD (406) 444-5549; or e-mail jjohns@mt.gov.

3. GENERAL STATEMENT OF REASONABLE NECESSITY: The 2007 Legislature passed Chap. 330, L. 2007 (HB 738) which set a cap on the conversion factors the Department of Labor and Industry may set for reimbursement rates for medical services provided to injured workers. The legislation also changed the relative value unit publication that the conversion factor is to be applied to. Formerly, the department by administrative rule followed the publication entitled Relative Values for Physicians (RVP). The legislation now requires that the Resource-Based Relative Value Scale (RBRVS) be used to establish reimbursement rates for medical treatment provided to injured workers. The RBRVS is the basis for reimbursement rates for the major public and private medical insurance payers in

Montana including Medicare, Medicaid, and Blue Cross/Blue Shield of Montana. The majority of other state workers' compensation systems that have medical fee schedules also base them on the RBRVS system. Conversion to an RBRVS reimbursement system will provide efficiency and convenience for both providers and payers who already use the RBRVS as the basis for billing the major public and private payers in Montana. These proposed amendments and new rules change the administrative rules to implement and conform to the statutory changes contained in HB 738.

The department believes that there is reasonable necessity to amend, rather than repeal, the existing fee schedule rules despite the fact that the rules will be superseded by NEW RULES I through VIII for services provided on or after January 1, 2008. The department bases that belief upon input from the Montana State Fund, which notes that disputes over medical services and fees payable sometimes linger for years, and that payment of old bills can be handled more promptly when the applicable rules are still "on the books." The department has considered but rejected the alternative of repealing the soon-to-be obsolete rules, based upon the input from the Montana State Fund.

The department believes that adoption of a new set of rules (NEW RULES I through VIII) tied to the RBRVS system will be less confusing than merely amending the existing rules to incorporate the RBRVS system. The department notes that when these new rules are adopted, they will each be assigned a unique rule number, which will assist providers, insurers, and the department in making sure that the correct rule is being applied with respect to services furnished on or after the applicability date of the rule. The department believes that the adoption of the proposed new rules makes it more likely that the correct payment is made by the insurer to the provider than if the existing rules were just amended.

Finally, the department notes that it also will be drafting utilization and treatment guidelines for the various categories of health care providers, which will be formally proposed via rulemaking at a future date. Various utilization and treatment guidelines are proposed as part of this batch of rules for chiropractors, physical therapists, and occupational therapists, and carry over to a certain extent existing utilization and treatment requirements.

This general statement applies to the rules changes as indicated, with specific or additional rationales included for each rule.

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

24.29.207 CONTESTED CASES (1) Except as provided in (2), parties ~~Parties~~ having a dispute involving legal rights, duties, or privileges, where the ~~dispute is one over which the department has jurisdiction to hold a hearing, must~~ bring the dispute to the department for a contested case hearing.

(2) The following disputes are required to follow the administrative rules on mediation before proceeding as provided by statute to either a contested case hearing before the department or a case in the workers' compensation court:

(a) other than disputes over benefits available directly to a claimant under Title 39, chapters 71 and 72, MCA;

(b) disputes between an insurer and a medical service provider regarding medical services provided; and

(c) disputes involving a determination of the independent contractor central unit regarding the issue of whether a worker is an independent contractor or an employee. where the dispute is one over which the department has jurisdiction to hold a hearing, must bring the dispute to the department for a contested case hearing.

~~(2)~~(3) A contested case concerning employment classifications assigned to an employer by an Plan 2 insurer is administered by the classification review committee in accordance with 33-16-1012, MCA.

~~(3)~~(4) A contested case held by the department under Title 39, chapters 71, 72 or 73, MCA, is administered by the department in accordance with ARM 24.2.101 and 24.29.201(2).

AUTH: 2-4-201, 39-71-203, ~~39-72-203~~, MCA

IMP: Title 2, chapter 6 ~~4~~, part 6, ~~33-16-1012~~, 39-71-204, 39-71-415, ~~39-71-704~~, ~~39-71-2401~~, 39-71-2905, ~~39-72-611~~, ~~39-72-612~~, MCA

REASON: There is reasonable necessity to amend ARM 24.29.207 to implement changes enacted by Chap. 117, L. 2007 (SB 108) to direct disputes between medical service providers and insurers to the mediation process effective July 1, 2007. There is also reasonable necessity to delete the reference to Title 39, chapter 72, MCA, because chapter 72 (the former Occupational Disease Act) was repealed in 2005. There is reasonable necessity to clarify that the employment classification administered by the classification review committee under the insurance commissioner's requirements in 33-16-1008, MCA, only applies to Plan 2 insurance carriers in the workers' compensation context. Finally, there is reasonable necessity to correct the rule to clarify the disputes that require mediation and to correct the implementation citations.

24.29.1404 DISPUTED MEDICAL CLAIMS (1) After mediation, disputes between an insurer and a medical service provider Disputes arising over the following issues amount of a fee for medical services are resolved by a hearing before the department upon written application of a party to the dispute or the injured worker. The following issues are considered to be disputes arising over the amount of a fee for medical services:

(a) amounts payable to medical providers, when benefits available directly to claimants are not an issue;

(b) access to medical records;

(c) timeliness of payments to medical providers; or

(d) requirements for documentation submitted by a provider to an insurer pursuant to ARM 24.29.1513 as a condition of the payment of medical fees.

(2) through (4) remain the same.

AUTH: 39-71-203, MCA

IMP: 39-71-203, 39-71-704, MCA

REASON: There is reasonable necessity to amend ARM 24.29.1404 to implement changes enacted by Chap. 117, L. 2007 (SB 108) directing that disputes between medical providers and insurers must first be sent to mediation before being resolved by a department hearing.

24.29.1426 HOSPITAL SERVICE RULES FOR SERVICES PROVIDED FROM APRIL 1, 1998, THROUGH DECEMBER 31, 2007 (1) through (3) remain the same.

AUTH: 39-71-203, MCA

IMP: 39-71-704, MCA

REASON: There is reasonable necessity to amend the catchphrase for ARM 24.29.1426 due to Chap. 330, L. 2007 (HB 738), which is effective in relevant part on January 1, 2008, to distinguish it from rules that apply to services rendered on or after January 1, 2008. NEW RULE III is proposed to change reimbursement to a medical provider for professional services provided at a facility from the RVP to the RBRVS system. ARM 24.29.1426 will therefore apply to reimbursements for dates of service from April 1, 1998, through December 31, 2007.

24.29.1504 DEFINITIONS As used in this subchapter, the following definitions apply:

(1) "Current Procedural Terminology" or "CPT" codes means codes as published by the American Medical Association.

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

(3) "Facility" or "health care facility" has the meaning provided under 50-5-101, MCA, and the administrative rules implementing that definition, and is limited to only those facilities licensed or certified by the Department of Public Health and Human Services.

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

(5) "Healthcare Common Procedure Coding System" or "HCPCS" means the identification system for health care matters developed by the federal government, and includes level one codes, known as CPT codes, and level two codes that were developed to use for supplies, procedures, or services that do not have a CPT code.

(3) and (4) remain the same but are renumbered (6) and (7).

(8) "Nonfacility" means any place not included in this rule's definition of "facility".

(5) through (8) remain the same but are renumbered (9) through (12).

(13) "Relative Value Unit" or "RVU" represents a unit of measure for medical services, procedures, or supplies. RVU is used in the fee schedule formulas to calculate reimbursement fees and is expressed in numeric units. Those services

that have greater costs or value have higher RVUs than those services with lower costs or value.

(14) "Resource-Based Relative Value Scale" or "RBRVS" means the publication titled "Essential RBRVS", published by Ingenix, Inc.

(9)(15) "Treating physician" means:

(a) has the meaning provided by ARM 24.29.1511 for with respect to claims arising before July 1, 1993, and the meaning provided by 39-71-116(29), MCA (1993) for the meaning provided by ARM 24.29.1511;

(b) with respect to claims arising on or after July 1, 1993, the meaning provided by 39-71-116, MCA.

(10) remains the same but is renumbered (16).

AUTH: 39-71-203, MCA

IMP: 39-71-704, MCA

REASON: There is reasonable necessity to amend ARM 24.29.1504 to define RBRVS, RVU, and HCPCS, terms used in or required by Chap. 330, L. 2007 (HB 738), as those terms are not commonly understood but are an integral part of the new fee schedule proposed in NEW RULE III in this notice. The definitions of facility and nonfacility are added here in order to indicate that when the rules refer to nonfacility services, the rules refer to medical services that are provided somewhere other than a health care facility or facility, as defined by 50-5-101(23), MCA. Chap. 359, L. 2007 (SB 444) grants an advanced practice registered nurse the ability to provide services independently as a treating physician. Therefore it is necessary to amend the definition of treating physician.

24.29.1521 MEDICAL EQUIPMENT AND SUPPLIES FOR DATES OF SERVICE BEFORE JANUARY 1, 2008 (1) Reimbursement for medical equipment and supplies dispensed through a medical provider before January 1, 2008, is limited to the lesser of \$30.00 or 30 percent above the cost of the item including freight a total amount that is determined by adding the cost of the item plus the freight cost plus the lesser of either \$30.00 or 30 percent of the cost of the item, except prescription medicines are limited to charges allowed under 39-71-727, MCA. An invoice documenting the cost of the equipment or supply must be sent to the insurer upon the insurer's request.

(2) and (3) remain the same.

AUTH: 39-71-203, MCA

IMP: 39-71-704, MCA

REASON: There is reasonable necessity to amend the catchphrase of ARM 24.29.1521 due to Chap. 330, L. 2007 (HB 738) which is effective in relevant part on January 1, 2008, to distinguish it from rules that apply to services rendered on or after January 1, 2008. NEW RULE II is proposed to change reimbursement for medical equipment and supplies to the RBRVS system. All medical equipment and supplies provided prior to January 1, 2008, are paid according to the rule in effect on the date of service so this rule is proposed to be amended to provide an ending

date. There is also reasonable necessity to clarify the amount of the reimbursement due to confusion reported to the department by users of the rule.

24.29.1532 USE OF FEE SCHEDULES FOR SERVICES PROVIDED ON OR AFTER FROM JULY 1, 2002, THROUGH DECEMBER 31, 2007 (1) The department's schedule of fees for medical nonhospital services is known as the Montana Workers' Compensation Medical Fee Schedule. Effective July 1, 2002, to December 31, 2007, the fee schedule in this rule is hereby adopted. The fee schedule is comprised of the following:

(a) through (12) remain the same.

AUTH: 39-71-203, MCA

IMP: 39-71-704, MCA

REASON: There is reasonable necessity to amend the catchphrase of ARM 24.29.1532 due to Chap. 330, L. 2007 (HB 738) which is effective in relevant part on January 1, 2008, to distinguish it from rules that apply to services rendered on or after January 1, 2008. NEW RULE III is proposed to adopt the RBRVS reimbursement system for medical services. All services provided prior to January 1, 2008, are paid according to the rule in effect on the date of service so this rule is proposed to be amended to provide an ending date.

24.29.1536 CONVERSION FACTORS -- METHODOLOGY FOR SERVICES PROVIDED FROM APRIL 1, 1993, THROUGH DECEMBER 31, 2007 (1) This rule applies to services provided from April 1, 1993, to December 31, 2007.

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

AUTH: 39-71-203, MCA

IMP: 39-71-704, MCA

REASON: There is reasonable necessity to amend the catchphrase of ARM 24.29.1536 to implement changes enacted by Chap. 330, L. 2007 (HB 738), to distinguish it from rules that apply to services rendered on or after January 1, 2008. The proposed rule defines the time period for which the prior method of increasing the conversion factors by the state's average weekly wage applies.

24.29.1541 ACUPUNCTURE FEES FOR SERVICES PROVIDED FROM APRIL 1, 1993, THROUGH DECEMBER 31, 2007 (1) through (3) remain the same.

(4) Effective April 1, 1993, through December 31, 2007, the The following special procedure codes, with the associated description and unit values, are recognized for acupuncture specialty area services:

(a) and (b) remain the same.

AUTH: 39-71-203, MCA

IMP: 39-71-704, MCA

REASON: There is reasonable necessity to amend ARM 24.29.1541 to implement changes enacted by Chap. 330, L. 2007 (HB 738). Under the previously used RVP system, acupuncture was not covered so a separate rule was required. Under the new RBRVS system, acupuncture is now covered by proposed NEW RULE III. The proposed changes to this rule set an ending date for application of the rule to services provided through that date.

24.29.1551 DENTAL SPECIALTY AREA FEES FOR SERVICES PROVIDED FROM APRIL 1, 1993, THROUGH DECEMBER 31, 2007 (1) through (3) remain the same.

(4) Effective April 1, 1993, through December 31, 2007, the following schedule of procedure codes, with the associated description and unit values, are recognized for the dental service areas:

(a) through (z) remain the same.

AUTH: 39-71-203, MCA

IMP: 39-71-704, MCA

REASON: There is reasonable necessity to amend the catchphrase of ARM 24.29.1551 to implement changes enacted by Chap. 330, L. 2007 (HB 738), to distinguish it from rules that apply to services rendered on or after January 1, 2008. Under the previously used RVP system, dental services were not covered so a separate rule was required. Under the new RBRVS system, dental services are now covered by proposed NEW RULE III. The proposed changes to this rule set an ending date for application of the rule to services provided through that date.

24.29.1561 PHYSICIAN FEES -- MEDICINE FOR SERVICES PROVIDED FROM APRIL 1, 1993, THROUGH DECEMBER 31, 2007 (1) For services provided from April 1, 1993, through December 30, 2007, fees ~~Fees~~ for medicine specialty area services are payable according to the values listed in Relative Values for Physicians.

(2) and (3) remain the same.

AUTH: 39-71-203, MCA

IMP: 39-71-704, MCA

REASON: There is reasonable necessity to amend the catchphrase of ARM 24.29.1561 to implement changes enacted by Chap. 330, L. 2007 (HB 738), to distinguish it from rules that apply to services rendered on or after January 1, 2008. Under the previously used RVP system, ARM 24.29.1561 made clear that the RVP applied to standard medical nonfacility services. The proposed new RBRVS system covers all nonfacility services in NEW RULE III so a separate rule is no longer required. The proposed changes to this rule set an ending date for application of the rule to services provided through that date.

24.29.1566 PHYSICIAN FEES -- ANESTHESIA SPECIALTY AREA FOR SERVICES PROVIDED FROM APRIL 1, 1993, THROUGH DECEMBER 31, 2007

(1) For services provided from April 1, 1993, through December 30, 2007, except ~~Except~~ as otherwise provided by this rule, fees for the anesthesia medical specialty area are payable according to the values listed in Relative Values for Physicians. Special unit value rules listed in ~~subsections~~ (4) and (5), ~~below~~, are established for anesthesia. Those special unit value rules supersede the corresponding unit values listed in Relative Values for Physicians, and apply to all providers. A physician who furnishes other medical services in addition to anesthesia must use the fee schedule that applies to the services rendered.

(2) through (5) remain the same.

AUTH: 39-71-203, MCA

IMP: 39-71-704, MCA

REASON: There is reasonable necessity to amend the catchphrase of ARM 24.29.1566 to implement changes enacted by Chap. 330, L. 2007 (HB 738), to distinguish it from rules that apply to services rendered on or after January 1, 2008. Under the previously used RVP system, ARM 24.29.1566 applied the RVP to anesthesia services and set special unit values for services. The proposed new RBRVS system covers all nonfacility services in NEW RULE III so a separate rule is no longer required. The proposed changes to this rule set an ending date for application of the rule to services provided through that date. The department will be proposing the new health care facility fee schedule in the future. The department anticipates addressing special fee schedule adjustments for anesthesia at that time.

24.29.1572 CHIROPRACTIC FEES FOR SERVICES PROVIDED ON OR AFTER FROM JULY 1, 2002, THROUGH DECEMBER 31, 2007 (1) Beginning Effective July 1, 2002, through December 31, 2007, fees for services rendered by doctors of chiropractic are payable only for the procedure codes listed below and unless otherwise specified, are payable according to the unit values listed in the RVP. The procedure codes, descriptions, and unit values in the RVP apply to diagnostic x-rays for services provided by doctors of chiropractic.

(2) through (7) remain the same.

AUTH: 39-71-203, MCA

IMP: 39-71-704, MCA

REASON: There is reasonable necessity to amend the catchphrase of ARM 24.29.1572 to implement changes enacted by Chap. 330, L. 2007 (HB 738), to distinguish it from rules that apply to services rendered on or after January 1, 2008. Under the previously used RVP system, ARM 24.29.1572 applied the RVP to chiropractic services and designated what codes chiropractors could bill. The proposed new RBRVS system covers all nonfacility services in NEW RULE III; however, the department believes that it is proper to continue to designate the billable codes for chiropractors. Proposed NEW RULE V copies ARM 24.29.1572 and adapts it to the RBRVS system. The proposed changes to this rule set an ending date for application of the rule to services provided through that date.

24.29.1573 PRIOR AUTHORIZATION AND BILLING LIMITATIONS FOR CHIROPRACTIC SERVICES PROVIDED ON OR AFTER FROM JULY 1, 2002, THROUGH DECEMBER 31, 2007 (1) This rule applies to services provided from July 1, 2002, through December 31, 2007.

(1) through (12) remain the same but are renumbered (2) through (13).

AUTH: 39-71-203, MCA

IMP: 39-71-704, MCA

REASON: There is reasonable necessity to amend the catchphrase of ARM 24.29.1573 to implement changes enacted by Chap. 330, L. 2007 (HB 738), to distinguish it from rules that apply to services rendered on or after January 1, 2008. Proposed NEW RULE VI copies ARM 24.29.1573 and adapts it to the RBRVS system. The proposed changes to this rule set an ending date for application of the rule to services provided through that date.

24.29.1582 PROVIDER FEES -- OCCUPATIONAL AND PHYSICAL THERAPY SPECIALTY AREA FOR SERVICES PROVIDED FROM JULY 1, 2002 THROUGH SEPTEMBER 30, 2003 (1) Effective July 1, 2002, through September 30, 2003, fees Fees for services provided by occupational therapists and physical therapists are payable only for the procedure codes listed below and unless otherwise specified, are payable according to the unit values listed in the RVP.

(2) through (8) remain the same.

AUTH: 39-71-203, MCA

IMP: 39-71-704, MCA

REASON: There is reasonable necessity to amend ARM 24.29.1582 to clarify within the text of the rule that the rule only applies to services provided from July 1, 2002, through September 30, 2003.

24.29.1583 PRIOR AUTHORIZATION AND BILLING LIMITATIONS FOR SERVICES PROVIDED BY OCCUPATIONAL THERAPISTS AND PHYSICAL THERAPISTS ON OR AFTER FROM JULY 1, 2002, THROUGH DECEMBER 31, 2007 (1) This rule applies to services provided from July 1, 2002, through December 31, 2007.

(1) through (11) remain the same but are renumbered (2) through (12).

AUTH: 39-71-203, MCA

IMP: 39-71-704, MCA

REASON: There is reasonable necessity to amend the catchphrase of ARM 24.29.1583 to implement changes enacted by Chap. 330, L. 2007 (HB 738), to distinguish it from rules that apply to services rendered on or after January 1, 2008. Proposed NEW RULE VIII copies from ARM 24.29.1583 and adapts it to the RBRVS system. The proposed changes to this rule set an ending date for application of the rule to services provided through that date.

24.29.1584 PROVIDER FEES -- OCCUPATIONAL AND PHYSICAL THERAPY SPECIALTY AREA FOR SERVICES PROVIDED ON OR AFTER FROM OCTOBER 1, 2003, THROUGH DECEMBER 31, 2007 (1) Fees for services provided by occupational therapists and physical therapists from October 1, 2003, through December 31, 2007, are payable only for the procedure codes listed below, and unless otherwise specified are payable according to the unit values listed in the RVP.

(2) through (4)(a)(iii) remain the same.

(b) Special services, procedures, and report codes 99070 and 99080 ~~Not~~ billed. A separate written report must be submitted describing the service provided when billing for these codes.

(5) through (8) remain the same.

AUTH: 39-71-203, MCA

IMP: 39-71-704, MCA

REASON: There is reasonable necessity to amend the catchphrase of ARM 24.29.1584 to implement changes enacted by Chap. 330, L. 2007 (HB 738), to distinguish it from rules that apply to services rendered on or after January 1, 2008. Proposed NEW RULE VII copies ARM 24.29.1584 and adapts it to the RBRVS system. The proposed changes to this rule set an ending date for application of the rule to services provided through that date. There is also reasonable necessity to correct the typo in the rule.

5. The proposed new rules provide as follows:

NEW RULE I HOSPITAL SERVICE RULES FOR CLAIMS ARISING ON OR AFTER JANUARY 1, 2008 (1) This rule applies to services provided on or after January 1, 2008.

(2) Any overall rate change adopted by a hospital shall be reported to the department on a department-approved form before the effective date of the rate change. The department may in its discretion conduct audits of any hospital's financial records to determine proper reporting of rate change filings.

(3) Insurers shall make timely payments of hospital bills. In cases where there is no dispute over liability the insurer shall, within 30 days of receipt of a hospital's charges, either pay the charges according to the rates established by these rules, or notify the hospital that additional information is requested, and specify that information. The insurer shall then pay the charges within 30 days of receipt of the requested information.

AUTH: 39-71-203, MCA

IMP: 39-71-704, MCA

REASON: There is reasonable necessity to adopt NEW RULE I to implement changes enacted by Chap. 330, L. 2007 (HB 738). Currently, a medical provider's professional fees, when the services are provided at a hospital facility, are subject to

the RVP. The legislation requires reimbursement to be based on the RBRVS system. This proposed rule is based upon ARM 24.29.1426, but deletes the reference to the RVP and the reference to professional fees because that change is proposed in NEW RULE III, deletes the reference to outpatient services as the department will be proposing rules regarding those services in a separate fee schedule, and sets a beginning date.

NEW RULE II MEDICAL EQUIPMENT AND SUPPLIES FOR DATES OF SERVICE ON OR AFTER JANUARY 1, 2008 (1) This rule applies to equipment and supplies provided on or after January 1, 2008.

(2) Except for prescription medicines as provided by ARM 24.29.1529, reimbursement for medical equipment and supplies dispensed through a medical provider is calculated by using the RVU listed in the RBRVS times the conversion factor established in [NEW RULE IV] in effect on the date of service. If a RVU is not listed or if the RVU is listed as null, reimbursement is limited to a total amount that is determined by adding the cost of the item plus the freight cost plus the lesser of either \$30.00 or 30 percent of the cost of the item. An invoice documenting the cost of the equipment or supply must be sent to the insurer upon the insurer's request.

(a) Copies of the instructions are available on the department web site at <http://erd.dli.state.mt.us/wcregs/medreg.asp> or may be obtained at no charge from the Montana Department of Labor and Industry, P.O. Box 8011, Helena, Montana 59604-8011.

(3) If a provider adds value to medical equipment or supplies (such as by complex assembly, modification, or special fabrication), then the provider may charge a reasonable fee for those services. Merely unpacking an item is not a "value-added" service. While extensive fitting of devices may be billed for, simple fitting (such as adjusting the height of crutches) is not billable.

(4) This rule does not apply to:

- (a) health care facilities;
- (b) pharmacies; or
- (c) equipment supply houses that are not also health care providers.

AUTH: 39-71-203, MCA

IMP: 39-71-704, MCA

REASON: There is reasonable necessity to adopt NEW RULE II to implement changes enacted by Chap. 330, L. 2007 (HB 738). Currently, reimbursement for medical equipment and supplies is subject to the terms of ARM 24.29.1521. The legislation requires reimbursement to be based on the RBRVS system. This proposed rule is based upon ARM 24.29.1521, but adds reimbursement pursuant to the RBRVS system, sets a beginning date, and clarifies the reimbursement amount when an RVU is not listed or is null.

NEW RULE III NONFACILITY FEE SCHEDULE FOR SERVICES PROVIDED ON OR AFTER JANUARY 1, 2008 (1) The department adopts the fee schedule provided by this rule to determine the reimbursement amounts for services provided by an individual medical service provider at a nonfacility or facility furnished

on or after January 1, 2008. An insurer is not obligated to pay more than the fee provided by the fee schedule for a service provided within the state of Montana. The fee schedule is comprised of the following elements:

- (a) the HCPCS codes, including CPT codes, which are incorporated by reference, and discussed in greater detail in (3);
- (b) the RVU given in the 2007 edition of the RBRVS, which is incorporated by reference, unless a relative value is otherwise specified in these rules;
- (c) the publication "Montana Workers' Compensation Nonfacility Fee Schedule Instruction Set for 2008", September 2007 edition, which is incorporated by reference;
- (d) the conversion factors established by the department in [NEW RULE IV];
- (e) modifiers, as found in the instructions; and
- (f) the Montana unique code, MT001, described in greater detail in (8).

(2) The conversion factors, the CPT codes, and the RVU used depends on the date the medical service, procedure, or supply is provided. The reimbursement amount is generally determined by finding the proper CPT code in the RBRVS then multiplying the RVU for that code by the conversion factor. For example, if the conversion factor is \$5.00, and a procedure code has a unit value of 3.0, the most that the insurer is required to pay the provider for that procedure is \$15.00.

(3) Unless a special code or description is otherwise provided by rule, pursuant to 39-71-704, MCA, the edition of the CPT publication in effect at the time the medical service is furnished must be used to determine the proper procedure code.

(4) Instructions for the fee schedule are available on the department's web site, along with already calculated reimbursement amounts by CPT code. All the definitions, guidelines, RVUs, procedure codes, modifiers, and other explanations provided in the instructions affecting the determination of individual fees apply. A copy of the instructions is available on the department web site at <http://erd.dli.state.mt.us/wcregs/medreg.asp> or may be obtained at no charge from the Montana Department of Labor and Industry, P.O. Box 8011, Helena, Montana 59604-8011.

(5) The maximum fee that an insurer is required to pay for a particular procedure is listed on the department web site and was computed using the RVU in the total facility or nonfacility column of the RBRVS times the conversion factor, except as otherwise provided for in these rules.

(6) Each provider is to limit services to those which can be performed within the limits and restrictions of the provider's professional licensure. For nonlicensed providers, the insurer is not required to reimburse above the related CPT codes for appropriate services.

(7) RVUs have not been established in the RBRVS for CPT codes 99455 and 99456. The RVU established by the department for:

- (a) code 99455 is 2.5 RVU; and
- (b) code 99456 is 2.8 RVU.

(8) When billing the services listed below, the Montana unique code, MT001, must be used and a separate written report is required describing the services provided. The reimbursement rate for this code is 0.5 RVUs per 15 minutes. These requirements apply to the following services:

(a) face-to-face conferences with payor representative(s) to update the status of a patient upon request of the payor;

(b) a report associated with nonphysician conferences required by the payor;
or

(c) completion of a job description or job analysis form requested by the payor.

(9) Where a procedure is not covered by these rules, the insurer must pay a reasonable fee, not to exceed the usual and customary fee charged by the provider to nonworkers' compensation patients unless the procedure is not allowed by these rules.

(10) Where a service is listed as "by report", the fee charged may not exceed the usual and customary fee charged by the provider to nonworkers' compensation patients.

(11) It is the responsibility of the provider to use the proper procedure, service, and supply codes on any bills submitted for payment. The failure of a provider to do so, however, does not relieve the insurer's obligation to pay the bill, but it may justify delays in payment until proper coding of the services provided is received by the insurer.

(12) Copies of the RBRVS are available from the publisher. Ordering information may be obtained from the department at the address listed in (4).

AUTH: 39-71-203, MCA

IMP: 39-71-704, MCA

REASON: There is reasonable necessity to adopt NEW RULE III to implement changes enacted by Chap. 330, L. 2007 (HB 738). Currently, reimbursement for nonfacility medical services is subject to the RVP. The legislation requires reimbursement to be based on the RBRVS system. This proposed rule is based upon ARM 24.29.1532, but deletes references to the RVP, adds reimbursement pursuant to the RBRVS system, incorporates department instructions and conversion factors, makes the rule easier to read for users, and sets a beginning date.

CPT codes 99455 and 99456 have been used in the Montana workers' compensation fee schedules applicable before January 1, 2008, and their RVU values were based on values from the RVU system. These codes do not have RVUs in the RBRVS. The department is proposing to establish values for these codes in the nonfacility fee schedule.

In addition, under the fee schedules for the previous years and under the RVP system, code 97799 applied only to chiropractors, occupational therapists, and physical therapists, and allowed billing for payor conferences. There is no equivalent code in the RBRVS system. The department is proposing to apply the substance of this code to all medical providers. A new Montana unique code, MT001, is being proposed to allow all providers to be reimbursed for these services.

NEW RULE IV CONVERSION FACTORS FOR SERVICES PROVIDED ON OR AFTER JANUARY 1, 2008 -- METHODOLOGY (1) This rule applies to services, supplies, and equipment provided on or after January 1, 2008.

(2) The conversion factors are established annually by the department pursuant to 39-71-704, MCA. The conversion factor for goods and services, other than anesthesia services:

(a) provided on or after January 1, 2008, is \$63.45.

(3) The conversion factors are established annually by the department pursuant to 39-71-704, MCA. The conversion factor for anesthesia services:

(a) provided on or after January 1, 2008, is \$57.20.

(4) The top five insurers or third-party administrators, ranked by premiums written in Montana providing group health insurance coverage through a group health plan as defined in 33-22-140, MCA, and who use the RBRVS to determine fees for covered services, must annually provide to the department their current standard conversion factors by July 1.

(5) The conversion factor amounts for nonfacility services are calculated using the average rates for medical services paid by the top five insurers or third-party administrators providing group health insurance via a group health plan in Montana, based upon the amount of premium for that category of insurance reported to the office of the Montana insurance commissioner. The term "group health plan" has the same meaning as provided by 33-22-140, MCA.

(a) The department annually surveys the top five insurers to collect information on the rates (the RBRVS conversion factors) paid during the current year for nonfacility health care services furnished in Montana.

(b) The department's conversion factors for the following year are set at 110% of the surveyed average.

AUTH: 39-71-203, MCA

IMP: 39-71-704, MCA

REASON: There is reasonable necessity to adopt NEW RULE IV to implement changes enacted by Chap. 330, L. 2007 (HB 738). This legislation bases the annual calculation of the conversion factors at a rate not higher than 10% above the average of the conversion factors used by the top five insurers or third-party administrators providing disability insurance who use the RBRVS system. This proposed rule clarifies that, within the broad category of disability insurance covered by Title 33, chapter 22, MCA, the department will only use the conversion factors of insurers or third-party administrators who provide group health insurance in Montana because those entities make up the private insurance market that is comparable to the coverage provided by workers' compensation insurance. There is reasonable necessity to actually establish the dollar amount of the conversion factors that will be applied beginning January 1, 2008, as well as to describe the methodology for how the conversion factors are established. The department notes that the system establishing two nonfacility conversion factors, one for anesthesia services and another for all goods and services other than anesthesia services, is dictated by the design of the RBRVS system.

NEW RULE V CHIROPRACTIC FEE SCHEDULE FOR SERVICES PROVIDED ON OR AFTER JANUARY 1, 2008 (1) This rule applies to services that are provided on or after January 1, 2008.

(2) Fees for services rendered by doctors of chiropractic are payable only for the procedure codes listed below and, unless otherwise specified, are payable according to the amounts allowed by the nonfacility fee schedule. The reimbursement rates referenced in the nonfacility fee schedule apply to diagnostic x-rays for services provided by doctors of chiropractic.

(3) Only the following codes may be billed for chiropractic services:

(a) all physical medicine and rehabilitation codes except:

(i) codes 97001 through 97006;

(ii) code 97033;

(iii) code 97532;

(iv) code 97533; and

(v) codes 97810 through 97814;

(b) special services, procedures, and report codes 99070, 99080, and MT001. Code MT001 is described in [NEW RULE III]. A separate written report must be submitted describing the service provided when billing for the codes identified in this subsection;

(c) chiropractic manipulative treatment codes 98940 through 98943;

(d) evaluation and management codes 99201 through 99204 and 99211 through 99214; and

(e) all diagnostic x-ray codes. The provider must furnish to the insurer documentation of the reasons justifying the use of the diagnostic x-ray procedure(s) employed.

(4) The explanations, protocols, comments, and directions for use contained in both the CPT manual and the nonfacility fee schedule are applied to the procedure codes contained in this rule.

(5) Code 97750 is payable for a maximum of 24 15-minute increments of service per day.

(6) Code 97150 is to be used when two or more injured workers are being treated in a group setting and all participants are engaged in the same therapeutic procedures under the direct supervision of a chiropractor. Documentation indicating the type of treatment and the number of participants in each session must be provided along with each bill.

(7) When a chiropractor is performing orthotics fitting and training (code 97760) or checking for orthotic/prosthetic use (code 97762), supplies and materials provided may be billed separately for each visit using the appropriate HCPCS code.

AUTH: 39-71-203, MCA

IMP: 39-71-704, MCA

REASON: There is reasonable necessity to adopt NEW RULE V to implement changes enacted by Chap. 330, L. 2007 (HB 738). In addition to adopting the RBRVS system, this legislation allows the department to adopt utilization and treatment guidelines. This proposed rule is based upon ARM 24.29.1572, but adds a beginning date and changes from the RVP to the nonfacility fee schedule in NEW RULE III which incorporates the RBRVS. In addition, the rule continues the utilization and treatment guidelines that were established under ARM 24.29.1572. Proposed NEW RULE V also removes CPT codes that are obsolete and replaces

them with current codes. To improve the rules for the users, the proposed rule copies the language regarding billing for group treatment from ARM 24.29.1573. Also, code 97799 is removed and replaced by MT001. The substantive requirements of this new code are moved to NEW RULE III, so that it applies to all providers.

NEW RULE VI CHIROPRACTIC -- PRIOR AUTHORIZATION AND BILLING LIMITATIONS FOR SERVICES PROVIDED ON OR AFTER JANUARY 1, 2008

- (1) This rule applies to services that are provided on or after January 1, 2008.
- (2) Evaluations and re-evaluations may not be billed more than once every 30 days without prior authorization. For the first visit and for each 30-day evaluation, the chiropractor may charge for an office call in addition to treatment codes. For all other visits, the provider may charge only treatment codes without prior authorization.
- (3) Prior authorization is required before performing the procedures identified by codes 97535, 97537, 97545, 97546, and 97750.
 - (a) New procedures, for which a CPT code does not yet exist, and those procedures for which a numerical RVU has not been established, require prior authorization from the insurer.
- (4) No more than two 15-minute units per day may be billed for each code 97032, 97034, and 97035 without prior authorization. When ultrasound (code 97035) and electrical stimulation (code 97032) are used simultaneously in treatment, only the higher unit value of the two may be billed without prior authorization.
- (5) Procedure codes 97110, 97112, 97113, 97116, 97140, 97530, 97532, 97533, and 97542, when billed alone, can be billed for no more than four 15-minute units in one day without prior authorization.
- (6) Procedure code 97124, when billed alone, can be billed for no more than three 15-minute units in one day without prior authorization.
- (7) No more than three unattended modality codes (97010 through 97028) may be billed each visit without prior authorization.
- (8) If the patient's condition requires the use of unattended modalities only, no more than three unattended modalities (codes 97010 through 97028) may be billed per visit. Unattended modalities in the absence of any other treatment may not be billed for a period exceeding two calendar weeks without prior authorization.
- (9) No more than a total of five codes may be billed per visit without prior authorization. With the exception of codes 97535, 97537, 97545, 97546, and 97750, each 15 minutes of a timed code is equivalent to the billing of one code for purposes of this rule.
- (10) When billing for a manipulative treatment using codes 98940, 98941, 98942, or 98943, an office visit may be charged for the treatment without prior authorization only if a modifier 25 is used for a specific evaluation and management code.
- (11) Code 97535 is to be used when training is conducted in the injured worker's home or at some other location outside of the chiropractor's office. Mileage and travel expenses shall be established with the insurer during prior authorization.
- (12) See ARM 24.29.1517 for additional prior authorization requirements concerning health care services provided by chiropractors.

AUTH: 39-71-203, MCA
IMP: 39-71-704, MCA

REASON: There is reasonable necessity to adopt NEW RULE VI to implement changes enacted by Chap. 330, L. 2007 (HB 738). This proposed rule is based upon ARM 24.29.1573, but adds a beginning date and changes from the RVP to the new fee schedule, which incorporates the RBRVS.

NEW RULE VII OCCUPATIONAL AND PHYSICAL THERAPY FEE
SCHEDULE FOR SERVICES PROVIDED ON OR AFTER JANUARY 1, 2008

- (1) This rule applies to services that are provided on or after January 1, 2008.
- (2) Fees for services provided by occupational therapists and physical therapists are payable only for the procedure codes listed below and, unless otherwise specified, are payable according to the amounts allowed by the nonfacility fee schedule.
- (3) Only the following codes found in the nonfacility fee schedule may be billed for services provided by occupational therapists and physical therapists:
 - (a) all physical medicine and rehabilitation codes, except:
 - (i) 97532;
 - (ii) 97533; and
 - (iii) 97810 through 97814; and
 - (b) special services, procedures, and report codes 99070, 99080, and MT001. Code MT001 is described in [NEW RULE III]. A separate written report must be submitted describing the service provided when billing for the codes identified in this subsection.
- (4) The explanations, protocols, comments, and directions for use contained in both the CPT manual and the nonfacility fee schedule are to be applied to the procedure codes contained in this rule.
- (5) When billing code 97033 (iontophoresis), medication charges and electrode charges must each be billed separately for each visit using code 99070.
- (6) Code 97150 is to be used when two or more injured workers are being treated in a group setting and all participants are engaged in the same therapeutic procedures under the direct supervision of the treating therapist. Documentation indicating the type of treatment and the number of participants in each session must be provided along with each bill.
- (7) When an occupational therapist or a physical therapist is performing orthotics fitting and training (code 97760) or checking for orthotic/prosthetic use (code 97762), supplies and materials provided may be billed separately for each visit using the appropriate HCPCS code.

AUTH: 39-71-203, MCA
IMP: 39-71-704, MCA

REASON: There is reasonable necessity to adopt NEW RULE VII to implement changes enacted by Chap. 330, L. 2007 (HB 738). This proposed rule is based upon ARM 24.29.1584, but adds a beginning date, changes from the RVP to the fee

schedule which incorporates the RBRVS, and makes minor changes to make the rule more concise. In addition to adopting the RBRVS system, the legislation allows the department to adopt utilization and treatment guidelines. This proposed rule continues the utilization and treatment guidelines that were established under ARM 24.29.1584. Proposed NEW RULE VII also removes CPT codes that are obsolete and replaces them with current codes. To improve the rules for users, the proposed rule copies the language regarding billing for group treatment from ARM 24.29.1583. Also, code 97799 is removed and replaced by MT001. The substantive requirements of this new code are moved to NEW RULE III, so that it applies to all providers.

NEW RULE VIII OCCUPATIONAL AND PHYSICAL THERAPISTS -- PRIOR AUTHORIZATION AND BILLING LIMITATIONS FOR SERVICES PROVIDED ON OR AFTER JANUARY 1, 2008 (1) This rule applies to services that are provided on or after January 1, 2008.

(2) Examinations and re-examinations may not be billed more than once every 30 days without prior authorization unless physician ordered. For the first visit and for each 30-day examination, the occupational therapist and physical therapist may charge for an office call in addition to treatment codes. For all other visits, the occupational therapist and physical therapist may charge only treatment codes without prior authorization. All examinations and re-examinations require a written report separate from the daily treatment note that reflects the claimant's functional status.

(3) Prior authorization is required before performing the procedures identified by codes 97535, 97537, 97545, 97546, and 97750.

(a) New procedures, for which a CPT code does not yet exist, and those procedures for which a numerical RVU has not been established, require prior authorization from the insurer.

(4) No more than two 15-minute units per day may be billed for each CPT code 97032, 97034, and 97035 without prior authorization. When ultrasound (CPT code 97035) and electrical stimulation (CPT code 97032) are used simultaneously in treatment, only the higher unit value of the two may be billed without prior authorization.

(5) Procedure codes 97110, 97112, 97113, 97116, 97140, 97530, 97532, 97533, and 97542, when billed alone, can be billed for no more than four 15-minute units in one day without prior authorization.

(6) Procedure code 97124, when billed alone, can be billed for no more than three 15-minute units in one day without prior authorization.

(7) No more than three unattended modality codes (97010 through 97028) may be billed each visit without prior authorization.

(8) If the patient's condition requires the use of unattended modalities only, no more than three unattended modalities (codes 97010 through 97028) may be billed per visit. Unattended modalities in the absence of any other treatment may not be billed for a period exceeding two calendar weeks without prior authorization.

(9) No more than a total of five codes may be billed per visit without prior authorization. With the exception of codes 97535, 97537, 97545, 97546, and 97750,

each 15 minutes of a timed code is equivalent to the billing of one code for purposes of this rule.

(10) Code 97535 is to be used when training is conducted in the injured worker's home or at some other location outside of the therapist's office. Mileage and travel expenses shall be established with the insurer during prior authorization.

(11) See ARM 24.29.1517 for additional prior authorization requirements concerning medical services provided by occupational therapists and physical therapists.

AUTH: 39-71-203, MCA

IMP: 39-71-704, MCA

REASON: There is reasonable necessity to adopt NEW RULE VIII to implement changes enacted by Chap. 330, L. 2007 (HB 738). This proposed rule is based upon ARM 24.29.1583, but adds a beginning date, changes from the RVP to the new fee schedule which incorporates the RBRVS, and removes chiropractors from the language of the rule.

6. A copy of the proposed 2008 instruction set publication, identified in NEW RULE III, is available and can be accessed on-line via the internet at: <http://erd.dli.state.mt.us/wcregs/medreg.asp>. A printed version of the proposed 2008 publication is also available by contacting Jeanne Johns, at the address or telephone numbers listed in paragraph 2.

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: Jeanne Johns, Workers' Compensation Regulation Section Supervisor, Workers' Compensation Regulation Bureau, Employment Relations Division, Department of Labor and Industry, P.O. Box 8011, Helena, MT 59624-8011; by facsimile to (406) 444-7710; or by e-mail to jjohns@mt.gov, and must be received no later than 5:00 p.m., October 5, 2007.

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

9. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have

their name added to the list shall make a written request, which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all Department of Labor and Industry administrative rulemaking proceedings or other administrative proceedings. Such written request may be mailed or delivered to the Department of Labor and Industry, attention: Mark Cadwallader, 1327 Lockey Avenue, P.O. Box 1728, Helena, Montana 59624-1728, faxed to the department at (406) 444-1394, e-mailed to mcadwallader@mt.gov, or may be 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 sponsor of House Bill 738 was notified on May 17, 2007, by regular mail. The primary sponsor of Senate Bill 108 was notified on May 17, 2007, by regular mail. The primary sponsor of Senate Bill 444 was notified on August 22, 2007, by regular mail.

11. The department's Hearings Bureau has been designated to preside over and conduct this hearing.

/s/ MARK CADWALLADER
Mark Cadwallader
Alternate Rule Reviewer

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

Certified to the Secretary of State August 27, 2007

BEFORE THE DEPARTMENT OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the proposed	)	NOTICE OF PROPOSED
amendment of ARM 32.2.403,	)	AMENDMENT
pertaining to diagnostic laboratory)	
fees	)	NO PUBLIC HEARING
	)	CONTEMPLATED

TO: All Concerned Persons

1. On October 6, 2007, the Department of Livestock proposes to amend the above-stated rule.

2. The Department of Livestock will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Livestock no later than 5:00 p.m. on September 27, 2007, to advise us of the nature of the accommodation that you need. Please contact Christian Mackay, 301 N. Roberts St., Room 308, P.O. Box 202001, Helena, MT 59620-2001; phone: (406) 444-9321; TTD number: 1-800-253-4091; fax: (406) 444-1929; e-mail: cmackay@mt.gov.

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

32.2.403 DIAGNOSTIC LABORATORY FEES (1) The following list identifies the laboratory services and procedures available at the Montana Department of Livestock veterinary diagnostic laboratory (laboratory), and the fees charged for each of those services and/or procedures:

ABORTION STUDIES (kits):	
Includes histopathology and bacteriology (use SV43 form)	\$35.00 <u>40.00</u>
BACTERIOLOGY (use SV43 form):	
aerobic culture (first isolate)	\$13.00 <u>14.00</u>
aerobic culture (additional isolates)	4.00 <u>5.00</u> each
anaerobic culture (facultative)	14.00 <u>15.00</u>
antibiotic sensitivity per isolate	7.00
Campylobacter (livestock reproductive disease)	10.50 <u>11.00</u>
Campylobacter (intestinal contents)	10.50 <u>11.00</u>
Chlamydia ELISA	17.00
Clostridium FA	10.50 <u>11.00</u>

Clostridium genotyping referral	cost of referral
dermatophyte culture and PAS stain	23.00 <u>25.00</u>
direct darkfield microscopy	7.00
E. coli K99 latex agglutination	11.00
Mycoplasma culture	12.00 <u>13.00</u>
non-dermatophyte fungal culture	19.00 <u>20.00</u>
special requests	contact lab
Trichomonas culture	5.00 <u>5.50</u>
CLINICAL PATHOLOGY (clinical profiles):	
small animal health screen (SA Chem Panel, CBC/Differential, UA)	\$37.00 <u>40.00</u>
small animal clinical profile (SA Chem Panel, CBC/Differential)	27.50 <u>30.00</u>
SA Pre-Anesthetic Profile (BUN, CRE, ALT, ALP, Glu, TP, CBC/Differential)	20.00 <u>22.00</u>
Feline ADR Profile (SA Chem Panel, T4, CBC/Differential, FeLV, FIV, FIA)	55.00 <u>60.00</u>
large animal health screen (LA Chem Panel, CBC/Differential, Fibrinogen, UA)	37.00 <u>40.00</u>
large animal clinical profile (LA Chem Panel, CBC/Differential, Fibrinogen)	27.50 <u>30.00</u>
LA Pre-Anesthetic Profile (BUN, GGT, AST, CK, CBC/Differential, Fibrinogen)	24.00 <u>23.00</u>
Equine Fitness Profile (AST, GGT, Tbili, CK, TP, ALB, Glob, Ca, PO4, Na, K, Cl, TCO2, CBC/Differential, Fibrinogen)	23.00 <u>25.00</u>
CLINICAL PATHOLOGY (mini profiles):	
small animal Hepatic profile (ALT, AST, ALP, GGT, Tbili, Dbili, TP, ALB, Glob, Chol, BUN, GLu)	\$13.75 <u>15.00</u>
small animal Renal Profile (BUN, CRE, TP, ALB, Glob, Ca, PO4, Na, K, Cl, TCO2)	13.75 <u>15.00</u>
Exocrine Pancreatic Profile (BUN, Ca, TP, ALB, Glu, ALP, ALT, AST, Chol, Amylase, LIPASE)	13.75 <u>15.00</u>
canine Endocrine Profile (Ca, PO4, TP, ALB, ALP, ALT, AST, Chol, T4, Na, K, Cl, Glu)	17.50 <u>21.00</u>
large animal Hepatic Profile (GGT, AST, Tbili, TP, ALB)	10.00 <u>11.00</u>
large animal Renal Profile (BUN, CRE, TP, ALB, Ca, PO4, Na, K, Cl)	11.00 <u>12.00</u>
SA/LA Gastrointestinal Profile (TP, ALB, Na, K, Cl)	9.00 <u>10.00</u>
feline Thyroid Profile (ALP, ALT, AST, PO4, T4)	11.00 <u>12.00</u>
Electrolytes (Na, K, Cl, TCO2)	7.00 <u>8.00</u>

cT4 T3 TSH free T4 TT4 cTSH cortisol canine thyroid panel (CTT4, CTSH, PT4, TT3) thyroid panel (equine/feline) Sorbitol Dehydrogenase bile acids TLI Phenobarbitol	7.00 <u>8.00</u> 7.00 <u>8.00</u> 7.00 <u>8.00</u> 7.00 <u>8.00</u> 7.00 <u>8.00</u> 7.00 <u>8.00</u> 13.00 each test 22.00 <u>24.00</u> 17.00 <u>19.00</u> contact lab contact lab <u>22.00</u> contact lab <u>22.00</u> contact lab <u>22.00</u>
CLINICAL PATHOLOGY (biochemical panels): small animal Chem Panel large animal Chem Panel individual biochemical tests	 \$21.00 <u>22.00</u> 21.00 <u>22.00</u> contact laboratory
CLINICAL PATHOLOGY (Cytology): solid tissue (FNA, imprint, or smear) bone marrow analysis fluid analysis (total cell count, TP, SG, Cytology) fluid smear (cytology only) CSF analysis (SG, Microprotein, Cytospin cytology)	 \$26.00 <u>28.00</u> 30.00 <u>32.00</u> 26.00 <u>28.00</u> 22.00 <u>24.00</u> 18.00 <u>20.00</u> plus microprotein referral
CLINICAL PATHOLOGY (Hematology): small animal CBC (RBC, HCT, MCV, MCH, MCHC, Reticulocytes, WBC/Differential, TP, RWD, MPV, Fibrinogen) small animal CBC without Differential Reticulocyte count Feline Anemia Panel (SA, CBC, FeLV, FIV, FIA) Large animal CBC (RBC, HCT, MCV, MCHC, Reticulocyte count, RDW, MPV, WBC/Differential, TP, Fibrinogen) large animal CBC without Differential Hemitropic Parasite Screen Fibrinogen	 \$10.50 <u>12.00</u> 5.25 5.25 31.50 <u>33.00</u> 10.50 <u>12.00</u> 5.25 3.00 3.00

CLINICAL PATHOLOGY (miscellaneous tests):	
blood cross match	\$12.00
Buffy coat count	20.00 <u>22.00</u>
Coagulation per test (PT, APTT, RBR, FDP)	17.00 <u>18.00</u>
<u>bovine IgG</u>	<u>12.00</u>
<u>equine IgG</u>	<u>12.50</u>
others	call ahead for prices
CLINICAL PATHOLOGY (urine evaluation):	
urinalysis (chemical, specific gravity, sediment evaluation)	\$40.00 <u>11.00</u>
urinalysis with culture/sensitivity	28.00 <u>30.00</u>
HISTOLOGY (use SV43 form):	
1 - 3 slides (one biopsy)	\$26.00 <u>28.00</u>
4 - 6 slides	32.00 <u>34.00</u>
7 - 10 slides	38.00 <u>40.00</u>
11 or greater slides	42.00 <u>45.00</u>
duplicate H&E slide	9.00 <u>10.00</u>
immunohistochemistry	23.00 <u>25.00</u>
special stains	8.00
MILK LABORATORY (use SV43 form):	
added water	\$3.00
antibiotic (depending on class of suspected antibiotic)	12.00 to 23.00
Brucella ring test	2.00
coliform (milk and water)	5.00
component testing	1.00
Gerber	3.00
Listeria culture	32.00
Majonnier	12.50
pesticide (organophosphate/carbamate)	24.00 minimum
pesticide (chlorinated hydrocarbon)	210.00 <u>minimum</u>
phosphatase	6.00
somatic cell count (direct microscopy)	5.00
somatic cell count (electronic)	1.00
standard plate count	5.50
yeast or mold	5.00
laboratory certification review	contact laboratory

<p>MISCELLANEOUS TESTS (use SV43):</p> <p>bovine IgG equine IgG ocular nitrate duplicate test reporting after hour fee (pathologist) stat results (clinical pathology only) minimum laboratory fee referral testing</p> <p>special testing/referral out-of-state fee</p>	<p>\$12.00 12.50 12.00 2.00 50.00 15.00 6.00</p> <p>referral lab testing costs mailing costs and \$6.00 handling fee</p> <p>contact laboratory 50% surcharge of total lab costs</p>
<p>NECROPSY:</p> <p>Includes gross examination, histopathology, and routine bacterial isolation, as deemed necessary by the pathologist. Contact the laboratory for procedural instructions. Euthanasia must be performed at animal departure point unless recommended otherwise by pathologist.</p> <p>cattle and horses fetus</p> <p>< 150 lbs. 150-500 lbs. > 500 lbs.</p> <p>sheep and goats fetus</p> <p>< 20 lbs. > 20 lbs.</p> <p>pigs fetus/s (same sow)</p> <p>< 25 lbs. 25-250 lbs. 250-500 lbs.</p> <p>dogs and cats other species</p> <p>carcass disposal rates small animals large animals wildlife</p>	<p>\$55.00 <u>60.00</u> + carcass disposal 72.00 <u>75.00</u> + CD 90.00 <u>100.00</u> + CD 130.00 <u>140.00</u> + CD</p> <p>55.00 <u>60.00</u> + CD 55.00 <u>60.00</u> + CD 72.00 <u>75.00</u> + CD</p> <p>55.00 <u>60.00</u> + CD 55.00 <u>60.00</u> + CD 72.00 <u>75.00</u> + CD 90.00 <u>100.00</u> + CD 90.00 <u>100.00</u> + CD</p> <p>35.00 <u>40.00</u> minimum</p> <p>25.00 to 85.00 20/per hundred weight contact FWP</p>

insurance and legal cases research cases spinal cord removal (in addition to necropsy fees) transmissible encephalopathies necropsy brain removal IHC and ELISA testing	contact laboratory 125 150/hour contact laboratory 45.00 to 80.00 (minimum) 125.00 + CD (minimum) 30.00 referral costs plus <u>±</u> shipping and handling
NEONATAL DIARRHEA STUDIES (kits): Includes histopathology and routine bacteriology with additional tests for K99 E. coli LA, viral agents (EM), Cryptosporidium, endoparasitism, and serum immunoglobulin as history and age of calf dictates (use SV43 form)	\$75.00 <u>85.00</u>
PARASITOLOGY: adult parasite or arthropod identification (referral) cryptosporidia exam Dirofilaria immitis ELISA screening Dirofilaria immitis ELISA confirmation fecal flotation Giardia ELISA special parasite ID procedures	\$25.00 6.00 8.00 <u>9.00</u> 12.50 <u>13.00</u> 9.00 <u>10.00</u> 25.00 contact laboratory
PCR TESTING:	contact lab <u>\$40.00 to 80.00</u>
RABIES: Submit entire brain or head in a refrigerated, fresh state. Do not submit live animals. Coincide specimen arrival with laboratory working schedule. FA examination (small animal) FA examination (large animal) carcass disposal (does not apply to bats)	\$25.00 50.00 see carcass disposal
SEROLOGY (large animal): anaplasmosis cELISA Avian Influenza AGID < 10 10 > 24 25 > 49	\$7.00 <u>7.50</u> 5.00 <u>5.50</u> 4.30 <u>4.75</u> 2.50 <u>2.75</u>

> 50	4.00 <u>1.50</u>
Bluetongue AGID	5.00 <u>5.50</u>
Bluetongue cELISA	7.50 <u>8.25</u>
Bovine Leukemia Virus, ELISA	6.00 <u>6.50</u>
Bovine Respiratory Syncytial Virus SN	referral
Bovine Virus Diarrhea Type I and II SN	42.00 <u>13.00</u>
Bovine Virus Diarrhea ELISA	5.00
> 100 BVD samples (each sample)	4.00
Brucella abortus, card, BAPA or FP	4.00 <u>1.50</u> each
Brucella abortus CF, Rivanol, SPT, or STT	2.00 <u>2.50</u> each
Brucella ovis ELISA, CF	7.00 <u>7.50</u>
Equine Infectious Anemia AGID (Coggins) 1-15	7.00 each
16 > 50	5.50 each
> 50	4.50 each
Equine Infectious Anemia ELISA	12.50
Epizootic Hemorrhagic Disease AGID	10.00
Infectious Bovine Rhinotracheitis SN	6.00 <u>6.50</u>
Johne's (Paratuberculosis) AGID	40.00 <u>11.00</u>
Johne's (Paratuberculosis) ELISA	7.00 <u>7.50</u>
Johne's ELISA CF	referral
Leptospirosis (8 routine serovars) MAT	6.50 <u>7.00</u>
Ovine Progressive Pneumonia/Caprine Arthritis	
Encephalitis AGID	5.00 <u>5.50</u>
Parainfluenza-3 HA	referral
Pseudorabies SN, LA	5.00 <u>5.50</u>
Salmonella pullorum MAT	4.00 <u>4.50</u>
Vesicular stomatitis CF	contact laboratory <u>40.00</u>
Vesicular stomatitis SN (New Jersey or Indiana)	12.00 <u>13.00</u>
West Nile IgM ELISA (<u>May – October</u>)	8.00 <u>15.00</u>
(<u>November – April</u>)	referral fee
SEROLOGY (small animals) (use SV43 form):	
Brucella canis Tube	\$20.00 <u>22.00</u>
Feline Infectious Peritonitis ELISA	23.00 <u>25.00</u>
Feline Leukemia ELISA	44.00 <u>15.00</u>
Feline Leukemia/Feline Immunodeficiency Virus ELISA	23.00 <u>25.00</u>
TOXICOLOGY:	referral to outside contracted lab
VIROLOGY (use SV43 form):	
BVD, IBR, Leptospira, EHV-1, and BRSV	
Fluorescent antibody testing	\$6.00 <u>8.00</u> per agent

Bovine Viral Diarrhea ELISA 0 to 99 samples	5.00
> 100 samples (per sample)	4.00
Canine Parvovirus (fecal only) ELISA	20.00
electron microscopy (where applicable)	25.00
virus isolation (livestock only)	20.00 <u>25.00</u> per virus
OTHER TESTS REQUESTED:	call ahead for prices
MISCELLANEOUS CHARGES/SUPPLIES:	
culturette	\$3.45
duplicate test reporting	2.00
handling fee	6.00 <u>7.00</u> plus shipping
kits	mailing costs
large shipper	11.50
minimum <u>laboratory</u> fee	6.00 <u>7.00</u>
out-of-state <u>fee</u>	cost of tests plus 50%
<u>organizational fee (submission abuse)</u>	<u>1.00 minimum</u>
<u>referral testing</u>	<u>referral lab testing costs +</u>
	<u>mailing costs and \$6.00</u>
	<u>handling fee</u>
<u>special testing/referral</u>	<u>contact laboratory</u>
<u>shipper return</u>	<u>mailing costs</u>

(2) remains the same.

AUTH: 81-1-102, 81-2-102, MCA
IMP: 81-2-102, MCA

REASON: ARM 32.2.403 is being amended to change fees that are currently charged by the Department of Livestock for diagnostic laboratory services. The fees are being increased to reflect increased costs associated with providing those services. The fees must, by statute, be set at levels commensurate with the costs of performing the tests or services listed.

Fees for each procedure and test were evaluated determining the cost of the test materials and labor for performance of the test. The fees were compared to regional government funded diagnostic laboratories and a private veterinary laboratory. The fees were adjusted to be competitive with these laboratories and to offset inflationary costs. The laboratory must continue to provide a utilized service to the Montana livestock industry in order to assure that a vital function and mission of the laboratory regarding disease surveillance is not compromised.

The increased fees charged by the department's diagnostic laboratory will potentially affect approximately 25,000 people who may use services at the laboratory. The cumulative amount of the fee increase will be \$40,000.00 based on this number of lab users.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to Christian Mackay, 301 N. Roberts St., Room 308, P.O. Box 202001, Helena, MT 59620-2001, by faxing to (406) 444-1929, or by e-mailing to cmackay@mt.gov to be received no later than 5:00 p.m., October 4, 2007.

5. If persons who are directly affected by the proposed action wish to express their data, views, and arguments orally or in writing at a public hearing, they must make a written request for a hearing and submit this request along with any written comments they have to the same address as above. The written request for hearing must be received no later than 5:00 p.m. October 4, 2007.

6. If the department 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 public hearing will be held at a later date. Notice of the public hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be more than 25, based upon the population of the state.

7. An electronic copy of this proposal notice is available through the department's site at www.mt.gov/liv.

8. The Montana Department of Livestock maintains a list of interested persons who wish to receive notice of rulemaking actions proposed by this 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 the area of interest that the person wishes to receive notices regarding. Such written request may be mailed or delivered to Christian Mackay, 301 N. Roberts St., Room 308, P.O. Box 202001, Helena, MT 59620-2001; faxed to (406) 444-1929 "attention Christian Mackay"; or e-mailed to cmackay@mt.gov. Request forms may also be completed at any rules hearing held by the department.

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

DEPARTMENT OF LIVESTOCK

BY: /s/ Christian Mackay
Christian Mackay
Executive Officer
Board of Livestock
Department of Livestock

BY: /s/ Carol Grell Morris
Carol Grell Morris
Rule Reviewer

Certified to the Secretary of State August 27, 2007.

BEFORE THE DEPARTMENT OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the proposed	)	NOTICE OF PROPOSED
amendment of ARM 32.18.101,	)	AMENDMENT
pertaining to hot iron brands)	
	)	NO PUBLIC HEARING
	)	CONTEMPLATED

TO: All Concerned Persons

1. On October 6, 2007, the Department of Livestock proposes to amend the above-stated rule.

2. The Department of Livestock will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Livestock no later than 5:00 p.m. on September 27, 2007, to advise us of the nature of the accommodation that you need. Please contact Christian Mackay, 301 N. Roberts St., Room 308, P.O. Box 202001, Helena, MT 59620-2001; phone: (406) 444-9321; TTD number: 1-800-253-4091; fax: (406) 444-1929; e-mail: cmackay@mt.gov.

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

32.18.101 HOT IRON BRANDS REQUIRED (1) remains the same.

(2) The hot iron or freeze brand must peel or heal to be valid for ownership. Fresh brands shall not be used to transfer ownership without bill of sale to prove ownership. A bill of sale may also be required to prove ownership of livestock with multiple brands.

AUTH: 81-1-102, MCA

IMP: 81-1-102, MCA

REASON: ARM 32.18.101 is being amended to clarify issues regarding fresh (peeling) brands on cattle being sold at Montana livestock auction markets. Currently, proceeds are held on freshly branded livestock sold through the markets if they are not accompanied by a bill of sale as proof of ownership matching the fresh brand.

The Board of Livestock has operated in this manner since the late 1940s, but no administrative rule has previously been adopted. The board is now amending ARM 32.18.101 to include requirements on fresh brands.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to Christian Mackay, 301 N. Roberts St., Room 308, P.O. Box 202001, Helena, MT 59620-2001, by faxing to (406) 444-1929,

or by e-mailing to cmackay@mt.gov to be received no later than 5:00 p.m., October 4, 2007.

5. If persons who are directly affected by the proposed action wish to express their data, views, and arguments orally or in writing at a public hearing, they must make a written request for a hearing and submit this request along with any written comments they have to the same address as above. The written request for hearing must be received no later than 5:00 p.m. October 4, 2007.

6. If the department 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 public hearing will be held at a later date. Notice of the public hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be more than 25, based upon the population of the state.

7. An electronic copy of this proposal notice is available through the department's site at www.mt.gov/liv.

8. The Montana Department of Livestock maintains a list of interested persons who wish to receive notice of rulemaking actions proposed by this 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 the area of interest that the person wishes to receive notices regarding. Such written request may be mailed or delivered to Christian Mackay, 301 N. Roberts St., Room 308, P.O. Box 202001, Helena, MT 59620-2001; faxed to (406) 444-1929 "attention Christian Mackay"; or e-mailed to cmackay@mt.gov. Request forms may also be completed at any rules hearing held by the department.

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

DEPARTMENT OF LIVESTOCK

BY: /s/ Christian Mackay
Christian Mackay
Executive Officer
Board of Livestock
Department of Livestock

BY: /s/ Carol Grell Morris
Carol Grell Morris
Rule Reviewer

Certified to the Secretary of State August 27, 2007.

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

In the matter of the amendment of	)	NOTICE OF PUBLIC HEARING
37.78.102, 37.78.206, 37.78.208,	)	ON PROPOSED AMENDMENT
37.78.420, 37.78.425, 37.78.506, and)	
37.78.508, pertaining to Temporary)	
Assistance for Needy Families (TANF))	

TO: All Interested Persons

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

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process (including reasonable accommodations at the hearing site) or who need an alternative accessible format of this notice. If you need an accommodation, contact the department no later than 5:00 p.m. on September 21, 2007. Please contact Gwen Knight, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 202951, Helena MT 59620-2951; telephone (406)444-9503; fax (406)444-9744; e-mail dphhslegal@mt.gov.

3. The rules as proposed to be amended provide as follows. New matter 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 ~~July 1, 2007~~ January 1, 2008 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

37.78.206 TANF: GENERAL ELIGIBILITY REQUIREMENTS (1) remains the same.

(2) Subject to the restrictions set forth in ARM 37.78.220 and in ~~37.78.206(3) of this rule~~, TANF Cash Assistance may be granted to the following classes of persons if they meet all other eligibility requirements:

(a) through (e) remain the same.

(3) The following are not eligible for TANF Cash Assistance:

(a) through (k) remain the same.

(l) ~~an individual~~ all required members of the filing unit, or individuals who would have been a required member of the filing unit at the time of sanction, which includes an individual who is sanctioned for noncompliance in allowable work activities as defined in ARM 37.78.103 and 37.78.807 negotiated in the Family Investment Agreement/WoRC Employability Plan (FIA/EP) or sanctioned for failure to accept and maintain employment without good cause, if the sanction results in an ineligibility period as defined in ARM 37.78.506;

(m) an individual who is sanctioned for noncompliance in employment and training activities negotiated in the Family Investment Agreement and/or WoRC Employability Plan or sanctioned for failure to accept and maintain employment without good cause; ~~and~~

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

(o) all required members of the filing unit if the filing unit includes an individual who has been sanctioned at least twice and the sanctioned individual has not complied with an intensive case management meeting within the first month of eligibility for TANF.

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

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

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

37.78.208 TANF: INCLUSION IN ASSISTANCE UNIT (1) through (5) remain the same.

(6) New household members required to be included in the assistance unit will be added the month after the month in which the new member entered the household or is reported to be living in the household, whichever occurs later; with the exception of a newborn minor child. A newborn minor child who is required to be included in the assistance unit will be added the date of birth or adoption, provided the household reports the birth or adoption of the newborn minor child within ten days from the date of birth or adoption. If the household fails to report the birth or adoption of the newborn minor child within ten days from the date of birth or adoption, the newborn minor child will be added the month after the month in which the newborn minor child entered the household or is reported to be living in the household, whichever occurs later.

(7) remains the same.

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

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

37.78.420 TANF: ASSISTANCE STANDARDS; TABLES; METHODS OF COMPUTING AMOUNT OF MONTHLY BENEFIT PAYMENT (1) through (3)(b) remain the same.

(4) The GMI standards, NMI standards, and benefits standards are as

follows:

(a) through (c) remain the same.

(d) The payment standards are compared to the assistance unit's net countable income as defined in ARM 37.78.103.

PAYMENT STANDARDS

(33% of the FY ~~2005~~ 2007 Federal Poverty Level)

1	\$ 263 <u>281</u>
2	353 <u>376</u>
3	442 <u>472</u>
4	532 <u>568</u>
5	622 <u>664</u>
6	714 <u>759</u>
7	804 <u>855</u>
8	894 <u>951</u>
9	980 <u>1,046</u>
10	1,070 <u>1,142</u>
11	1,160 <u>1,238</u>
12	1,249 <u>1,333</u>
13	1,339 <u>1,429</u>
14	1,429 <u>1,525</u>
15	1,518 <u>1,621</u>
16	1,608 <u>1,716</u>
17	1,698 <u>1,812</u>
18	1,787 <u>1,908</u>
19	1,877 <u>2,003</u>
20	1,967 <u>2,099</u>

(5) remains the same.

AUTH: 53-4-212, MCA

IMP: 53-4-211, 53-4-241, 53-4-601, MCA

37.78.425 TANF: NONFINANCIAL ASSISTANCE PAYMENT (1) remains the same.

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

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

(b) the assistance unit has not received a work support payment in the prior 12 months; and

(c) all members of the assistance unit who were required to participate in allowable work activities as outlined in ARM 37.78.216 have provided verification and/or documentation of participation in the allowable work activities during the month prior to case closure to the WoRC case manager.

AUTH: 53-4-212, MCA

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

37.78.506 TANF: TANF CASH ASSISTANCE; SANCTIONS (1) If any member of the assistance unit fails or refuses without good cause as defined in ARM 37.78.508 to comply with an employment related or training activity allowable work activity as defined in (8), or to provide verification and/or documentation of participation in the activities, a sanction will be imposed on the individual. ~~‡~~The first sanction will result in the reduction of the monthly TANF Cash Assistance payment by an amount equal to one person's share of the payment for one month. The second and subsequent sanction will result in case closure and the imposition of a one month ineligibility period against all required filing unit members or individuals who enter the household during the ineligibility period and who would have been a required filing unit member at the time of sanction. The third sanction will result in case closure and the imposition of a three month ineligibility period against all required filing unit members or individuals who enter the household during the ineligibility period and who would have been a required filing unit member at the time of sanction. The fourth and subsequent sanctions will result in a six months ineligibility period against all required filing unit members or individuals who enter the household during the ineligibility period and who would have been a required filing unit member at the time of sanction. The ineligibility period will follow the required filing unit members or individual(s) even if they move to another household and apply for benefits as part of that household. This rule does not apply to households who are receiving TANF extended benefits as defined in ARM 37.78.202. The imposition of a sanction ends the currently negotiated FIA/WoRC Employability Plan the last day of the penalty month. A sanction is considered imposed even if a fair hearing is requested and continued benefits are issued.

(2) and (3) remain the same.

~~(4) A sanctioned individual must negotiate and sign a new Family Investment Agreement prior to the end of the sanction penalty period for the first sanction or the household's TANF Cash Assistance will terminate at the end of the sanction penalty period.~~ A sanctioned individual who is required to negotiate and comply with a FIA/WoRC Employability Plan (FIA/EP) during the sanction penalty month must negotiate a FIA/EP, prior to the reduced benefits being issued to the household. These individuals are outlined in ARM 37.78.216.

~~(5) If the TANF Cash Assistance case closes because the sanctioned~~

~~individual did not end the sanction by negotiating a new FIA during the penalty period, the household must serve a one month ineligibility period for the first sanction as long as the sanctioned individual is a required filing unit member. A sanctioned individual who is not required to negotiate and comply with a FIA/EP during the sanction penalty month must negotiate and sign a new FIA/EP prior to the end of the sanction penalty period for the first sanction or the household's TANF cash assistance will terminate at the end of the sanction penalty period.~~

(6) remains the same.

(7) During the penalty period, child care assistance will continue if:

(a) child care is necessary to allow the TANF Cash Assistance participant to perform ~~employment-related or training activities~~ allowable work activities, as defined in (8), which are required by the ~~Family Investment Agreement~~ FIA/WoRC Employability Plan (FIA/EP); and

(b) the sanctioned individual participates in specified ~~employment-related or training activities~~ allowable work activities throughout the penalty period. If the sanctioned individual fails to comply with any ~~employment-related or training activity~~ allowable work activity during the penalty period, child care assistance will be discontinued and will not be reinstated during the penalty period even if the sanctioned individual begins to comply or participate.

(8) ~~"Employment-related or training activities"~~ "Allowable work activities", as specified in (7)(a), means activities specified on the FIA/WoRC Employability Plan or in the tribal NEW plan which are directly intended to promote economic self-sufficiency. These allowable work activities are defined in ARM 37.78.103 and 37.78.807.

(9) remains the same.

(10) If an individual who has been sanctioned at least twice applies for TANF cash assistance, that individual is required to comply with an intensive case management meeting within the first 30 days of eligibility for TANF, or the case will be closed for failing an eligibility requirement as outlined in ARM 37.78.206(3)(o).

AUTH: 53-4-212, MCA

IMP: 53-4-211, 53-4-601, 53-4-717, MCA

37.78.508 TANF: TANF CASH ASSISTANCE; GOOD CAUSE (1) A TANF Cash Assistance participant's failure to comply with a program requirement, such as providing information necessary to determine eligibility, reporting changes within ten days of knowing of the change, or a requirement under a Family Investment Agreement/WoRC Employability Plan (FIA/EP), including but not limited to participation in an ~~employment and training activity~~ allowable work activity or the requirement of accepting or maintaining suitable employment, shall not result in an adverse action, including imposition of a sanction if good cause exists for the failure to comply.

(2) If it appears that a participant has failed to comply with a FIA requirement, the participant shall be given the opportunity to provide good cause for failing to comply by providing and verifying information to the eligibility case manager or work readiness component (WoRC) case manager regarding the alleged noncompliance and the reasons for the alleged failure to comply. If the committee that reviews the

sanction determines from the available information; ~~including any information provided by the participant~~, that there was a failure to comply and that ~~good cause for the noncompliance does not exist~~, the participant has failed to prove good cause for the noncompliance, a sanction shall be imposed in accordance with ARM 37.78.506.

(3) Good cause consists of verified circumstances beyond the participant's control which prevent compliance with a requirement or which excuse a failure to comply.

(4) Good cause for failure to keep appointments, report changes, provide required information, or comply with ~~family investment agreement FIA/EP~~ activities or other eligibility requirements includes, but is not limited to, the following verified circumstances:

(a) temporary severe illness or incapacity of the participant for the duration of the illness or incapacity;

(b) temporary severe illness or incapacity of another household member sufficiently serious to require the presence of the participant for the duration of the illness or incapacity;

(c) death of an immediate family member within the 5th degree of kinship (up to a maximum of five working days);

~~(d) participant's incarceration or required court appearance;~~

~~(e) (d) temporary~~ inability to obtain ~~or pay for~~ necessary child care, through no fault of the participant;

~~(f) (e)~~ adverse weather conditions which make travel impossible or unreasonably dangerous;

~~(g) (f) temporary~~ lack of transportation in a case where the participant cannot reasonably be expected to walk or bicycle because of the distance or the participant's health or physical limitations;

(i) Transportation is considered to be available if the participant has the use of a private vehicle, has access to public transportation, or can ride with someone else, provided that a participant will not be required to accept a ride under circumstances which a reasonable person would consider dangerous or unsuitable.

(g) the individual is unable to comply due to a current domestic violence situation.

(5) Good cause for failure to accept employment or for voluntarily quitting a job or reducing earned income from employment includes, but is not limited to, the following verified circumstances:

(a) The wage is less than the state minimum wage.

~~(b) Transportation is not available and the~~ Temporary lack of transportation in a case where the participant cannot reasonably be expected to walk or bicycle to work because of the distance or the participant's health or physical limitations.

(i) Transportation is considered to be available if the participant has the use of a private vehicle, has access to public transportation, or can ride with someone else, provided that a participant will not be required to accept a ride under circumstances which a reasonable person would consider dangerous or unsuitable.

(c) Participant is temporarily unable to obtain ~~or pay for~~ necessary child care during employment hours, through no fault of the participant.

(d) and (e) remain the same.

(f) The participant has a physical or mental impairment which prevents the participant from accepting or maintaining this employment, as determined by a licensed physician or psychologist qualified medical professional involved in the treatment of the individual. A qualified medical professional is defined as an individual who is currently licensed in the state of Montana and is practicing within their field of expertise.

~~(i) A temporary mental or physical illness, injury, or incapacity may constitute good cause for the duration of the incapacity only.~~

(g) A temporary severe illness or incapacity of the participant for the duration of the illness/incapacity only.

(h) A temporary severe illness or incapacity of another household member sufficiently serious to require the presence of the participant, for the duration of the illness/incapacity only.

~~(g)~~ (i) The participant lacks the necessary work-related skills for the employment and cannot acquire such skills in time to obtain or retain the employment.

(j) The participant is unable to participate in employment due to a current domestic violence situation.

AUTH: 53-2-202, 53-4-212, MCA

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

4. The Department of Public Health and Human Services (the department) is proposing to amend ARM 37.78.102, 37.78.206, 37.78.208, 37.78.420, 37.78.425, 37.78.506, and 37.78.508 pertaining to Temporary Assistance for Needy Families (TANF).

ARM 37.78.102

ARM 37.78.102 currently adopts and incorporates by reference the TANF policy manual effective July 1, 2007. The department proposes to make some revisions to this manual that will take effect on January 1, 2008, 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 7,998 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 37.78.206

This ARM has been updated to reflect changes in the sanction policy. The department has seen a number of households reporting that the sanctioned individual has left the household in order to avoid the ineligibility period. The

department feels this is an indication that the current policy encourages participants to abuse the system by not being truthful in regards to their household composition during a sanction. The department has also seen an increase in the number of households who during a sanction ineligibility period indicate the children have gone to live with another specified caretaker relative. This allows the children to receive TANF cash assistance in the other household, and to return home after the sanction ineligibility period has been served. The department does not feel that the continual movement of children from one household to another, in order to gain eligibility for TANF cash assistance, is of benefit to the children.

To address these issues, the sanction policy set forth in this ARM is changed so that all individuals who are or would be required filing unit members at the time of sanction are subject to the ineligibility period related to a sanction if an ineligibility period is imposed. This ineligibility period will follow those individuals if they apply for benefits in another case.

The ARM has also been updated to reflect changes in the sanction policy that will require individuals who are applying for TANF cash assistance and who have been sanctioned at least twice to participate in an intensive case management meeting during the first month of eligibility. Failure to participate in this intensive case management meeting will result in case closure for failing an eligibility requirement.

The 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 as mandated by the Administration for Children and Families. Individuals who are not complying with these allowable work activities are subject to sanction and have a negative impact to the work participation rate. Failure to meet this work participation rate will result in monetary penalties to the state. By strengthening the consequences for noncompliance in the allowable work activities, the department believes it may limit the negative impact to the work participation rate.

While considering changes to the sanction policy, the department also included changes to mitigate difficulties in the sanction process. Individuals who are required to participate in allowable work activities may be granted exceptions to participating provided a qualified medical professional who is currently involved in treating the individual provides a signed statement attesting to the temporary full incapacity of the individual. If individuals are not fully incapacitated, the department will offer accommodations which will allow them to participate to the best of their ability in allowable work activities. As long as the individual participates to the best of their ability, a sanction would not be recommended and/or imposed.

In preparing changes to the sanction policy, the department also has taken into consideration changes it intends to make effective January 1, 2008 regarding the hours of required participation in allowable work activities. The department is proposing changes to decrease participation hours. By decreasing the required

hours of participation, the department will better meet the needs of individuals who are required to participate in allowable work activities, but have family obligations that also need to be met.

Changes in the sanction policy include a "resetting" of the sanction clocks for all TANF participants, which will allow individuals to start with a "clean slate" in regards to sanctions and will offer all participants the opportunity to understand fully and comply with the requirements prior to the imposition of a sanction.

The changes will apply to an average of approximately 7,062 TANF participants who currently are mandated to participate in work activities or are a member of the participant's filing unit. There will be no additional cost to the state unless a penalty is imposed for failure to meet the work participation rate.

ARM 37.78.208

This ARM has been updated to reflect a decision of the department to include a newborn minor child in the assistance unit upon the date of birth or adoption of the newborn minor child, provided the household reports the birth or adoption within ten days from the date of birth or adoption.

This change will allow single parents with a newborn child to take advantage of the existing exemption from allowable work activities the month the child is born and/or adopted. Currently, the child is not added to the household until the month following the month of birth or report of the birth, whichever is later. This change will also allow the department to disregard these individuals from the TANF work participation rate, which has a positive impact on the work participation rate, avoiding monetary penalties for failure to meet the work participation rate.

This change will have a positive impact on TANF cash assistance participants.

This change will apply to an average of approximately 3,810 TANF cases out of which approximately 400 in a six-month period are estimated to have a newborn child. There will be an additional cost to the state as TANF benefits will be supplemented the month of birth or adoption. The additional cost is estimated at \$72,000 per year.

ARM 37.78.420

This ARM has been updated to reflect the increase in the TANF payment standards to 33% of the 2007 Federal Poverty Level. This increase was approved in the 2007 legislative session under HB2. This change will have a positive impact on TANF cash assistance participants.

This change could affect approximately 7,998 TANF recipients.

ARM 37.78.425

This ARM has been updated to reflect that in order to be eligible for a work support payment the household must: (1) be losing cash assistance due to new or increased earnings from employment; (2) the new or increased income must be reported within ten days of the participant's knowledge of the change and verified within ten days from request for verification, if appropriate; and (3) all members of the assistance unit who were required to participate in allowable work activities during the month of closure must have provided verification and/or documentation of their participation in allowable work activities to the WoRC Case Manager. This will allow the department to reconcile the hours of participation attributable to the work participation rate.

The TANF Reauthorization regulations contained in the Deficit Reduction Act of 2005 are very specific as to what constitutes an allowable work activity. The regulations are also very specific as to the type of verification and documentation of participation in work activities that would allow the department to include the hours of participation in the calculation of the work participation rate. If individuals who are closing off TANF cash assistance do not provide verification and documentation of participation in allowable work activities, the department is unable to attribute hours of participation to the work participation rate. This has a negative impact on the work participation rate and may result in monetary penalties to the state.

This change will apply to an average of approximately 2,354 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 37.78.506

This ARM has been updated to clarify existing policy that failure to provide verification of documentation of participation in allowable work activities will result in imposition of a sanction. This ARM has also been updated to clarify existing policy regarding the requirement for work-eligible individuals, as defined in the TANF Reauthorization, to agree to participate in allowable work activities during a sanction penalty month, prior to reduced TANF cash assistance being issued to the household.

This ARM has also been updated to reflect changes in the sanction policy. The department has seen a number of households reporting that the sanctioned individual has left the household in order to avoid the ineligibility period. The department feels this is an indication that the current policy encourages participants to abuse the system by not being truthful in regards to their household composition during a sanction. The department has also seen an increase in the number of households who during a sanction ineligibility period indicate the children have gone to live with another specified caretaker relative. This allows the children to receive TANF cash assistance in the other household, and to return home after the sanction

ineligibility period has been served. The department does not feel that the continual movement of children from one household to another, in order to gain eligibility for TANF cash assistance, is of benefit to the children.

To address these issues, the sanction policy set forth in this ARM is changed so that all individuals who are or would be required filing unit members at the time of sanction are subject to the ineligibility period related to a sanction if an ineligibility period is imposed. This ineligibility period will follow those individuals if they apply for benefits in another case.

The ARM has also been updated to reflect changes in the sanction policy that will require individuals who are applying for TANF cash assistance and who have been sanctioned at least twice to participate in an intensive case management meeting during the first month of eligibility. Failure to participate in this intensive enrollment process will result in case closure for failing an eligibility requirement.

This ARM has also been updated to reflect changes in the sanction policy regarding individuals who are not work-eligible individuals and who are not required to participate in allowable work activities during a sanction penalty month. These individuals will be required to negotiate a Family Investment Agreement/WoRC Employability Plan (FIA/EP) prior to the end of the sanction penalty month or the TANF cash assistance of the household will terminate at the end of the sanction penalty month, and the household would then be required to reapply for TANF cash assistance. Currently these individuals are required to negotiate a (FIA/EP) prior to the end of the sanction penalty month to avoid the imposition of a one month ineligibility period.

The 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 as mandated by the Administration for Children and Families. Individuals who are not complying with these allowable work activities are subject to sanction and have a negative impact to the work participation rate. Failure to meet this work participation rate will result in monetary penalties to the state. By strengthening the consequences for noncompliance in the allowable work activities, the department believes it may limit the negative impact to the work participation rate.

While considering changes to the sanction policy, the department also included changes to mitigate difficulties in the sanction process. Individuals who are required to participate in allowable work activities may be granted exceptions to participating provided a qualified medical professional who is currently involved in treating the individual provides a signed statement attesting to the temporary full incapacity of the individual. If individuals are not fully incapacitated, the department will offer accommodations which will allow them to participate to the best of their ability in allowable work activities. As long as the individual participates to the best of their ability, a sanction would not be recommended and/or imposed.

In preparing changes to the sanction policy, the department also has taken into consideration changes it intends to make effective January 1, 2008 regarding the hours of required participation in allowable work activities. The department is proposing changes to decrease participation hours. By decreasing the required hours of participation, the department will better meet the needs of individuals who are required to participate in allowable work activities, but have family obligations that also need to be met.

Changes in the sanction policy include a "resetting" of the sanction clocks for all TANF participants, which will allow individuals to start with a "clean slate" in regards to sanctions and will offer all participants the opportunity to understand fully and comply with the requirements prior to the imposition of a sanction.

The changes will apply to an average of approximately 7,062 TANF participants who currently are mandated to participate in work activities or are a member of the participant's filing unit. There will be no additional cost to the state unless a penalty is imposed for failure to meet the work participation rate.

ARM 37.78.508

This ARM has been updated both to clarify and reflect changes to what constitutes good cause for failure to comply with a program requirement, such as Family Investment Agreement/WoRC Employability Plan (FIA/EP) requirements, including participation in allowable work activities and the requirement to accept and maintain employment.

The department has always excused a participant's failure to comply with a program requirement upon the showing of "good cause". With the implementation of the TANF Reauthorization regulations the department felt the good cause criteria should be updated to reflect the focus of the TANF cash assistance program on employment. The department also felt it was necessary to clarify that the responsibility to provide information and verification of good cause lies with the participant, keeping with the employment focus of the program.

The department felt it was necessary to add an acceptable good cause reason based on an individual's inability to comply with a program requirement due to a current domestic violence situation. The department also added language to make the good cause for failure to comply with a program requirement consistent with good cause for failing to accept and maintain employment, where applicable.

The TANF Reauthorization regulations contained in the Deficit Reduction Act of 2005 are very specific as to what constitutes an allowable work activity. The regulations are also very specific as to the type of verification and documentation of participation in work activities that would allow the department to include the hours of participation in the calculation of the work participation rate. If individuals who are required to participate in allowable work activities fail to fulfill their obligation of

participation, the department is unable to attribute hours of participation to the work participation rate. This has a negative impact on the work participation rate and may result in monetary penalties to the state.

This change will apply to an average of approximately 2,354 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.

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

TANF 201-3 - Adding/Removing Members

TANF 201-3 is being updated to reflect that a newborn minor child is added to the assistance unit the day of birth or adoption, provided the household reports the birth or adoption of the newborn minor child within ten days of the birth or adoption. Failure to report the birth or adoption within ten days will result in the newborn child being added the month following the month of birth or report of the birth, whichever is later.

TANF 702-2 - WoRC Sanction Review Process/Good Cause

TANF 702-2 is being updated to reflect the responsibility of the participant to provide and verify information related to good cause for failing to comply with a program requirement.

TANF 702-3 - Sanction

TANF 702-3 is being updated to reflect the changes to the sanction policy/process.

TANF 704-2 - Work Support Payments

TANF 704-2 is being updated to reflect the change in policy that requires an individual who is losing TANF eligibility based on new or increased earned income to provide verification and documentation of participation in allowable work activities to the WoRC Case Manager, prior to being eligible for a work support payment.

TANF 1509-1 - Good Cause Criteria

TANF 1509-1 is being updated to reflect the clarifications and changes to the good cause criteria.

5. The TANF manual changes and changes to ARM 37.78.102, 37.78.206, 37.78.208, 37.78.425, 37.78.506, and 37.78.508 will have an applied effective date of January 1, 2007. The changes to ARM 37.78.420 will be applied retroactively to July 1, 2007. No adverse impact is expected with the retroactive applicability date

as to ARM 37.78.420.

6. Interested persons may submit comments orally or in writing at the hearing. Written comments 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 October 4, 2007. Comments may also be faxed to (406)444-9744 or e-mailed to dphhslegal@mt.gov. The department maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. To be included on such a list, please notify this same person or complete a request form at the hearing.

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

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

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

/s/ Francis X. Clinch
Rule Reviewer

/s/ Joan Miles
Director, Public Health and
Human Services

Certified to the Secretary of State August 27, 2007.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the proposed amendment) NOTICE OF PUBLIC HEARING
of ARM 1.2.419 regarding the) ON PROPOSED AMENDMENT
scheduled dates for the 2008 Montana)
Administrative Register)

TO: All Concerned Persons

1. On September 27, 2007, a public hearing will be held at 10:00 a.m. in the Secretary of State's Office Conference Room, Room 260, State Capitol Building, Helena, Montana, to consider the proposed amendment of the above-stated rule.

2. The Secretary of State will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Secretary of State no later than 5:00 p.m. on September 21, 2007, to advise us of the nature of the accommodation that you need. Please contact Jean Branscum, Secretary of State's Office, P.O. Box 202801, Helena, MT 59620-2801; telephone (406) 444-5596; FAX (406) 444-4263; e-mail jbranscum@mt.gov.

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

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

~~2007 Schedule~~

Filing	Publication
January 2	January 11
January 16	January 25
January 29	February 8
February 12	February 22
February 26	March 8
March 12	March 22
April 2	April 12
April 16	April 26
April 30	May 10
May 14	May 24
May 29	June 7
June 11	June 21
June 25	July 5

July 16	July 26
July 30	August 9
August 13	August 23
August 27	September 6
September 10	September 20
September 24	October 4
October 15	October 25
October 29	November 8
November 13	November 21
November 26	December 6
December 10	December 20

2008 Schedule

<u>Filing</u>	<u>Publication</u>
<u>January 7</u>	<u>January 17</u>
<u>January 22</u>	<u>January 31</u>
<u>February 4</u>	<u>February 14</u>
<u>February 19</u>	<u>February 28</u>
<u>March 3</u>	<u>March 13</u>
<u>March 17</u>	<u>March 27</u>
<u>March 31</u>	<u>April 10</u>
<u>April 14</u>	<u>April 24</u>
<u>April 28</u>	<u>May 8</u>
<u>May 12</u>	<u>May 22</u>
<u>June 2</u>	<u>June 12</u>
<u>June 16</u>	<u>June 26</u>
<u>July 7</u>	<u>July 17</u>
<u>July 21</u>	<u>July 31</u>
<u>August 4</u>	<u>August 14</u>
<u>August 18</u>	<u>August 28</u>
<u>September 2</u>	<u>September 11</u>
<u>September 15</u>	<u>September 25</u>
<u>September 29</u>	<u>October 9</u>
<u>October 14</u>	<u>October 23</u>
<u>October 27</u>	<u>November 6</u>
<u>November 17</u>	<u>November 26</u>
<u>December 1</u>	<u>December 11</u>
<u>December 15</u>	<u>December 24</u>

(2) remains the same.

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

4. ARM 1.2.419 is proposed to be amended to set dates pertinent to the publication of the Montana Administrative Register during 2008. The schedule is proposed during the month of August in order that it may be adopted during October to allow state agencies the opportunity to plan their rulemaking schedule to meet program needs for the upcoming year.

5. Concerned persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Jean Branscum, Secretary of State's Office, P.O. Box 202801, Helena, Montana 59620-2801, or by e-mailing jabranscum@mt.gov, and must be received no later than 5:00 p.m., October 4, 2007.

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

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

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

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

/s/ W. Ralph Peck for
W. RALPH PECK for
BRAD JOHNSON
Secretary of State

/s/ Janice Doggett
JANICE DOGGETT
Rule Reviewer

Dated this 27th day of August 2007.

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM) NOTICE OF AMENDMENT
4.17.102, 4.17.106, and 4.17.114 relating)
to the organic certification program)

TO: All Concerned Persons

1. On July 26, 2007, the Montana Department of Agriculture published MAR Notice No. 4-14-174 relating to the above-stated rules at page 990 of the 2007 Montana Administrative Register, Issue Number 14.

2. The agency has amended ARM 4.17.102, 4.17.106, and 4.17.114 exactly as proposed.

3. No comments or testimony were received.

DEPARTMENT OF AGRICULTURE

/s/ Joel A. Clairmont
Joel A. Clairmont, Acting Director

/s/ Gregory H. Ames
Gregory H. Ames
Rule Reviewer

Certified to the Secretary of State, August 27, 2007.

BEFORE THE GRANT REVIEW COMMITTEE
DEPARTMENT OF COMMERCE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 8.99.803 pertaining to the)
submission and review of applications)
for workforce training grants)

TO: All Concerned Persons

1. On June 7, 2007 the Department of Commerce published MAR Notice No. 8-99-57 pertaining to the proposed amendment of the above-stated rule at page 740 of the 2007 Montana Administrative Register, Issue Number 11.
2. The department has amended ARM 8.99.803 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 August 27, 2007.

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

In the matter of the amendment of a	)	NOTICE OF AMENDMENT OF A
temporary emergency rule closing	)	TEMPORARY EMERGENCY RULE
Placid Lake and Seeley Lake,)	
Missoula County, MT)	

TO: All Concerned Persons

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

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

(b) The aircraft scoop water while hovering over the surface of the water. Other aircrafts used require at least 5,000 feet of clearance in order to slow down, scoop water into the airplane, and lift off again.

(c) Persons on Placid Lake recreating while aircraft are loading water would be subjected to immediate and extreme danger. Furthermore, flight crews would be subjected to increased and additional peril if aircraft had to maneuver to avoid recreationists. However, the threat to persons recreating on Seeley Lake no longer exists.

(d) Therefore, as this situation constitutes an imminent peril to public health, safety, and welfare, and this threat cannot be averted or remedied by any other administrative act, the commission amends the following temporary emergency rule. The emergency rule will be sent as a press release to newspapers throughout the state. Also, signs informing the public of the closure will be posted at access points. The rule will be sent to interested parties, and published as an amended temporary emergency rule in Issue No. 17 of the 2007 Montana Administrative Register.

(e) This temporary emergency rule was adopted on August 10, 2007, and published at page 1183 of the 2007 Montana Administrative Register, Issue No. 16.

2. The commission will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of the notice. If you require an accommodation, contact the department no later than 5:00 p.m. on September 20, 2007, to advise us of the nature of the accommodation that you need. Please contact Jessica Snyder, Fish, Wildlife and Parks, 1420 East Sixth Avenue, P.O. Box 200701, Helena, MT 59620-0701; telephone (406) 444-4594; fax (406) 444-7456; or e-mail jesnyder@mt.gov.

3. The amended temporary emergency rule is effective August 25, 2007.

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

RULE I PLACID LAKE AND SEELEY LAKE TEMPORARY EMERGENCY CLOSURE (1) Placid Lake and Seeley Lake are is located in Missoula County.

(2) Placid Lake and Seeley Lake are is closed to all boating, floating, and swimming and any other public occupation of the lakes.

(3) This rule is effective as long as Placid Lake or Seeley Lake is needed as a source of water for fighting wildfires. The commission delegates its authority to the department, in consultation with the commissioner in the region, to determine when Placid Lake and Seeley Lake are is again safe for boating, floating, and swimming and any other occupation of the water and to rescind the temporary emergency closure.

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

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

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

6. This rule will expire as soon as the department determines the lake is again safe for boating, floating, and swimming and any other occupation of the lake. This will depend on the extent and duration of wildfires in the area. Signs restricting use of the lake will be removed when the rule is no longer effective. Notice of repeal of this amended emergency rule will be published in the Montana Administrative Register.

7. Concerned persons are encouraged to submit their comments to the department. They should submit their comments along with their names and addresses to Jessica Snyder, Legal Unit, Department of Fish, Wildlife and Parks, 1420 East Sixth Avenue, P.O. Box 200701, Helena, Montana 59620-0701; telephone (406) 444-4594; fax (406) 444-7456; or e-mail jesnyder@mt.gov. Any comments must be received no later than September 21, 2007.

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

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

/s/ M. Jeff Hagener

M. Jeff Hagener,

Secretary

Fish, Wildlife and Parks Commission

/s/ Bill Schenk

Bill Schenk

Rule Reviewer

Certified to the Secretary of State August 23, 2007.

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

In the matter of the repeal of a	)	NOTICE OF REPEAL OF A
temporary emergency rule closing	)	TEMPORARY EMERGENCY RULE
Placid Lake, Missoula County, MT)	

TO: All Concerned Persons

1. On August 10, 2007, the Fish, Wildlife and Parks Commission (commission) adopted a temporary emergency rule closing Placid Lake and Seeley Lake in Missoula County, MT, published at page 1183 of the 2007 Montana Administrative Register, Issue No. 16. There was an immediate need for a source of water for aircraft dropping water on the Jocko Lakes fires. This situation constituted an imminent peril to the public health, safety, and welfare of anyone using the lakes. Within the rule, the commission delegated its authority to the Department of Fish, Wildlife and Parks to determine, in consultation with the commissioner in the region, when the lakes were again safe for public use.

2. On August 23, 2007, the temporary emergency rule was amended to open Seeley Lake but keep Placid Lake closed. This Notice is published at page 1315 of this issue of the Montana Administrative Register.

3. Since firefighting aircraft have stopped loading water in Placid Lake, MAR Notice No. 12-335 is no longer necessary. As this situation no longer constitutes an imminent peril to public health, safety, and welfare, the commission is repealing the rule. The repealing of the rule will be sent as a press release to newspapers throughout the state. Also, signs informing the public of the closure will be removed at access points. The repeal notice will be sent to interested parties, and published in Issue No. 17 of the 2007 Montana Administrative Register.

4. The repealing of the temporary emergency rule is effective August 28, 2007.

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

/s/ Christian A. Smith
Christian A. Smith,
Chief of Staff
Department of Fish, Wildlife and Parks
Acting Secretary
Fish, Wildlife and Parks Commission

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

Certified to the Secretary of State August 28, 2007.

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

In the matter of the adoption of a)
temporary emergency rule closing a)
portion of Rock Creek in Granite and)
Missoula Counties)

NOTICE OF ADOPTION OF A
TEMPORARY EMERGENCY RULE

TO: All Concerned Persons

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

(a) There is an immediate need for a source of water for aircraft dropping water on the Sawmill Complex fires.

(b) Helicopters will be dipping water from the confluence where Stony Creek flows into Rock Creek to the confluence where Rock Creek flows into the Clark Fork River. The helicopters scoop water with a large bucket while hovering over the surface of Rock Creek.

(c) The area where helicopters will be dipping water is a fairly narrow canyon that provides little maneuverability for aircraft.

(d) Persons on the Rock Creek recreating while aircraft are loading water would be in danger of collision with aircraft and aircraft equipment that could result in injury or death. Furthermore, flight crews would be subjected to increased and additional peril if aircraft had to maneuver narrow passageways and high cliff walls to avoid recreationists.

(e) Therefore, as this situation constitutes an imminent peril to public health, safety, and welfare, and this threat cannot be averted or remedied by any other administrative act, the commission adopts the following temporary emergency rule. The emergency rule will be sent as a press release to newspapers throughout the state. Also, signs informing the public of the closure will be posted at access points. The rule will be sent to interested parties, and published as a temporary emergency rule in Issue No. 17 of the 2007 Montana Administrative Register.

2. The commission will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of the notice. If you require an accommodation, contact the department no later than 5:00 p.m. on September 13, 2007, to advise us of the nature of the accommodation that you need. Please contact Jessica Snyder, Fish, Wildlife and Parks, 1420 East Sixth Avenue, P.O. Box 200701, Helena, MT 59620-0701; telephone (406) 444-4594; fax (406) 444-7456; or e-mail jesnyder@mt.gov.

3. The temporary emergency rule is effective August 15, 2007, when this rule notice is filed with the Secretary of State.

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

RULE I ROCK CREEK TEMPORARY EMERGENCY CLOSURE (1) Rock Creek is located in Granite County and Missoula County.

(2) Rock Creek from the confluence where Stony Creek flows into Rock Creek to the confluence where Rock Creek flows into the Clark Fork River is closed to all boating, floating, and swimming and any other public occupation of the river.

(3) This rule is effective as long as Rock Creek is needed as a source of water for fighting wildfires. The commission delegates its authority to the department, in consultation with the commissioner in the region, to determine when Rock Creek is again safe for boating, floating, and swimming and any other occupation of the water and to rescind the temporary emergency closure.

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

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

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

6. This rule will expire as soon as the department determines the closed area of Rock Creek is again safe for boating, floating, and swimming and any other occupation of the creek. This will depend on the extent and duration of wildfires in the area. Signs restricting use of the creek will be removed when the rule is no longer effective. Notice of repeal of this emergency rule will be published in the Montana Administrative Register.

7. Concerned persons are encouraged to submit their comments to the department. They should submit their comments along with their names and addresses to Jessica Snyder, Legal Unit, Department of Fish, Wildlife and Parks, 1420 East Sixth Avenue, P.O. Box 200701, Helena, Montana 59620-0701; telephone (406) 444-4594; fax (406) 444-7456; or e-mail jesnyder@mt.gov. Any comments must be received no later than September 14, 2007.

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

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

/s/ Christian A. Smith
Christian A. Smith,
Chief of Staff
Department of Fish, Wildlife and Parks
Acting Secretary
Fish, Wildlife and Parks Commission

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

Certified to the Secretary of State August 15, 2007.

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

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 12.3.403 pertaining to)
replacement licenses)

To: All Concerned Persons

1. On July 26, 2007, the Department of Fish, Wildlife and Parks (department) published MAR Notice No. 12-332 regarding a public hearing on the proposed amendment of the above-stated rule at page 995 of the 2007 Montana Administrative Register, Issue No. 14.

2. The department has amended ARM 12.3.403 as proposed.

3. The department received five comments regarding the proposed amendment. All supported the general principle of requiring a second replacement license to be purchased at a department office. A summary of the comments appears below with the department's responses:

Comment 1: When a person who has multiple tags has lost a license (such as areas where a hunter may purchase additional antlerless deer licenses) he/she would not be able to replace more than a single tag.

Response: The intent here is that if a person were to lose a number of tags and go in for replacement, that transaction would be treated as a single replacement.

Comment 2: I agree with the proposed fee but suggest increasing replacement cost by one and a half to two times or half the original cost of the tag.

Response: Current statute specifically limits the cost of replacement licenses to \$5.00.

Comment 3: My suggestion will encourage people to be more responsible. Simply put: a lost license should simply not be replaced.

Response: There are instances where a license is legitimately lost, misplaced, or destroyed. The proposed rule would address legitimate loss while controlling unlawful and capricious purchase of replacements.

Comment 4: Any license that was lost, stolen, or destroyed could only be replaced with a signed affidavit of affirmation at a department regional or area office.

Response: Currently, an affidavit is required for replacement. The proposed rule would require the purchaser to complete the affidavit at a department regional or area office only after the second replacement in a two-year period.

Comment 5: A replacement should only be granted twice in any five-year period.

Response: The department believes that the proposed rule using a two-year replacement period, along with monitoring of replacement purchases, will provide an adequate safeguard for the unlawful use of licenses as well as encourage greater care with legitimately purchased replacements.

/s/ Christian A. Smith

Christian A. Smith

Chief of Staff

Department of Fish, Wildlife and Parks

/s/ Rebecca J. Dockter

Rebecca J. Dockter

Rule Reviewer

Certified to the Secretary of State August 27, 2007.

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

In the matter of the amendment) NOTICE OF AMENDMENT
of ARM 24.7.201, 24.7.301, 24.7.303,) AND ADOPTION
24.7.304, 24.7.305, 24.7.306, 24.7.312,)
24.7.313, 24.7.315, and the adoption of)
NEW RULE I related to Board)
of Labor Appeals procedural rules)

TO: All Concerned Persons

1. On June 11, 2007, the Board of Labor Appeals (board) published MAR Notice No. 24-7-221 regarding the proposed amendment and adoption of the above-stated rules at page 813 of the 2007 Montana Administrative Register, issue no. 12.

2. The board has amended ARM 24.7.201, 24.7.301, 24.7.303, 24.7.304, 24.7.305, 24.7.312, 24.7.313, and 24.7.315 as proposed.

3. The board has amended ARM 24.7.306 with the following changes, new matter underlined:

24.7.306 DETERMINATION OF APPEALS (1) remains as proposed.

(2) The board will review the hearing officer's decision for errors of law or fact. In making its determination, the board will consider the record transmitted on appeal, written or oral arguments, as well as any new evidence admitted pursuant to ARM 24.7.312.

(3) remains as proposed.

AUTH: 2-4-201, MCA

IMP: 2-4-201, 39-51-310, 39-51-1109, 39-51-2404, 39-51-2407, MCA

4. The board has adopted NEW RULE I [24.7.316] as proposed.

5. The board received one comment, which it has thoroughly considered. A summary of the comment appears below with the board's response:

COMMENT: The Department of Labor and Industry's Unemployment Insurance Division noted concern that the procedure set forth in ARM 24.7.306 did not clarify the Board of Labor Appeals' obligation to review the record.

RESPONSE: The Board of Labor Appeals (board) has changed the language in ARM 24.7.306 to clarify the board's obligation to review the record that is transmitted.

/s/ MARK CADWALLADER

Mark Cadwallader
Alternate Rule Reviewer

/s/ ELIZABETH BEST

Elizabeth Best, Chair
BOARD OF LABOR APPEALS

Certified to the Secretary of State August 27, 2007

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

In the matter of the amendment	)	NOTICE OF AMENDMENT
of ARM 24.101.413 renewal dates,	)	AND ADOPTION
24.183.404 fees, 24.183.502 applications,)	
24.183.504 application disposal, 24.183.509)	
examination procedures, 24.183.510 grant)	
and issue licenses, 24.183.2102 inactive)	
status, and adoption of NEW RULE I)	
teaching engineering subjects, and NEW)	
RULE II certificate of authorization)	

TO: All Concerned Persons

1. On June 7, 2007, the Department of Labor and Industry (department) and Board of Professional Engineers and Professional Land Surveyors (board) published MAR Notice No. 24-183-34 regarding the proposed amendment and adoption of the above-stated rules, at page 762 of the 2007 Montana Administrative Register, issue no. 11.

2. On June 29, 2007, a public hearing was held on the proposed amendment and adoption of the above-stated rules in Helena. No comments or testimony were received.

3. The department has amended ARM 24.101.413 exactly as proposed.

4. The board has amended ARM 24.183.404, 24.183.502, 24.183.504, 24.183.509, 24.183.510, and 24.183.2102 exactly as proposed.

5. The board has adopted NEW RULE I (24.183.407) and NEW RULE II (24.183.408) exactly as proposed.

BOARD OF PROFESSIONAL ENGINEERS
AND PROFESSIONAL LAND SURVEYORS
TOM HEINECKE, PE, PRESIDING OFFICER

/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 August 27, 2007

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

In the matter of the amendment of ARM	)	NOTICE OF AMENDMENT,
24.101.413 renewal dates and requirements,	)	ADOPTION, AND REPEAL
24.210.301 definitions, 24.210.401,)	
24.210.410 through 24.210.412, 24.210.416,)	
24.210.426, and 24.210.430 general)	
provisions, 24.210.601, 24.210.602,)	
24.210.610, 24.210.611, 24.210.615,)	
24.210.616, 24.210.624, 24.210.625,)	
24.210.629, 24.210.635, 24.210.641,)	
24.210.646, 24.210.651, 24.210.660,)	
24.210.661, 24.210.667, 24.210.674, and)	
24.210.677 brokers and salespersons,)	
24.210.805, 24.210.807, 24.210.809,)	
24.210.812, 24.210.818, 24.210.825,)	
24.210.826, 24.210.828, 24.210.835,)	
24.210.840, and 24.210.843 property)	
management, the adoption of NEW RULE I)	
inactive status, and NEW RULE II continuing)	
education, the repeal of 24.210.405 application)	
of rules, 24.210.435 investigations committee,)	
24.210.603 application for examination,)	
24.210.621 nonresident license, 24.210.815)	
application for examination, and 24.210.836)	
continuing education)	

TO: All Concerned Persons

1. On April 12, 2007, the Department of Labor and Industry (department) and the Board of Realty Regulation (board) published MAR Notice No. 24-210-29 regarding the amendment, adoption, and repeal of the above-stated rules, at page 407 of the 2007 Montana Administrative Register, issue no. 7.

2. On May 3, 2007, a public hearing was held on the proposed amendment, adoption, and repeal of the above-stated rules in Helena. Several comments were received by the May 11, 2007, deadline.

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

COMMENT 1: Several commenters supported the proposed rule amendments stating that the changes are long overdue and will better facilitate licenses and the public.

RESPONSE 1: The board acknowledges the comments.

COMMENT 2: One commenter opposed annual license renewals and continuing education for real estate brokers and salespersons, claiming the change would increase the administrative burden on both board and staff. The commenter listed several problems such as a huge one-time influx of renewal applications, receipt of all renewal fees in a short period of time, doubling the time and cost for preparation and mailing by sending renewal notices, applications, and renewed licenses annually, and doubling the licensee's required paperwork. The commenter suggested a biennial renewal and a biennial continuing education requirement with staggered renewal dates throughout the year.

RESPONSE 2: The board decided to align the renewal and continuing education dates to address licensees' difficulties with annual continuing education and biennial renewal requirements. Most licensees are now renewing via the Internet which requires less staff attention and lessens the administrative burden. The department has determined that a set renewal date is more manageable and more beneficial for licensees and the department.

COMMENT 3: One commenter stated that ARM 24.210.301(13) is misleading and confusing because including an applicant as a "licensee" could lead someone to believe that an applicant can do all of the things that a licensee can do under the rules.

RESPONSE 3: The board disagrees with the commenter's interpretation of the definition. The board notes that currently a statute exists prohibiting someone from performing any licensed activity without properly obtaining a license.

COMMENT 4: One commenter questioned whether several property manager license fees were missing from ARM 24.210.401 in the notice.

RESPONSE 4: The property management fees are located in a different rule at ARM 24.210.801 but are not amended or included in this rule notice.

COMMENT 5: One commenter indicated a potential conflict between (1) and (3) of ARM 24.210.426 in that (1) appears to make it mandatory to use trust accounts while (3) suggests that trust account use is permissive. The commenter further opined that the rules task force intended a permissive use.

RESPONSE 5: The board agrees with the comment and is amending the rule accordingly.

COMMENT 6: One commenter stated that the current and proposed amended rules seem to address two distinctly different business endeavors, sales versus management of real property. Regarding ARM 24.210.426(1) the commenter stated that brokerage companies that only sell real property, and have a third-party hold

client funds, should not be required to maintain a trust account. The commenter suggested amending (1) to read "Should a brokerage have written policies in place that preclude all property management activities and the maintenance of an in-house trust account, and if the brokerage policies also clearly indicate that all client funds, i.e., earnest money, are to be deposited with a recognized closing agent as the designated holder of the funds, no trust account is required to be maintained."

RESPONSE 6: The board agrees with the comment and is amending the rule to clarify that the maintenance of a trust account is not mandatory but if a broker uses a trust account, they must comply with the maintenance rules.

COMMENT 7: A commenter suggested the board include in rule the types of third-party business entities (title companies, banks, credit unions, etc.) acceptable as recognized closing agents and the requirement to receive and maintain in the transaction files receipts and other documentation regarding earnest money.

RESPONSE 7: The principals to a transaction determine who will hold the earnest money, not the board. The principals must agree to have someone hold the earnest money and the board lacks authority to dictate such requirements to nonlicensees.

COMMENT 8: One commenter stated that ARM 24.210.426(3)(d) only addresses situations where it is presumed that the client's funds have first been deposited in a brokerage trust account and then moved to a closing agent's trust account. The commenter suggested the board amend (3) to acknowledge the permissive nature of brokers maintaining trust accounts.

RESPONSE 8: The board determined that amending this rule to clarify a broker does not need to maintain a trust account addresses the concerns in this comment.

COMMENT 9: A commenter expressed concern that the amendments to ARM 24.210.426(3)(d) would remove a broker's ability to withdraw money from a trust account in advance of the termination or consummation of the transaction following a signed written agreement by the buyer and seller. The commenter described the practice where real estate agents retaining earnest money deposits in their trust accounts provide in the buy-sell agreement for the use of earnest money to pay fees and costs to file an interpleader action in an earnest money dispute. The commenter suggested amending (6)(d) to read "However, trust funds may be disbursed to the closing agent in anticipation of closing or to the broker in advance of the termination or consummation of the transaction upon written agreement of the buyers and sellers. The broker must account for trust account funds at all times."

RESPONSE 9: The board considered the comment and at this time is amending the rule to address issues raised in other comments. The board will include this issue in future rule review discussions.

COMMENT 10: One commenter suggested amending ARM 24.210.426(6) to acknowledge and clarify that real estate companies that are sales brokerages, not

property managers, can deposit earnest money funds in a brokerage trust account, or deliver them to a third-party designated holder of the funds.

RESPONSE 10: The board agrees the proposed language is not clear and is amending the rule accordingly to eliminate the apparent confusion.

COMMENT 11: A commenter stated that the proposed language in (1) of ARM 24.210.610 is cumbersome and suggested changing "applicant" to "person."

RESPONSE 11: The proposed language is consistent with terminology usage throughout the rules, thus the board is amending (1) exactly as proposed.

COMMENT 12: One commenter stated that ARM 24.210.611(5)(b) has never worked and still doesn't think it will work. The commenter believes brokers don't understand the section or it is not serious enough and needs to be strengthened.

RESPONSE 12: The rule implements the statutory requirement that an application for a sales license is accompanied by the recommendation of the licensed broker certifying the applicant is of good repute and will be actively supervised. The board has a disciplinary process in place when a broker fails to meet the supervisory obligations.

COMMENT 13: In reference to ARM 24.210.611(6)(b)(i) a commenter stated that out of state licensees from other jurisdictions should have to document the number of transactions.

RESPONSE 13: Out of state licensees are required to document their transactions before receiving a broker license unless they are applying for a broker license in Montana by reciprocity.

COMMENT 14: In reference to ARM 24.210.611(6)(c) a commenter requested that people given a Montana broker license are required to have the same number of transactions as Montana brokers.

RESPONSE 14: Montana requires all broker applicants to meet the same activity level unless they are being licensed by reciprocity from those jurisdictions where Montana has entered into a reciprocal agreement.

COMMENT 15: A commenter asserted a conflict exists between the preceding 18-month licensure requirement in ARM 24.210.615(1) and 37-51-302(2)(c), MCA, which requires active engagement as a salesperson for two years.

RESPONSE 15: The statute requires an applicant to have been actively engaged as a licensed real estate salesperson for two years or have equivalent experience or education to obtain a broker license. The amendment to (1) addresses the equivalent means of obtaining a broker license and the board finds no conflict.

COMMENT 16: Two commenters suggested not changing "experience qualifications" to "transaction requirements" in ARM 24.210.616(1), since the change is confusing, unnecessary, and would further tie the board's hands.

RESPONSE 16: The board agrees with the comment and is considering alternative amendments to this rule. The board is not amending the rule at this time.

COMMENT 17: In reference to ARM 24.210.629 a commenter expressed concern in dealing with brokers licensed via reciprocity not knowing Montana laws, including applicable water law, and suggested such a requirement for reciprocity licensees.

RESPONSE 17: The board acknowledges the comment but it is outside the scope of this rule notice.

COMMENT 18: One commenter opined that the conflict of interest in ARM 24.210.641(2) pertains to listing agents buying their own listing and buyer agents selling personally owned property to their clients. The commenter suggested the proposed new language be deleted from (2) since the board is currently drafting rules to address this specific conflict of interest and the proposed language is vague.

RESPONSE 18: The board agrees with the comment and is amending the rule accordingly.

COMMENT 19: One commenter suggested adding examples of transactions that are not real estate transactions to clarify ARM 24.210.641(3).

RESPONSE 19: Following discussion, the board decided to not add (3) to this rule as proposed.

COMMENT 20: A commenter questioned the reason for new language proposed at ARM 24.210.641(3) and expressed concern as to the vagueness of the language and the potential for misinterpretation.

RESPONSE 20: Following discussion, the board decided to not add (3) to this rule as proposed.

COMMENT 21: One commenter suggested that (6)(t) of ARM 24.210.641 is unnecessary following the enactment of Senate Bill 319.

RESPONSE 21: The board agrees that the new language is no longer necessary following the 2007 legislative session and is not adding this subsection to the rule.

COMMENT 22: One commenter stated the new language being added to ARM 24.210.641(6)(aa), "This does not prohibit a buyer's broker from reducing commissions received and is not considered payment to an unlicensed person" is unclear, is not what the rules task force and board intended, and may be misinterpreted.

RESPONSE 22: The board agrees the rule as noticed is unclear and is amending the rule accordingly.

COMMENT 23: A commenter opposed the amendment to ARM 24.210.641(6)(aa) stating that he offers buyers incentives because they are producing the money to make a transaction work. The commenter asserted that seller's agents can offer to work for whatever compensation is wanted, but if some of the commission is returned to the party that produces the capital to make the transaction work, it is considered unprofessional conduct. The commenter states that the proposed change is unnecessary, doesn't allow for the free enterprise system to work, and would have a major negative impact on his approach used. The commenter also questioned the purpose of the proposed change.

RESPONSE 23: The board discussed this comment at length. Through the proposed amendment, the board is attempting to further clarify 37-51-321(1)(p), MCA, that considers a licensee paying a commission in connection with a real estate sale or transaction to a person who is not licensed as a real estate broker or real estate salesperson grounds for license discipline.

COMMENT 24: Regarding ARM 24.210.677(5), one commenter asked what is meant by needing approval for "each topic" and suggested that instructors should only have to pay \$50 per different topic and not per course.

RESPONSE 24: Currently an instructor pays one fee to make application and may include a number of topics on a single application. Instructors do not make application for each course, nor will they be required to do so. The fee covers the cost of reviewing the entire instructor application.

COMMENT 25: A commenter suggested the board be more aggressive in its responses to alleged transgressions, even though specific sanctions are not part of the rule changes.

RESPONSE 25: The board acknowledges the comment, but the suggestion is outside the scope of this rule notice.

4. The department has amended ARM 24.101.413 exactly as proposed.

5. The board has amended ARM 24.210.301, 24.210.401, 24.210.410 through 24.210.412, 24.210.416, 24.210.430, 24.210.601, 24.210.602, 24.210.610, 24.210.611, 24.210.615, 24.210.624, 24.210.625, 24.210.629, 24.210.635, 24.210.646, 24.210.651, 24.210.660, 24.210.661, 24.210.667, 24.210.674, 24.210.677, 24.210.805, 24.210.807, 24.210.809, 24.210.812, 24.210.818, 24.210.825, 24.210.826, 24.210.828, 24.210.835, 24.210.840, and 24.210.843 exactly as proposed.

6. The board is not amending ARM 24.210.616 at this time.

7. The board has amended ARM 24.210.426 and 24.210.641 with the following changes, stricken matter interlined, new matter underlined:

24.210.426 TRUST ACCOUNT REQUIREMENTS (1) ~~The designated broker shall maintain a trust account and maintain the records required by this rule.~~ Offices or firms having more than one broker may utilize a single trust account.

(2) A broker may delegate authority for maintenance of a trust account to a designated broker with whom the broker is employed or associated. Delegation shall not relieve either broker from responsibility for any failure to comply with these trust account requirements whether by the delegating broker or the designated broker.

(2) (3) Broker trust accounts may be maintained in interest-bearing accounts with the interest payable to the broker, principal, third-party, or any other person, as may be designated by agreement. Interest payable to the broker shall be identified by agreement as consideration for services performed.

(3) (4) If a broker elects to hold trust funds ~~use a trust account to hold trust fund deposits~~, the broker must comply with the following:

(a) through (n) remain as proposed.

(4) through (8) remain as proposed but are renumbered (5) through (9).

24.210.641 UNPROFESSIONAL CONDUCT (1) remains as proposed.

(2) A licensee shall not act as an agent for a party or parties in a real estate transaction where that agency representation conflicts with the obligations owed by the licensee to another party. This does not prohibit dual agency as permitted in 37-51-313, MCA, ~~except where there is a conflict of interest or the appearance of a conflict of interest.~~

(3) ~~A licensee shall not cause or allow another person to rely on the licensee's status as a licensee in any transaction that is not a real estate transaction.~~

(4) through (6)(s) remain as proposed but are renumbered (3) through (5)(s).

(t) ~~failing to disclose in writing to both principals that the agent is involved in competing offers if a buyer's broker has two principals making offers on the same property;~~

(u) through (z) remain as proposed but are renumbered (t) through (y).

(aa) (z) paying consideration in connection with a real estate sale or transaction to a person who is not licensed as a real estate broker. Reducing the commission owed by the principal who pays the commission is not considered payment of a commission to an unlicensed person. ~~This does not prohibit a buyer's broker from reducing commissions received and is not considered payment to an unlicensed person.~~ Licensees may not solicit business by offering gifts, rebates, or promotional items;

(ab) through (ae) remain as proposed but are renumbered (aa) through (ad).

(7) remains as proposed but is renumbered (6).

8. The board has adopted NEW RULE I (24.210.827) and NEW RULE II (24.210.829) exactly as proposed.

9. The board has repealed ARM 24.210.405, 24.210.435, 24.210.603, 24.210.621, 24.210.815, and 24.210.836 exactly as proposed.

BOARD OF REALTY REGULATION
TEDDYE BEEBE, 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 August 27, 2007

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

In the matter of the amendment of ARM 24.189.401) NOTICE OF AMENDMENT
fees, and 24.189.604 minimum standards)

TO: All Concerned Persons

1. On June 7, 2007, the Board of Psychologists (board) published MAR Notice No. 24-189-31 regarding the proposed amendment of the above-stated rules, at page 771 of 2007 Montana Administrative Register, issue no. 11.

2. On June 28, 2007, a public hearing was held on the proposed amendment of the above-stated rules in Helena. Several comments were received by the July 6, 2007, deadline.

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

COMMENT 1: Several commenters opposed the proposed fee increase as an unfair burden on licensees since psychologist salaries have not increased at the same rate. The commenters suggested the board cut back expenses and reduce costs instead of increasing the renewal fee.

RESPONSE 1: All licensing boards are statutorily mandated by 37-1-134, MCA, to set board fees commensurate with the costs of licensure and regulation. The board cannot set fees according to inflation, cost of living, or the current salaries of licensees. A fairly constant number of licensees combined with inflationary increases in costs such as rent, supplies, and electricity and a change in the department's method of allocating costs to boards have resulted in the need to increase fees. Roughly 47 percent of the board's budget is a fixed cost allocation to the board for computer systems, web site support, staff salaries, phone and mail service, and attorney salaries, etc.

The board also notes that both the department and the board continually seek and implement ways to reduce costs associated with board functions. Examples of this are the recent shift to using electronic board books instead of paper ones and having some board meetings by telephone conference instead of in-person attendance.

COMMENT 2: Two commenters opposed the fee increase stating that the board's expenses have not been adequately described. The commenters also questioned the board's necessity and function.

RESPONSE 2: The department is required biennially to provide detailed information to the Montana Legislature on current and projected licensee numbers and board revenues, expenses, activities, goals, objectives, and complaints. The board also

reviews a current financial report, including the board's fiscal year income and expenditures to date, at each full board meeting. This fiscal information is publicly available from the board and is open to public inspection and scrutiny.

The board is an executive branch agency created by the Montana Legislature to protect the public by licensing and regulating psychologists in the state. The Legislature also enacted the statute that mandates the board fund itself solely through its own licensure fees. Thus, the function or funding of the board can only be changed through the actions of the Montana Legislature.

COMMENT 3: One commenter questioned why psychologists' licensing fees are not the same as other Montana licensed mental health professionals, such as social workers.

RESPONSE 3: The board is statutorily required to set and maintain licensure fees that are commensurate with board costs. Licensure fees are directly impacted by the number of licensees a board regulates; thus, boards with fewer licensees generally charge higher fees and boards with more licensees are able to charge lower licensure fees. The board licenses approximately 234 psychologists while the Board of Social Work Examiners and Professional Counselors regulates approximately 1320 licensees.

COMMENT 4: One commenter suggested the board release information on licensee complaints and that a reduction in complaints filed against psychologists and processed by the board may eliminate the need for future fee increases.

RESPONSE 4: The board sets licensure fees to be commensurate with associated board costs of licensing and regulation, including the processing of complaints against licensees and unlicensed individuals. However, per 37-1-312, MCA, all fines assessed by the board as disciplinary sanctions and paid by licensees must be deposited into the state general fund and do not go toward payment of board costs. The board notes that information on final disciplinary actions taken by the board is available to the public upon request to the board and will be available in electronic format on the board's web site by January 1, 2009.

4. The board has amended ARM 24.189.401 and 24.189.604 exactly as proposed.

BOARD OF PSYCHOLOGISTS
GEORGE WATSON, PhD., CHAIRPERSON

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

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

Certified to the Secretary of State August 27, 2007

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

In the matter of the amendment of ARM)
37.85.212 pertaining to the resource)
based relative value scale (RBRVS))
)

NOTICE OF AMENDMENT

TO: All Interested Persons

1. On April 12, 2007, the Department of Public Health and Human Services published MAR Notice No. 37-402 pertaining to the public hearing on the proposed amendment of the above-stated rule, at page 462 of the 2007 Montana Administrative Register, issue number 7.
2. The department has amended ARM 37.85.212 as proposed.
3. No comments or testimony were received.
4. The department intends that the amendments to ARM 37.85.212 be applied effective October 1, 2007. No negative impact is anticipated.

/s/ Geralyn Driscoll
Rule Reviewer

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

Certified to the Secretary of State August 27, 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 P.O. Box 201706, Helena, MT 59620-1706.

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

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

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

Use of the Administrative Rules of Montana (ARM):

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

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through June 30, 2007. This table includes those rules adopted during the period July 1 through September 30, 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 June 30, 2007, this table, and the table of contents of this issue of the MAR.

This table indicates the department name, title number, rule numbers in ascending order, catchphrase or the subject matter of the rule, and the page number at which the action is published in the 2006 and 2007 Montana Administrative Register.

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