

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 1

The Montana Administrative Register (MAR), 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 The Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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 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 Administrative Rules Bureau at (406) 444-2055.

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BEFORE THE STATE LOTTERY COMMISSION
DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PROPOSED AMENDMENT
ARM 2.63.201, 2.63.203 and	)	AND REPEAL
2.63.204, 2.63.401 through 2.63.407,)	
2.63.601 through 2.63.604, 2.63.606	)	NO PUBLIC HEARING
through 2.63.609, 2.63.611 through	)	CONTEMPLATED
2.63.613, 2.63.801, 2.63.1001 and)	
2.63.1002, 2.63.1004, 2.63.1006,)	
2.63.1007, 2.63.1201 and 2.63.1202)	
and the repeal of ARM 2.63.202 and)	
2.63.408, concerning the State)	
Lottery's procedures, and rules)	
pertaining to retailers, licensing,)	
scratch tickets and prizes)	

TO: All Concerned Persons

1. On February 13, 2006, the State Lottery Commission proposes to amend and repeal the above-stated rules concerning the State Lottery's procedures, and rules pertaining to retailers, licensing, scratch tickets and prizes.

2. The State Lottery Commission 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 State Lottery Commission no later than 5:00 p.m. on January 24, 2006, to advise us of the nature of the accommodation that you need. Please contact John Tarr, State Lottery, P.O. Box 200544, Helena, MT 59620-0544, telephone (406) 444-5804, fax (406) 444-5830, e-mail jtarr@mt.gov.

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

2.63.201 PROCEDURAL RULES (1) The commission ~~hereby~~ adopts and incorporates by reference rules 1 through 28 of the Attorney General's Model Procedural Rules found in ARM 1.3.102 through 1.3.210, except for the Attorney General's sample rule notice forms. A copy of these rules may be obtained ~~from the Director of the Lottery, 2525 North Montana, P.O. Box 200544, Helena, Montana 59620-0544~~ by contacting the Attorney General's Office, Justice Building, 215 North Sanders, P.O. Box 201401, Helena, MT 59620-1401, telephone (406) 444-2026.

AUTH: ~~23-5-1007~~ 23-7-202, MCA
IMP: ~~23-5-1007 through 23-5-2036~~ 23-7-101, 23-7-102, 23-7-103, 23-7-110,
MCA

STATEMENT OF REASONABLE NECESSITY: The amendments to (1) are reasonably necessary to provide a more specific reference to the Attorney General's Model Rules and a better address for obtaining them. Amendments to the Montana Code Annotated (MCA) citations are made because the statutes were renumbered as a result of legislation passed by the Fifty-Second Legislature, 1991 Montana Laws, chapter 647.

2.63.203 DEFINITIONS

(1) remains the same.

(2) "Commission" means the State Lottery Commission created by ~~23-5-1006~~ 23-7-201, MCA.

(3) "Director" means the director of the Montana State Lottery appointed by the governor under ~~23-5-1014~~ 23-7-210, MCA.

~~(4)~~ (5) "License" means the document issued by the lottery which authorizes a retailer to sell lottery ~~instant~~ scratch tickets at a fixed place of business.

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

(6) remains the same.

(7) "Place of business" means the premises where any Montana business is conducted and includes but is not limited to:

(a) retail businesses;

(b) businesses of religious, charitable, civic, or fraternal organizations;

(c) senior citizen centers; and

(d) businesses of the state or any of its political subdivisions. ~~"Place of business" does not include a mobile business or any business without a fixed location.~~

(8) remains the same.

(9) "Retailer" means a licensed ticket or chance sales agent provided for in ~~23-5-1016~~ 23-7-301, MCA.

~~(10)~~ (11) "Ticket" means a lottery ~~instant~~ scratch ticket that has a removable coating covering symbols that determine the amount of prize a player can win.

~~(11)~~ (10) "On-line Terminal issued ticket" means a lottery ticket printed by a terminal connected ~~by a phone line~~ to a computer.

AUTH: ~~23-5-1007~~ 23-7-202, MCA

IMP: ~~23-5-1016~~ 23-7-301, MCA

STATEMENT OF REASONABLE NECESSITY: The amendments to (4) and (10) correct terminology referring to a specific type of Lottery ticket, changing the term "instant" to "scratch." This better reflects how both the Lottery and the public refer to the tickets. The amendment to (7) removes unnecessary language. The amendment to (11) corrects prior terminology referring to a specific type of Lottery ticket, changing the term "on-line" to "terminal issued." This change more accurately describes the nature of the ticket and how it is produced. The elimination of the term "phone line" reflects the fact that the Lottery uses mixed communications networks and protocols (Satellite, Cable, Radio and Telephone) between a retailer's terminal and the primary computer system. Amendments to the MCA citations are made as explained in the statement of reasonable necessity for ARM 2.63.201.

2.63.204 GENERAL PROVISIONS (1) The lottery shall provide ~~instant~~ scratch ticket games to the public whenever the director, with the concurrence of the commission, finds it feasible and in the best interest of the state.

(2) The director shall adopt working papers for each ~~instant~~ scratch game, including, but not limited to:

(a) through (g) remain the same.

(3) The director shall determine the length of each ~~instant~~ scratch game. The starting date and closing date of each game shall be publicly announced.

(4) The director shall adopt rules for each ~~instant~~ scratch game, including, but not limited to:

(a) through (5) remain the same.

(6) The director may conduct a grand prize event in conjunction with the ~~instant~~ scratch games. The procedures for conducting preliminary drawings and for the grand prize event shall be determined by the director, subject to ~~section~~ 23-7-102, MCA.

(7) The lottery shall provide a type of ~~on-line~~ terminal issued game to the public whenever the director, with the concurrence of the commission, finds it feasible and in the best interest of the state.

AUTH: ~~23-5-1007~~ 23-7-202, MCA

IMP: ~~23-5-1001 through 23-5-1035~~ 23-7-101, 23-7-102, 23-7-103, 23-7-110, and 23-5-1007(2) 23-7-202, MCA

STATEMENT OF REASONABLE NECESSITY: The amendments to (1), (2), (3), (4), (6) and (7) are reasonably necessary to clarify existing procedures, repeal obsolete provisions, and correct language relating to overall Lottery operations. The amendments to (1) address two issues. First, they add language to indicate when and how the Lottery may add new scratch games, which mirrors the language in (7), which indicates when and how the Lottery may add new terminal issued games. Second, the amendments to (2), (3), (4) and (6) correct terminology referring to a specific type of Lottery ticket, changing the term "instant" to "scratch." This better reflects how both the Lottery and the public refer to the tickets. The amendment to (7) addresses terminology referring to a specific type of Lottery ticket, changing the term "on-line" to "terminal issued." This change more accurately describes the nature of the ticket and how it is produced. Amendments to the MCA citations are made as explained in the statement of reasonable necessity for ARM 2.63.201.

2.63.401 RETAILER PLACES OF SALE (1) Lottery tickets or chances may be sold at any place of business in Montana:

(a) and (b) remain the same.

~~(c) that is not a mobile business;~~

~~(d) (c)~~ that is financially responsible;

~~(e) (d)~~ that is accessible to the public and meets ADA standards;

~~(f) (e)~~ whose owner has not been convicted of a felony or a gambling-related offense; and

~~(g) (f)~~ whose owner does not have a financial interest in any gaming supplier.

AUTH: ~~23-5-1007(8)~~ 23-7-202 and ~~23-5-1016(2)~~ 23-7-301, MCA
IMP: ~~23-5-1016~~ 23-7-301, ~~23-5-1019~~ 23-7-306, and ~~23-5-1020~~ 23-7-307,
MCA

STATEMENT OF REASONABLE NECESSITY: Subsection (1)(c) is eliminated because it is no longer applicable with the striking of language in ARM 2.63.203(7) and provides for a restriction on a type of business that could successfully offer Lottery products at events like state, regional and county fairs or other major events around Montana. The amendment to (1)(d) is reasonably necessary to indicate the standard of accessibility that will be required in accordance with the Americans with Disabilities Act (ADA). Amendments to the MCA citations are made as explained in the statement of reasonable necessity for ARM 2.63.201.

2.63.402 RETAILER RESIDENCY (1) Each person applying for a license must either:

(a) ~~be a resident of Montana~~ file an application for registration of assumed business name with the Montana Secretary of State's office if 30-13-203, MCA, is applicable; or

(b) if a corporation, be licensed to do business in Montana; or

~~(c) if a partnership, have at least one partner residing in Montana.~~

(c) if a foreign corporation, obtain a certificate of authority to transact business in the state from the Montana Secretary of State's office.

AUTH: ~~23-5-1007(8)~~ 23-7-301, MCA

IMP: ~~23-5-1007(8)~~ and ~~23-5-1016(2)~~ 23-7-301, MCA

STATEMENT OF REASONABLE NECESSITY: The amendment to (1)(a) strikes the requirement that a Lottery retailer must be a resident of the State of Montana. This is as a result of District Court Judge Thomas C. Honzel's decision in the Montana First Judicial District Court case of Hotel Venture Limited Partnership v. State of Montana, Montana Department of Revenue. The decision is set out in the Court's Memorandum and Order on Plaintiffs' Motion for Summary Judgment regarding Article II, Section 4, the Equal Protection Clause of the Montana Constitution. The new language of this subsection now references the statutory requirement of section 30-13-203, MCA, which requires that a business operating in Montana under an assumed business name shall register with the Montana Secretary of State's office. Subsection (1)(c) is stricken because of the previously referred to court ruling. A new subsection (1)(c) is added which references section 35-1-1026, MCA, which requires that all out-of-state businesses transacting business in Montana must obtain a certificate of authority from the Montana Secretary of State's office. Amendments to the MCA citations are made as explained in the statement of reasonable necessity for ARM 2.63.201.

2.63.403 RETAILER APPLICATIONS

(1) remains the same.

(2) The application must provide sufficient information for the director to

determine the eligibility for a license as set forth in ~~23-5-1016~~ 23-7-301, MCA, and these rules and for the director for security to perform sufficient background checks to ~~insure~~ ensure that applicants and licensees conform to the law and rules.

AUTH: ~~23-5-1007(8)~~ 23-7-202, MCA

IMP: ~~23-5-1013(3)(a)~~ 23-7-202 and ~~23-5-1016(1) through (3)~~ 23-7-301, MCA

STATEMENT OF REASONABLE NECESSITY: A minor grammatical change was made to (2). Amendments to the MCA citations are made as explained in the statement of reasonable necessity for ARM 2.63.201.

2.63.404 RETAILER REQUIRED RULE READING

(1) remains the same.

AUTH: ~~23-5-1007~~ 23-7-202, MCA

IMP: ~~23-5-1007~~ 23-7-202 and ~~23-5-1016~~ 23-7-301, MCA

STATEMENT OF REASONABLE NECESSITY: Amendments to the MCA citations are made as explained in the statement of reasonable necessity for ARM 2.63.201.

2.63.405 RETAILER ELECTRONIC FUNDS TRANSFER

(1) and (2) remain the same.

AUTH: ~~23-5-1007~~ 23-7-202, MCA

IMP: ~~23-5-1016~~ 23-7-301, MCA

STATEMENT OF REASONABLE NECESSITY: Amendments to the MCA citations are made as explained in the statement of reasonable necessity for ARM 2.63.201.

2.63.406 RETAILER BONDING (1) The director will ~~not~~ require a bond of ~~instant~~ scratch ticket or ~~on-line~~ terminal issue retailers if a determination is made based on credit history of the owner or corporation making application to the lottery.

AUTH: ~~23-5-1007~~ 23-7-202 and ~~23-5-1016~~ 23-7-301, MCA

IMP: ~~23-5-1016~~ 23-7-301, MCA

STATEMENT OF REASONABLE NECESSITY: The amendments to (1) are reasonably necessary to correct terminology referring to a specific type of Lottery ticket, changing the term "instant" to "scratch." This change in terminology better reflects how both the Lottery and the public refer to the tickets. The amendment to (1) also corrects prior terminology referring to a specific type of Lottery ticket, changing the term "on-line" to "terminal issued." This change more accurately describes the nature of the ticket and how it is produced. The amendments on the bond requirements adjust inconsistent language between section 23-7-301(6), MCA, and current administrative rules. This change will also protect the monetary interest of the Lottery and the State of Montana. Amendments to the MCA citations are made as explained in the statement of reasonable necessity for ARM 2.63.201.

2.63.407 RETAILER COMMISSION (1) Each retailer is entitled to a base commission of 5% of the face value of ~~instant~~ scratch tickets activated and not returned. Retailers who sell ~~on-line~~ terminal issued tickets are entitled to a 5% commission of the face value of ~~on-line~~ terminal issued tickets printed. However, to further the sale of lottery products, the lottery commission may adopt rules providing additional commissions to sales agents based on incremental sales.

(a) Each retailer is assigned an ~~instant~~ scratch ticket sales base.

(b) For each ~~instant~~ scratch ticket quarterly sales period, the retailer's ~~instant~~ scratch tickets activated and not returned are measured against the assigned base.

(c) remains the same.

(d) Retailer ~~instant~~ scratch ticket sales bases may be adjusted annually at the discretion of the commission.

(e) remains the same.

AUTH: 23-7-202 and 23-7-301, MCA

IMP: 23-7-202 and 23-7-301, MCA

STATEMENT OF REASONABLE NECESSITY: Section (1) and subsections (1)(a), (1)(b), and (1)(d) are amended to correct terminology referring to a specific type of Lottery ticket, changing the term "instant" to "scratch." This better reflects how both the Lottery and the public refer to tickets. Also, the term "instant" now refers to a terminal generated product called "Qwik Tix." The amendment to (1) also corrects prior terminology referring to a specific type of Lottery ticket, changing the term "on-line" to "terminal issued." This change more accurately describes the nature of the ticket and how it is produced.

2.63.601 LICENSE APPLICATION FEE

(1) and (2) remain the same.

AUTH: ~~23-5-1007~~ 23-7-202, MCA

IMP: ~~23-5-1016~~ 23-7-301, MCA

STATEMENT OF REASONABLE NECESSITY: Amendments to the MCA citations are made as explained in the statement of reasonable necessity for ARM 2.63.201.

2.63.602 PROVISIONAL LICENSE

(1) remains the same.

AUTH: ~~23-5-1007~~ 23-7-202 and 23-5-1012, MCA

IMP: 23-5-1012 and ~~23-5-1016~~ 23-7-301, MCA

STATEMENT OF REASONABLE NECESSITY: Amendments to the MCA citations are made as explained in the statement of reasonable necessity for ARM 2.63.201.

2.63.603 DISPLAY OF LICENSE

(1) remains the same.

AUTH: ~~23-5-1016~~ 23-7-301, MCA
IMP: ~~23-5-1016~~ 23-7-301, MCA

STATEMENT OF REASONABLE NECESSITY: Amendments to the MCA citations are made as explained in the statement of reasonable necessity for ARM 2.63.201.

2.63.604 LICENSE LOCATIONS
(1) through (4) remain the same.

AUTH: ~~23-5-1007~~ 23-7-202, ~~23-5-1012~~ and ~~23-5-1016~~ 23-7-301, MCA
IMP: ~~23-5-1012~~ and ~~23-5-1016~~ 23-7-301, MCA

STATEMENT OF REASONABLE NECESSITY: Amendments to the MCA citations are made as explained in the statement of reasonable necessity for ARM 2.63.201.

2.63.606 DUPLICATE LICENSES
(1) through (6) remain the same.

AUTH: ~~23-5-1007~~ 23-7-202, MCA
IMP: ~~23-5-1012~~ 23-7-211, MCA

STATEMENT OF REASONABLE NECESSITY: Amendments to the MCA citations are made as explained in the statement of reasonable necessity for ARM 2.63.201.

2.63.607 BUSINESS CHANGES (1) A licensee must notify the director of any of the following changes in the licensed business:

- (a) any change of business structure;
- (b) material change of ownership;
- (c) voluntary or involuntary business closure;
- (d) business interruptions for reasons beyond the owner's control;
- ~~(e)~~ (e) changes in the officers;
- ~~(d)~~ (f) changes in the board of directors; and
- ~~(e)~~ (g) change of business address.

AUTH: ~~23-5-1007~~ 23-7-202, MCA
IMP: ~~23-5-1016~~ 23-7-301, MCA

STATEMENT OF REASONABLE NECESSITY: Subsections (1)(c) and (1)(d) were added to include another increasingly common change in a Lottery retailer's business. Subsections (1)(e), (1)(f), and (1)(g) are renumbered because of the addition of (1)(c) and (1)(d). Amendments to the MCA citations are made as explained in the statement of reasonable necessity for ARM 2.63.201.

2.63.608 ASSIGNMENT OR TRANSFER OF LICENSE PROHIBITED (1) In accordance with ~~23-5-1016(8)~~ 23-7-301, MCA, licenses for the sale of lottery tickets are not assignable or transferable. No licensee may attempt to assign or transfer

the license to another person or to another location.

AUTH: ~~23-5-1007~~ 23-7-202, MCA

IMP: ~~23-5-1016~~ 23-7-301, MCA

STATEMENT OF REASONABLE NECESSITY: See Statement of Reasonable Necessity for ARM 2.63.404.

2.63.609 CHANGE OF LOCATION

(1) and (2) remain the same.

AUTH: ~~23-5-1007~~ 23-7-202, MCA

IMP: ~~23-5-1016~~ 23-7-301, MCA

STATEMENT OF REASONABLE NECESSITY: Amendments to the MCA citations are made as explained in the statement of reasonable necessity for ARM 2.63.201.

2.63.611 REVOCATION OR SUSPENSION OF LICENSE (1) After notice, ~~in writing, and hearing before the commission,~~ the director shall has the authority to provisionally suspend the license and, after a hearing before the commission, permanently revoke the license and endorsement of any person who has:

(a) through (d) remain the same.

(2) The director may provisionally suspend the license and, after a hearing before the commission, permanently suspend or revoke a license and/or endorsement for any of the following reasons:

(a) through (i) remain the same.

(3) Upon notice of revocation or suspension, the retailer shall give a final accounting to the lottery and surrender the license, lottery material, and tickets to the lottery. The retailer is liable for all money still owed the lottery ~~and for any low tier prizes paid by the lottery on tickets sold by that retailer.~~

(4) remains the same.

AUTH: ~~23-5-1007~~ 23-7-202, MCA

IMP: ~~23-5-1016~~ 23-7-301, MCA

STATEMENT OF REASONABLE NECESSITY: Section (1) is amended to allow the Lottery Director to temporarily suspend a retailer's license to sell Lottery products for the reasons listed in (1)(a) through (1)(d). This will allow the Lottery to promptly remove any retailer who has violated provisions of these rules. This change will also help mitigate any harm to the general public and thus reduce liability risks to the State of Montana. Retailers will continue to maintain their rights to a hearing before the Commissioners before any permanent suspension is imposed. Section (2) changes are made for the same reason as those in (1) except that the impacted subsections are (2)(a) through (2)(i). The amendment to (3) is necessary because automated accounting procedures do away with the need for this language. Amendments to the MCA citations are made as explained in the statement of reasonable necessity for ARM 2.63.201.

2.63.612 TEMPORARY LICENSES

(1) remains the same.

AUTH: ~~23-5-1007~~ 23-7-202, MCA

IMP: ~~23-5-1016~~ 23-7-301, MCA

STATEMENT OF REASONABLE NECESSITY: Amendments to the MCA citations are made as explained in the statement of reasonable necessity for ARM 2.63.201.

2.63.613 ENDORSEMENT (1) The director may issue an on-line endorsement to a licensed retailer taking into consideration factors including, but not limited to:

- (a) history of ~~instant~~ scratch ticket sales;
 - (b) and (c) remain the same.
 - (d) location relative to other ~~on-line~~ terminal issue retailers.
- (2) remains the same.

AUTH: ~~23-5-1007~~ 23-7-202, MCA

IMP: ~~23-5-1007~~ 23-7-202 and ~~23-5-1016~~ 23-7-301, MCA

STATEMENT OF REASONABLE NECESSITY: The amendment to substitute the word "scratch" for "instant" is reasonably necessary because the term "instant ticket" has become obsolete. Section (1) is amended to correct this change in terminology referring to a specific type of Lottery ticket, changing the term "instant" to "scratch." This better reflects how both the Lottery and the public refer to the tickets. Also, the term "instant" now refers to a terminal generated product called "Qwik Tix." Amendments to the MCA citations are made as explained in the statement of reasonable necessity for ARM 2.63.201.

2.63.801 ELECTRONIC FUNDS TRANSFER

(1) through (5) remain the same.

AUTH: ~~23-5-1007~~ and ~~23-5-1016~~ 23-7-202, 23-7-301, MCA

IMP: ~~23-5-1016~~ 23-7-301, MCA

STATEMENT OF REASONABLE NECESSITY: Amendments to the MCA citations are made as explained in the statement of reasonable necessity for ARM 2.63.201.

2.63.1001 SALE OF INSTANT SCRATCH TICKETS (1) ~~Instant Scratch~~ tickets may be sold by any licensed retailer at the location specified on the license or by any employee of the retailer who is 18 years of age or older.

AUTH: ~~23-5-1007~~ 23-7-202, MCA

IMP: ~~23-5-1007~~ 23-7-202, MCA

STATEMENT OF REASONABLE NECESSITY: The amendment to substitute the

word "scratch" for "instant" is reasonably necessary because the term "instant ticket" has become obsolete. Section (1) is amended to correct this change in terminology referring to a specific type of Lottery ticket, changing the term "instant" to "scratch." This better reflects how both the Lottery and the public refer to the tickets. Also, the term "instant" now refers to a terminal generated product called "Qwik Tix." Amendments to the MCA citations are made as explained in the statement of reasonable necessity for ARM 2.63.201.

2.63.1002 INSTANT SCRATCH TICKET PRICE (1) The price of an ~~instant~~ scratch ticket will be determined by the lottery commission. A retailer may not sell a ticket for more than the price printed on the ticket. A retailer may give away tickets.

AUTH: ~~23-5-1007~~ 23-7-202, MCA

IMP: ~~23-5-1007~~ 23-7-202 and ~~23-5-1016~~ 23-7-301, MCA

STATEMENT OF REASONABLE NECESSITY: The amendments to substitute the words "a scratch" for "an instant" are reasonably necessary because the term "instant ticket" has become obsolete. Section (1) is amended to correct this change in terminology referring to a specific type of Lottery ticket, changing the term "instant" to "scratch." This better reflects how both the Lottery and the public refer to the tickets. Also, the term "instant" now refers to a terminal generated product called "Qwik Tix." Amendments to the MCA citations are made as explained in the statement of reasonable necessity for ARM 2.63.201.

2.63.1004 INSTANT SCRATCH TICKETS – RETAILER
(1) remains the same.

AUTH: 23-7-202, MCA

IMP: 23-7-202 and 23-7-301, MCA

STATEMENT OF REASONABLE NECESSITY: The amendment to substitute the word "scratch" for "instant" is reasonably necessary because the term "instant ticket" has become obsolete. Section (1) is amended to correct this change in terminology referring to a specific type of Lottery ticket, changing the term "instant" to "scratch." This better reflects how both the Lottery and the public refer to the tickets. Also, the term "instant" now refers to a terminal generated product called "Qwik Tix." Amendments to the MCA citations are made as explained in the statement of reasonable necessity for ARM 2.63.201.

2.63.1006 INSTANT SCRATCH TICKET RETURNS (1) Unsold ~~instant~~ scratch game tickets may be returned to the lottery for full credit within time limits established by the director.

AUTH: ~~23-5-1007~~ 23-7-202, MCA

IMP: ~~23-5-1007~~ 23-7-202, MCA

STATEMENT OF REASONABLE NECESSITY: The amendment to substitute the word "scratch" for "instant" is reasonably necessary because the term "instant ticket" has become obsolete. Section (1) is amended to correct this change in terminology referring to a specific type of Lottery ticket, changing the term "instant" to "scratch." This better reflects how both the Lottery and the public refer to the tickets. Also, the term "instant" now refers to a terminal generated product called "Qwik Tix." Amendments to the MCA citations are made as explained in the statement of reasonable necessity for ARM 2.63.201.

2.63.1007 SALES STAFF INCENTIVE PLAN (1) remains the same.

(a) Sales representatives will receive a bonus of \$20 for each new retailer recruited to sell lottery products, providing the retailer stays active for at least 90 days. Sales representatives will also receive a 1% commission on the total number of ~~instant~~ scratch tickets activated and not returned, by a new retailer in their region during the first six months of sales, excluding the first 2,000 tickets. New stores added to existing lottery chain accounts will be excluded from this new retailer bonus.

(b) remains the same.

AUTH: 23-7-202, MCA

IMP: 23-7-202, MCA

STATEMENT OF REASONABLE NECESSITY: The amendments to substitute the word "scratch" for "instant" are reasonably necessary because the term "instant ticket" has become obsolete. Subsection (1)(a) is amended to correct this change in terminology referring to a specific type of Lottery ticket, changing the term "instant" to "scratch." This better reflects how both the Lottery and the public refer to the tickets. Also, the term "instant" now refers to a terminal generated product called "Qwik Tix."

2.63.1201 PRIZES

(1) through (4) remain the same.

(5) The lottery may deny a claim for a winning ~~instant~~ scratch or ~~on-line~~ terminal issued ticket if:

(a) through (12) remain the same.

AUTH: 23-7-202, MCA

IMP: 23-7-202 and 23-7-211, MCA

STATEMENT OF REASONABLE NECESSITY: Section (5) is amended to correct this change in terminology referring to a specific type of Lottery ticket, changing the term "instant" to "scratch." This better reflects how both the Lottery and the public refer to the tickets. Also, the term "instant" now refers to a terminal generated product called "Qwik Tix."

2.63.1202 ~~INSTANT~~ SCRATCH TICKET WINNER REDEMPTIONS

(1) remains the same.

AUTH: 23-7-202, MCA
IMP: 23-7-202, MCA

STATEMENT OF REASONABLE NECESSITY: The amendment to substitute the word "scratch" for "instant" is reasonably necessary because the term "instant ticket" has become obsolete. This better reflects how both the Lottery and the public refer to the tickets. Also, the term "instant" now refers to a terminal generated product called "Qwik Tix." Amendments to the MCA citations are made as explained in the statement of reasonable necessity for ARM 2.63.201.

4. ARM 2.63.202, which can be found on page 2-6509 of the Administrative Rules of Montana, is proposed to be repealed because it is obsolete. It adopts and incorporates by reference the citizen participation rules of the Department of Commerce as set forth in ARM 8.2.201 through 8.2.206 with no mention of the statutory requirements. Citizen participation is already required in Title 2, chapter 3, MCA, which takes precedence over an administrative rule.

AUTH: 23-5-1007, MCA
IMP: 23-5-1001 through 23-5-1036, MCA

5. ARM 2.63.408, which can be found on page 2-6519 of the Administrative Rules of Montana, is proposed to be repealed because it contains an obsolete provision relating to the "Point of Sale" promotion of Lottery products. The current provision is unenforceable and fails to contain a penalty stipulation for noncompliance. The addition of a punitive penalty stipulation would require legislative action and contradicts good retailer relationships. This requirement for practical and customer relationship purposes should be handled in the retailer licensing agreement.

AUTH: 23-7-1007, MCA
IMP: 23-5-1007 and 23-5-1016, MCA

6. Concerned persons may submit their data, views or arguments concerning the proposed actions in writing to John Tarr, Montana Lottery, P.O. Box 200544, Helena, MT 59620-0544, telephone (406) 444-5804, fax (406) 444-5830, e-mail jtarr@mt.gov. Any comments must be received no later than 5:00 p.m. on February 9, 2006.

7. If persons who are directly affected by the proposed actions wish to express their data, views and 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 John Tarr, Montana Lottery, P.O. Box 200544, Helena, MT 59620-0544, telephone (406) 444-5804, fax (406) 444-5830, e-mail jtarr@mt.gov. A written request for hearing must be received no later than 5:00 p.m. on February 9, 2006.

8. If the agency receives requests for a public hearing on the proposed actions from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed actions; from the appropriate administrative rule review committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 75 based on 750 Lottery retailers.

9. The State Lottery Commission maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this bureau. Persons who wish to have their name added to this list shall make a written request that includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notice regarding the State Lottery. Such written request may be mailed to John Tarr, Montana Lottery, P.O. Box 200544, Helena, MT 59620-0544, telephone (406) 444-5804, fax (406) 444-5830, e-mail jtarr@mt.gov, or may be made by completing a request form at any rules hearing held by the Montana Lottery Commission.

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

By: /s/ Robert Crippen
ROBERT CRIPPEN, CHAIR
MONTANA LOTTERY COMMISSION

/s/ Dal Smilie
DAL SMILIE, Rule Reviewer

Certified to the Secretary of State January 3, 2006.

BEFORE THE DEPARTMENT OF TRANSPORTATION
OF THE STATE OF MONTANA

In the matter of the amendment of ARM) NOTICE OF PROPOSED
18.9.704 regarding definitions for motor) AMENDMENT
fuels)
) NO PUBLIC HEARING
) CONTEMPLATED

TO: All Concerned Persons

1. On March 10, 2006, the Department of Transportation proposes to amend ARM 18.9.704 regarding definitions for motor fuels.

2. The Department 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 no later than 5:00 p.m. on January 27, 2006, to advise us of the nature of the accommodation you need. Please contact Robert Turner, Fuel Tax Management and Analysis Bureau, Department of Transportation, P.O. Box 201001, Helena, MT 59620-1001, (406) 444-7672, TTY (406) 444-7696, fax (406) 444-6032, e-mail boturner@mt.gov.

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

18.9.704 Definitions (1) "Biodiesel" means: is as defined in 15-70-301, MCA.

~~(a) a fuel sold for use in motor vehicles operating upon the public roads and highways within the state that contains at least 20% esterified vegetable oil, at least 10% alcohol, or an equivalent mixture of both oil and alcohol, with the balance being diesel fuel or any other petroleum-based volatile liquid of less than 46 degrees A.P.I. (American petroleum institute) gravity test and other additives; or~~

~~(b) a monoalkyl ester that:~~

~~(i) is derived from domestically produced vegetable oils, renewable lipids, rendered animal fats, or any combination of those ingredients; and~~

~~(ii) meets the requirements of ASTM PS 121, also known as the Provisional Specification for Biodiesel Fuel (B100) blend stock for distillate fuels, as adopted by the American society of testing and materials.~~

~~(c) Biodiesel is also known as "B-20".~~

(2) "Gasohol" means a fuel blend containing at least 10% alcohol, with the balance being gasoline and other additives. Gasohol is also known as "E-10".

(3) "Point specified" for purposes of the starting point of the temporary special fuel agricultural permit means the point where the person first crosses the border into Montana.

(4) "Radius" for purposes of measuring the area of the temporary special fuel agricultural permit is measured in air miles.

AUTH: 15-70-104, MCA

IMP: 15-70-201, ~~and~~ 15-70-301, and 15-70-311, MCA

REASON: It is necessary to amend the definition of "biodiesel" in order to ensure that the rule corresponded with the definition found in the statute. The amendments are also reasonably necessary to implement Chapter No. 397 which was passed in the 59th Legislature that allows a 90-day temporary agricultural special fuel permit. The proposed rule is necessary to precisely define the radius of the permit in air miles and at what point the permit starts.

4. Concerned persons may present their data, views, or arguments concerning the proposed amendment in writing to Robert Turner, Fuel Tax Management and Analysis Bureau, Department of Transportation, P.O. Box 201001, Helena, MT 59620-1001, (406) 444-7672, TTY (406) 444-7696, fax (406) 444-6032, e-mail boturner@mt.gov. Any comments must be received no later than February 10, 2006.

5. If persons who are directly affected by the proposed amendment wish to express their data, views, and arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments they have to Robert Turner, Fuel Tax Management and Analysis Bureau, Department of Transportation, P.O. Box 201001, Helena, MT 59620-1001, (406) 444-7672, TTY (406) 444-7696, fax (406) 444-6032, e-mail boturner@mt.gov. A written request for hearing must be received no later than February 10, 2006.

6. If the agency receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action; from the appropriate administrative rule review committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 125 persons based on the number of motor fuel permits purchased.

7. The Department of Transportation 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 proposed by the Administration Division, Aeronautics Division, Highways and Engineering Division, Maintenance Division, Motor Carrier Services Division, or Rail, Transit and Planning Division. Such written request may be mailed or delivered to Montana Department of Transportation, Legal Services, 2701 Prospect Ave, P.O. Box 201001, Helena, MT 59620-1001; Fax: (406) 444-7206; or e-mailed to lmanley@mt.gov or may be made by completing a request form at any rules hearing held by the department.

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

By: /s/ Jim Currie
Jim Currie, Deputy Director
Department of Transportation

/s/ Lyle Manley
Lyle Manley, Rule Reviewer

Certified to the Secretary of State, January 3, 2006.

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

In the matter of the proposed) NOTICE OF PUBLIC HEARING
amendment of ARM 24.141.405) ON PROPOSED AMENDMENT
pertaining to the fee schedule,) AND ADOPTION
and ARM 24.141.2102 pertaining to)
continuing education, and the)
proposed adoption of NEW RULE I)
pertaining to licensee)
responsibilities, and NEW RULE II)
pertaining to fee abatement)

TO: All Concerned Persons

1. On February 3, 2006, at 1:00 p.m., a public hearing will be held in room B-07 of the Park Avenue Building, 301 South Park Avenue, Helena, Montana to consider the proposed amendment and adoption of the above-stated rules.

2. The Department of Labor and Industry will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or who need an alternative accessible format of this notice. If you require an accommodation, contact Mr. George Edwards no later than 5:00 p.m., January 27, 2006, to advise us of the nature of the accommodation you need. Please contact Mr. George Edwards, State Electrical Board, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2329; Montana Relay 1-800-253-4091; TDD (406) 444-2978; Facsimile (406) 841-2309; e-mail dlibsdele@mt.gov.

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

24.141.405 FEE SCHEDULE (1) through (3) remain the same.

(4) Renewal fee (~~three~~ two years)

(a) Contractor 250 165

(b) Master 400 70

(c) Journeyman 400 70

(d) Residential 400 70

(5) through (9) remain the same.

AUTH: 37-1-134, 37-68-201, MCA

IMP: 37-1-134, 37-1-304, 37-1-305, 37-68-304, 37-68-307, 37-68-310, 37-68-311, 37-68-312, 37-68-313, MCA

REASON: It is reasonable and necessary to amend this rule to implement changed statutory language from the 2005 legislative session, as provided by Chap.

467, Laws of 2005 (HB 182). Current renewal fees are based on a statutory three-year license renewal cycle. The new license renewal cycle will be a two-year period, in line with the state budgeting and appropriations cycle. Basing fees on a two-year period means that fees must be adjusted to prevent an excess amount of revenue. A failure to adjust renewal fees based on the new two-year renewal cycle would cause an excess of revenue collection.

Renewal fee adjustments reflected in this rule amendment will increase fees to individual electrician licensees by \$3.34 per each two-year renewal cycle. The \$3.34 increase will be used for an increase in Board expenses such as Department staff salaries and office supplies. Based on the current numbers of licensed electricians and electrical contractors, approximately 3,200 licensed electricians will be impacted by the \$3.34 fee increase per each two-year renewal cycle. This would amount to a \$10,688 revenue increase every two years. Approximately 830 licensed electrical contractors will have their fees reduced by \$1.68 per each two-year renewal cycle. This would amount to a \$1,394.00 decrease in revenue projections; this will keep revenues within the Board's appropriation levels. The fee adjustments lower the three year rate by approximately one-third, but are rounded to make the fees an even-dollar amount. The Board therefore estimates that approximately 4,030 persons will be affected by the proposed changes, for an estimated total fee increase of approximately \$9,294 per year.

24.141.2102 CONTINUING EDUCATION (1) Each master, journeyman, and residential electrician license shall not be renewed unless the continuing education requirements imposed by this rule have been met, prior to a ~~July 15th~~ the renewal date set by administrative rule. Any licensee who fails to fulfill the continuing education requirements, imposed by this rule, ~~by the August 15th following a July 15th~~ within 45 days of the renewal date, shall cause the license to lapse. It is unlawful for a person whose license has lapsed to perform electrical work in this state. For reinstatement after ~~August 15th and before July 15th of the next year~~ the license has lapsed, the applicant shall have completed the continuing education requirements, certified that fact to the board, and met all other renewal requirements.

(2) To receive credit for continuing education, the following requirements must be met:

(a) Courses or seminars must have prior approval of curriculum by the state electrical board or designated board representative. Each course shall be assigned a course approval number by the board to be listed on the certificate of completion. Board approval of said courses and seminars expires August 1 of each license renewal year.

(b) and (c) remain the same.

(d) Maintaining a record of completion ~~Completion~~ certificates for courses or seminars and the hours attended shall be the responsibility of the licensee. An audit of completion certificates may be requested by the board or designated board representative at any time, attached to the ~~application for license renewal to a maximum verification of 24 hours in the three-year period prior to each license renewal date~~. A minimum of eight hours each licensed year must be obtained per

renewal cycle. All of the requisite hours may be obtained during any portion of the renewal cycle. A minimum of 12 four of the 24 eight hours shall be verified as being on the national electrical code updates.

(e) through (j) remain the same.

(3) Continuing education courses approved by another state which has a reciprocal licensing agreement with the board will be honored toward renewal. The reciprocal state's course approval number and date of course must appear on the completion certificate.

(4) Completion certificates must be submitted within 30 days upon request by the board office for the purpose of licensing renewal audits. Failure to supply continuing education completion certificates when requested by the board office shall be cause for disciplinary actions.

AUTH: 37-1-131, 37-1-319, 37-68-201, MCA

IMP: 37-1-131, 37-1-306, 37-1-319, 37-68-201, MCA

REASON: It is reasonable and necessary to amend this rule to implement new statutory language from the 2005 legislative session, to clarify what constitutes approved courses given by another jurisdiction, and to establish disciplinary actions for failure to comply with this rule. Changes include the duration of license renewals from three years to two years. Existing language in the rule specified an hour requirement based upon a three-year renewal cycle. The amendment provides for flexibility by specifying the hour requirement based on the length of time a licensee holds the license rather than tying the requirement to the time of a renewal cycle. Legislative changes provide an audit of not more than 50% of licensees for continuing education compliance. To meet the statutory change, the rule is being amended from requiring all course certificates (a 100% audit of licensees) being sent in with a renewal. This also allows for licensees to participate in an on-line renewal process.

Approval of continuing courses has, historically, required Board action. To facilitate a shortened time period for course approval, under the proposed changes, the Board would be able to appoint a representative to approve continuing education courses. The Board participates in a multi-state reciprocal licensing agreement. Amendments to this rule specify conditions that need to be met in order for the Board to honor courses given by another jurisdiction.

There also is reasonable necessity to amend the IMP citation to reflect the implementation of new provisions of section 37-1-131, MCA, concerning continuing education requirements, as well as clarifying that the rule also implements section 37-1-319, MCA.

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

NEW RULE I UNPROFESSIONAL CONDUCT (1) In addition to the activities set forth in 37-1-316, MCA, the following activities are also deemed by the board to be unprofessional conduct:

(a) uncorrected violations of the Montana State Electrical Code as adopted by the Department of Labor and Industry's Building Codes Bureau;

(b) failing to comply with all provisions of state law relating to workers' compensation insurance, unemployment insurance, and independent contracting; and

(c) failure to comply with continuing education requirements set forth in ARM 24.141.2102.

(2) Upon findings of unprofessional conduct as defined in (1) and determined in accordance with the Montana Administrative Procedure Act, the board may impose sanctions, including but not limited to those allowed by and listed in 37-1-312, MCA.

AUTH: 37-1-131, 37-1-136, 37-1-319, 37-68-201, MCA

IMP: 37-1-307, 37-1-316, 50-60-601, 50-60-603, 50-60-604, MCA

REASON: It is reasonable and necessary to adopt rules to clarify for electrical contractors, journeymen electricians, master electricians, electrical apprentices, licensing applicants, and electrical industry consumers that the board intends to fully utilize the quasi-judicial authority it is granted in and by Title 37, Chapter 1, Part 1, MCA. It is reasonable to adopt (1)(a) because the Board has become increasingly aware that many licensed electricians are routinely failing to comply with Montana's electrical code. These violations commonly involve failing to obtain permits for electrical work prior to performing that work, if at all; failing to correct defective installations; or failure to properly call for inspections. The Board believes that adopting this provision will provide it a specific pathway to discipline electricians for these types of infractions which, in turn, will provide all licensees a greater incentive to ensure their work is done in full compliance with electrical code requirements. The Board believes this action is necessary to ensure and enhance public safety as it relates to the electrical industry.

It is reasonable and necessary to adopt (1)(b) to ensure that licensees who are employers or bona fide independent contractors conduct their activities in full compliance with the referenced laws. The Board believes adoption of this provision will benefit the public because it will assist in assuring that a vibrant workforce of skilled and licensed electricians is continuously available to serve Montana citizens.

It is reasonable and necessary to adopt (1)(c) to clarify and emphasize that all licensed electricians must comply with applicable continuing education requirements, and for the Board to be able to take effective disciplinary measures against licensees who do not timely meet their continuing education obligations. The Board believes adoption of this provision is necessary as an incentive for electrical licensees to remain current with the rapidly changing technologies in the electrical industry, especially those changes which are accommodated by changes in the state and national electrical code.

It is reasonable and necessary to adopt (2) to clarify and emphasize for electrical contractors, journeymen electricians, master electricians, electrical apprentices,

licensing applicants, and electrical industry consumers that the board intends to fully utilize the quasi-judicial authority it is granted in and by Title 37, Chapter 12, Part 1, MCA.

NEW RULE II FEE ABATEMENT (1) The State Electrical Board adopts and incorporates by reference the fee abatement rule of the Department of Labor and Industry found at ARM 24.101.301.

AUTH: 37-1-131, MCA

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

REASON: The Board has determined there is reasonable necessity to adopt and incorporate by reference ARM 24.101.301 to allow the Board to authorize the Department to perform renewal licensure fee abatements as appropriate and when needed, without further vote or action by the Board. The Department recently adopted ARM 24.101.301 to implement a means for the prompt elimination of excess cash accumulation in the licensing programs operated by the Department.

Adoption and incorporation of ARM 24.101.301 will allow the Department to promptly eliminate excess cash balances of the Board that result from unexpectedly high licensing levels or other non-typical events. Abatement in such instances will allow the licensees who have paid fees into the Board's program to receive the temporary relief provided by abatement. Adoption of this abatement rule does not relieve the Board from its duty to use proper rulemaking procedures to adjust the Board's fee structure in the event of recurrent instances of cash balances in excess of the statutory allowed amount.

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 by mail to Mr. George Edwards, State Electrical Board, Department of Labor and Industry, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2309, or by e-mail to dlibsdele@mt.gov and must be received no later than 5:00 p.m., February 13, 2006.

6. An electronic copy of this Notice of Public Hearing is available through the Department and Board's website on the World Wide Web at <http://www.electrician.mt.gov>, in the Rules Notices 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 website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems, and that a person's technical difficulties in accessing or posting to the e-mail address do not excuse late submission of comments.

7. The State Electrical Board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this Board. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all State Electrical Board administrative rulemaking proceedings or other administrative proceedings. Such written request may be mailed or delivered to the State Electrical Board, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2309, e-mailed to dlibsdele@mt.gov or may be made by completing a request form at any rules hearing held by the agency.

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

9. Lon Mitchell, attorney, has been designated to preside over and conduct this hearing.

STATE ELECTRICAL BOARD
TONY MARTEL, PRESIDENT

/s/ MARK CADWALLADER
Mark Cadwallader
Alternative Rule Reviewer

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

Certified to the Secretary of State January 3, 2006

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

In the matter of the proposed amendment of) NOTICE OF PUBLIC
ARM 24.174.301 and 24.174.303) HEARING ON PROPOSED
definitions, 24.174.401 and) AMENDMENT AND ADOPTION
24.174.403 general provisions,)
24.174.503, 24.174.514,)
24.174.521, 24.174.522,)
24.174.523 and 24.174.524)
licensing, 24.174.603 and)
24.174.612 internship regulations,)
24.174.705 and 24.174.711)
pharmacy technicians, 24.174.801,)
24.174.806 and 24.174.814)
certified pharmacies, 24.174.1002 mail)
service pharmacies, 24.174.1107 and)
24.174.1111 institutional pharmacies,)
24.174.1201, 24.174.1202,)
24.174.1211 and 24.174.1212)
wholesale drug distributors licensing,)
24.174.1401 dangerous drugs, 24.174.2101)
renewals and continuing education,)
24.174.2401 screening panel, and the)
proposed adoption of NEW RULE I)
inactive license, NEW RULE II telepharmacy)
operations, NEW RULE III remote)
telepharmacy dispensing machine sites,)
NEW RULE IV central filling by hub)
pharmacies, NEW RULE V ambulatory surgical)
facilities and NEW RULE VI fee abatement)

TO: All Concerned Persons

1. On February 2, 2006, at 10:00 a.m., a public hearing will be held in room 489, Park Avenue Building, 301 South Park, Helena, Montana to consider the proposed amendment and adoption of the above-stated rules.

2. The Department of Labor and Industry (Department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Pharmacy (Board) no later than 5:00 p.m. on January 27, 2006, to advise us of the nature of the accommodation that you need. Please contact Marilyn Kelly-Clark, Board of Pharmacy, 301 South Park, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2355; Montana Relay

1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail dlibsdp@mt.gov.

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

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

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

(1) through (4) remain the same but are renumbered (2) through (5).

(6) "DEA" means the Drug Enforcement Administration of the United States Department of Justice.

(5) through (24) remain the same but are renumbered (7) through (26).

(27) "Remote pharmacy" means a licensed pharmacy at which prescriptions may be filled or transmitted to a central hub pharmacy for filling and subsequent delivery to the remote site or the patient's home. Patient counseling by a pharmacist may occur at this site.

(28) "Remote telepharmacy dispensing machine site" means a licensed site containing prescription inventory which is secured in an automated dispensing device and which has access to its parent pharmacy and registered pharmacists via computer, video, and audio link at all times during business hours.

(29) "Remote telepharmacy site" means a licensed site staffed by a registered pharmacy technician with access to its parent pharmacy and registered pharmacists via computer, video, and audio link at all times during business hours.

(30) "Satellite pharmacy" means a specialized inpatient pharmacy staffed by a pharmacist which is adjacent to or near the department served and is connected via computer to the central institutional pharmacy.

(25) and (26) remain the same but are renumbered (31) and (32).

(33) "Verification audit" means a comparison and verification of written patient orders with medications removed for that patient.

AUTH: 37-7-201, MCA

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

REASON: The 1999 Montana Legislature enacted Chapter 273, Laws of 1999 (Senate Bill 478), an act requiring the Board to adopt rules providing for the registration of ambulatory surgical facilities. The bill was signed by the Governor and became effective on April 6, 1999, and was codified at 50-32-314, MCA. The 1999 Legislature also enacted Chapter 98, Laws of 1999 (Senate Bill 116), which changed the term "ambulatory surgical facilities" to "outpatient center for surgical services" in several places in statute. However, the terminology change was not made at 50-32-314, MCA. It is reasonably necessary for the Board to add a definition for "ambulatory surgical facilities" as identical to "outpatient center for surgical services". This amendment will clarify the meaning of the term as it pertains to the registration of these facilities under New Rule V and further implement the legislation. The Department intends to propose legislation during the 2007

legislative session to amend 50-32-314, MCA, and change the outdated term to "outpatient center for surgical services" to achieve consistency in statute.

It is reasonable and necessary to define "DEA" in one centralized location within the rules. The Board is adding the definition of "DEA" to this rule to provide simplicity and consistency throughout the rules by maintaining all definitions in a single rule.

The Board determined that it is necessary to include new definitions not previously enumerated. Adding definitions of several different types of pharmacy locations will enable licensees to better understand the provisions of telepharmacy regulation as set forth in New Rules II, III and IV.

The Board is proposing to add a definition of "verification audit" as the term is used in subchapter 11 of the Board rules. Addition of this definition will clarify the accounting process required following drug removal from night cabinets in institutional pharmacies. The remaining unaffected definitions are being renumbered within the rule accordingly. The implementation cites are being amended to accurately reflect all statutes implemented through the rule.

24.174.303 INTERNSHIP PROGRAM DEFINITIONS (1) through (5) remain the same.

(6) "Internship period" means 1500 hours of practical experience in an approved pharmacy, hospital or other facility. The intern must acquire a minimum of 20 hours experience per calendar week and may acquire a maximum of 48 hours experience per calendar week. ~~However, the~~ The student may acquire up to 1000 hours concurrently with school attendance in approved courses, externships and clerkships, or demonstration projects in the B.S. program and up to 1500 hours concurrently with school attendance in approved courses, externships and clerkships advanced practice, or demonstration projects in the Pharm.D. program.

(7) through (9) remain the same.

AUTH: 37-7-201, MCA

IMP: 37-7-201, MCA

REASON: It is reasonable and necessary to amend the definition of "internship period" to conform with current pharmacy education standards throughout the United States. Previously, a pharmacy student could graduate with a bachelor of science in pharmacy (BS) degree, a doctor of pharmacy (Pharm.D.) degree or both. All schools of pharmacy within the United States have since changed to exclusively require the Pharm.D. degree, and reference to the BS program is no longer necessary. The term "clerkships" is being amended to "advanced practice" to comply with current terminology used in schools of pharmacy.

24.174.401 FEE SCHEDULE

(1) through (23) remain the same.

(24) Inactive pharmacist annual renewal fee

25

(25) Ambulatory surgical facility (original

or renewal)

75

AUTH: 37-1-134, 37-7-201, 50-32-314, MCA

IMP: 37-1-134, 37-7-201, 37-7-302, ~~37-7-303~~, 37-7-321, 37-7-703, 50-32-314, MCA

REASON: It is reasonable and necessary to amend this rule to add a fee for inactive pharmacist licensure, a new licensure category set forth in New Rule I. An estimated annual increase in revenue of \$625.00 is anticipated, based upon an estimated 25 applicants with an annual inactive license fee of \$25.00 per applicant.

Further, it is reasonably necessary to add a fee for the registration of ambulatory surgical facilities, as set forth in New Rule V, to further implement Senate Bill 478 of the 1999 Montana Legislature. An estimated annual increase in revenue of \$1,125.00 is anticipated, based upon an estimated 15 facility registrants with an annual fee of \$75.00 per applicant.

Authority and implementation cites are being amended to accurately reflect all statutes implemented through the rule, to provide the complete sources of the Board's rulemaking authority and to delete reference to a repealed statute.

24.174.403 CHANGE IN ADDRESS AND/OR EMPLOYMENT (1) All licensees ~~must~~ shall notify the board in writing within 10 days of any change in ~~location of their employment, together with the~~ and/or any change of business or personal address.

AUTH: 37-7-201, MCA

IMP: 37-7-201, ~~37-7-303~~, MCA

REASON: It is necessary for the Board to be able to contact licensees for license renewal, rulemaking notification and disciplinary purposes. The Board determined it is reasonably necessary to specify which address changes must be reported to the Board. Licensees may receive notifications from the Board at either their homes or places of employment, and the amended language will help ensure that all licensees' current addresses are maintained in the Board office. Implementation cites are being amended to accurately reflect all statutes implemented through the rule and to delete reference to a repealed statute.

24.174.503 ADMINISTRATION OF VACCINES BY PHARMACISTS

(1) through (5) remain the same.

(6) The authority of a pharmacist to administer immunizations may not be delegated. : however, an immunization-certified intern may immunize under the direct supervision of a pharmacist qualified under this chapter.

(7) remains the same.

AUTH: 37-7-101, 37-7-201, MCA

IMP: 37-7-101, 37-7-201, MCA

REASON: It is reasonable and necessary to amend this rule to clarify that pharmacy interns who have received training and certification from a Board approved program may perform immunizations while under the direct supervision of

a qualified pharmacist. Clarification of this topic has been sought by many practitioners throughout the state, as the University of Montana School of Pharmacy presently trains and certifies students to administer immunizations.

24.174.514 TRANSFER OF PRESCRIPTIONS (1) The manual transfer of original prescription information for the purpose of refill dispensing is permissible between pharmacies subject to the following requirements:

(a) and (b) remain the same.

(2) The manual transfer of original prescription information for a controlled (dangerous) substance listed in Schedules III, IV or V for the purpose of refill dispensing is permissible between pharmacies on a one time basis only, by following the procedures listed above. In addition to:

(a) the transferring pharmacist shall record on the reverse of the invalidated prescription the DEA registration number of the pharmacy to which it was transferred; and

(b) the pharmacist receiving the transferred prescription shall record the DEA registration number of the pharmacy from which the prescription information was transferred.

(3) The electronic transfer of prescription information for the purpose of refill dispensing is permissible between pharmacies subject to the following requirements:

(a) the transferring pharmacy shall:

(i) render the prescription void;

(ii) enter the name, address, and DEA number of the receiving pharmacy into the database of the transferring pharmacy;

(iii) inform the receiving pharmacy of:

(A) the date on which the prescription was written;

(B) the original number of refills;

(C) the number of refills remaining; and

(D) the date of the most recent refill; and

(iv) maintain a retrievable audit trail, including the date of transfer and initials or code of the transferring party, for a period of two years; and

(b) the receiving pharmacy shall maintain documentation including:

(i) a notation that the prescription was received by transfer;

(ii) the date on which the prescription was written;

(iii) the original prescription number of the transferred prescription;

(iv) the original number of refills, number of refills remaining, and the date of the most recent refill;

(v) the name, address, and DEA number of the transferring pharmacy;

(vi) all other prescription information required by state and federal laws and regulations;

(vii) a retrievable audit trail, including the date of transfer and initials or code of the receiving party, for a period of two years; and

(viii) a nonfading hard copy record of each prescription drug order transferred.

(4) The electronic transfer of original prescription information for a controlled (dangerous) substance listed in Schedules III, IV or V for the purpose of refill

dispensing is permissible between pharmacies on a one time basis only, by following the procedures listed above.

~~(3)~~ (5) Pharmacies accessing a common or shared electronic file or database used to maintain required dispensing information are not required to transfer prescription drug orders or information for dispensing purposes between or among pharmacies participating in the common or shared prescription file, provided, however, that any such common or shared file shall contain complete records of each prescription drug order and refill dispensed, ~~and further, that a~~ A hard copy record of each prescription drug order ~~transferred or~~ accessed for purposes of refilling shall be generated if necessary and maintained at the refilling pharmacy ~~refilling the prescription drug order or to which the prescription drug order is transferred.~~ An easily retrievable audit trail which documents the location of each filling must be maintained and provisions must be made to assure that the number of authorized refills is not exceeded.

(a) and (b) remain the same.

(4) through (6) remain the same but are renumbered (6) through (8).

AUTH: 37-7-201, MCA

IMP: 37-7-201, MCA

REASON: It is reasonably necessary to amend this rule to recognize and address the electronic transfer of prescriptions between pharmacies in addition to the traditional manual method of transfer. The Board has determined that electronic prescription transfer may be more efficient than manual transfer, and could potentially enhance the protection of public health and safety as transcription errors are avoided. As the procedures differ in several ways, and to add clarification, manual and electronic methods of prescription transfer have been separated into two distinct sections of the rule. Minor wording changes will enhance clarity of the rule and ease of reading.

24.174.521 RETURNED PRESCRIPTION (1) In the best interest of, and for the safety and protection of public health and ~~to~~ the pharmacy, no pharmacist shall place in stock for reuse or resale the contents of any prescription, which has been returned after leaving the pharmacy except as provided in ARM 24.174.1141.

AUTH: 37-7-201, 37-7-1401, MCA

IMP: 37-7-201, 37-7-1401, MCA

REASON: The 2001 Montana Legislature enacted Chapter 362, Laws of 2001 (Senate Bill 288), an act enabling dispensed medications to be returned and reused in specific circumstances. The bill was signed by the Governor on April 23, 2001, and became effective October 10, 2001. It is reasonable and necessary to amend this rule to acknowledge the exception exists, and to direct the reader to ARM 24.174.1141 for further explanation. Authority and implementation cites are being amended to accurately reflect all statutes implemented through the rule and to provide the complete sources of the Board's rulemaking authority.

24.174.522 ALTERNATE DELIVERY OF PRESCRIPTIONS (1) Under the provisions of 37-7-301, MCA, it shall be deemed a violation of the pharmacy law for any person or corporation holding a pharmacy license to participate in any arrangement or agreement whereby prescriptions may be left at, picked up from, accepted by or delivered to any store, shop or any other establishment not licensed by the board as a "~~certified pharmacy~~" "pharmacy".

(a) and (b) remain the same.

AUTH: 37-7-201, MCA

IMP: 37-7-201, 37-7-301, MCA

REASON: It is reasonable and necessary to amend this rule to clarify and promote terminology consistency by striking "certified" from "certified pharmacy". Section 37-7-321, MCA, uses both "pharmacy" and "certified pharmacy" interchangeably, and 37-7-101(23), MCA, defines "pharmacy" with no differentiation from "certified pharmacy." There exists no definition, either in rule or statute, for "certified pharmacy." Deleting the word "certified" will lessen confusion among licensees. Implementation cites are being amended to accurately reflect all statutes implemented through the rule.

24.174.523 TRANSMISSION OF PRESCRIPTIONS BY ELECTRONIC MEANS (1) through (2)(b) remain the same.

(c) A signed prescription for a Schedule II substance for a patient enrolled in a hospice care program certified and/or paid for by Medicare under Title XVIII of the Social Security Act or a hospice program which is licensed by the state of Montana may be transmitted by the practitioner or the practitioner's agent to the dispensing pharmacy by electronic means. The practitioner or the practitioner's agent shall note on the prescription that the patient is a hospice patient. The electronic transmission serves as the original written prescription for purposes of this rule and it shall be maintained in accordance with ARM 24.174.512.

(3) remains the same.

(4) Prescriptions may be transmitted electronically directly from an authorized prescriber or his/her authorized agent to the pharmacy of the patient's choice without ~~intervention, alteration by a third~~ any other party, providing the following requirements are met:

(a) Both prescriber and pharmacist must have a secure (encrypted or encoded) system for electronic transmission from computer to computer that ensures patient confidentiality;

(b) through (f) remain the same.

~~(g) The electronic transmission shall maintain patient confidentiality;~~

~~(h)~~ (g) An electronically transmitted prescription shall be transmitted only to the pharmacy of the patient's choice; ~~and~~

~~(i)~~ (h) The pharmacist is responsible for assuring the validity of the electronically transmitted prescription;

(i) A pharmacist or pharmacy shall not enter into any agreement to provide or receive a computer or computer modem, personal digital assistant, facsimile

machine, or any other electronic device which would adversely affect a patient's freedom to select the pharmacy of the patient's choice; and

(j) A pharmacist or pharmacy shall not provide a computer or computer modem, personal digital assistant, facsimile machine, or any other electronic device to a prescriber or health care facility for the purpose of providing an incentive to refer patients to a particular pharmacy.

(5) remains the same.

AUTH: 37-7-201, 50-32-103, MCA

IMP: 37-7-102, 37-7-201, 50-32-208, MCA

REASON: It is reasonably necessary to amend this rule adding hospice programs to the list of circumstances in which a pharmacist may legally dispense a Schedule II controlled substance pursuant to an electronically transmitted prescription. The Code of Federal Regulations, Chapter 21, lists hospice programs as one of three exceptions to the written prescription requirements for Schedule II controlled substances. This important exception was inadvertently omitted from the original Board rule, and clarification on the matter has been requested by practitioners.

Further, it is reasonable and necessary to amend section (4) to clarify requirements for electronic prescription transmittal. With the increased use of electronic prescribing and current technology, many programs must route electronic messages through secure switching stations. The Board has no objection to systems requiring electronic rerouting during transmission as patient confidentiality and freedom of pharmacy choice are ensured and the prescription is not altered in its electronic progression from prescriber to pharmacy. The proposed rule change clarifies Board intent, protects both the intent of the prescriber and patient safety, and has been requested both by pharmacy practitioners and industry.

The Board determined it is reasonably necessary to add new subsections (4)(i) and (j) to address a situation in a Montana community where a pharmacy offered free computers and software programs to prescribing physicians to persuade the doctor to refer prescriptions directly to the pharmacy. The Board discussed this situation during two meetings and determined that such a practice would limit competition among pharmacies and place constraints on the patient's freedom to select a pharmacy. The Board concluded it is necessary to amend the rule in a proactive attempt to ensure patients' ability to choose the pharmacy filling their prescriptions.

24.174.524 NONINSTITUTIONAL COLLABORATIVE PRACTICE AGREEMENT REQUIREMENTS

(1) through (3) remain the same.

(4) Collaborative practice agreements approved by an institutional committee such as the pharmacy and therapeutics committee and that will be used solely for inpatients are exempt.

AUTH: ~~37-7-101~~, 37-7-201, MCA

IMP: 37-7-101, 37-7-201, MCA

REASON: The 2001 Montana Legislature enacted Chapter 388, Laws of 2001 (House Bill 279), an act generally revising the practice of pharmacy. The bill was signed by the Governor on April 28, 2001 and became effective October 1, 2001. The legislation enabled pharmacists to enter into collaborative practice agreements with medical practitioners licensed to prescribe in Montana for purposes of their patient's medication management. The Board adopted ARM 24.174.524 in response to the legislation. Some confusion has arisen because hospital (institutional) pharmacists are frequently authorized to follow in-house protocols approved by the pharmacy and therapeutics committee within their institution. It was not the Board's intent to interfere with, or attempt to regulate, the many inpatient protocols unique to each institution in Montana. It is reasonably necessary to amend this rule and the catchphrase to clarify the Board's intent regarding the exemption. Authority cites are being amended to accurately reflect the statutory sources of the Board's rulemaking authority.

24.174.603 OUT-OF-STATE INTERNSHIP REQUIREMENTS

(1) Written request by the intern must be made to the board prior to commencing training at an out-of-state site.

(2) and (3) remain the same.

AUTH: 37-7-201, MCA

IMP: 37-7-201, MCA

REASON: It is reasonably necessary to amend this rule to specify to whom requests must be submitted to avoid delays in processing and to lessen confusion among applicants.

24.174.612 REQUIRED FORMS AND REPORTS (1) remains the same.

(a) The "intern application" must be filed with the board by the intern before computed time is credited.

(b) The "internship experience affidavit", provided by the board, must be filed at the school of pharmacy by the intern at the end of the internship experience in a given site or after 500 hours, whichever comes first.

(c) The "evaluation of internship site" must be filed at the school of pharmacy by the intern at the completion of internship or externship experience in a given site or after 500 hours, whichever comes first.

(d) The "~~clerkship~~ advanced practice experience affidavit", provided by the board, must be filed at the school of pharmacy by the intern at the end of the academic year.

(e) The school of pharmacy shall forward to the board verification of 1500 hours of practical experience obtained through externship and advanced practice upon completion of those hours by each Pharm.D. candidate before application to take NAPLEX is made.

AUTH: 37-7-201, MCA

IMP: 37-7-201, MCA

REASON: The Board determined it is reasonable and necessary to amend the rule to clarify to whom specific internship forms and reports must be submitted. Designating submission to either the Board or the intern's school of pharmacy will avoid delays in processing such forms and will lessen confusion among interns.

Because pharmacy education standards have recently changed throughout the United States and all pharmacy graduates now obtain a Pharm.D. degree, the required 1500 hours of internship experience can be obtained through scheduled rotations required by all Pharm.D. programs. Since student preceptors grade pharmacy externs and clerks at the end of each rotation, and the schools monitor reports and issue academic credit at the end of each rotation, the Board determined it is reasonable to amend this rule to simplify the reporting procedure. The amendment will require students to submit rotational reports to the schools only, rather than both the school and the Board.

Amending the rule to require the consolidation of periodic reports solely at the schools of pharmacy, rather than also at the Board office, will be simpler for pharmacy students and will help to eliminate unnecessary duplication of filing and maintaining documents. Further, the schools are better equipped than Board staff to monitor the accrual of intern hours and to ensure that students have completed the necessary requirements and are qualified to sit for the examination. The Board is obligated to license and regulate pharmacists and pharmacies and does not regulate the education of pharmacy students.

24.174.705 TASKS AND FUNCTIONS OF PHARMACY TECHNICIAN

(1) A Only a registered pharmacy technician may perform the following tasks or functions under the provisions of an approved utilization plan:

(a) through (e) remain the same.

~~(f) sell nonprescription drugs in their original containers without engaging in patient counseling, and refer all questions to the registered pharmacist;~~

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

~~(h) (g) a pharmacy technician may act as agent in charge of the pharmacy to assure its integrity when a registered pharmacist is not physically present, but may not perform any duties which require the exercise of the pharmacist's independent professional judgment. The technician may not be left in charge for more than 30 minutes; and~~

~~(i) receive and check in pharmaceuticals, including controlled substances, if the pharmacy technician initials and dates all invoices with the actual date the drugs were received;~~

~~(j) participate in the biennial inventory of controlled substances, providing a pharmacist supervises the process. The supervising pharmacist must co-sign the inventory with the pharmacy technician.~~

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

(2) remains the same.

AUTH: 37-7-201, MCA

IMP: 37-7-101, 37-7-201, 37-7-301, 37-7-307, MCA

REASON: It is reasonably necessary to amend this rule to update and clarify those tasks that only pharmacy technicians, as opposed to pharmacy clerks, may perform. The Board has received many comments and suggestions from pharmacists, pharmacy technicians and pharmacy clerks on this topic. Licensed pharmacists may delegate tasks to pharmacy technicians that do not require the exercise of the pharmacist's independent professional judgment and that are verified by the pharmacist. While many of the tasks listed may only be delegated by a pharmacist to a pharmacy technician, the Board determined that certain functions may safely be performed by pharmacy clerks. The Board has amended the rule accordingly, deleting those functions that can safely be performed by pharmacy clerks absent the objection of the pharmacist. Implementation cites are being amended to accurately reflect all statutes implemented through the rule.

24.174.711 RATIO OF PHARMACY TECHNICIANS TO SUPERVISING PHARMACISTS (1) ~~Except as provided in (2), a~~ A registered pharmacist in good standing may supervise the services of ~~only one~~ no more than four ~~technician technicians~~ at any time. The 1:4 pharmacist to pharmacy technician ratio may be revised by the board at any time for good cause.

~~(2) A registered pharmacist in good standing may supervise the services of two technicians at the same time if both are performing any of the following procedures:~~

- ~~(a) intravenous admixture and other sterile product preparation;~~
- ~~(b) filling of unit dose cassettes;~~
- ~~(c) prepackaging; or~~
- ~~(d) bulk compounding.~~

~~(3) A registered pharmacist in good standing may supervise the services of two technicians at the same time if one of the two technicians is a technician trainee enrolled in an approved academic training program, engaged in on-the-job training for a specific period of time.~~

(4) ~~(2)~~ All registered Registered pharmacists in good standing in the state of Montana may supervise ~~more than one~~ a maximum of four registered pharmacy technician ~~technicians~~, provided, in their professional judgment:

~~(a) a request for a ratio other than those previously defined must first be approved by the board;~~

~~(b)~~ (a) in the professional judgment of the pharmacist on duty, the policy and procedures of the ~~certified~~ pharmacy must allow for safe and accurate filling and labeling of prescriptions;

~~(c)~~ (b) the policy and procedures shall be reviewed annually. All affected supervising pharmacists and pharmacy technicians must be familiar with the contents and any changes made must be reported to the board; and

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

~~(5)~~ (3) If a pharmacy desires more than ~~one~~ four ~~technician technicians~~ to work under the supervision, direction, and control of one pharmacist, the pharmacy shall obtain the prior written approval of the board. To apply for approval, the pharmacist-in-charge shall submit a pharmacy services plan to the board. The pharmacy services plan submitted shall demonstrate how the plan facilitates the provision of pharmaceutical care and shall include, but shall not be limited to the

following:

(a) through (d) remain the same.

~~(6)~~ (4) The board shall grant approval of a pharmacy service plan only when the board is satisfied that the provision of pharmaceutical care by the pharmacy will be enhanced by the increased use of technicians. An exception may be revoked by the board at any time for good cause.

(7) and (8) remain the same but are renumbered (5) and (6).

AUTH: 37-7-201, MCA

IMP: 37-7-101, 37-7-201, 37-7-307, 37-7-308, 37-7-309, MCA

REASON: The Survey of Pharmacy Law, conducted by the National Association of Boards of Pharmacy, lists Montana as the only state requiring a 1:1 pharmacist to pharmacy technician ratio and allowing limited exceptions. All other U.S. states now require ratios no greater than 1:2, 1:3 or 1:4, while some states have eliminated a recommended ratio entirely. No studies have linked the incidence of medication errors to the pharmacist to technician ratio, but many studies have implicated increasing pharmacist workloads directly to increased rates of medication errors. The Board determined it is therefore reasonable to amend this rule to allow for a maximum pharmacist to pharmacy technician ratio of 1:4. Increased utilization of pharmacy technicians and a corresponding decrease in the pharmacists' workload should reduce medication errors while enabling pharmacists to spend more time counseling patients and reviewing their medications. The Board notes that if for any reason the supervising pharmacist determines that patient safety is not enhanced but potentially harmed by an increased ratio, the pharmacist has the ability and the obligation to require a lesser ratio. As well, the Board reserves the right to revise the 1:4 ratio at any time for good cause to further the protection of the public.

The Board determined it is reasonably necessary to no longer restrict technicians to performing only a specific few tasks when working under an increased ratio. Supervising pharmacists may delegate to technicians only those tasks verified by the pharmacist and not requiring the pharmacist to exercise independent professional judgment. The Board decided to leave the choice of tasks to the supervising pharmacist and has amended the rule accordingly. Further, the Board is amending the rule to no longer require one technician to be a trainee while functioning under an increased ratio. The Board decided to leave the question of technician trainee use up to the discretion of the supervising pharmacist.

To provide greater clarity and further protect patient safety, the Board is amending the rule to allow Board revocation of ratio exceptions for good cause. The Board concluded that it is reasonable and necessary to specify in rule that the Board will revoke an exception allowing a greater than 1:4 ratio upon a good cause determination that public safety is at risk. Implementation cites are being amended to accurately reflect all statutes implemented through the rule.

24.174.801 GENERAL LICENSE REQUIREMENTS (1) through (3) remain the same.

(4) Upon permanent closure of a ~~certified~~ pharmacy, the original license becomes void and must be surrendered to the board within 10 days.

(5) Whenever a pharmacy permanently closes, the owner shall notify the board of the closing no later than 15 days prior to the anticipated date of closing. The notice shall be submitted in writing and shall include the following information:

(a) the date the pharmacy will close;
(b) the names and addresses of the persons who will have custody of the closing pharmacy's:

- (i) prescription files;
- (ii) bulk compounding records;
- (iii) repackaging records; and
- (iv) controlled substances inventory records; and

(c) the names and addresses of any persons who will acquire any legend drugs from the closing pharmacy, if known at the time the notice is filed.

(6) No later than 15 days after the pharmacy has closed, the owner shall submit to the board written confirmation that:

(a) all legend drugs have been either:
(i) destroyed; or
(ii) transferred to an authorized person(s), including the names and addresses of the person(s) to whom the legend drugs were transferred;

(b) controlled substances were transferred, including:
(i) names and addresses of the person(s) to whom the substances were transferred;

- (ii) the substances transferred;
- (iii) the amount of each substance transferred; and
- (iv) the date on which the transfer took place;

(c) the DEA registration and all unused DEA 222 forms (order forms) were returned to the DEA;

(d) all pharmacy labels and blank prescriptions which were in the possession of the pharmacy were destroyed; and

(e) all signs and symbols indicating the presence of the pharmacy have been removed.

(7) Every pharmacy benefit manager (PBM) providing services or benefits in this state, which constitutes the practice of pharmacy as defined in 37-7-101(26), MCA, shall be licensed as a pharmacy with PBM endorsement in this state and shall comply with all provisions of ARM 24.174.801.

AUTH: 37-7-201, 37-7-503, MCA

IMP: 37-7-301, 37-7-321, MCA

REASON: It is reasonable and necessary to amend this rule to expand upon and clarify procedures for pharmacy closure. The Board notes that pharmacies have closed with no advance notice to the general public, creating patient safety issues when prescription refills cannot be obtained and the timing of previous refills is not readily available to the patient's physician or other provider. Under law, pharmacies are required to maintain prescription and patient refill history for a minimum amount of time, and prescription information must be available to authorized Board inspectors even though a pharmacy may have recently closed. The Board notes that a closed pharmacy's stock of prescription medications, including controlled

substances and the related order forms, could pose a significant risk of public harm if diverted. The Board determined that amending the rule to clearly delineate pharmacy closure procedures would further the goal of ensuring patient health and safety.

It is reasonable and necessary to amend this rule to clarify licensure and Board regulation of pharmacy benefit managers providing services or benefits within this state. It is unlawful to engage in the practice of pharmacy unless licensed by the Board pursuant to 37-7-301, MCA. The practice of pharmacy is defined at 37-7-101(26), MCA, and includes the modification of drug therapy. Drug product selection is regulated pursuant to title 37, chapter 7, part 5, MCA, which provides the Board's authority to adopt, amend or repeal rules to implement and enforce the section. Pharmacy benefit managers engaging in drug product selection that results in modification of drug therapy fall under the jurisdiction of the Board for regulatory purposes, as engaging in the practice of pharmacy. The addition of this section was made at the request of several citizens throughout Montana, and is being proposed by the Board in an effort to further protect public health and safety.

Authority and implementation cites are being amended to accurately reflect all statutes implemented through the rule and provide the complete sources of the Board's rulemaking authority.

24.174.806 LICENSES TO BE POSTED (1) The ~~certified~~ pharmacy license must be posted in a conspicuous place in the pharmacy.

AUTH: 37-7-201, MCA

IMP: ~~37-7-302~~, 37-7-321, MCA

REASON: It is reasonable and necessary to amend this rule by deleting "certified" from "certified pharmacy" to clarify a potentially confusing point and add consistency in the rules. Both "pharmacy" and "certified pharmacy" are used interchangeably in 37-7-321, MCA, but "certified pharmacy" is not defined in either rule or statute. "Pharmacy" is defined in 37-7-101(23), MCA, without differentiating the term from, or further defining, "certified pharmacy". All pharmacies, regardless of the terminology used to describe them, must post their licenses in a conspicuous place. Implementation cites are being amended to accurately reflect all statutes implemented through the rule and to delete reference to an erroneous cite.

24.174.814 SECURITY OF A CERTIFIED PHARMACY (1) remains the same.

(a) A Schedule II controlled substance perpetual inventory shall be maintained and routinely reconciled in all pharmacies.

(2) through (4) remain the same.

AUTH: 37-7-201, MCA

IMP: 37-7-201, MCA

REASON: It is reasonable and necessary to amend this rule by deleting "certified" from the catchphrase to clarify a potentially confusing point and add consistency in

the rules. Both "pharmacy" and "certified pharmacy" are used interchangeably in 37-7-321, MCA, but "certified pharmacy" is not defined in either rule or statute.

"Pharmacy" is defined in 37-7-101(23), MCA, without differentiating the term from, or further defining, "certified pharmacy". All pharmacies, regardless of the terminology used to describe them, must maintain security against theft or diversion of drugs.

The Board determined it is reasonably necessary to amend this rule to require all pharmacies to maintain and routinely reconcile a perpetual, ongoing written or electronic inventory of its Schedule II controlled substances. Many pharmacies already engage in this safety practice, which allows the earliest possible detection of errors, miscounts or possible diversion of many of the most easily divertible and addictive medications. As a matter of public health and safety, and as perpetual inventories are rapidly becoming a recognized standard of care, the Board is amending the rule to require all pharmacies to maintain perpetual inventory records of Schedule II controlled substances purchased, stored and dispensed.

24.174.1002 CONDITIONS OF REGISTRATION (1) remains the same.

(a) be a legal entity registered and in good standing in this with the Montana Secretary of State; as a foreign corporation;

(b) through (f) remain the same.

AUTH: 37-7-712, MCA

IMP: 2-18-704, 37-7-701, 37-7-702, 37-7-703, 37-7-704, 37-7-706, MCA

REASON: It is reasonable and necessary to amend this rule to clarify with whom out-of-state mail service pharmacies must register and to change the term "foreign corporation" to "legal entity". In a time of ever-increasing international business ventures, the term "foreign corporation" has unnecessarily confused applicants, in some cases delaying completion of their licensure.

24.174.1107 ABSENCE OF PHARMACIST IN INSTITUTIONAL SETTINGS

(1) remains the same.

(2) If night cabinets are used to store drugs in the absence of a pharmacist, they must be locked and sufficiently secure to deny access to unauthorized persons, and must be located outside of the pharmacy area. Contents of night cabinets must be prepackaged. Only specifically authorized personnel may obtain access by key or combination, pursuant to a valid prescription order. The pharmacist-in-charge shall, in conjunction with the appropriate committee of the facility, develop inventory listings of drugs included in these cabinet(s), and determine who may have access, ~~and shall ensure that:~~

~~(a) written policies and procedures are established to implement the requirements of this rule;~~

~~(b) all drugs are properly labeled; and~~

~~(c) only prepackaged drugs are available, in amounts sufficient for immediate therapeutic requirements.~~

~~(3) Whenever access to the cabinet occurs, all of the following information must be recorded on or attached to a suitable form:~~

~~(a) a copy of the written practitioner's orders, showing the date and time the order was issued;~~

~~(b) identification of patient;~~

~~(c) identification of the patient's room number, if applicable;~~

~~(d) the name, strength and quantity of drug removed; and~~

~~(e) the signature of the person removing the drug(s).~~

~~(4) (3) A complete verification audit of all inpatient orders and activity concerning the night cabinet or after-hours pharmacy entry must be conducted by ~~the pharmacist in charge or the~~ a pharmacist, pharmacy technician, or other licensed designee of that pharmacist within 48 hours of the drugs having been removed from the night cabinet or pharmacy.~~

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

(a) Removal of any drug from the pharmacy, floor stock, or night cabinet by an authorized nurse must be recorded on a suitable form ~~left in the pharmacy~~ showing the following information:

(i) and (ii) remain the same.

(iii) the name, strength, and quantity ~~and NDC number~~ of drug removed;

(iv) through (vi) remain the same.

(b) in cases of medication not unit-dosed, the NDC number of the drug removed must also be recorded.

(5) The pharmacist-in-charge shall ensure that:

(a) written policies and procedures are established to implement the requirements of this rule;

(b) all drugs are properly labeled; and

(c) only prepackaged drugs are available, in amounts sufficient for immediate therapeutic requirements.

(6) A copy of the original drug order with the NDC number or other identifying code of the drug(s) provided may be faxed to the pharmacist. If the patient is an inpatient, A a patient profile containing the patient's name, location, allergies, current medication regimen, and relevant laboratory values must be reviewed by a pharmacist within 48 hours.

AUTH: 37-7-201, MCA

IMP: 37-7-201, MCA

REASON: The Board determined it is reasonably necessary to amend this rule to clarify and facilitate good institutional pharmacy practice while maintaining patient safety. The Board is proposing the changes following careful consideration of comments from practitioners. Adding a requirement that contents of night cabinets be prepackaged adds an extra element of patient safety, as drug identification and expiration date follow each tablet or capsule. For medication that is not prepackaged, the National Drug Code (NDC), a unique identifying number, must be recorded by the nurse removing medication to verify that the correct drug and dose was removed. The rule is being amended accordingly.

The Board acknowledges that the pharmacist-in-charge is not always able to perform a timely verification audit of drugs removed from the night cabinet or pharmacy after hours. The Board determined that it is not necessary that the

pharmacist-in-charge be the only person able to perform a verification audit. The rule is being amended to allow another pharmacist, a pharmacy technician, or that pharmacist's licensed designee, to perform verification audits, as well. Further, the Board intended the requirement of verification audits to address the provision of inpatient medications, and the word "inpatient" has been added in (3) to clarify that.

New orders for inpatients are often ongoing, as opposed to emergent orders for outpatients that are of limited duration. It is important, therefore, that a pharmacist review pertinent aspects of the inpatient's chart including allergies, current medications and relevant laboratory values in a timely manner to verify that the new medication(s) added are appropriately dosed and do not pose dangers to the patient regarding drug-drug or drug-disease interactions or contraindications. The Board is amending the rule accordingly, to require such review to occur within 48 hours of the addition of new medication(s). The requirements of pharmacists-in-charge are not new, but were moved within the rule to new (5) for added clarity.

24.174.1111 DRUG DISTRIBUTION AND CONTROL IN AN INSTITUTIONAL FACILITY (1) through (5) remain the same.

(6) The safe handling, storage, and administration of medications within jails, correctional facilities, and detention facilities without onsite pharmacies shall be regulated as follows:

(a) Jails, correctional facilities, and detention facilities must have written policies and procedures in place, written by the responsible practitioner or authority, for the safe handling, storage, and administration of medications. Such policies shall address security of medications, procurement, proper storage and disposal of medications, training for those administering medication, methods for documenting that medications were given or refused, procedures for confirming that the inmate has ingested each medication, and the disposition of medications at discharge. Medications brought by or with an inmate upon admission to the jail, correctional facility, or detention facility must not be used unless specifically authorized by a physician at the jail, correctional facility, or detention facility or that physician's designee, and medication identity has been confirmed by a licensed health care professional. Prescription medications brought by an inmate from outside must be recorded on the inmate property record. If they are not used while the patient is incarcerated, they must be stored in a secure area until the inmate's release.

(b) Patient medications may be transferred from one jail, correctional facility, or detention facility to another if there is a secure method for ensuring that individual inmate prescriptions are not tampered with between locations and that containers are properly labeled. During transfer, medications requiring storage at room temperature should be subjected to external temperatures no greater than 86 degrees Fahrenheit. A method of transferring refrigerated medications from one jail, correctional facility, or detention facility to another must be addressed in policy and procedure. Medications transferred pursuant to the above regulations, in control of the transferring official at all time, may continue to be used for that patient.

(c) Emergency kits supplied and maintained by a registered pharmacist may be utilized if policies and procedures regulating their use are in place. Such emergency kits will comply with the requirements of ARM 24.174.1114.

(d) Jails, correctional facilities, and detention facilities without an onsite

pharmacy that procures, stores, and administers prescription medications may request technical assistance from the board.

AUTH: 37-7-201, MCA

IMP: 37-7-201, 37-7-307, 37-7-308, 37-7-406, MCA

REASON: Although the Board does not license or inspect jail facilities without in-house pharmacies, the Board is statutorily mandated to regulate the practice of pharmacy, including establishing specifications for facilities, environment, supplies, technical equipment, personnel and procedures for the storage, compounding, or dispensing of drugs and devices. If no in-house pharmacy exists, a consulting pharmacist and supplying pharmacy are involved. It is in the best interest of inmates and society as a whole that policies and procedures be written and followed that describe the safe handling, storage, administration and transfer of those medications within and between jail facilities, as well as use of medications in emergency kits supplied by registered pharmacists. The Board finds it reasonably necessary to amend this rule in an effort to assure medication safety for all Montana residents, including those incarcerated. Implementation cites are being amended to accurately reflect all statutes implemented through the rule.

24.174.1201 WHOLESALE DRUG DISTRIBUTOR LICENSING

(1) through (3) remain the same.

(4) A separate license is required for each separate location where drugs are stored, ~~within the state of Montana.~~ If a wholesaler distributes prescription drugs from more than one facility, the wholesaler must obtain a license for each facility.

~~(a) Out-of-state wholesale drug distributors who do not maintain or operate a physical facility within the state of Montana are not required to license separate locations from which drugs are shipped to Montana, but may instead obtain licensure for the primary location of the parent entity and any divisions, subsidiaries, or affiliated companies.~~

(5) Wholesale drug distributors shall operate in compliance with applicable federal, state, and local laws and regulations. Wholesale drug distributors who deal in controlled substances shall register with the board of pharmacy and with the drug enforcement administration DEA, and shall comply with all applicable state, local, and drug enforcement administration DEA regulations.

AUTH: 37-7-201, 37-7-610, MCA

IMP: 37-7-603, 37-7-604, 37-7-605, 37-7-606, MCA

REASON: The Board determined it is reasonably necessary to amend this rule to update its regulation of the channels through which medications pass on their way to Montana patients. Counterfeit prescription medications are a significant threat to the health and safety of the patients of this state. To protect the safety of Montana's medication supply, the Board concluded that it is necessary to add language specifying the Board's licensure, regulation and inspection of all branches of a wholesaler's operation that ship medications into Montana rather than just the sole parent entity. The definition of wholesale drug distributor at 37-7-302(7), MCA,

includes all levels of an entity engaged in wholesale distribution of prescription drugs.

The definition of "DEA" has been added to ARM 24.174.301, the Board's definitions rule for simplicity and to maintain all definitions in a single rule. The Board is amending this rule accordingly.

24.174.1202 MINIMUM INFORMATION REQUIRED FOR LICENSURE

(1) through (1)(d) remain the same.

(e) the name, address, and telephone number of the owner and operator of the licensee, including:

(i) if an individual, the name, address, and telephone number of the individual;

(ii) if a partnership, the name, address, telephone number, and ownership percentage of each partner, and the name of the partnership;

(iii) if a corporation, the name, address, telephone number, and ownership percentage and title of each corporate officer and director, the corporate names, and the name of the state of incorporation; and

(iv) if a sole proprietorship, the full name, address, and telephone number of the sole proprietor, and the name of the business entity;

(f) the name and address of the five highest-ranking employees responsible for daily operations;

(g) the name and address of the five largest shareholders owning at least 5% of the total shares;

(h) if out-of-state, proof of corresponding licensure in good standing in the state in which the applicant resides;

(i) the federal tax identification number of the company; and

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

(2) remains the same.

AUTH: 37-7-201, 37-7-610, MCA

IMP: 37-7-604, 37-7-605, MCA

REASON: It is reasonable and necessary to amend this rule to update the required information for licensure of wholesale drug distributors. It is becoming a regulatory standard to request more detailed information from wholesalers to safeguard the integrity of the state's drug supply. To further protect the health and safety of Montana's citizens, the Board is amending this rule to more strictly regulate the channels through which prescription medications pass.

24.174.1211 MINIMUM REQUIREMENTS FOR STORAGE AND HANDLING OF DRUGS (1) through (5) remain the same.

(6) A stock of prescription drugs, adequate to service the ordinary needs of practitioners and pharmacies with which the wholesaler transacts business, must be maintained.

(7) A wholesaler may not maintain a stock of controlled substances unless the wholesaler ordinarily sells controlled substances to practitioners and pharmacies with which the wholesaler transacts business.

(8) Within any calendar month, a wholesaler may not sell, distribute, transfer, or otherwise provide more than 10% of the total amount distributed of each prescription drug or drug product to another wholesaler, distributor, or manufacturer.

(9) A wholesaler may not purchase or receive back from a pharmacy a greater quantity of any prescription drug than was originally sold by the wholesaler.

AUTH: 37-7-201, 37-7-610, MCA

IMP: 37-7-604, MCA

REASON: The Board determined it is reasonably necessary to amend the rule to more strictly regulate the channels through which medications pass into this state. Counterfeit prescription drugs have penetrated the security of legitimate channels of distribution in the U.S., posing a growing risk to the health and safety of Montana's citizens. The Board is statutorily mandated with licensing and regulating lawful wholesale operations which consequently aids in the reduction of criminal establishment of phony wholesale operations. The additional requirements, all elements of legitimate wholesale operations, will help to differentiate the two.

24.174.1212 MINIMUM REQUIREMENTS FOR ESTABLISHMENT AND MAINTENANCE OF DRUG DISTRIBUTION RECORDS (1) and (1)(a) remain the same.

(b) the identity and quantity of the drugs received and distributed or disposed of; and

(c) the dates of receipt and distribution or other disposition of the drugs; ;

(d) evidence of the existence of a written franchise, license, or other agreement between a manufacturer and wholesaler to distribute prescription drugs;

(e) evidence of completion of two or more purchases of prescription drugs in any six month period; and

(f) a complete list of all wholesale distributors and manufacturers from whom the wholesaler purchased prescription drugs within the last year.

(2) through (5) remain the same.

AUTH: 37-7-201, 37-7-610, MCA

IMP: 37-7-604, 37-7-609, MCA

REASON: The Board determined it is reasonably necessary to amend the rule to more strictly regulate the channels through which medications pass into this state. Counterfeit prescription drugs have penetrated the security of legitimate channels of distribution in the U.S., posing a growing risk to the health and safety of Montana's citizens. The Board is statutorily mandated with licensing and regulating lawful wholesale operations which consequently aids in the reduction of criminal establishment of phony wholesale operations. The additional requirements, all elements of legitimate wholesale operations, will help to differentiate the two.

24.174.1401 REQUIREMENTS FOR REGISTRATION (1) through (4)(b) remain the same.

(c) the applicant has furnished the board a complete resume of all research proposed relative to any dangerous drugs. Such resume must be a duplicate of an application submitted to the ~~drug enforcement administration of the United States department of justice~~ DEA; and

(d) remains the same.

AUTH: 50-32-103, MCA

IMP: 50-32-306, 50-32-308, MCA

REASON: It is reasonable and necessary to define "DEA" in one centralized location within the rules. The Board is adding the definition of "DEA" to ARM 24.174.301 to provide simplicity in the rules and maintain all definitions in a single rule, and is amending this rule accordingly.

24.174.2101 CERTIFIED PHARMACIES - ANNUAL RENEWAL

(1) remains the same.

AUTH: 37-7-201, MCA

IMP: 37-7-321, MCA

REASON: It is reasonable and necessary to amend this rule catchphrase by deleting "certified" to clarify a potentially confusing point and add consistency within the rules. Both "pharmacy" and "certified pharmacy" are used interchangeably in 37-7-321, MCA, but "certified pharmacy" is not defined in either rule or statute. "Pharmacy" is defined in 37-7-101(23), MCA, without differentiating the term from, or further defining, "certified pharmacy". The term is being amended for consistency throughout the rules and this rule is being amended accordingly.

24.174.2401 SCREENING PANEL (1) The board screening panel shall consist of three board members, including the two pharmacist members who have served longest on the board, and one ~~public other~~ member as appointed by the board president who has served longest on the board. The board president may reappoint screening panel members as necessary at the president's discretion.

AUTH: 37-7-201, MCA

IMP: 37-1-307, MCA

REASON: The 2003 Montana Legislature enacted Chapter 224, Laws of 2003 (Senate Bill 109), an act generally revising professional and occupational licensing laws and adding a pharmacy technician to the Board. The bill was signed by the Governor on April 3, 2003 and became effective on July 1, 2003. It is reasonable and necessary to amend this rule to reflect the change in Board composition.

4. The proposed new rules provide as follows:

NEW RULE I INACTIVE LICENSE (1) A pharmacist may obtain an inactive license through a written request to the board, if the pharmacist holds an active

Montana pharmacist license in good standing, and will not practice in Montana for the period of inactive licensure.

(2) A pharmacist with an inactive status of three years or less, whether or not the pharmacist has been in practice in another state, wishing to return to active status in Montana shall:

- (a) submit a written request for status change to the board;
- (b) pay either:
 - (i) the difference between the current inactive and active license renewal fees if the change occurs between renewal periods; or
 - (ii) the full active license renewal fee if the change occurs during the regular renewal period;
- (c) certify that:
 - (i) no disciplinary action has been taken by any state or federal jurisdiction which would prevent or restrict the pharmacist's practice of the profession; and
 - (ii) the pharmacist has not surrendered any credential or privilege in the practice of the profession in lieu of or to avoid formal action;
- (d) submit verification of active practice from the state(s) in which practice occurred; and
- (e) provide proof that continuing education requirements for the period of inactive licensure have been satisfied.

(3) A pharmacist with an inactive status of three to five years, who has not been in active practice in another U.S. state, wishing to return to active status in Montana shall:

- (a) comply with the requirements of (2);
- (b) complete an appropriate internship of 300 hours or take and pass the North American Pharmacist Licensure Examination (NAPLEX); and
- (c) take and pass the Multistate Pharmacy Jurisprudence Examination (MPJE) for the state of Montana.

(4) A pharmacist with an inactive status of five years or more, who has not been in active practice in another U.S. state, wishing to return to active status in Montana shall:

- (a) comply with the requirements of (2);
- (b) complete an appropriate internship of 300 hours;
- (c) take and pass the NAPLEX; and
- (d) take and pass the MPJE for the state of Montana.

(5) A pharmacist with an inactive status for more than three years, who has been in active practice in another U.S. state, wishing to return to active status in Montana shall:

- (a) comply with the requirements of (2); and
- (b) take and pass the MPJE for the state of Montana.

AUTH: 37-1-319, 37-7-201, MCA

IMP: 37-1-319, 37-7-201, MCA

REASON: It is reasonably necessary to adopt New Rule I to address inquiries and requests from practitioners both nearing retirement and working out of state regarding an inactive licensure status capable of conversion to active status upon

request and fulfillment of qualifications. Such a mechanism has proven to be a cost savings to inactive status pharmacists in other states and still permits the Board to set requirements for reentry into the profession on an active basis if the pharmacist has not practiced for years. The proposed requirements for reentry into active practice are set at several levels based upon length of inactive status and whether or not the applicant has been in active practice in another state. It is reasonable and necessary to create New Rule I to fairly license pharmacists wishing to retain their licensure while not practicing in this state and still ensure that those wishing to reenter the active practice of pharmacy are competent to do so.

NEW RULE II TELEPHARMACY OPERATIONS (1) A remote telepharmacy site shall be connected to its parent pharmacy via computer, video, and audio link.

(2) A site cannot be licensed as a remote telepharmacy site if it is located within a 10 mile radius of an existing pharmacy.

(3) A remote telepharmacy site manned by a registered pharmacy technician shall access and use the parent pharmacy's central processing unit.

(4) A remote telepharmacy site shall comply with all the requirements of pharmacy rules and statutes of Montana. The remote telepharmacy site is considered to be under the personal charge of the pharmacist at the parent pharmacy.

(a) The remote telepharmacy site must have a registered pharmacy technician present and a working computer, video, and audio link to a pharmacist at the parent pharmacy to have the prescription area open.

(b) The technician at the remote telepharmacy site must:

(i) be currently registered with the board;

(ii) be currently certified with the pharmacy technician certification board; and

(iii) have at least six months of active experience as a pharmacy technician.

(c) The technician may unlock the prescription and storage areas. While the technician is on duty, the prescription area may remain open. Security standards for pharmacies shall be maintained at all times pursuant to ARM 24.174.814.

(d) The technician will be subject to all rules of ARM 24.174.701 through 24.174.714.

(e) All prescription records and consecutive prescription numbers must be maintained at the parent pharmacy. The remote telepharmacy site must transmit copies of new prescriptions via secure electronic means to the parent pharmacy, keeping the original prescription blank at the remote telepharmacy site.

(f) Prescriptions filled at the remote telepharmacy site must be distinguishable in some manner from those filled at the parent pharmacy.

(g) Daily reports for both the parent pharmacy and remote telepharmacy site must be maintained at the parent pharmacy.

(h) The remote telepharmacy site may have a prescription inventory. Prescription medications including controlled substances shall be securely maintained at the remote telepharmacy site in accordance with current Montana pharmacy statutes and rules.

(i) If controlled substances are dispensed or handled, both the remote telepharmacy site and the parent pharmacy must be registered with the DEA and must obtain individual DEA numbers.

(j) All records must be stored at the parent pharmacy, except those required by DEA to be at a DEA registered site.

(k) The software system utilized must be able to generate labels from the parent pharmacy or at the remote telepharmacy site.

(l) The input of drug information may be done by a pharmacist at the parent pharmacy or a technician at either location if verified by a pharmacist.

(m) New prescriptions may be received at the parent pharmacy and entered there with a label printing at the remote telepharmacy site.

(n) New prescriptions received at the remote telepharmacy site may be entered into the computer system at the remote telepharmacy site. The pharmacist at the parent pharmacy remains responsible for all verification, interaction checking, and profile review.

(o) All filled prescriptions must have a label meeting the requirements of ARM 24.174.511 attached to the final drug container before the pharmacist verifies the dispensing process.

(p) Unless the remote telepharmacy site is a remote telepharmacy dispensing machine site, a pharmacist shall compare via video link the stock bottle, drug dispensed, and strength. The entire label must be checked for accuracy on the video link.

(q) The computer, video, and audio link must be operational and the remote telepharmacy site must be closed if the link malfunctions, unless a pharmacist is working at the remote site.

(r) A code containing both the pharmacist's and technician's initials must appear on the fill screen, patient profile, and prescription label.

(s) No prescription medication may be released to a patient until approved by a pharmacist in person or via the computer, video, and audio link.

(t) The pharmacist shall counsel the patient or the patient's agent via video and audio link on all new prescriptions and on refills only if the pharmacist deems necessary.

(u) When the technician is not present, dispensing and counseling via video and audio link may be done using a secure alternate delivery system with prior approval of the board.

(v) The license holder or the pharmacist in charge of the parent pharmacy shall apply for a license for the remote telepharmacy site.

(w) As dispensing is considered to be done by the pharmacist, the pharmacist shall be responsible for and held accountable for dispensing at the remote telepharmacy site.

(x) Policies and procedures must be in place to ensure the safe and effective distribution of pharmaceutical products and delivery of required pharmaceutical care.

(y) The pharmacist at the parent pharmacy shall perform an ongoing analysis of incident reports and outcomes, with appropriate corrective action taken when necessary to ensure patient safety.

(z) The pharmacist at the parent pharmacy or that person's designee shall conduct and complete monthly inspections of the remote telepharmacy site. Inspection criteria must be included in the policies and procedures for the site. The inspection report must be available for review at the next board inspection.

AUTH: 37-7-201, MCA

IMP: 37-7-101, 37-7-201, 37-7-321, MCA

REASON: As a sparsely populated rural state, Montana has great inconsistency in the provision of pharmacy services. Ten counties in Montana have no community pharmacy in operation, which can create a tremendous hardship for citizens of those counties. Many other rural states, including North Dakota, permit telepharmacy practice within their borders, with positive results regarding patient satisfaction and patient safety. Montana currently has one telepharmacy pilot project in operation, and the initial results have been positive.

It is reasonable and necessary to adopt New Rule II to address the practice of telepharmacy in Montana through the utilization of registered pharmacy technicians at remote sites and subject to rules protecting patient safety, confidentiality and pharmacy security. The Board determined that provision of best-practice pharmacy service in underserved areas, and not economic concerns, is the driving force behind proposed New Rule II.

NEW RULE III REMOTE TELEPHARMACY DISPENSING MACHINE SITES

(1) Remote telepharmacy dispensing machine sites contain prescription inventory which is secured in an automated dispensing device connected to the central processing unit at the parent pharmacy.

(2) A site cannot be licensed as a remote telepharmacy dispensing machine site if it is located within a 10 mile radius of an existing pharmacy.

(3) A pharmacist must approve all outpatient prescriptions before they are dispensed, unless the prescription is directly dispensed by a person authorized to prescribe.

(4) All filled prescriptions must have a label that meets the requirements of ARM 24.174.511 attached to the final drug container.

(5) A licensed pharmacist at the parent site shall perform counseling and professional consultation via audio and video link as required by ARM 24.174.903, unless the prescription is directly dispensed by a person authorized to prescribe.

(6) Registered technicians involved in stocking and removal of prescription medications under this rule must have at least 80 hours of pre-training in bar coding technology. All requirements of ARM 24.174.701 through 24.174.714 will apply, excluding the technician certification requirement of ARM 24.174.702.

(7) Policies and procedures of the parent pharmacy and the remote telepharmacy dispensing machine site must address all aspects of the telepharmacy operation, including stocking procedures and removal of outdated prescription medications.

(8) The pharmacist at the parent pharmacy shall perform an ongoing analysis of incident reports and outcomes, with appropriate corrective action taken when necessary to ensure patient safety.

(9) The pharmacist in charge of the parent pharmacy or that person's designee shall conduct and complete monthly inspections of the remote telepharmacy dispensing machine site. Inspection criteria must be included in the policies and procedures for the site. The inspection reports must be available for review at the next board inspection.

(10) Remote telepharmacy dispensing machine sites must be licensed with the board by November 30 of each year, and will be subject to random inspection by board inspectors.

(11) This rule does not apply to institutional satellite pharmacies as defined in ARM 24.174.301.

AUTH: 37-7-201, MCA

IMP: 37-7-101, 37-7-201, 37-7-321, MCA

REASON: New Rule III is a variant of proposed New Rule II, wherein the remote telepharmacy site utilizes both a registered pharmacy technician and a computerized dispensing machine at the remote site. The Board determined it is reasonably necessary to adopt New Rule III to protect patient safety, confidentiality and pharmacy security while further implementing the practice of telepharmacy in Montana by providing pharmacy services to our underserved populations.

NEW RULE IV CENTRAL FILLING BY HUB PHARMACIES

(1) Original written prescriptions may be brought to a remote pharmacy by the patient or patient's agent for filling or faxing, scanning, and physical delivery to a central hub pharmacy.

(2) Prescription refill requests may be communicated to the remote pharmacy by the patient or patient's agent and forwarded electronically or by phone to the central hub pharmacy.

(3) A pharmacist shall offer patient counseling at either the remote or central hub pharmacy for all new prescriptions and at the pharmacist's professional discretion for refills.

(4) The pharmacist in charge of the central hub pharmacy shall write, maintain, and enforce policies and procedures regarding the secure transfer of filled prescriptions to the remote pharmacy. The pharmacist shall review such policies at least annually, and the policies must contain a quality assurance program capable of tracking errors.

(5) The central hub pharmacy and remote pharmacy must renew their registration with the board by November 30 of each year, and are subject to random inspections by the board.

AUTH: 37-7-201, MCA

IMP: 37-7-201, 37-7-321, MCA

REASON: It is reasonable and necessary to adopt New Rule IV to offer the flexible provision of pharmacy services between two licensed Montana pharmacies. New Rule IV will allow prescriptions to be filled at either a remote pharmacy, or at a central hub pharmacy and then transferred securely back to the remote pharmacy. Both pharmacies must be staffed by licensed pharmacists. Pharmacist counseling of patients may occur at either pharmacy site. The Board determined it is reasonably necessary to adopt New Rule IV to enable greater flexibility in pharmacy practice in Montana while maintaining required safeguards and ensuring patient safety, confidentiality and pharmacy security.

NEW RULE V AMBULATORY SURGICAL FACILITIES

(1) The board shall annually register and inspect all ambulatory surgical facilities in Montana, regardless of pharmacy status.

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

(3) The physician director or consulting pharmacist shall provide for applicable policies and procedures to ensure:

(a) proper acquisition and secure, temperature-controlled storage of all pharmaceuticals;

(b) security and accountability of controlled substances;

(c) quality control of sterile and nonsterile pharmaceutical products including procedures for identifying, removing, and destroying outdated products;

(d) evaluation of reported medication errors and development of procedures to prevent those errors;

(e) maintenance of all required records; and

(f) compliance with all requirements of the board.

AUTH: 50-32-314, MCA

IMP: 50-32-314, MCA

REASON: The 1999 Montana Legislature enacted Chapter 273, Laws of 1999 (Senate Bill 478), an act requiring the Board to adopt rules providing for the registration of ambulatory surgical facilities. The bill was signed by the Governor and became effective on April 6, 1999, and was codified at 50-32-314, MCA. The Board determined that it is reasonably necessary to adopt New Rule V providing for the registration and regulation of the prescription drug stock of ambulatory surgical facilities and to further implement the 1999 legislation.

NEW RULE VI FEE ABATEMENT (1) The Board of Pharmacy adopts and incorporates by reference the fee abatement rule of the Department of Labor and Industry found at ARM 24.101.301.

AUTH: 37-1-131, MCA

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

REASON: The Board has determined there is reasonable necessity to adopt and incorporate by reference ARM 24.101.301 to allow the Board to authorize the Department to perform renewal licensure fee abatements as appropriate and when needed, without further vote or action by the Board. The Department recently adopted ARM 24.101.301 to implement a means for the prompt elimination of excess cash accumulations in the licensing programs operated by the Department.

Adoption and incorporation of ARM 24.101.301 will allow the Department to promptly eliminate excess cash balances of the Board that result from unexpectedly high licensing levels or other atypical events. Abatement in such instances will allow

the licensees who have paid fees into the Board's program to receive the temporary relief provided by abatement. Adoption of this abatement rule does not relieve the Board from its duty to use proper rulemaking procedures to adjust the Board's fee structure in the event of recurrent instances of cash balances in excess of the statutorily allowed amount.

5. Concerned persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Board of Pharmacy, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to dlibsdp@mt.gov, and must be received no later than 5:00 p.m., February 10, 2006.

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

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

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

9. Jack Atkins, attorney, has been designated to preside over and conduct this hearing.

BOARD OF PHARMACY
WILLIAM BURTON, RPH, 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 January 3, 2006

BEFORE THE BOARD OF REAL ESTATE APPRAISERS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the proposed)
amendment of ARM 24.207.401 fees,) NOTICE OF PUBLIC HEARING
24.207.501, 24.207.502,) ON PROPOSED AMENDMENT
24.207.504, 24.207.505,) AND ADOPTION
24.207.506, 24.207.507,)
24.207.509, 24.207.515 and)
24.207.516 licensing, and)
24.207.2101 continuing education,)
and the proposed adoption of)
NEW RULE I renewals)

TO: All Concerned Persons

1. On February 8, 2006, at 10:00 a.m., a public hearing will be held in room 489 of the Park Avenue Building, 301 South Park Avenue, Helena, Montana to consider the proposed amendment and adoption of the above-stated rules.

2. The Department of Labor and Industry (Department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or who need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Real Estate Appraisers (Board) no later than 5:00 p.m., February 1, 2006, to advise us of the nature of the accommodation you need. Please contact Barb McAlmond, Board of Real Estate Appraisers, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2325; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2323; e-mail dlibsrea@mt.gov.

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

24.207.401 FEES (1) remains the same.

~~(2) In addition to the fees charged by the board, examination candidates who sit for an examination must pay a seating fee to cover the cost of administering the examination. The seating fee must be paid by the examination candidate directly to the examination service provider specified by the board. The board will furnish examination candidates with the necessary information regarding the examination, and the contact information for registering with the examination service provider.~~

AUTH: 37-1-131, 37-54-105, MCA

IMP: 37-1-131, 37-54-105, 37-54-112, 37-54-201, 37-54-202, ~~37-54-210, 37-54-211, 37-54-212, 37-54-302, 37-54-310, 37-54-403, MCA~~

REASON: It is reasonable and necessary to amend this rule deleting section (2) because the Board is now contracting with an independent examination entity for the purpose of examination of applicants for licensure. The Board is no longer involved in the administration or facilitation of the examinations. The implementation cites are being amended to delete reference to repealed statutes.

24.207.501 EXAMINATION (1) through (3) remain the same.

~~(4) Applicants for licensure or certification may not retake the examination for six months after having failed it a second or subsequent time.~~

AUTH: 37-1-131, 37-54-105, MCA

IMP: 37-1-131, 37-54-105, 37-54-202, 37-54-302, ~~37-54-304~~, MCA

REASON: The Board determined it is reasonably necessary to amend this rule because there is no longer any rationale to require applicants to wait to retake the licensure examination. The examination pool of questions is large enough to ensure an applicant will not retake the same examination and thus, the Board is able to assure the public that those applicants who succeed in passing the examination have met the requisite minimum qualifications for competence. Implementation cites are being amended to delete reference to a repealed statute.

24.207.502 APPLICATION REQUIREMENTS (1) through (3) remain the same.

~~(4) The applicant shall provide three appraisal reports of their choice, with three true and correct copies of each.~~

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

~~(6)~~ (5) The applicant shall correct any deficiencies and submit required material. Failure to submit the required material within 60 days of notification of deficiencies shall be treated as a voluntary withdrawal of the application. After voluntary withdrawal, an applicant will be required to submit an entirely new application to begin the process again.

~~(7) All requests for reasonable accommodations under the Americans with Disabilities Act of 1990, at 42 USC 12101, et seq., must be made on forms provided by the board and submitted with the application prior to any application deadline set by the board.~~

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

AUTH: 37-1-131, 37-54-105, MCA

IMP: 37-1-131, 37-54-105, 37-54-202, MCA

REASON: It is reasonable and necessary to delete section (4) to clarify that the requirement for appraisal reports is a routine part of the application process and is included in the standard application form. The rule is being amended as appraisal reports are not a separate requirement for licensure. The Board is also amending the rule to clarify that the time limit for submission of additional materials begins upon the applicant's notification of application deficiencies by the Board. Section (7) is being deleted because the Board determined that requests for accommodations

in the application process is adequately addressed elsewhere in statute and it is not necessary to duplicate them in rule.

24.207.504 QUALIFYING EDUCATION REQUIREMENTS

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

(d) course examinations; and

~~(e) dates of course offerings;~~

~~(f) locations of course offering;~~

~~(g) (e) history of the provider; ˆ~~

~~(h) (5) A passing score requirement of 70% for the course is required.~~

~~(5) (6) The board shall have the authority to deny or revoke its approval of a previously-approved course or course provider for cause.~~

~~(6) (7) Except as otherwise provided in (11), an An applicant must attend a minimum of 90% of the scheduled class hours, complete all required exercises, and achieve a passing score on the course examination in order to receive credit for the course.~~

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

~~(11) Credit toward the classroom hour requirement may be awarded to teachers of appraisal courses.~~

~~(12) Qualifying education credit must have been obtained within five years prior to the application date.~~

~~(13) Instructors of the uniform standards of professional appraisal practice (USPAP) course must provide proof to the board by submitting a copy of the current certificate demonstrating that the individual has attended the annual update course provided by the appraisal standards board of the appraisal foundation.~~

(14) remains the same but is renumbered (12).

AUTH: 37-1-131, 37-54-105, MCA

IMP: 37-1-131, 37-54-105, 37-54-202, MCA

REASON: It is reasonable and necessary to amend this rule to clarify that the Board does not and never has required the submission of dates or locations of qualifying education courses. The Board is amending the rule to specify that the required passing score for qualifying courses is 70%. This is the current required passing score and is not being changed. Section (11) is being deleted to comply with new Appraisers' Qualifications Board (AQB) requirements established for 2008 and the years following. Section (12) is being deleted because inclusion of more than five years education is being mandated by the AQB for the year 2008 and following. Section (13) is being deleted as no longer necessary, since all licensed instructors of the Uniform Standards of Professional Appraisal Practice (USPAP) courses are required to recertify every two years with the Appraisal Foundation in order to be able to teach USPAP.

24.207.505 QUALIFYING EDUCATION REQUIREMENTS FOR LICENSED REAL ESTATE APPRAISERS (1) remains the same.

(2) To upgrade from a trainee to a licensed real estate appraiser, an applicant may use education obtained for licensure as a trainee.

(3) Effective January 1, 2008, applicants for original licensure as a licensed real estate appraiser shall complete at least 150 hours of board approved instruction, 15 hours of which must cover the USPAP as promulgated by the appraisal foundation at the time the educational offering was completed and at least 15 hours of which must cover report writing. Applicants shall demonstrate that their education involves coverage of all topics listed in (1) with particular emphasis on the appraisal of one-unit to four-unit residential properties.

AUTH: 37-1-131, 37-54-105, MCA

IMP: 37-1-131, 37-54-105, 37-54-202, ~~37-54-203~~, MCA

REASON: It is reasonable and necessary to amend this rule and add new section (2) to address the upgrade of trainees to licensed real estate appraisers and give credit to the education obtained while still a trainee. It is reasonably necessary to add section (3) to address the new AQB requirements established for 2008 and the years following. Implementation cites are being amended to delete reference to a repealed statute.

24.207.506 QUALIFYING EDUCATION REQUIREMENTS FOR RESIDENTIAL CERTIFICATION (1) Applicants for certification as a certified residential real estate ~~appraiser~~ appraisers shall provide evidence of completion of ~~120 classroom hours or board approved instruction~~, 15 hours of which must cover the ~~uniform standards of professional appraisal practice~~ USPAP as promulgated by the appraisal foundation and at least 15 hours of which must cover report writing ~~and which may include the 90 classroom hours required for licensure as a licensed real estate appraiser.~~

(2) remains the same.

(3) To upgrade from a trainee or a licensed real estate appraiser to a certified residential real estate appraiser, an applicant may use education obtained for licensure as a licensed real estate appraiser.

(4) Effective January 1, 2008, applicants for original certification as certified residential real estate appraisers shall provide evidence of completion of:

(a) 200 hours of board approved instruction, 15 hours of which must cover the USPAP as promulgated by the appraisal foundation and at least 15 hours of which must cover report writing; and

(b) 21 semester credit hours covering the subject matter of English composition, principles of economics (micro or macro), finance, algebra, geometry or higher mathematics, statistics, introduction to computers (word processing/spreadsheets), and business or real estate law. In lieu of the required courses, an associate degree will qualify.

AUTH: 37-1-131, 37-54-105, MCA

IMP: 37-1-131, 37-54-105, 37-54-303, MCA

REASON: It is reasonable and necessary to amend the rule to better clarify the education requirements for residential certification. Section (1) is being amended to address the upgrade of trainees to certified residential real estate appraisers. It is

reasonably necessary to add sections (4) and (5) to address and comply with new AQB requirements beginning in January of 2008.

24.207.507 QUALIFYING EDUCATION REQUIREMENTS FOR GENERAL CERTIFICATION

(1) Applicants for certification as a certified general real estate appraiser shall provide evidence of 180 ~~classroom~~ hours of board approved instruction, 15 hours of which must cover the uniform standards of professional appraisal practice, as promulgated by the appraisal foundation and at least 15 hours of which must cover report writing.

(2) and (3) remain the same.

(4) To upgrade from a trainee, a licensed real estate appraiser or a certified residential real estate appraiser to a certified general real estate appraiser, an appraiser may use education obtained for licensure as a licensed real estate appraiser with the additional 90 hours being obtained from non-residential courses.

(5) remains the same.

(6) Effective January 1, 2008, applicants for certification as a certified general real estate appraiser shall provide evidence of:

(a) 300 hours of board approved instruction, 15 of which must cover the USPAP as promulgated by the appraisal foundation and at least 15 hours of which must cover report writing; and

(b) 30 semester credit hours covering the subject matter courses of English composition, economics (micro or macro), finance, algebra, geometry or higher mathematics, statistics, introduction to computers (word processing/ spreadsheets), business or real estate law and two elective courses in either accounting, geography, agricultural economics, business management, or real estate. In lieu of the required courses, a bachelors degree will qualify.

AUTH: 37-1-131, 37-54-105, MCA

IMP: 37-1-131, 37-54-105, 37-54-303, MCA

REASON: The Board has determined that it is reasonable and necessary to amend section (4) to address the upgrade from trainee to licensure as a certified general real estate appraiser. Sections (6) and (7) are being added to comply with new AQB requirements to be effective January 1, 2008.

24.207.509 QUALIFYING EXPERIENCE (1) through (6) remain the same.

(7) Qualifying experience must be obtained within five years prior to application date unless otherwise determined by the board.

(8) remains the same.

(9) The board will use the following hourly credit as a guide toward the crediting of experience hours:

- (a) single family residential (one unit dwelling)
 - (i) ~~complete report~~ assignment 12
 - (ii) ~~limited report~~ assignment 8
- (b) multi-family residential (two-to-four units)
 - (i) complete assignment 20
 - (ii) limited assignment 10

(c) through (l) remain the same.

(10) Review appraisals will be allowed 1/3 the allotted time found in (9).

~~(40) (11)~~ The board may provide a variance from the hourly standards provided in ~~(8) (9) and (10)~~ above. To be considered for such a variance, an applicant must submit a written request for a variance supported by documentation which demonstrates the need for additional credit hours.

AUTH: 37-1-131, 37-54-105, MCA

IMP: 37-1-131, 37-54-105, 37-54-202, 37-54-303, MCA

REASON: It is reasonable and necessary to amend section (7) in response to applicant inquiry and to address qualifying experience obtained more than five years prior to the date of application. The Board notes that all experience obtained after 1991 (the first year of licensure for real estate appraisers in Montana) must meet USPAP requirements and standards. It remains the Board's intent to accept only experience measurable by a specific standard. The amendment will allow the Board to examine experience outside the five year time limit and determine acceptability on a case by case basis. Section (9) is being amended to clarify the difference between the requirement of a report and an assignment. Addition of section (10) is necessary to address the difference between an appraisal and a review appraisal, as a review appraisal is neither as extensive nor as labor intensive as a normal appraisal and therefore will be credited fewer experience hours.

24.207.515 INACTIVE LICENSE/CERTIFICATION (1) and (2) remain the same.

~~(3) A licensed or certified appraiser may remain inactive for a period of one year.~~ Inactive licensees must pay their inactive renewal fee annually. Failure to renew the inactive status or become active will result in the lapsing of their license or certification.

AUTH: 37-1-131, 37-1-319, 37-54-105, 37-54-210, 37-54-310, MCA

IMP: 37-1-131, 37-1-319, 37-54-105, 37-54-210, 37-54-310, MCA

REASON: It is reasonable and necessary to amend this rule because licensees on inactive status were confused as to the requirement to pay annual renewal fees. This clarification will hopefully lessen the expiration of licenses due to nonpayment of this fee. Authority and implementation cites are being amended to accurately reflect all statutes implemented through the rule, to provide the complete sources of the Board's rulemaking authority and to delete reference to a repealed statute.

24.207.516 REACTIVATION OF INACTIVE TO ACTIVE LICENSE (1) and (1)(a) remain the same.

~~(b) submit proof of obtaining the required continuing education in accordance with ARM 24.207.2101.~~

AUTH: 37-1-131, 37-1-319, 37-54-105, 37-54-210, 37-54-310, MCA

IMP: 37-1-131, 37-1-319, 37-54-105, 37-54-210, 37-54-310, MCA

REASON: It is reasonable and necessary to amend this rule to remove information that is being included and expanded upon in New Rule I. It is unnecessary and redundant to include the information in both rules. Authority and implementation cites are being amended to accurately reflect all statutes implemented through the rule, to provide the complete sources of the Board's rulemaking authority and to delete reference to a repealed statute.

24.207.2101 CONTINUING EDUCATION (1) Continuing education courses shall be approved according to the criteria of ARM 24.207.504, including application for re-approval after three years ~~except that an examination shall not be required.~~

(2) An examination shall not be required.

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

~~(4) (5) Beginning with the March 31, 2003 renewal, licensees, upon every~~ Every other renewal year, licensees shall provide evidence to the board of having completed at least 31 hours of instruction in courses or seminars approved by the board, at least seven hours of which must be ~~related to the national uniform standards of professional appraisal practice~~ USPAP course.

(5) through (9) remain the same but are renumbered (6) through (10).

AUTH: 37-1-131, ~~37-1-306~~, 37-1-319, 37-54-105, 37-54-303, MCA

IMP: 37-1-131, 37-1-306, 37-54-105, ~~37-54-210~~, 37-54-303, 37-54-310,

MCA

REASON: It is reasonable and necessary to amend this rule to be in accordance with federal guidelines that require licensee completion of the USPAP course once every 24 months. Authority and implementation cites are being amended to accurately provide the complete sources of the Board's rulemaking authority and to delete reference to a repealed statute.

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

NEW RULE I RENEWALS (1) All active and inactive licensees will be required to renew for a period of one year by March 31.

(2) Renewal forms will be mailed to all real estate licensees at the address of record with the board.

(3) Failure to receive a renewal form does not eliminate the renewal requirement.

(4) At the end of their education cycle, licensees shall complete and submit an education reporting form at the time of renewal.

(5) Incomplete renewal and education reporting forms will not be accepted and will be returned to the licensee. Any form returned to the licensee must be properly completed and resubmitted before the March 31 renewal deadline.

AUTH: 37-1-131, 37-1-319, 37-54-105, MCA

IMP: 37-1-131, 37-1-319, 37-54-105, 37-54-310, MCA

REASON: It is reasonable and necessary to implement New Rule I to clarify renewal requirements for active and inactive licensees. Licensees have expressed confusion and adoption of this rule will provide information on renewal requirements in a clear and more concise format.

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 by mail to Barb McAlmond, Board of Real Estate Appraisers, Department of Labor and Industry, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2323, or by e-mail to dlibsirea@mt.gov and must be received no later than 5:00 p.m., February 16, 2006.

6. An electronic copy of this Notice of Public Hearing is available through the Department and Board's site on the World Wide Web at <http://realestateappraiser.mt.gov>, in the Rule Notices 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 website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems, and that a person's technical difficulties in accessing or posting to the e-mail address do not excuse late submission of comments.

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

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

9. Lon Mitchell, attorney, has been designated to preside over and conduct this hearing.

BOARD OF REAL ESTATE APPRAISERS
TIM MOORE, 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 January 3, 2006

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

In the matter of the proposed amendment) NOTICE OF PUBLIC HEARING ON
of ARM 24.216.402, pertaining to) PROPOSED AMENDMENT
fee schedule)

TO: All Concerned Persons

1. On February 3, 2006, at 10:00 a.m., a public hearing will be held in room B-07 of the Park Avenue Building, 301 South Park Avenue, Helena, Montana to consider the proposed amendment of the above-stated rule.

2. The Department of Labor and Industry will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Sanitarians no later than 5:00 p.m., on January 27, 2006, to advise us of the nature of the accommodation that you need. Please contact Wayne Johnston, Board of Sanitarians, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2370; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2309; e-mail dlibsdsan@mt.gov.

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

24.216.402 FEE SCHEDULE

(1) Application fee	\$50 <u>90</u>
(2) Examination	150
(3) Reexamination	150
(4) Renewal	50 <u>90</u>
(5) Late renewal (in addition to renewal fee)	50 <u>90</u>
(6) Sanitarian-in-training application fee	50 <u>90</u>
(7) All fees are nonrefundable.	

AUTH: 37-1-134, 37-40-203, MCA

IMP: 37-1-134, 37-40-101, 37-40-301, 37-40-302, ~~37-40-304~~, MCA

REASON: It is reasonable and necessary for the Board to amend ARM 24.216.402 in order to generate enough revenue to maintain the current level of services being offered and to accommodate the addition of two new Board members assigned in the 2005 legislative session by Chap. 126, Laws of 2005 (HB 203). Pursuant to 37-1-134, MCA, the Board is required to set its fees commensurate with costs, and is the reason why these fees need to be increased now. If the proposed fee increases are not approved at this time, the Board expects it will be operating with a negative cash balance by the next renewal period. The proposed fee increase is to fund

existing services only, and the only new expenses proposed are associated with the addition of the two new Board members. The Board's budget for FY 2006 is 24,897.00. The proposed fee increase is expected to raise the total anticipated revenue for FY 2006 to \$24,930.00, which would leave a positive cash balance for the Board of \$2,052.45.

The Board estimates, based on current licensing, that approximately 190 existing licensees will be affected by the increased renewal fee during the first renewal cycle, and that 30 of those licensees will also be affected by the increased late renewal fee. The Board estimates that based on recent trends, approximately 20 new applicants will be affected by the increases in the license application fees, and 20 applicants for the sanitarian-in-training fee. The Board estimates that the proposed fee increases will raise the Board's revenue by an aggregate of approximately \$10,400 per year.

In addition, there is reasonable necessity to amend the IMP citations to more accurately reflect the statutes being implemented by the rule, and to delete a reference to a statute repealed in 2005.

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 by mail to Wayne Johnston, Board of Sanitarians, Department of Labor and Industry, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2309, or by e-mail to dlibsdsan@mt.gov and must be received no later than 5:00 p.m., February 13, 2006.

5. An electronic copy of this Notice of Public Hearing is available through the Department and Board's site on the World Wide Web at <http://sanitarian.mt.gov>, in the Rules Notices 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 website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems, and that a person's technical difficulties in accessing or posting to the e-mail address do not excuse late submission of comments.

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

2309, e-mailed to dlibsdsan@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.

8. Lon Mitchell, attorney, has been designated to preside over and conduct this hearing.

BOARD OF SANITARIANS
TED KYLANDER, CHAIRPERSON

/s/ MARK CADWALLADER
Mark Cadwallader
Alternative Rule Reviewer

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

Certified to the Secretary of State January 3, 2006

BEFORE THE BOARD OF VETERINARY MEDICINE
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the proposed amendment) NOTICE OF PUBLIC HEARING
of ARM 24.225.301 definitions and) ON PROPOSED AMENDMENT
ARM 24.225.507 out-of-state licensure) AND ADOPTION
endorsement and the proposed adoption of)
NEW RULE I occasional case exemption)
and NEW RULE II fee abatement)

TO: All Concerned Persons

1. On February 8, 2006, at 2:00 p.m., a public hearing will be held in room 489, of the Park Avenue Building, 301 South Park Avenue, Helena, Montana, to consider the proposed amendment and adoption of the above-stated rules.

2. The Department of Labor and Industry (Department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Veterinary Medicine (Board) no later than 5:00 p.m., on February 3, 2006, to advise us of the nature of the accommodation that you need. Please contact Cheryl Brandt, Board of Veterinary Medicine, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2394; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail dlibsdrvvet@mt.gov.

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

24.225.301 DEFINITIONS (1) and (2) remain the same.
(3) "Occasional case" shall mean no more than two cases per year.
(3) through (5) remain the same but are renumbered (4) through (6).

AUTH: 37-1-131, 37-18-202, MCA
IMP: 37-18-102, 37-18-104, MCA

REASON: It is reasonable and necessary for the Board to maintain all definitions used within the rules in a single location. Adding the definition of "occasional case" will lessen confusion and clarify the meaning of the term as used in New Rule I. Implementation cites are being amended to accurately reflect all statutes implemented through the rule.

24.225.507 LICENSURE ENDORSEMENT OF OUT-OF-STATE APPLICANTS (1) through (1)(b) remain the same.
(c) The candidate holds a valid and unrestricted license to practice veterinary medicine in another state or jurisdiction, and has been ~~continuously~~ actively in

practice for ~~four~~ three of the five years immediately preceding the date of application to Montana. Official written verification of such licensure status must be received by the board directly from the other states or jurisdictions.

(d) The candidate's license to practice veterinary medicine has had no disciplinary sanction during the last ~~four~~ five years of licensure and no license suspension or license revocation at any time.

(e) through (g) remain the same.

AUTH: 37-1-131, 37-18-202, MCA

IMP: 37-1-304, MCA

REASON: Recently, several out-of-state applicants for licensure have not been able to meet the requirement of four years of continuous practice for various reasons, including medical and personal reasons. The Board requires the continuous practice to assure continued competence in the practice of veterinary medicine. The Board desires to maintain some flexibility in verifying continued competence for applicants coming from other states who are not beginning practitioners. It is reasonable and necessary for the Board to amend the rule to require active practice in three of the five years preceding Montana application. The Board determined that due to constantly changing technology associated with the practice of veterinary medicine, if an applicant cannot establish continued competency specified in the amended rule, the applicant must then retake the national licensing examination.

4. The proposed new rules provide as follows:

NEW RULE I OCCASIONAL CASE EXEMPTION (1) The board, in its discretion, may grant an exemption to a veterinarian not licensed in Montana who renders veterinary services in this state, provided that the veterinarian:

(a) submits a written request to the board, describing the date, place, and the scope of practice and/or the procedures to be performed prior to such service;

(b) submits proof of veterinary licensure (active and in good standing in another state or territory of the United States or Canada);

(c) submits a signed statement from a veterinarian licensed in this state who will be in attendance and will assume continuing care for the veterinary patient; and

(d) limits the service to an occasional case as defined in board rule.

AUTH: 37-1-131, 37-18-202, MCA

IMP: 37-18-104, MCA

REASON: The 2005 Montana Legislature enacted Chapter 126, Laws of 2005 (House Bill 203), an act generally revising laws relating to professional and occupational licensing and revising the licensing exemption for out-of-state veterinarians practicing in Montana. The bill was signed by the Governor on March 30, 2005, and became effective on July 1, 2005. In response to HB 203, the Board is proposing New Rule I to implement the legislation and allow out-of-state licensed veterinarians to attend a limited number of cases in Montana without requiring them to go through the time and expense of the full licensure process. The out-of-state

veterinarian must possess a current and unrestricted license, notify the Board in writing in advance of the services to be rendered, and identify a Montana-licensed veterinarian responsible for the follow-up care of the animal. The number of cases will be restricted to two cases per year. The Board concluded that this process will adequately protect the citizens of Montana from unscrupulous persons attempting to circumvent the law, while permitting access to out-of-state veterinarians with advanced training and expertise.

NEW RULE II FEE ABATEMENT (1) The Board of Veterinary Medicine adopts and incorporates by reference the fee abatement rule of the Department of Labor and Industry found at ARM 24.101.301.

AUTH: 37-1-131, MCA

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

REASON: The Board has determined there is reasonable necessity to adopt and incorporate by reference ARM 24.101.301 to allow the Board to authorize the Department to perform renewal licensure fee abatements as appropriate and when needed, without further vote or action by the Board. The Department recently adopted ARM 24.101.301 to implement a means for the prompt elimination of excess cash accumulations in the licensing programs operated by the Department.

Adoption and incorporation of ARM 24.101.301 will allow the Department to promptly eliminate excess cash balances of the Board that result from unexpectedly high licensing levels or other non-typical events. Abatement in such instances will allow the licensees who have paid fees into the Board's program to receive the temporary relief provided by abatement. Adoption of this abatement rule does not relieve the Board from its duty to use proper rulemaking procedures to adjust the Board's fee structure in the event of recurrent instances of cash balances in excess of the statutorily allowed amount.

5. Concerned persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Board of Veterinary Medicine, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to dlibsdrv@mt.gov, and must be received no later than 5:00 p.m. February 10, 2006.

6. An electronic copy of this Notice of Public Hearing is available through the Department and Board's site on the World Wide Web at www.vet.mt.gov. 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 website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems, and that a person's technical difficulties

in accessing or posting to the e-mail address do not excuse late submission of comments.

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

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

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

BOARD OF VETERINARY MEDICINE
JACK NEWMAN, DVM, PRESIDENT

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

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

Certified by the Secretary of State January 3, 2006

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

In the matter of the amendment of	)	NOTICE OF PROPOSED
ARM 37.85.406, 37.86.1406,	)	AMENDMENT
37.86.2803, 37.86.2907, 37.86.2912,)	
37.86.2918, 37.86.2928, 37.86.3001,)	
and 37.86.3022 pertaining to	)	NO PUBLIC HEARING
Medicaid Hospital and Ambulatory	)	CONTEMPLATED
Surgical Center Reimbursement)	

TO: All Interested Persons

1. On February 11, 2006, the Department of Public Health and Human Services proposes to amend the above-stated rules.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice. If you need to request an accommodation, contact the department no later than 5:00 p.m. on January 30, 2006, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970; Email dphhslegal@mt.gov.

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

37.85.406 BILLING, REIMBURSEMENT, CLAIMS PROCESSING, AND PAYMENT (1) through (22)(a) remain the same.

~~(23) Notwithstanding any other provision, critical access hospital interim reimbursement is based on hospital specific medicaid cost to charge ratio. Critical access hospitals will still be reimbursed their actual allowable costs determined on a retrospective basis as provided in ARM 37.86.2803.~~

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

IMP: 53-2-201, 53-6-101, 53-6-111, 53-6-113, 53-6-131, 53-6-141, 53-6-149, MCA

37.86.1406 CLINIC SERVICES, REIMBURSEMENT (1) Ambulatory surgical center (ASC) services as defined in ARM 37.86.1401(2) provided by an ASC will be reimbursed on a fee basis as follows:

(a) 100% of the ~~m~~Medicare allowable amount ~~for rural counties~~. For purposes of determining the ~~m~~Medicare allowable amount for ASC services to ~~m~~Medicaid recipients under this rule, the department ~~hereby~~ adopts and incorporates ~~herein~~ by reference the methodology at 42 CFR part 416, subpart E

(1997) (2005), and the schedule listing the allowable amounts for ASC services in rural counties found at in the Medicare Carriers Manual, section 5243. The cited authorities are federal regulations and manuals specifying the methods and rules used to determine reasonable cost for purposes of the Medicare program. Copies of the cited authorities may be obtained from the Department of Public Health and Human Services, ~~Health Policy and Services Division~~ Health Resources Division, P.O. Box 202951, Helena, MT 59620-2951.

(i) For purposes of applying the provisions of 42 CFR part 416, subpart E (1997) (2005), and the Medicare Carriers Manual, section 5243, any reference in such authorities to Medicare, Medicare beneficiary, beneficiary, intermediary, or secretary shall be deemed to refer also to Medicaid, Medicaid recipient, recipient, ~~the department or the department, respectively.~~

(ii) through (3)(b) remain the same.

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

IMP: ~~53-6-101~~, ~~53-6-141~~, MCA

37.86.2803 ALL HOSPITAL REIMBURSEMENT, COST REPORTING

(1) Allowable costs will be determined in accordance with generally accepted accounting principles as defined by the American Institute of Certified Public Accountants. Such definition of allowable costs is further defined in accordance with the Medicare Provider Reimbursement Manual, CMS Publication 15 last updated ~~August 27, 2002~~ April 2005 (Pub. 15), subject to the exceptions and limitations provided in the department's administrative rules. The department adopts and incorporates by reference Pub. 15, which is a manual published by the United States Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), which provides guidelines and policies to implement Medicare regulations which set forth principles for determining the reasonable cost of provider services furnished under the Health Insurance for Aged Act of 1965, as amended. A copy of Pub. 15 may be obtained through the Department of Public Health and Human Services, ~~Child and Adult Health~~ Resources Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

(a) Hospitals located in the state of Montana providing inpatient and outpatient hospital services reimbursement under the retrospective cost based methodology for a hospital that is identified by the department as a distinct part rehabilitation unit are subject to the provisions regarding cost reimbursement and coverage limits and rate of increase ceilings specified in 42 CFR 413.30 through 413.40 (2002), except as otherwise provided in these rules. This provision applies to distinct part rehabilitation units only through January 31, 2003. The department adopts and incorporates by reference 42 CFR 413.30 through 413.40 (2002). A copy of 42 CFR 413.30 through 413.40 (2002) may be obtained through the Department of Public Health and Human Services, ~~Child and Adult Health~~ Resources Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

(b) and (c) remain the same.

(d) For cost report periods ending on or after ~~July 1, 2003~~ January 1, 2006, for each hospital which is a critical access or exempt hospital, as defined in ARM

37.86.2901, reimbursement for reasonable costs of outpatient hospital services shall be limited to 101% of allowable costs, as determined in accordance with (1).

(2) remains the same.

(3) All hospitals reimbursed under ARM 37.86.2904, 37.86.2905, 37.86.2907, 37.86.2912, 37.86.2914, 37.86.2916, 37.86.2918, 37.86.2920, 37.86.2924, 37.86.2925, or 37.86.3005 must file the cost report with the Montana ~~Medicare~~ intermediary and the department on or before the last day of the fifth calendar month following the close of the period covered by the report. For fiscal periods ending on a day other than the last day of the month, cost reports are due 150 days after the last day of the cost reporting period.

(a) through (4) remain the same.

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

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

37.86.2907 INPATIENT HOSPITAL PROSPECTIVE REIMBURSEMENT, DRG PAYMENT RATE DETERMINATION (1) through (1)(d) remain the same.

(2) For those Montana hospitals designated by the department ~~as of April 1, 1993, as having~~ after July 15, 2005 as having met the requirements for a specialty (level II) and subspecialty (level III) neonatal intensive care units facility as provided in the Guidelines for Perinatal Care, Fifth Edition (2002), published by the American Academy of Pediatrics and the American College of Obstetricians and Gynecologists, reimbursement for neonatal DRGs 385 through 389 will be actual allowable cost determined on a retrospective basis, with allowable costs determined according to ARM 37.86.2803. The guidelines are adopted and incorporated by reference and are available through the Department of Public Health and Human Services, Health Resources Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951. In addition, such facilities:

(a) through (c) remain the same.

(3) The Montana ~~Medicaid~~ Medicaid DRG relative weight values, average length of stay (ALOS), and outlier thresholds are contained in the DRG table of weights and thresholds ~~(2002) (October 2005)~~. The DRG table of weights and thresholds is published by the department. The department adopts and incorporates by reference the DRG table of weights and thresholds ~~(2002) (October 2005)~~. Copies may be obtained from the Department of Public Health and Human Services, Health Resources Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

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

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

37.86.2912 INPATIENT HOSPITAL PROSPECTIVE REIMBURSEMENT, CAPITAL-RELATED COSTS (1) The department will reimburse inpatient hospital service providers located in the state of Montana for capital-related costs that are allowable under ~~Medicare~~ Medicare cost reimbursement principles as set forth at 42 CFR 412.113(a), as amended through October 1, ~~1992~~ 2004. The department adopts and incorporates by reference 42 CFR 412.113(a) and (b), as amended through October 1, ~~1992~~ 2004, which set forth ~~Medicare~~ Medicare cost reimbursement principles.

Copies of the cited regulation may be obtained from the Department of Public Health and Human Services, Child and Adult Health Resources Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

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

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

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

37.86.2918 INPATIENT HOSPITAL, READMISSIONS, AND TRANSFERS

(1) This rule states the billing requirements applicable to inpatient hospital readmissions and transfers. Sections (2) and (3) apply to DRG hospitals only unless otherwise noted. Sections (4) and (5) apply to DRG, ~~critical access, exempt~~ out-of-state, and border hospitals.

(2) through (5) remain the same.

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

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

37.86.2928 INPATIENT HOSPITAL REIMBURSEMENT, HOSPITAL REIMBURSEMENT ADJUSTOR (1) remains the same.

(2) Part 1 of the HRA payment will be based upon ~~m~~Medicaid inpatient utilization, and will be computed as follows: $HRA1 = (M \div D) \times P$.

(a) For the purposes of calculating Part 1 of the HRA, the following apply:

(i) through (iv)(B) remain the same.

(C) ~~6%~~ 8% of the total revenue generated by the hospital utilization fee, which will be expended as match for Part 2 of the HRA, as provided in (3).

(3) Part 2 of the IRA payment will be based upon total hospital ~~m~~Medicaid charges, and will be computed as follows: $HRA2 = (I \div D) \times P$.

(a) For the purposes of calculating Part 2 of the HRA, the following apply:

(i) through (iii) remain the same.

(iv) "P" equals the total amount to be paid via Part 2 of the HRA. "P" will be ~~6%~~ 8% of the total revenue generated by Montana's hospital utilization fee plus applicable federal financial participation.

(b) through (c) remain the same.

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

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

37.86.3001 OUTPATIENT HOSPITAL SERVICES, DEFINITIONS

(1) through (11) remain the same.

(12) "Partial hospitalization services" means an active treatment program that offers therapeutically intensive, coordinated, structured clinical services provided only to individuals who are determined to have a serious emotional disturbance or severe disabling mental illness. Partial hospitalization services are time-limited and provided within either an acute level program or a sub-acute level program. Partial hospitalization services include day, evening, night, and weekend treatment

programs that employ an integrated, comprehensive, and complementary schedule of recognized treatment or therapeutic activities.

(a) Acute level partial hospitalization is provided by programs which:

(i) are operated by a hospital as described in ~~(7)~~ 50-5-101, MCA and are co-located with that hospital such that in an emergency a patient of the acute partial hospitalization program can be transported to the hospital's inpatient psychiatric unit within 15 minutes;

(ii) through (b) remain the same.

(c) Sub-acute level partial (SAP) hospitalization is provided by programs which:

(i) through (iv) remain the same.

(v) provide services in a supervised environment by a well-integrated, multi-disciplinary team of professionals which includes but is not limited to program therapists, behavioral specialists, teachers, and ancillary staff;

(vi) through (13) remain the same.

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

IMP: 53-2-201, 53-6-101, 53-6-111, 53-6-113, 53-6-141, MCA

37.86.3022 OUTPATIENT HOSPITAL SERVICES, PARTIAL HOSPITALIZATION SERVICES (1) Partial hospitalization services will be reimbursed on a prospective per diem rate which shall be the lesser of the amount specified in the department's ~~m~~Medicaid mental health fee schedule or the provider's usual and customary charges (billed charges). The per diem rates specified in the department's ~~m~~Medicaid ~~m~~Mental ~~h~~Health ~~f~~Fee ~~s~~Schedule are bundled prospective per diem rates for full-day programs and half-day programs, as defined in ARM 37.86.3001. The bundled prospective per diem rate includes all outpatient psychiatric and psychological treatments and services, laboratory and imaging services, drugs, biologicals, supplies, equipment, therapies, nurses, social workers, psychologists, licensed professional counselors, and other outpatient services, that are part of or incident to the partial hospitalization program, except as provided in the department's ~~m~~Medicaid ~~m~~Mental ~~h~~Health ~~f~~Fee ~~s~~Schedule.

(2) remains the same.

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

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

3. The Department of Public Health and Human Services (the Department) is proposing the amendment of ARM 37.85.406, 37.86.1406, 37.86.2803, 37.86.2907, 37.86.2912, 37.86.2918, 37.86.2928, 37.86.3001 and 37.86.3022 pertaining to cost reporting and Medicaid reimbursement for inpatient hospital services, neonatal intensive care facility services and critical access hospital services. The purpose of the proposed rule amendments is to increase Medicaid reimbursement rates to those providers. Appropriations for this purpose were enacted by the 2005 Montana Legislature in "The General Appropriations Act of 2005", 2005 Laws of Montana, Chapter 607.

The proposed changes are necessary to assure that high quality hospital services are available to Medicaid recipients in rural communities and to mitigate the shifting of costs from Medicaid patients to privately insured and privately paying individuals. The proposed changes to ARM 37.86.2803 would implement the legislative funding increases for fiscal year 2006.

The Department did not consider alternatives to an increase in Medicaid rates for critical access hospitals (CAHs), since the proposed amendments are necessary to comply with the legislature's intent. The Department's budget proposal to the 2005 Montana Legislature included a recommendation that Medicaid CAH reimbursement rates be increased to follow a Medicare rate increase for these hospitals.

The Department is also proposing an amendment to ARM 37.86.2928 to increase the percentage of Medicaid hospital reimbursement adjustor (HRA) payments received by CAHs. This would further help maintain access to and assure a high quality of hospital services. Although the bed tax rates have been increased on July 1, 2005 and will change slightly on January 1, 2006, the proposed amendment to the percentage of the Medicaid hospital reimbursement adjustor would affect only the amount of the bed tax distributed to critical access hospitals and not the total amount of bed tax collected.

The Department is proposing amendments to ARM 37.85.406 and 37.86.2918 that would exempt CAHs and exempt hospitals from the diagnostic related group (DRG) bundling rules. This is necessary to provide a more precise method of reimbursement based on individual hospital cost to charge ratios.

In addition, the Department is taking this opportunity to update the reference to a CMS manual in ARM 37.86.2803, to update a reference to the DRG grouper in ARM 37.86.3907, update a reference to the Code of Federal Regulations (CFR) in ARM 37.86.2912, to correct an inaccurate cross reference in ARM 37.86.3001 and to correct an incomplete sentence in ARM 37.86.3022. The Department does not intend these changes to affect any substantive provisions pertaining to critical access hospitals.

The Department also proposes an amendment to ARM 37.86.1406 that would increase Medicaid reimbursement to ambulatory surgical centers (ASC). Appropriations for this purpose were enacted by the 2005 Montana Legislature in "The General Appropriations Act of 2005," 2005 Laws of Montana, Chapter 607. An increase in reimbursement for ASC services is necessary to assure that high quality surgical services are available to Medicaid recipients at the best possible price. The proposed changes to ARM 37.86.1406 would serve that purpose by implementing the legislative funding increases for fiscal year 2006.

Because the legislature specified the ambulatory surgical center rate increase, no other options were considered.

ARM 37.85.406

The Department is proposing to delete section (23) of this rule. In addition to the proposed amendment to ARM 37.86.2918, this amendment would exempt CAHs from the DRG bundling rules. Critical access hospitals and exempt hospitals are reimbursed their allowable costs. Currently, these hospitals are paid a DRG interim rate which is adjusted through a cost settlement process. The Department is proposing that interim reimbursement for CAHs and exempt hospitals be made on the basis of an individual cost to charge ratio. This is a much more precise method of reimbursement. It will allow interim rates to more closely approximate costs.

ARM 37.86.1406

The Department is proposing an amendment to ARM 37.86.1406 that would increase reimbursement to ambulatory surgical centers by removing the term "rural" from the standard for allowable costs. This will allow ASC reimbursement to equal 100% of the Medicare rate. Montana has nine groups of ASC provider reimbursement rates. The effect of the proposed amendment on rates would be:

Group 1	+12.64%
Group 2	+12.25%
Group 3	+12.38%
Group 4	+12.48%
Group 5	+12.29%
Group 6	+ 9.90%
Group 7	+12.31%
Group 8	+10.26%
Group 9	+11.81%

The Department's goal is to encourage ASCs to perform more surgeries, thereby improving Medicaid recipients' access to surgical services that would otherwise be provided by hospitals at higher rates of Medicaid reimbursement. ASCs are able to provide high quality outpatient surgeries at rates lower than hospitals because their overhead costs are less and because they perform greater numbers of surgeries, taking advantage of the economies of scale.

At the same time, the Department proposes to update the references to Medicare reimbursement for ASC facility services, 42 Code of Federal Regulations (CFR) part 416, subpart E (42 CFR sections 416.120 through 416.150), to the most recent publication, 2005. The Department does not intend the proposed update to affect reimbursement rates.

ARM 37.86.2803

The proposed changes to this rule include an update of the reference in section (1) to the Medicare Provider Reimbursement Manual, CMS Publication 15 (Pub. 15) from "August 27, 2002" to "April 2005", the most recent edition available.

Effective January 1, 2006, the Department proposes to increase Medicaid reimbursement to critical access hospitals from 100% of allowable costs to 101% of allowable costs as intended by the 2005 Montana legislature in the 2005 General Appropriations Act. The funding for this reimbursement rate increase will come from some of the revenue from increased taxes on the sale of tobacco products enacted by Initiative Measure No. 149, approved by Montana voters on November 2, 2004. This follows changes to the Medicare reimbursement rate, which also increased payment to 101% in accordance with the Medicare Prescription Drug Improvement and Modernization Act of 2003 (MMA).

ARM 37.86.2907

Section (2) of this rule currently provides that hospitals may obtain designation by the Department as neonatal intensive care units in order to receive Medicaid reimbursement at 100% of cost for those services. It did not specify guidelines and standards to be used by the Department in making a designation. The Department proposes that the national guidelines and standards set by the American Academy of Pediatrics and the American College of Obstetricians and Gynecologists in the "Guidelines For Perinatal Care", Fifth Edition (October 2002) for designated Level II and Level III neonatal units be adopted and incorporated by reference. In the General Appropriations Act of 2005 (2005 Laws of Montana, Chapter 607), the Montana legislature allotted additional funds so that the Department could apply the national guidelines and standards to designate additional hospitals' neonatal units as eligible for reimbursement at 100% of allowable costs. The proposed amendments to this rule would implement the legislature's intent.

DRG hospitals are classified as such by the Centers for Medicare and Medicaid Services (CMS) in accordance with 42 CFR 412. They are reimbursed under the DRG prospective payment system described in ARM 37.86.2907, 37.86.2912, 37.86.2914, 37.86.2916, 37.86.2918, 37.86.2920 and 37.86.2924. One of the factors used to compute a hospital's DRG rate is the "medicare grouper program version" (the grouper) developed by 3M Health Information Systems and updated October first of every year. The Department is taking this opportunity to update the grouper references to reflect the most recent version.

ARM 37.86.2912

The Department is taking this opportunity to update references in this rule to 42 CFR 412.113 dated October 1, 2004, the most recent version available. The Department does not intend the update to have any financial effect on hospitals.

ARM 37.86.2918

The Department is proposing an amendment of this rule to exempt critical access hospitals and exempt hospitals from the DRG bundling rules. This allows the Department's Medicaid program to conform with Medicare bundling rules.

Critical access and exempt hospitals are reimbursed their costs through cost settlement. The former system paid them a DRG on the interim. A more precise way to reimburse them is to pay a hospital cost to charge ratio on the interim and cost settle for final payment.

The billing requirements will conform to Medicare requirements, thereby making billing easier. This amendment will not effect reimbursement. No other options were considered.

ARM 37.86.2928

The Department proposes amendments to this rule to increase the percentage of Medicaid hospital reimbursement adjustor (HRA) payments received by critical access hospitals. It would change the distribution of revenue and federal financial participation received as a result of the hospital utilization fee but it would not affect total expenditures. The amendment is proposed at the request of the Montana Hospital Association and was agreed to by its members and by the Department. The number of CAHs is growing statewide. The proportion of Medicaid services provided by CAHs is increasing, so the portion of HRA payments to them should also increase.

ARM 37.86.3001

Section (12) of this rule pertaining to "partial hospitalization services" contained an incorrect reference to a description of "acute level partial hospitalization" services. The correct reference should have been to ARM 37.86.2901. The Department is taking this opportunity to correct the error.

ARM 37.86.3022

Due to a clerical mistake, the phrase "or the provider's usual and customary charges" was inadvertently omitted from the first sentence of this rule providing for Medicaid reimbursement of partial hospitalization services. The Department is taking this opportunity to correct the error.

Fiscal effects

The appropriation of tobacco tax revenue and implementation of the proposed increase in Medicaid reimbursement to critical access hospitals from 100% of allowable costs to 101% of allowable costs in ARM 37.86.2803 would begin January 1, 2006, halfway through the state fiscal year (SFY). The fiscal impact for the remaining six months of SFY 2006 would be \$19,149 from the State Special Revenue fund and \$46,228 from Federal matching funds. The impact for SFY 2007 will be \$40,950 from the State Special Revenue fund and \$95,915 in Federal matching funds.

The appropriation of tobacco tax revenue and implementation of the proposed increase in Medicaid reimbursement to ambulatory surgical centers in ARM 37.86.1406 would begin January 1, 2006, halfway through the state fiscal year. The impact for the remaining six months of SFY 2006 would be \$47,136 from the State Special Revenue fund and \$113,793 from Federal matching funds. The impact for SFY 2007 will be \$50,400 from the State Special Revenue fund and \$118,049 in Federal matching funds.

The appropriation for an increase in the number of hospitals designated as neonatal intensive care centers under ARM 37.86.2907 is also from the I-149 Tobacco Tax proceeds and would begin July 15, 2005. The appropriations for SFY06 are \$142,881 from the State Special Revenue fund and \$344,934 in Federal match. The appropriations for SFY07 are \$152,775 from the State Special Revenue fund and \$357,837 in Federal match.

None of the other proposed amendments are expected to have a fiscal effect.

Persons and entities affected

In Montana there are 43 critical access hospitals and 25 ambulatory surgical centers eligible to receive Medicaid reimbursement. They would be affected by the proposed reimbursement increases.

Currently, three hospitals meet the standard for Level III neonatal care and provide neonatal services to 71 babies per year. One additional hospital would meet the standard for Level II care. There may be as many as five more hospitals that could meet the standard for Level II care. If six hospitals were to meet the standards for Level II neonatal care, a total of 251 babies would be affected by the proposed amendments to ARM 37.86.2907.

There are 14 DRG hospitals within the state of Montana and 35 DRG hospitals in border states that would be affected by changes in the table of weights and thresholds.

4. The Department intends that the amendments to ARM 37.86.2803 and 37.86.1406 be applied retroactively to January 1, 2006. The amendments to ARM 37.86.2907 would be applied retroactively to October 1, 2005. All other proposed amendments would be effective the day after publication of the notice of adoption.

5. Interested persons may submit their data, views or arguments concerning the proposed action in writing to Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210, no later than 5:00 p.m. on February 9, 2006. Data, views or arguments may also be submitted by facsimile (406)444-1970 or by electronic mail via the Internet to dphhslegal@mt.gov. The Department also maintains lists of persons interested in receiving notice of administrative rule changes. These lists are

compiled according to subjects or programs of interest. For placement on the mailing list, please write the person at the address above.

6. If a person who is directly affected by the proposed action wishes to express data, views and arguments orally or in writing at a public hearing, that person must make a written request for a public hearing and submit such request, along with any written comments to Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210, by facsimile (406)444-1970 or by electronic mail via the Internet to dphslegal@mt.gov no later than 5:00 p.m. on February 9, 2006.

7. If the Department of Public Health and Human Services receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of those who are directly affected by the proposed action, from the Administrative Rule Review Committee of the legislature, from a governmental agency or subdivision, or from an association having no less than 25 members who are directly affected, a hearing will be held at a later date and a notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 44 based on the 348 individuals, families and entities affected by rules covering CAHs, ASCs, neonatal intensive care centers and DRG hospitals.

/s/ Dawn Sliva
Rule Reviewer

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

Certified to the Secretary of State January 3, 2006.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule)	
I and amendment of ARM 2.5.201,)	
2.5.301, 2.5.302, 2.5.404, 2.5.406,	)	CORRECTED NOTICE OF
2.5.407, 2.5.408, 2.5.503, 2.5.505,	)	AMENDMENT
2.5.601, 2.5.602, 2.5.603, and 2.5.702)	
concerning state procurement of supplies)	
and services and disposition and)	
disposal of surplus property)	

TO: All Concerned Persons

1. On August 28, 2005 the Montana Department of Administration published MAR Notice No. 2-2-342 regarding the proposed adoption and amendment of the above-stated rules at page 1316 of the 2005 Montana Administrative Register, Issue No. 14. On September 22, 2005, the department published an amended notice of proposed adoption and amendment (MAR Notice No. 2-2-365) at page 1709 of the 2005 Montana Administrative Register, Issue Number 18. On October 6, 2005, the department published the notice of adoption and amendment at page 1906 of the 2005 Montana Administrative Register, Issue Number 19.

2. The reason for the correction is that in ARM 2.5.601, sections were renumbered, but an internal reference was not amended to reflect that change. In addition, in ARM 2.5.602 a text addition was not properly shown and a reference to an MCA should have been changed to indicate a change made by the 2005 Legislature. The corrected rule amendments read as follows, stricken matter interlined, new matter underlined:

2.5.601 COMPETITIVE SEALED BIDS

(1) through (9) remain as amended.

(10) Nothing in this rule shall be deemed to permit contract award to a bidder submitting a higher quality item than that designated in the invitation for bid if such bidder is not also the lowest bidder as determined under ~~(8)~~(9).

(11) through (15) remain as amended.

AUTH: 18-4-221, MCA

IMP: 18-4-303, MCA

2.5.602 COMPETITIVE SEALED PROPOSALS

(1) through (3) remain as amended.

(4) An evaluation committee may be utilized to evaluate the proposals.

(5) and (6) remain as amended.

(7) After the time established for receipt of proposals, a procurement officer shall open the proposals and inspect the proposals for material not available for public inspection pursuant to 18-4-304 and 18-4-308, MCA. The procurement officer

will remove this material and then make the remainder of the proposal available for public inspection. Offerors submitting a proposal containing a claim to shield confidential information pursuant to 18-4-304(4)(a), (b) and (d), MCA, must include a statement that attests to the offeror's acceptance of the legal and financial responsibility for defending the claim. In addition, any claim to shield trade secret material must be made by an offeror's legal counsel using the affidavit form prescribed by the division.

(8) through (15) remain as amended.

AUTH: 18-4-221, MCA

IMP: 18-4-304, MCA

3. Replacement pages for the corrected notice of amendment were submitted to the Secretary of State on December 31, 2005.

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

By: /s/ Dal Smilie
Dal Smilie, Rule Reviewer

Certified to the Secretary of State January 3, 2006.

BEFORE THE DEPARTMENT OF TRANSPORTATION
AERONAUTICS DIVISION, BOARD OF AERONAUTICS
STATE OF MONTANA

In the matter of the adoption of new rules) NOTICE OF ADOPTION
I through XIII on the aeronautical grant)
and loan program and the pavement)
preservation grant program)

TO: All Concerned Persons

1. On November 10, 2005, the Department of Transportation, Board of Aeronautics, published MAR Notice No. 18-114 regarding the public hearing on the proposed adoption of new RULES I through XIII at page 2151 of the 2005 Montana Administrative Register, Issue Number 21.

2. The Board has adopted new RULE I (ARM 18.13.401); new RULE II (ARM 18.13.402); new RULE III (ARM 18.13.403); new RULE IV (ARM 18.13.404); new RULE V (ARM 18.13.405); new RULE VI (ARM 18.13.406); new RULE VII (ARM 18.13.407); new RULE VIII (ARM 18.13.408); new RULE IX (ARM 18.13.501); new RULE X (ARM 18.13.502); new RULE XI (ARM 18.13.503); new RULE XII (ARM 18.13.504); and, new RULE XIII (ARM 18.13.505) exactly as proposed.

3. The hearing was held on December 8, 2005. One written comment was received. The Board of Aeronautics has thoroughly considered the comment received. A summary of the comment received and the Board's response is as follows:

COMMENT NO. 1: One comment was received stating the proposed rules are needed, well written and address the program adequately except for an important omission. The comment stated the grant/loan assurance provision is needed.

RESPONSE: The Board stated that grant and loan assurances are reflective of the current legal obligations required by a contract administered by the Department of Transportation. These assurances may occasionally be revised per state or federal requirement. Because of this, the specific assurances are not spelled out within the text of the administrative rules and are considered part of the application.

BOARD OF AERONAUTICS
AERONAUTICS DIVISION
DEPARTMENT OF TRANSPORTATION

By: /s/ Jim Lynch
Director,
Dept. of Transportation

By: /s/ Tricia McKenna
Chair,
Board of Aeronautics

By: /s/ Lyle Manley
Rule Reviewer

Certified to the Secretary of State January 3, 2006.

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

In the matter of the amendment of) CORRECTED NOTICE OF
ARM 8.54.410 related to fees and ARM) AMENDMENT
8.54.802 related to basic requirements)

TO: All Concerned Persons

1. On October 6, 2005, the Board of Public Accountants (Board) published MAR Notice No. 8-54-41 regarding the proposed amendment of the above-stated rules at page 1864 of the 2005 Montana Administrative Register, issue no. 19. On December 22, 2005, the Board published the notice of amendment of ARM 8.54.410 and 8.54.802 at page 2671 of the 2005 Montana Administrative Register, issue no. 24.

2. In preparing replacement pages for the fourth quarter of 2005, it was discovered that ARM 8.54.802 was inadvertently numbered incorrectly in the original proposal. It was also discovered that when a change was made to ARM 8.54.410 in the notice of amendment that a period should have been taken out. The rules, as amended, read as follows, deleted matter interlined, new matter underlined:

8.54.410 FEE SCHEDULE (1) through (1)(j) remain as amended.

(k) Late fee for failure to timely file quarterly reports
by practice units under pre-issuance review: 100
(l) and (2) remain as amended.

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

IMP: 37-1-134, 37-50-204, 37-50-308, 37-50-314, 37-50-317, 37-50-323,
MCA

8.54.802 BASIC REQUIREMENT (1) and (2) remain as amended.

(4) and (5) remain as amended, but are renumbered (3) and (4).

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

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

3. The corrected replacement pages were submitted to the Secretary of State's office on December 30, 2005.

/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 January 3, 2006

BEFORE THE BOARD OF RADIOLOGIC TECHNOLOGISTS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment) CORRECTED NOTICE OF
of ARM 24.204.411, replacement) AMENDMENT
licenses and permits)

TO: All Concerned Persons

1. On July 14, 2005, the Board of Radiologic Technologists (Board) published MAR Notice No. 24-204-31 regarding the proposed amendment of the above-stated rule at page 1226 of the 2005 Montana Administrative Register, issue no. 13. On December 8, 2005, the Board published the notice of amendment of ARM 24.204.411 at page 2465 of the 2005 Montana Administrative Register, issue no. 23.

2. In preparing replacement pages for the fourth quarter of 2005, it was discovered that a comma was inadvertently left out of the original proposal and should have been stricken at that time. The rule, as amended, reads as follows, deleted matter interlined, new matter underlined:

24.204.411 REPLACEMENT LICENSES AND PERMITS

(1) Licensees and permit holders shall immediately notify the board of lost, damaged, or destroyed licenses and permits.

AUTH: 37-1-131, 37-14-202, MCA
IMP: 37-14-305, 37-14-308, MCA

3. The corrected replacement page was submitted to the Secretary of State's office on December 30, 2005.

/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 January 3, 2006

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF AMENDMENT AND
ARM 42.2.304, 42.2.306, 42.2.501,	)	REPEAL
42.2.504, 42.2.505, 42.2.510,)	
42.2.511, 42.2.613, 42.2.621,)	
42.15.314, 42.15.315, 42.15.320,)	
42.23.605, and repeal of ARM)	
42.2.326, 42.2.327, 42.31.510, and)	
42.31.705 relating to general)	
department rules and penalty and)	
interest rules)	

TO: All Concerned Persons

1. On November 10, 2005, the department published MAR Notice No. 42-2-752 regarding the proposed amendment and repeal of the above-stated rules relating to general department rules and rules that address various penalties and interest for various tax types administered by the department at page 2198 of the 2005 Montana Administrative Register, issue no. 21.

2. A public hearing was held on November 30, 2005, to consider the proposed amendment and repeal. Webb Brown, Montana Chamber of Commerce, appeared at the hearing but did not testify. No written comments were received.

3. Upon further review of the rules, the department has determined that additional amendments to the rules are required. Therefore, the department further amends ARM 42.2.304 to correct internal subsection references, ARM 42.2.510 to delete (10) and the flow chart that goes with that section, and ARM 42.2.511 to correct internal references to names of department forms that were inadvertently missed when the proposal notice was prepared. Further amendment is necessary for ARM 42.2.511 to delete (10) and the flow chart that goes with that section.

42.2.304 DEFINITIONS (1) through (36)(a) remain as proposed.

(b) acreages that would meet the definition of contiguous contained in ~~(10)~~ (11) were the acreages not separated by one or more of the following features only:

(i) through (39) remain as proposed.

(50) "Residence" means the same as ~~(14)~~(19).

(51) through (60) remain as proposed.

AUTH: 15-1-201, 15-30-305, 15-31-501, 16-1-303, 16-10-104, and 16-11-103, MCA

IMP: 15-1-102, 15-1-601, 15-30-101, 15-30-105, 15-30-131, 15-30-1101, 15-30-1102, 15-30-1111, 15-30-1112, 15-30-1113, 15-30-1121, and 15-31-101, and Title 15, chapter 31, part 3, MCA

42.2.510 REVIEW OF STATEMENT OF ACCOUNT NOTICES (1) through (9) remain as proposed.

~~(10) The following flow chart shows the process beginning with the initial notice provided to the customer: (The SOA appeal process flow chart on page 42-257 of the Administrative Rules of Montana is also deleted.)~~

AUTH: 15-1-201, 15-1-211, 15-1-701, 15-31-501, 15-35-122, and 15-36-322, MCA

IMP: 15-1-211, 15-1-406, 15-8-601, 15-23-102, 15-23-107, 15-30-142, 15-30-257, 15-31-503, 15-37-109, 15-37-114, 15-38-108, and 15-39-110, MCA

42.2.511 REVIEW OF CENTRALLY ASSESSED PROPERTY APPRAISALS

(1) remains as proposed.

(2) Appraisal reports will be mailed to the customer as provided in ARM 42.22.115. The appraisal report shall advise the customer of the requirement to file a request for informal review form ~~(AB-26)~~ APLS101F or a written objection to the appraisal report within 15 days of the date of the appraisal report; and that failure to file a written objection within the 15 days shall be deemed an admission that the customer agrees with the appraisal is correct and final. If the customer agrees with the appraisal, no response is required and the department will advise the local department field office and the customer by issuing an assessment notice on or before July 1 of the year of assessment that the appraisal is final.

(3) remains as proposed.

(4) Mutual extensions may be granted if both parties agree. The parties may extend the time periods in this rule after the initial objection has been filed by completing an extension form ~~(DOR form 577)~~ or by detailed letter.

(6) through (9) remain as proposed.

~~(10) The following flow chart shows the process beginning with the appraisal report being provided to the customer: (The appraisal report and assessment notice appeal process flow chart on page 42-260 of the Administrative Rules of Montana is also deleted.)~~

AUTH: 15-1-201, 15-1-211, and 15-23-108, MCA

IMP: 15-1-211, 15-1-406, 15-8-601, 15-23-102, and 15-23-107, MCA

4. Therefore, the department amends ARM 42.2.306, 42.2.501, 42.2.504, 42.2.505, 42.2.613, 42.2.621, 42.15.314, 42.15.315, 42.15.320, 42.23.605 and repeals ARM 42.2.326, 42.2.327, 42.31.510, and 42.31.705 as proposed and amends ARM 42.2.304, 42.2.510, and 42.2.511 as shown above.

5. An electronic copy of this Adoption Notice is available through the Department's site on the World Wide Web at www.mt.gov/revenue, under "for your reference"; "DOR administrative rules"; and "upcoming events and proposed rule changes." The Department strives to make the electronic copy of this Adoption 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 website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems.

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

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

Certified to Secretary of State January 3, 2006

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I (ARM 42.20.117) relating to manufactured homes and real property taxes) NOTICE OF ADOPTION
)
)
)

TO: All Concerned Persons

1. On November 23, 2005, the department published MAR Notice No. 42-2-753 regarding the proposed adoption of the above-stated rule relating to manufactured homes and real property taxes at page 2326 of the 2005 Montana Administrative Register, issue no. 22.

2. A public hearing was held on December 19, 2005, to consider the proposed adoption. No one appeared at the hearing to testify and no written comments were received.

3. The department adopts New Rule I (ARM 42.20.117) as proposed.

4. An electronic copy of this Adoption Notice is available through the Department's site on the World Wide Web at www.mt.gov/revenue, under "for your reference"; "DOR administrative rules"; and "upcoming events and proposed rule changes." The Department strives to make the electronic copy of this Adoption 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 website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems.

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

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

Certified to Secretary of State January 3, 2006

CITIES AND TOWNS - Public comment and participation;
LOCAL GOVERNMENT - Public comment and participation;
MUNICIPAL GOVERNMENT - Public comment and participation;
OPEN MEETINGS - Public comment and participation in municipal government;
STATUTORY CONSTRUCTION - Construing statutes incorporated by reference, construing plain meaning of statutes;
MONTANA CODE ANNOTATED - Title 2, chapter 3; sections 1-2-101, -102 to -108, 2-3-101 to -104, -101, -102, (1), -103, (1), (b), -108, -111 to -114, -111, -112, -201, -202, -203, (3), 7-1-4141 to 4143, -4141, -4142, -4143;
MONTANA CONSTITUTION - Article II, sections 8 and 9;
OPINIONS OF THE ATTORNEY GENERAL - 47 Op. Att'y Gen. No. 13 (1998), 42 Op. Att'y Gen. No. 51 (1988).

- HELD:
1. A city council must provide an agenda item for public comment on non-agenda matters only for issues that are of significant interest to the public. Public notice is required for any meeting of the council.
 2. A city council must provide an agenda item for public comment on non-agenda matters of significant interest to the public even when the council meets in informal work sessions where no action may be taken.
 3. The right of the public to comment at a meeting of a city council on non-agenda items extends to matters that may involve an interest in individual privacy. The presiding officer retains the power to close the meeting to other members of the public upon a determination that the right of individual privacy clearly outweighs the merits of public disclosure.
 4. Montana Code Annotated tit. 2, ch. 3 applies to all advisory boards, commissions and committees of the city council subject to the limitation that such entities need not permit public comment on matters that are not of significant interest to the public.
 5. Only an item that is not of significant public interest or is otherwise exempt from the public participation requirements of Mont. Code Ann. § 2-3-103 may be added to the city council agenda and acted upon at the same meeting.

December 30, 2005

Mr. Brent Brooks
City Attorney
City Attorney's Office
P.O. Box 1178
Billings, Montana 59103-1178

Dear Mr. Brooks:

You have requested my opinion on a number of questions relating to the public notice and comment provisions of Mont. Code Ann. § 2-3-103 as amended in 2003 by House Bill 94 ("HB 94"). Your particular questions relate to the application of the amended statute to city councils, committees and commissions of the same. Specifically you have asked:

1. Is public notice with public comment required only for city council decisions that are of significant interest to the public?
2. Is public comment required when the council meets in informal work sessions where no action is taken?
3. What are "public matters" upon which the public may comment?
4. Does House Bill 94 apply to all advisory boards and commissions of a city council?
5. Can an item be added to a city council agenda at the time of the meeting and acted upon at the same meeting?

The analysis of these questions requires an interpretation and understanding of the complex relationship between the "Right to Know" provision of our Constitution, article II, section 9; the section that defines a citizen's "Right of Participation", article II, section 8; and the statutes implementing these constitutional provisions. Both constitutional provisions recognize and describe the public's right to be involved in the workings of state and local government. But the scope of the public's right is differently defined.

The constitutional language suggests the complexity of the relationship between these two rights. The "right to know" gives the public the right to "examine documents" and "to observe the deliberations of all public bodies or agencies of state government and its subdivisions except in cases in which the demand of individual privacy clearly exceeds the merits of public disclosure." Mont. Const. art. II, § 9 (emphasis added). The constitutional "right of participation" is more limited. The public has a right to "expect governmental agencies to afford such reasonable opportunity for citizen participation in the operation of the agencies prior to the final decision as may be provided by law." Mont. Const. art. II, § 8 (emphasis added).

The use of the phrase "all public bodies or agencies of state government and its subdivisions" in section 9 and the narrower term "governmental agencies" in section 8 has significance for the determination of the answers to your questions. Section 9 gives the public a right to know that applies to every public body in the state. Subject to the individual privacy exception, the public has a right to observe the deliberations and examine the documents of every public body. In contrast, section 8 defines the constitutional right to participation that applies to a much narrower group of public entities. Under this section the public has a right to participation only in the operation of "agencies" and only "as may be provided by law."

The constitutional history of section 8 demonstrates that the drafters of our constitution intended that the term "governmental agencies" have a narrow meaning. Delegate Wade Dahood, chair of the Bill of Rights Committee, described the purpose of section 8 as follows: "What is intended by Section 8 is that any rules and regulations that shall be made and formulated and announced by any governmental agency . . . shall not be made until some notice is given so that the citizen will have a reasonable opportunity to participate . . ." II 1972 Mont. Const. Conv. 1655 (1972). Additional questioning of delegate Dahood followed:

CHAIRMAN GRAYBILL: His question, Mr. Dahood, was, is the city council a governmental agency?

DELEGATE DAHOOD: The city council, in my judgment, would not be the type of governmental agency that's contemplated by Section 8.

DELEGATE HELIKER: May I ask--inquire further? Then you--this applies only to appointive agencies?

DELEGATE DAHOOD: Basically, that's true, because a city council, for example, just like a Legislature, is not going to act without regard to the--to citizen participation. They are not going to do it; but the governmental agencies that are not elected, that are appointed, that function to carry out the laws that are passed, are the ones, of course that will enact rules and regulations and make the decisions that affect people with the effect of law, without, sometimes, having any regard for citizen participation.

Id. at 1667.

It is my opinion that the constitutional right to participate found in article II, section 8 does not apply to local elected bodies such as a city council. However, it does not follow that the public has no right to participate in city council matters. Section 8 is not self-executing and the legislature has provided for these rights.

In 1975 the legislature passed House Bill 396, "An act to implement Article II, section 8 of the 1972 Constitution by providing guidelines for citizen participation in the

operations of government agencies." This law, now codified at Mont. Code Ann. § 2-3-101 to -104, and -111 to -114, gave legislative substance to the public right of participation. The act, however, continued to define the right of public participation only with reference to state and local "agencies." Since the law was intended to implement article II, section 8, it is reasonable to assume that the legislature intended to use the term as it was used by the drafters of the Constitution.

The legislature brought the right of public participation to the city councils of the state in 1979 with the enactment of Senate Bill 503. This bill was a general municipal government act of thirty-one separate sections. Sections 17, 18 and 19 extended a statutory right to the public to participate in meetings of municipal governing bodies, boards, authorities, and committees. These sections are codified at Mont. Code Ann. § 7-1-4141 to -4143 and provide as follows:

7-1-4141. Public Meeting Required. (1) All meetings of municipal governing bodies, boards, authorities, committees, or other entities created by a municipality shall be open to the public except as provided in 2-3-203.

. . . .

7-1-4142. Public Participation. Each municipal governing body, committee, board, authority or entity, in accordance with Article II, section 8 of the Montana Constitution and Title 2, chapter 3, shall develop procedures for permitting and encouraging the public to participate in decisions that are of significant interest to the public.

7-1-4143. Participation. In any meeting required to be open to the public, the governing body, committee, board, authority or entity shall adopt rules for conducting the meeting, affording citizens a reasonable opportunity to participate prior to the final decision.

The above analysis leads to the conclusion that the framers of the constitution left to the legislature the crafting of any right of public participation in the activities of a city council. It addressed the issue in 1979 with the adoption of the provisions quoted in the preceding paragraph.

Before the passage of HB 94, the public right of participation before both the "agencies" described in title 2 and the "municipal entities" of title 7 was limited to those matters of "significant interest to the public."

The passage of House Bill 94 in 2003 added a new dimension to the rights of public participation. The legislation set forth a right to comment on non-agenda issues that is applicable to "any public matter," regardless of the level of interest to the public. Montana Code Annotated § 2-3-103 reads as follows:

(a) Each agency shall develop procedures for permitting and encouraging the public to participate in agency decisions that are of significant interest to the public. The procedures must ensure adequate notice and assist public participation before a final action is taken that is of significant interest to the public. The agenda for a meeting, as defined in 2-3-202, must include an item allowing public comment on any public matter that is not on the agenda of the meeting and that is within the jurisdiction of the agency conducting the meeting. However, the agency may not take action on any matter discussed unless specific notice of that matter is included on an agenda and public comment has been allowed on that matter. Public comment received at a meeting must be incorporated into the official minutes of the meeting, as provided in 2-3-212.

(b) For purposes of this section, "public matter" does not include contested case and other adjudicative proceeding.

(House Bill 94 amendments underscored.)

The public participation procedures for city councils must be "developed" "in accordance with Title 2, chapter 3." Mont. Code Ann. § 7-1-4142. When reference is made in a statute to another part of the Montana Code, it is presumed to refer to that part of the code "as it may be amended or changed from time to time." Such "presumption may be overcome only by a clear showing that a subsequent amendment or change . . . is inconsistent with the continued purpose or meaning of the section referring to it." Mont. Code Ann. § 1-2-108. To the extent possible, these related statutes must be harmonized to give effect to each. Gregg v Whitefish City Council, 2004 MT 262, ¶ 38, 323 Mont. 109, 99 P3d 151.

With this framework in mind, I turn to your questions.

I.

As a public body, the city council must open its meetings to the public to meet the requirements of article II, section 9 of the Constitution and Mont. Code Ann. §§ 2-3-201 and 7-1-4141. A meeting is not effectively open without public notice of the meeting. "Montana law requires that public notice be given of meetings subject to the requirements of the open meeting statutes. Without public notice, an 'open' meeting is open in theory only, not in practice." Common Cause of Montana v. Statutory Comm. to Nominate Candidates for Comm'r of Political Practices, 263 Mont. 324, 331, 868 P.2d 604, 609 (1994) (citation omitted). These constitutionally mandated open meeting requirements are imposed on all public bodies irrespective of whether the business being conducted by the body is "of significant interest to the public." Public notice of any meeting of the city council or its committees is therefore a requirement of the law of Montana.

Under the Supreme Court's decision in Common Cause, the right to notice that a meeting will be held is an element of the constitutional right to know under article II,

section 9. As discussed in Part V, infra, it does not follow, however, that the public has a right to advance notice of matters that will be considered during a meeting that are not of significant interest to the public.

The public's right to participate in city council requires only that procedures be developed to permit public participation in issues that are of "significant public interest." Mont. Code Ann. § 7-1-4142. It does not require those procedures to include a right to participate on issues that are not of "significant public interest." The statute provides that these procedures shall be developed in accordance with title 2, chapter 3. That reference is presumed to incorporate any amendments. But the presumption is defeated when the referenced code is amended so that it is "inconsistent with the continued purpose or meaning of" the statute. Mont. Code Ann. § 1-2-108. Only those requirements of HB 94 that are consistent with Mont. Code Ann. § 7-1-4142 may be incorporated by reference.

I conclude that when HB 94 requires an agenda item for public comment on non-agenda matters, this mandate is imposed upon a city council only to the extent that the comments are directed to matters of significant interest to the public. The express purpose of Mont. Code Ann. § 7-1-4142 is to permit and encourage "the public to participate in decisions that are of significant interest to the public." House Bill 94 is inconsistent with the purpose of Mont. Code Ann. § 7-1-4142 to the extent that it would require the council to allow public comment on matters that are not of significant interest to the public. However, related statutes must be harmonized to the extent possible, as enunciated by the Montana Supreme Court in Gregg. Therefore the city council must provide an agenda item for public comment on non-agenda, public matters. But it is not required to take public comment on matters that are not of significant interest to the public.

II.

Your second question deals with the application of HB 94 to "informal meetings." This also requires consideration of the meaning of Mont. Code Ann. § 7-1-4142 after the amendment of Mont. Code Ann. § 2-3-103 by House Bill 94.

The answer to your question turns on the definition of "meeting" in Mont. Code Ann. § 2-3-103. This section defines "meeting" with reference to Mont. Code Ann. § 2-3-202. Section 202 states that a "meeting" is "the convening of a quorum of the constituent membership of a public agency or association . . . to hear, discuss, or act upon a matter over which the agency has supervision, control, jurisdiction, or advisory power." (Emphasis added.) Our open meeting law does not require action or the possibility of action before the deliberations of a public body must be open to the public. It is sufficient that the body will "hear" or "discuss" a public issue. Common Cause of Montana, 263 Mont. at 331. When the council meets in informal work sessions where no action is taken, it is nevertheless a "meeting" within the definition of the statute. See 47 Op. Att'y. Gen. No. 13 (1998) ("Informal governmental action, which includes discussions and information-gathering, must be

considered a meeting open to the public . . ."); cf. 42 Op. Att'y Gen. No. 51 (1988) ("Use of 'deliberations' and 'discussions' in the context of open meeting laws connotes collective discussion and collective acquisition of information among the 'constituent membership' of the agency.") (Emphasis added.)

Therefore, the informal work sessions of the council must be considered "meetings" to which the public participation provisions apply. Consistent with Part I, the council must include on the agenda for its informal meetings a period for public comment on non-agenda items of significant interest to the public that are within the jurisdiction of the council. The sessions need not permit public comment on non-agenda matters that are not of significant interest to the public.

In addition you have asked whether public notice and comment on agenda items at the informal working sessions is required. Nothing in Mont. Code Ann. §§ 2-3-103, 7-1-4142, -4143 or any other statute of which I am aware, requires public comment on agenda items in these sessions. The language of Mont. Code Ann. § 2-3-103 only requires procedures to "ensure adequate notice and assist public participation before a final agency action." (Emphasis added.) Furthermore, Mont. Code Ann. § 7-1-4143 requires the council to adopt procedures "affording citizens a reasonable opportunity to participate prior to the final decision." The Billings ordinance specifying the rules of procedure for work sessions, BMCC § 2-222, states that "no motions will be entertained nor votes taken." No action, let alone final action can be taken at the work sessions. If the council affords a reasonable opportunity for public participation at a later date, but before final action, the mandate of the statute has been met.

III.

House Bill 94 contains two limitations on the types of "public matters" subject to comment. A public matter "does not include contested case and other adjudicative proceedings." Mont. Code Ann. § 2-3-103(1)(b). In addition, the public participation rights do not extend to the exceptions listed in Mont. Code Ann. § 2-3-112 (emergency situations, ministerial acts or decisions required to protect the interest of the agency). You have suggested that there should be an additional limitation for matters involving individual privacy.

You correctly note that article II, section 9 of our Constitution limits the right to know and observe governmental proceedings where "the demand of individual privacy clearly exceeds the merits of public disclosure." You suggest that the legislative history supports the conclusion that public comment should be limited by this privacy right. The minutes of the Senate Committee on Local Government, February 6, 2003, record the following exchange between Senator Mangan and the sponsor, Rep. Lawson:

Senator Mangan asked about the cases they had in Great Falls where a student is facing disciplinary action. Are there rules or guidelines in place for this type of privacy interest?

Representative Lawson replied that was why the word public was inserted in committee. Originally it was left open with any matter and that is why the word public was inserted to take care of issues just like that.

The consideration of your question starts with the application of traditional rules of statutory interpretation. "Where the language is clear and unambiguous, no further interpretation is required." State v. Burkhart, 2004 MT 372, ¶ 47, 325 Mont. 27, 103 P.3d 1037. (Emphasis added.) In such cases, resort to "any other means of interpretation" is improper. Softich v. Baker, 171 Mont. 135, 136-37, 556 P.2d 902 (1976). For purposes of implementing Mont. Code Ann. § 2-3-103, House Bill 94 specifically excluded from the definition of "public matter" any "contested case or other adjudicative proceeding." Mont. Code Ann. § 2-3-103(1)(b). The bill included no other exceptions. In construing a statute one may not "insert what has been omitted or omit what has been inserted." Mont. Code Ann. § 1-2-101. Therefore, recognition of a broad exception for any matter involving an individual privacy right is inappropriate.

However, in 47 Op. Att'y Gen. No. 13 (1998), Attorney General Mazurek addressed the question of the meaning of the phrase "significant interest to the public" in a manner that provides some guidance here. In that opinion, after noting the absence of any helpful authority, General Mazurek opined that "any non-ministerial decision or action of a county commission which has meaning to or affects a portion of the community requires notice to the public and opportunity for the public to participate in the decision making process." This definition may in fact address the issue with which Senator Mangan had concern.

Although there might be some exceptional cases to the contrary, disciplining a student would generally not be a subject that has meaning to or affects a portion of the community. Rather, such a decision is generally a matter of interest only to the involved students, parents and school official. Generally, it would be a private matter and not a permissible subject for comment. But a disciplinary or other issue with a teacher or other employee might be a "public matter," affecting the whole community, even though its discussion or consideration would lead to subjects about which the teacher or employee would have a legitimate privacy right. Consistent with this view, in 47 Op. Att'y Gen. No. 13 (1998), General Mazurek commented favorably on a case in which the Montana First Judicial District Court held that extension of a school superintendent's contract was a matter of significant interest to the public, and on similar holdings in two Texas cases involving termination of contracts of a school superintendent and a police chief.

This does not mean that the public comment period provides a license for members of the public to violate the privacy rights of other persons. The open meeting laws

recognize that the chair of a meeting may close it to the public if the "discussion" touches matters of individual privacy and the presiding officer determines that the interest of individual privacy clearly outweighs the public's right to know. Mont. Code Ann. § 2-3-203(3), incorporated by reference in Mont. Code Ann. § 7-1-4141. If a member of the public ventures into an area in which the presiding officer makes such a finding, the officer may exclude other members of the public from the meeting and hear the comment in closed session under these provisions.

IV.

You have suggested that advisory boards, commissions and committees are not "agencies" as defined by Mont. Code Ann. § 2-3-102, and because they are not "agencies" they are not subject to the new requirements imposed by House Bill 94. I disagree.

As noted above, the right to participate under article II, section 8, is not self-executing but exists only as provided by law. Mont. Code Ann. § 7-1-4142 is quite clear in extending the right to participate to "each municipal governing body, committee, board, authority or entity, in accordance with Article II, section 8 of the Montana constitution and Title 2, chapter 3." Thus it is my opinion that any "municipal entity" is subject to the right of the public to participate in any action that is of significant interest to the public. Under the analysis in Part I, that would extend to such entities the obligation to comply with Mont. Code Ann. tit. 2, ch. 3 to the extent of any public comments directed at matters of significant public interest.

V.

You have asked if an item can be added to the city council agenda at the time of the meeting and acted upon at the same meeting. The answer to this question is suggested by the principles applied in part I above.

"The procedures for assisting public participation must include a method of affording interested persons reasonable opportunity to submit data, views or arguments orally or in written form, prior to making a final decision that is of significant interest to the public." Mont. Code Ann. § 2-3-111. As noted above, "adequate notice" is required by Mont. Code Ann. § 2-3-103. Thus, if an issue of significant interest is discussed in the public comment period and the council wishes to take action on the issue, the council must place the matter on the agenda for a subsequent meeting and provide adequate notice. Through this procedure, the public's right to participate will be protected.

If the council permits discussion on an issue that has no significant interest to the public and action is advisable, the council may act upon it immediately. The council is not required by Mont. Code Ann. § 7-1-4142 to place any matter on a future agenda or provide for public comment on any subject that was discussed if that

matter has no "significant public interest." Nor is it required to place items on a future agenda that are exempted from the public participation requirements by Mont. Code Ann. § 2-3-112.

You specifically inquired about "Council Initiatives." Council initiatives are directions to staff on legislative or staff action to be considered at a future city council meeting. Such directions appear to be procedural and do not constitute a "final decision" on the substance of an issue. As noted, Mont. Code Ann. § 2-3-112 specifically exempts ministerial acts from the notice and public participation requirements. Moreover, Mont. Code Ann. § 7-1-4143 requires that the citizens shall be afforded a "reasonable opportunity to participate prior to the final decision." Assuming that the public will be given such an opportunity at a later date, then the initiative suggestions need not be listed on the agenda.

THEREFORE, IT IS MY OPINION:

1. A city council must provide an agenda item for public comment on non-agenda matters only for issues that are of significant interest to the public. Public notice is required for any meeting of the council.
2. A city council must provide an agenda item for public comment on non-agenda matters of significant interest to the public even when the council meets in informal work sessions where no action may be taken.
3. The right of the public to comment at a meeting of a city council on non-agenda items extends to matters that may involve an interest in individual privacy. The presiding officer retains the power to close the meeting to other members of the public upon a determination that the right of individual privacy clearly outweighs the merits of public disclosure.
4. Montana Code Annotated tit. 2, ch. 3 applies to all advisory boards, commissions and committees of the city council subject to the limitation that such entities need not permit public comment on matters that are not of significant interest to the public.
5. Only an item that is not of significant public interest or is otherwise exempt from the public participation requirements of Mont. Code Ann. § 2-3-103 may be added to the city council agenda and acted upon at the same meeting.

Very truly yours,

/s/ Mike McGrath

MIKE McGRATH
Attorney General

mm/je/jym

NOTICE OF FUNCTION OF ADMINISTRATIVE RULE REVIEW COMMITTEE

Interim Committees and the Environmental Quality Council

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

Economic Affairs Interim Committee:

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

Education and Local Government Interim Committee:

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

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

- Department of Public Health and Human Services.

Law and Justice Interim Committee:

- Department of Corrections; and
- Department of Justice.

Energy and Telecommunications Interim Committee:

- Department of Public Service Regulation.

Revenue and Transportation Interim Committee:

- Department of Revenue; and
- Department of Transportation.

State Administration and Veterans' Affairs Interim Committee:

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

Environmental Quality Council:

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

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

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

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

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

Montana Administrative Register (MAR) 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 September 30, 2005. This table includes those rules adopted during the period September 1, 2005 through December 31, 2005 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, however, include the contents of this issue of the Montana Administrative Register (MAR).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through September 30, 2005, 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 2004 and 2005 Montana Administrative Registers.

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