

# MONTANA ADMINISTRATIVE REGISTER

## ISSUE NO. 14

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 The Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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

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BEFORE THE DEPARTMENT OF ADMINISTRATION  
OF THE STATE OF MONTANA

In the matter of the proposed ) NOTICE OF PUBLIC HEARING  
adoption of NEW RULE I pertaining ) ON PROPOSED ADOPTION  
to retention of credit union records )

TO: All Concerned Persons

1. On August 17, 2006, at 10:30 a.m., a public hearing will be held in Room 342 of the Park Avenue Building, 301 S. Park, Helena, Montana, to consider the proposed adoption of the above-stated rule.

2. The Department of Administration, Division of Banking and Financial Institutions, will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice. If you require an accommodation, contact the Division of Banking and Financial Institutions no later than 5:00 p.m. on August 11, 2006, to advise us of the nature of the accommodation that you need. Please contact Christopher Romano, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; telephone (406) 841-2928; TDD (406) 444-1421; facsimile (406) 841-2930; e-mail to cromano@mt.gov.

3. The proposed new rule provides as follows:

NEW RULE I RETENTION OF CREDIT UNION RECORDS (1) The schedule Credit Union Records Publication Appendix "A" establishes the minimum period for retention of credit union records. Credit Union Records Publication Appendix "A" is maintained by the Commissioner of Banking and Financial Institutions, and may be updated at regular intervals not more than once a year by the commissioner. The July 27, 2006, edition of the Credit Union Records Publication Appendix "A" is incorporated by reference as part of this rule. A copy of this document can be obtained from the Division of Banking and Financial Institutions, Department of Administration, 301 South Park, P.O. Box 200546, Helena, MT 59620-0546.

(2) When a bank microfilms, photographs, uses other electronic or computer-generated data records in the regular course of business, the retention period of the microfilm, photographs, electronic, or computer-generated data must be the same as specified in the Credit Union Records Publication Appendix "A".

(3) Credit unions must comply with all federal laws and regulations requiring specific retention periods for the records enumerated in those laws or regulations. In the event that a federal law or regulation conflicts with a retention period contained in Credit Union Records Publication Appendix "A", a credit union must comply with whichever retention period is longer. Credit unions must comply with other applicable state laws governing retention of personnel records, corporation records, etc.

(4) If a credit union does not maintain records set forth in Credit Union Records Publication Appendix "A", but maintains similar records with equivalent information, the credit union's records must be retained for the time specified within Credit Union Records Publication Appendix "A" as to the equivalent records.

(5) Records not covered by this rule are to be retained for a period of time determined appropriate by the credit union's board of directors. Such retention periods determined appropriate shall be noted as a permanent part of the board's minutes.

AUTH: 32-3-201, MCA

IMP: 32-3-204, MCA

REASON: Section 32-3-204, MCA, allows the department to adopt rules which establish how a credit union must maintain its records. New Rule I is needed to clarify the guidelines for retaining records. This new rule sets forth specific retention periods in Credit Union Records Publication Appendix "A". In addition, New Rule I also sets forth standards when there are differences in the credit union retention periods specified in Appendix "A" and federal law, when there are similar records to what is found in Appendix "A", and when Appendix "A" does not address certain records maintained by credit unions. The division does not anticipate any financial impact from the proposed rules. There are currently 12 state-chartered credit unions in Montana.

4. Concerned persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Mark Prichard, Legal Counsel, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; faxed to the office at (406) 841-2930; or e-mailed to [maprichard@mt.gov](mailto:maprichard@mt.gov), and must be received no later than August 28, 2006.

5. Mark Prichard, Legal Counsel, Division of Banking and Financial Institutions, has been designated to preside over and conduct the hearing.

6. An electronic copy of this Notice of Proposed Adoption is available through the department's site on the World Wide Web at <http://www.banking.mt.gov>, under "Administrative Rule Notices." 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 Division of Banking and Financial Institutions maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this division. Persons who wish to have their name added to the mailing list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding division rulemaking actions. Such written requests may be mailed or delivered to Christopher Romano, Division of Banking and Financial Institutions, 301 S. Park, Ste. 316, P.O. Box 200546, Helena, Montana 59620-0546; faxed to the office at (406) 841-2930; e-mailed to cromano@mt.gov; or may be made by completing a request form at any rules hearing held by the Division of Banking and Financial Institutions.

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

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

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

Certified to the Secretary of State July 17, 2006.

BEFORE THE DEPARTMENT OF ADMINISTRATION  
OF THE STATE OF MONTANA

In the matter of the proposed ) NOTICE OF PUBLIC HEARING  
amendment of ARM 2.59.111 pertaining ) ON PROPOSED AMENDMENT  
to retention of bank records )

TO: All Concerned Persons

1. On August 17, 2006, at 9:00 a.m., a public hearing will be held in Room 342 of the Park Avenue Building, 301 S. Park, Helena, Montana, to consider the proposed amendment of the above-stated rule.

2. The Department of Administration, Division of Banking and Financial Institutions, will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice. If you require an accommodation, contact the Division of Banking and Financial Institutions no later than 5:00 p.m. on August 11, 2006, to advise us of the nature of the accommodation that you need. Please contact Christopher Romano, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; telephone (406) 841-2928; TDD (406) 444-1421; facsimile (406) 841-2930; e-mail to cromano@mt.gov.

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

2.59.111 RETENTION OF BANK RECORDS (1) ~~The There exists a~~ schedule ~~known as~~ Bank Records Publication Appendix "A" ~~that~~ establishes the minimum period for retention of bank records other than those specified in 32-1-491, MCA. Bank Records Publication Appendix "A" is maintained by the Commissioner of Banking and Financial Institutions, and may be updated at regular intervals not more than once a year ~~yearly~~ by the commissioner. The July 27, 2006 edition of the Bank Records Publication Appendix "A" ~~is henceforth~~ incorporated by reference as part of this rule. A copy of ~~the most recent edition of Bank Records Publication Appendix "A"~~ this document can be obtained from the Division of Banking and Financial Institutions, Department of Administration, ~~846 Front Street~~ 301 South Park, P.O. Box 200546, Helena, MT 59620-0546.

(2) When a bank microfilms, or photographs, or uses other electronic or computer-generated data records in the regular course of business as permitted by 32-1-492 through 32-1-494, MCA, the retention period of the microfilm, ~~or~~ photographs, electronic, or computer-generated data must be the same as specified in the Bank Records Publication Appendix "A" ~~below~~.

(3) Banks must comply with all federal laws and regulations requiring specific retention periods for the records enumerated in those laws or regulations. In the event that a federal law or regulation conflicts with a retention period contained in Bank Records Publication Appendix "A", a bank must comply with whichever retention period is longer. Banks must comply with ~~All other applicable~~ state laws



governing retention of personnel records, corporation records, etc. ~~must be complied with.~~

(3) and (4) remain the same but are renumbered (4) and (5).

AUTH: 32-1-218, MCA

IMP: 32-1-218, 32-1-491, 32-9-492, MCA

REASON: Section 32-3-204, MCA, allows the department to adopt rules which establish standards for bookkeeping and accounting as well as to set forth how banks maintain credit information, information in connection with assets, or information in connection with charged off items. In addition, 32-9-491, MCA, addresses record retention of customer accounts and allows the department to adopt rules for retention schedules of bank records other than those of customer accounts.

The division is proposing to amend the time period in which the Bank Records Publication Appendix "A" may be amended from yearly to regular intervals not more than once a year. The division is proposing this amendment because it may not be necessary to update this Appendix "A" in a given year. The division is proposing to amend this rule to include the electronic or computer-generated data as a method of records storage. This method of records storage has been recognized within the definitions of banks records and electronic storage within 32-1-492, MCA. The division is proposing to amend this rule in order to set forth standards when there are differences in the bank retention periods specified in Appendix "A" and federal law. It is reasonably necessary to propose this amendment to clarify the requirements for banks when there are differences in record retention guidelines set forth by state and federal laws. The division is also proposing to update Bank Records Publication Appendix "A". This Appendix has not been updated since March 31, 1995, and needs to be updated to reflect changes in the banking industry as well as new federal laws. The division does not anticipate any financial impact from the proposed rules. There are currently 65 state-chartered banks in Montana.

4. Concerned persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Mark Prichard, Legal Counsel, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; faxed to the office at (406) 841-2930; or e-mailed to [maprichard@mt.gov](mailto:maprichard@mt.gov), and must be received no later than August 28, 2006.

5. Mark Prichard, Legal Counsel, Division of Banking and Financial Institutions, has been designated to preside over and conduct the hearing.

6. An electronic copy of this Notice of Proposed Amendment is available through the department's site on the World Wide Web at <http://www.banking.mt.gov>, under "Administrative Rule Notices." 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 Division of Banking and Financial Institutions maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this division. Persons who wish to have their name added to the mailing list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding division rulemaking actions. Such written requests may be mailed or delivered to Christopher Romano, Division of Banking and Financial Institutions, 301 S. Park, Ste. 316, P.O. Box 200546, Helena, Montana 59620-0546; faxed to the office at (406) 841-2930; e-mailed to [cromano@mt.gov](mailto:cromano@mt.gov); or may be made by completing a request form at any rules hearing held by the Division of Banking and Financial Institutions.

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

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

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

Certified to the Secretary of State July 17, 2006.

BEFORE THE DEPARTMENT OF AGRICULTURE  
OF THE STATE OF MONTANA

In the matter of the proposed repeal of	)	NOTICE OF PROPOSED
ARM 4.11.1201 through 4.11.1209	)	REPEAL
relating to a specific agricultural ground	)	
water management plan	)	NO PUBLIC HEARING
	)	CONTEMPLATED

TO: All Concerned Persons

1. On August 26, 2006, the Montana Department of Agriculture proposes to repeal the above-stated rules.

2. The Department of Agriculture will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Agriculture no later than 5:00 p.m. on August 10, 2006, to advise us of the nature of the accommodation that you need. Please contact Gregory H. Ames at the Montana Department of Agriculture, 303 North Roberts, P.O. Box 200201, Helena, MT, 59620-0201; Phone: (406) 444-3144; Fax: (406) 444-5409; or e-mail: [agr@mt.gov](mailto:agr@mt.gov).

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

4.11.1201 GENERAL located at page 4-337, Administrative Rules of Montana.

AUTH: 80-15-217, MCA  
IMP: 80-15-214, MCA

4.11.1202 DEFINITIONS located at page 4-337, Administrative Rules of Montana.

AUTH: 80-15-217, MCA  
IMP: 80-15-217, MCA

4.11.1203 GEOGRAPHICAL AREA located at page 4-338, Administrative Rules of Montana.

AUTH: 80-15-217, MCA  
IMP: 80-15-212, MCA

4.11.1204 AGRICULTURAL CHEMICAL located at page 4-338.1, Administrative Rules of Montana.

AUTH: 80-15-217, MCA

IMP: 80-15-212, MCA

4.11.1205 IMAZAMETHABENZ METHYL STANDARD located at page 4-338.1, Administrative Rules of Montana.

AUTH: 80-15-217, MCA

IMP: 80-15-201, MCA

4.11.1206 CONTENTS located at page 4-338.1, Administrative Rules of Montana.

AUTH: 80-15-217, MCA

IMP: 80-15-214, MCA

4.11.1207 PUBLIC NOTIFICATION located at page 4-338.3, Administrative Rules of Montana.

AUTH: 80-15-217, MCA

IMP: 80-15-215, 80-15-218, MCA

4.11.1208 RECORD KEEPING located at page 4-338.3, Administrative Rules of Montana.

AUTH: 80-15-217, MCA

IMP: 80-15-214, 80-15-217, MCA

4.11.1209 EVALUATION located at page 4-338.4, Administrative Rules of Montana.

AUTH: 80-15-217, MCA

IMP: 80-15-217, MCA

REASON: ARM 4.11.1206 of the Administrative Rules of Montana describes the contents of the Specific Management Plan for Imazamethabenz methyl on the Fairfield Bench of Montana. The implementation of an educational program for users of Imazamethabenz methyl and integration of Best Available Technologies into farm practices on the bench have been achieved. An evaluation of ground and surface water monitoring data shows that the presence of Imazamethabenz methyl has been mitigated during the four years the Specific Management Plan has been in place on the bench. A survey of barley producers within the Specific Management Zone shows that the Specific Management Plan has improved knowledge of the relationship between Imazamethabenz methyl use and ground water quality, and that appropriate mitigation measures have been adopted by a majority of producers on the bench.

Research conducted on the bench during the past four years has improved understanding of the Fairfield Bench's geology, and of the strongly connected relationship of soil inputs and ground water contamination. Given this close

relationship, the Steering Committee for the Fairfield Bench will continue to meet so that educational outreach will be ongoing. The Montana Department of Agriculture will continue to monitor ground and surface water in the area as part of the statewide ground water monitoring network. The Voluntary Advisory Committee for the Fairfield Bench will also continue to meet to evaluate monitoring data and new technologies that will help continue the mitigation of all agricultural chemicals in the water on the Fairfield Bench.

The intention of the Specific Management Plan, to prevent or minimize the presence of Imazamethabenz methyl on the Fairfield Bench, has been fulfilled to the best extent possible given the geological conditions on the bench. Therefore, the regulatory presence of the Specific Management Plan is no longer necessary.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to Gregory H. Ames at the Montana Department of Agriculture, 303 North Roberts, P.O. Box 200201, Helena, MT, 59620-0201; Fax: (406) 444-5409; or e-mail: agr@mt.gov. Any comments must be received no later than August 24, 2006.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments they have to Gregory H. Ames at the Montana Department of Agriculture, 303 North Roberts, P.O. Box 200201, Helena, MT 59620-0201; Fax: (406) 444-5409; or e-mail: agr@mt.gov. A written request for hearing must be received no later than August 24, 2006.

6. If the department receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action; from the appropriate administrative rule review committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 36 persons based on 357 identified persons who reside within the specific management zone.

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

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

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

DEPARTMENT OF AGRICULTURE

/s/ Nancy K. Peterson  
Nancy K. Peterson, Director

/s/ Timothy J. Meloy  
Timothy J. Meloy, Attorney  
Rule Reviewer

Certified to the Secretary of State, July 17, 2006.

BEFORE THE BOARD OF PUBLIC EDUCATION  
OF THE STATE OF MONTANA

In the matter of the proposed ) NOTICE OF PUBLIC HEARING  
amendment of ARM 10.65.101 ) ON PROPOSED AMENDMENT  
relating to pupil instruction-related days )

TO: All Concerned Persons

1. On August 24, 2006, at 9:00 a.m. a public hearing will be held in the OCHE conference room, 46 North Last Chance Gulch, Helena, Montana, to consider the amendment of the above-stated rule.

2. The Board of Public Education will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Public Education no later than 5:00 p.m. on August 10, 2006, to advise us of the nature of the accommodation that you need. Please contact Steve Meloy, P.O. Box 200601, Helena, MT 59620-0601, telephone: (406) 444-6576, FAX: (406) 444-0847, e-mail: smeloy@bpe.montana.edu.

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

10.65.101 POLICY GOVERNING PUPIL INSTRUCTION-RELATED DAYS  
APPROVED FOR BASE FUNDING PROGRAM CALCULATIONS (1) A school which in any fiscal year was in session for at least ~~180 pupil instruction days and~~ provided the minimum aggregate hours required (20-1-301, MCA) may count for the year's foundation program a maximum of seven PIR days with a minimum of three of the days for instructional and professional development meetings or other appropriate in-service training. These seven PIR days in addition to ~~the required 180 pupil instruction days and~~ the minimum aggregate hours may be counted provided that such additional days did not include any time counted for pupil instruction as provided in 20-1-302, MCA and were used for one or more of the following purposes in accordance with the regulations hereby established:

(a) through (d) remain the same.

(e) A school district may count for the year's foundation program a total of not more than three and one-half days in addition to the ~~required 90 pupil instruction days and~~ the minimum aggregate hours required for kindergarten purposes, provided that such additional days were used for one or more of the above-named purposes.

AUTH: 20-2-121, 20-2-121, MCA

IMP: 20-1-304, MCA

Statement of Reasonable Necessity: The Board of Public Education has determined that it is reasonable and necessary to amend the above-stated rule to eliminate the

references to 180/90 pupil instruction days which requirement was eliminated by SB 170, 2005 Session Laws.

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

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 the Board of Public Education, P.O. Box 200601, Helena, Montana 59620-0601, or by e-mail to [smeloy@bpe.montana.edu](mailto:smeloy@bpe.montana.edu) and must be received no later than 5:00 p.m. on August 24, 2006.

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

7. The Board of Public Education maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding pupil instruction-related days or other school related rulemaking actions. Such written request may be mailed or delivered to Steve Meloy, P.O. Box 200601, Helena, Montana 59620-0601, faxed to the office at (406) 444-0847, by e-mail to [smeloy@bpe.montana.edu](mailto:smeloy@bpe.montana.edu), or may be made by completing a request form at any rules hearing held by the Board of Public Education.

8. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled. The requirements of 20-1-501, MCA, have been fulfilled. Copies of these rules have been sent to all tribal governments in Montana.

/s/ Dr. Kirk Miller  
Dr. Kirk Miller, Chairperson  
Board of Public Education

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

Certified to the Secretary of State July 17, 2006.



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

In the matter of the adoption of new ) NOTICE OF PUBLIC HEARING ON  
rules I, II, and III and the amendment ) PROPOSED ADOPTION AND  
of ARM 12.6.2205, 12.6.2210, ) AMENDMENT  
12.6.2215, and 12.6.2220 pertaining to )  
exotic species )

TO: All Concerned Persons

1. On August 16, 2006, at 7:00 pm, the Fish, Wildlife and Parks Commission (commission) will hold a public hearing at the Department of Fish, Wildlife and Parks, 1420 East Sixth Avenue, Helena, Montana to consider the adoption and amendment of the above-stated rules.

2. The commission will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the commission no later than 5:00 p.m. on August 10, 2006, to advise us of the nature of the accommodation that you need. Please contact Tim Feldner, P.O. Box 200701, Helena, Montana 59620-0701; telephone (406) 444-4039; fax (406) 444-4952; or e-mail tfeldner@mt.gov.

3. The proposed new rules provide as follows:

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

(a) exotic waterfowl in the family Anayidae that are not classified as prohibited.

(2) A person may possess the controlled fish species listed in (2)(a) and (b) without completion and approval of a department application. However, individuals possessing these species shall submit a completed reporting form to the department upon acquiring the fish and shall follow restrictions established in [NEW RULE III] regarding ponds where fish are held. The following fish are classified as controlled species:

(a) Koi – *Cyprinus carpio* (for use in outdoor ponds); and

(b) Goldfish – *Carassius avaratus* (for use in outdoor ponds).

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

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

NEW RULE II APPLICATION FOR A PERMIT TO POSSESS A CONTROLLED SPECIES (1) An applicant may be eligible for a controlled species permit if the applicant:

(a) is at least 18 years of age; and

(b) has not been convicted of any violation of exotic wildlife regulations, any offense involving the illegal commercialization of wildlife, or any offenses involving cruelty to animals, within three years of the date of application.

(2) To obtain a controlled species permit a person shall make written application to the department on forms provided by the department. The application must specify:

- (a) the applicant's name;
- (b) the applicant's date of birth;
- (c) the applicant's address;
- (d) the controlled species proposed to be kept or reared at the above address;
- (e) the type of facilities the applicant intends to use for confinement of the controlled species, including cage specifications; and
- (f) the source from which the applicant intends to acquire the controlled species.

(3) In order for an applicant to receive a permit, the applicant shall agree to comply with all permit conditions.

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

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

NEW RULE III REQUIREMENTS FOR CARE AND HOUSING OF EXOTIC WILDLIFE HELD IN CAPTIVITY (1) Exotic wildlife held in captivity must be treated in a humane manner and cannot be restrained with a chain, rope, or other holding device. Facilities for care of captive exotic wildlife must be maintained in a sanitary condition, be large enough to provide room for exercise, sturdy enough to prevent escape, and provide protection to the public. Food, water, and cover must be provided in sufficient quantity and quality to maintain the exotic wildlife in a healthy condition.

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

(3) All ponds containing controlled exotic wildlife must be registered with the department. Ponds used to hold controlled exotic wildlife (including koi and goldfish):

- (a) must not be larger than 400 square feet;
  - (b) must not be within the 100 year flood plain;
  - (c) must be at least 200 yards from any open water;
  - (d) must not receive diverted surface water; and
  - (e) must not have an effluent or discharge to surface water.
- (4) Adequate veterinary care must be provided to identify and minimize the spread of diseases. All exotic wildlife held in captivity must be in compliance with and subject to the current Compendium of Animal Rabies Prevention and Control.

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

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

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

12.6.2205 EXOTIC WILDLIFE: LIST OF NONCONTROLLED SPECIES

- (1) The following mammals are classified as noncontrolled species:
- (a) African pygmy hedgehog - *Atelerix albiventris* and *Atelerix algirus*;
  - (b) Wallaby (Bennets) - *Macropus rufogriseus*;
  - (c) Wallaby (Tamar) - *Macropus eugenii*; and
  - (d) Sugar gliders - *Petaurus breviceps*;
  - (e) Two toed sloth - *Choloepus didactylus*;
  - (f) Serval cat - *Leptailurus serval*;
  - (g) Jungle cat - *Felis chaus*; and
  - (h) Degus (bush tailed rat) - *Octodon degus*.

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

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

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

- (a) to provide annual reports to the department of births, deaths, sales, and purchases of any controlled species;
- (b) to provide a viable bio-security and emergency response plan to protect emergency personnel and the species involved;
- (c) to report the escape of any controlled species to the department within 24 hours of the escape and accept responsibility and liability for recapture costs;
- (d) to report any injuries to humans inflicted by the controlled species to local public health officials;
- (e) to report injuries inflicted by the exotic species on other animals to the Department of Livestock within 24 hours of infliction of the injury; and
- (f) to report injuries inflicted by the exotic species on wildlife to the department within 24 hours of infliction of the injury.

(2) The department may require additional conditions on a permit ~~A permit may be conditioned to protect Montana's native wildlife and plant species, livestock, horticultural, forestry, agricultural production, and human health and safety. A person must comply with all permit conditions in order to receive or retain a permit. The department may suspend or cancel a permit if the permittee violates or fails to comply with a permit condition or is convicted of violating a federal or state law, or county or city ordinance associated with possession of the exotic wildlife species.~~

~~(2)~~(3) The department may amend, suspend, or cancel a permit if necessary to protect native wildlife, livestock, public health, public safety, or the environment.

~~(3)~~(4) The department shall document compliance with conditions, either through inspection by representatives of the department or through affidavit by the permittee prior to possession of the exotic wildlife species in Montana.

~~(4)~~(5) A person that displays, exhibits, or uses a controlled species for exhibition or commercial photography or television may import the species into Montana without a controlled species permit if the animal:

(a) ~~the species~~ is accompanied by evidence of lawful possession;  
(b) ~~the species~~ is not in this state for more than 90 days or a time period authorized by the department;

(c) ~~the species~~ is maintained under complete control and prohibited from coming into contact with members of the general public unless authorized for such contact by the department. If the person is displaying, exhibiting, or using animals for commercial purposes other than food or fiber, he/she must possess the appropriate license issued by the United States Department of Agriculture; and

(d) ~~the species~~ is accompanied by an official certificate of veterinary inspection as defined in ARM 32.3.206 "Official Health Certificate" and an entry permit number issued by the Montana Department of Livestock within ~~40~~ ten days of entry into Montana.

~~(5)~~(6) An interstate shipment of a controlled species may be transported through this state, without a permit or license issued by the department, if:

(a) the shipper or transporter has evidence of lawful possession of the species issued by the state or country where the species originated;

(b) mammals, and birds, reptiles, and amphibians are accompanied by a certificate of veterinary inspection issued by an accredited veterinarian in the state or country where the species originated that indicates the destination and origin of the species being transported;

(c) fish are accompanied by a health certificate issued in the state or country where the species originated that indicates the destination and origin of the species being transported; and

(d) the species is not unloaded or otherwise released while being transported through this state.

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

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

12.6.2215 LIST OF PROHIBITED SPECIES (1) The following amphibians are classified as prohibited species:

(a) African clawed frog - *Xenopus laevis*; and

(b) North American bullfrog - *Rana catesbeiana*.

(2) The following crustaceans are classified as prohibited species:

(a) Rusty crayfish - *Orconectes rusticus*.

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

(a) Bighead carp - *Hypophthalmichthys nobilis*;

(b) Black carp - *Mylopharyngodon piceus*;

(c) Grass carp - *Ctenopharyngodon idella*;

(d) Silver carp - *Hypophthalmichthys molitrix*; and

(e) Snakehead fish - genera *Channa* and *Parachanna* (29 species); ;

(f) Zander (European pike perch) - *Sander lucipoerca*; and

(g) Walking catfish - *Clarias batrachus*.

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

- (a) Nutria - *Myocastor coypus*; ;
- (b) Short tailed opossum - *Monodelphis domestica*;
- (c) Virginia opossum - *Didelphis virginiana*;
- (d) Brush tailed possum - *Trichosurus vulpecula*;
- (e) Southern flying squirrel - *Glaucomys volans*; and
- (f) Primates in the family Cebidae.
- (5) The following mollusks are classified as prohibited species:
  - (a) New Zealand mudsnail - *Potamopyrgus antipodarum*; and
  - (b) Zebra mussel - *Dreissena polymorpha*.
- (6) The following reptiles are classified as prohibited:
  - (a) Boomsnake – *Dispholidus typus*;
  - (b) Burrowing asps (all species in family Atractaspidae);
  - (c) Coral snakes (all species in family Elapidae);
  - (d) Cobras (all species in family Elapidae);
  - (e) Kraits (all species in family Elapidae);
  - (f) Mambas (all species in family Elapidae); and
  - (g) Pit vipers and true vipers (all species in family Viperidae except species indigenous to Montana).
- (7) The following birds are classified as prohibited species:
  - (a) Mute swans - *Cygnus olor*.

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

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

- 12.6.2220 PROHIBITED SPECIES PERMITS (1) The department may issue a permit for possession of a prohibited species only to the following:
- (a) a zoo or aquarium which is an accredited institutional member of the American association of zoological parks and aquariums;
  - (b) a business that displays, exhibits, or uses the species for exhibition or commercial photography or television if the species:
    - (i) is accompanied by evidence of lawful possession;
    - (ii) is not in this state for more than 90 days or a time period authorized by the department; and
    - (iii) is maintained under complete control and prohibited from coming into contact with members of the general public unless authorized for such contact by the department. If the person is displaying, exhibiting, or using animals for commercial purposes other than food or fiber, he/she must possess the appropriate license issued by the United States Department of Agriculture; and
    - (iv) is accompanied by an official certificate of veterinary inspection as defined in ARM 32.3.206 "Official Health Certificate" and an entry permit number issued by the Montana Department of Livestock within ten days of entry into Montana;
  - (c) a college, university, or government agency, for scientific or public health research;
  - (d) any other scientific institution, as determined by the department, for research or medical necessity;

(e) a tax-exempt nonprofit organization licensed by the United States Department of Agriculture that exhibits wildlife solely for educational or scientific purposes; or

(f) a person who, due to a medical necessity, has assistance requirements that may be provided by the prohibited species and that requirement is certified by a physician licensed in the state of Montana.

(2) An interstate shipment of a prohibited species may be transported through this state, without a permit or license issued by the department, if:

(a) the shipper or transporter has evidence of lawful possession of the species issued by the state or country where the species originated;

(b) mammals and birds, reptiles, and amphibians are accompanied by a certificate of veterinary inspection issued by an accredited veterinarian in the state or country where the species originated that indicates the destination and origin of the species being transported;

(c) fish are accompanied by a health certificate issued in the state or country where the species originated that indicates the destination and origin of the species being transported; and

(d) the species is not unloaded or otherwise released while being transported through this state.

(3) The department may amend, suspend, or cancel a permit if necessary to protect native wildlife, livestock, public health, public safety, or the environment.

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

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

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

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

In May of 2005, new rules were adopted officially classifying and regulating various exotic wildlife species as noncontrolled and prohibited. At that time, the committee did not recommend any species as eligible for classification as "controlled." Recently, the committee recommended to the commission that three species be listed as "controlled species" within the state of Montana. The committee believed listing these species as controlled was necessary because special requirements are

needed to eliminate risks to the environment should those species escape or be released from captivity.

The purpose of this rulemaking is to implement the recommendations of the committee and to increase the clarity of the existing rule through minor editing changes. New rules I, II, and III are necessary to implement committee recommendations as the listing of controlled species within the state of Montana is established.

New rule I is necessary to officially list by administrative rule the species recommended by the committee for classification as controlled.

New rule II is needed to establish the procedure and requirements for obtaining a controlled species permit.

New rule III describes the requirements for care and housing of exotic wildlife held in captivity. These new rules are similar to rules under ARM 12.6.1304 that regulate the treatment and sanitation of wildlife held in captivity at roadside menageries for the purpose of exhibition or attracting trade. This rule is necessary to assure that exotic wildlife held in captivity is treated humanely and cared for appropriately. New rule III also provides requirements for the holding of exotic species of fish in backyard/ornamental ponds to prevent escape into the state's waters.

In addition to establishing controlled species in Montana, the committee recommended the addition of four exotic wildlife species to the list of noncontrolled species. These additions made revisions to ARM 12.6.2205 necessary. The committee recommended classification of these species as noncontrolled following evaluation of the potential impacts of private ownership of the species.

Revisions to ARM 12.6.2210 provide the potential for an extension of the 90 day time period for possession of a controlled species in Montana for exhibition, commercial photography, or television without obtaining a controlled species permit. Some contracted exhibitions schedule longer exhibition periods and could be granted longer time periods at the discretion of the department under this rule revision. ARM 12.6.2210 has also been revised to require reptiles and amphibians imported into Montana to be accompanied by a certificate of veterinary inspection. That documentation is required under 81-2-703(1), MCA. Finally, revisions have been made to ARM 12.6.2210 listing controlled species permit requirements necessary prior to authorization of a controlled species permit.

Revisions to ARM 12.6.2215 add seven species of exotic wildlife and all primate species in the family Cebidae to the list of prohibited species not allowed for personal possession as pets in Montana. The classification of these exotic wildlife species as prohibited for personal possession as pets was recommended by the committee because the species 1) would not be readily subject to control by humans while in captivity, 2) would pose a substantial threat to native wildlife and plants or agricultural production if released from captivity, or 3) would pose a risk to human

health or safety, livestock, or native wildlife through disease transmission, hybridization, or ecological or environmental damage.

Revisions to ARM 12.6.2220 are identical to the first two changes made in ARM 12.6.2210 but pertain to prohibited species of exotic wildlife.

6. Concerned persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Beth Giddings, P.O. Box 200701, Helena, Montana 59620-0701; or e-mail FWPExotics@mt.gov.

7. Tim Feldner or another hearing officer appointed by the department has been designated to preside over and conduct the hearing.

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

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

/s/ Tim Mulligan

Tim Mulligan  
Vice Chairman, Fish, Wildlife and  
Parks Commission

/s/ Bill Schenk

Bill Schenk  
Rule Reviewer

Certified to the Secretary of State July 17, 2006



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

In the matter of the adoption of new rules	)	NOTICE OF PUBLIC HEARING ON
I through XV and the repeal of ARM	)	PROPOSED ADOPTION AND
12.8.211 pertaining to commercial use of	)	REPEAL
lands under the control of the department	)	

TO: All Concerned Persons

1. The Fish, Wildlife and Parks Commission (commission) will hold public hearings to consider the adoption and repeal of the above-stated rules. The hearing dates and places are as follows:

August 21, 2006, 6:30 p.m.  
Red Lion Hotel  
2100 Cornell Street  
Butte, MT

August 22, 2006, 6:30 p.m.  
Fish, Wildlife and Parks  
Region 3 Headquarters  
1400 South 19th  
Bozeman, MT

August 23, 2006, 6:30 p.m.  
Fish, Wildlife and Parks  
Region 5 Headquarters  
2300 Lake Elmo Drive  
Billings, MT

August 24, 2006, 6:30 p.m.  
Fish, Wildlife and Parks  
Region 7 Headquarters  
Industrial Suite W  
Miles City, MT

August 28, 2006, 6:30 p.m.  
Holiday Inn – Parkside  
200 South Pattee Street  
Missoula, MT

August 29, 2006, 6:30 p.m.  
West Coast Outlaw Hotel  
1701 Highway 93 South  
Kalispell, MT

August 30, 2006, 6:30 p.m.  
Fish, Wildlife and Parks  
Region 4 Headquarters  
4600 Giant Springs Road  
Great Falls, MT

August 31, 2006, 6:30 p.m.  
Fish, Wildlife and Parks  
Region 6 Headquarters  
54078 US Highway 2 East  
Glasgow, MT

2. The commission will make reasonable accommodations for persons with disabilities who wish to participate in these public hearings or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m. on August 9, 2006, to advise us of the nature of the accommodation that you need. Please contact Charles Sperry, Fish, Wildlife and Parks, 1420 East Sixth Avenue, P.O. Box 200701, Helena, MT 59620-0701; telephone (406) 444-3888; fax (406) 444-4952; e-mail [csperry@mt.gov](mailto:csperry@mt.gov).

3. The commission is proposing new rules for commercial use on lands owned, controlled, or managed by the commission or department. During the public scoping meetings, the commission heard a wide range of viewpoints on whether to allow commercial use at wildlife management areas. Therefore, the commission desires to receive comment on two different rule proposal alternatives pertaining to commercial use at wildlife management areas. Alternative A provides for some commercial use at wildlife management areas. Alternative B does not allow commercial use at wildlife management areas:

#### ALTERNATIVE A

NEW RULE I DEFINITIONS (1) "Allocation" means distributing limited use opportunities when a rationing system is in place.

(2) "Authorization" means written permission granted to a person or entity by the department to conduct commercial use.

(3) "Commercial use" means any person or entity that utilizes lands under the control, administration, and jurisdiction of the Montana Department of Fish, Wildlife and Parks for consideration. Commercial use includes any person, group or organization, including nonprofit organizations and academic institutions, that make or attempt to make a profit, vend a service or product, receive money, amortize equipment, or obtain goods or services as compensation from participants in activities occurring on lands that are under the control, administration, and jurisdiction of the department. Examples of commercial use that are governed by these rules include but are not limited to: trail rides, guided walks or tours, float trips, guided angling or hunting, game retrieval, professional dog training, equipment rentals, retail sales, food concessions, filming, firewood cutting, construction-related activities, research when accompanied by paying clients, or any combination

thereof. This does not include persons or entities that transfer vehicles or people to or from a department owned or controlled site.

(4) "Commission" means the Department of Fish, Wildlife and Parks Commission of the state of Montana.

(5) "Concession service" means a commercial business that provides multiple services or products on department land. Examples include but are not limited to marinas, lodging, equipment rental or sales, retail sales, and food services.

(6) "Consideration" means something of value given or done in exchange for something of value given or done by another.

(7) "Department" means the Department of Fish, Wildlife and Parks of the state of Montana.

(8) "Fishing access site" means a site or area designated by the department as a fishing access site.

(9) "Ration" means to regulate use intensity by limiting the amount of use on a site.

(10) "Restricted water body" means a body of water regulated by special department rules governing commercial or public use, such as rules that restrict the timing, location, amount, or type of use that occurs. "Restricted water body" also means a body of water that is cooperatively managed with another agency.

(11) "Site" means an individual unit of land, or portion thereof, owned or managed by the department.

(12) "State park" means a site or area designated by the department as a state park.

(13) "Water-based outfitter or guide" means any person who for consideration provides nonhunting, water-related recreation services or supervises someone providing these services. This includes fishing outfitters and guides that are licensed by the state of Montana, and nonfishing water-based outfitters and guides that are not licensed by the state of Montana.

(14) "Wildlife management area" means a site or area designated by the department as a wildlife management area.

AUTH: 23-1-105, 23-1-106, 87-1-301, 87-1-303, MCA

IMP: 23-1-105, 23-1-106, 87-1-303, MCA

NEW RULE II APPLICABILITY OF COMMERCIAL USE RULES (1) The following rules shall govern commercial use, as defined in [NEW RULE I], that occurs on lands under the control, administration, and jurisdiction of the department. Unless otherwise noted in these rules, these rules apply to fishing access sites, state parks, wildlife management areas, administrative sites, and other lands under the control, administration, and jurisdiction of the department.

(2) The department may apply these rules to leased lands when the department has authorization to manage use of these lands. This does not include block management lands or lands under a conservation easement.

AUTH: 23-1-105, 23-1-106, 87-1-301, 87-1-303, MCA

IMP: 23-1-105, 23-1-106, 87-1-303, MCA

- NEW RULE III EXCEPTIONS TO APPLICABILITY OF COMMERCIAL USE RULES (1) These commercial use rules do not apply to commercial activities or uses that are initiated or invited by the department for the purpose of manipulating, enhancing, or otherwise improving the habitat of a site. Such uses shall continue to be governed by the department's land lease-out policy. Examples include but are not limited to livestock grazing, farming, haying, fencing, and timber harvest.
- (2) These commercial use rules do not apply to the leasing of department lands for communication towers, utility easements, and granting of right-of-way. These types of commercial use shall continue to be governed by the department's land lease-out policy.
- (3) These commercial use rules do not apply to the leasing of department oil and gas reserves. These uses shall continue to be governed by the department's oil and gas reserves leasing policy.
- (4) These commercial use rules do not apply to the transferring of vehicles or people to or from a department site.
- (5) These commercial use rules do not apply to the collection of antlers.
- (6) These commercial use rules do not apply to trapping or commercial activities under Title 87, chapter 4, parts 2 through 10, MCA (87-4-201, MCA; etc.). (Taxidermists, fur dealers, alternative livestock, shooting preserves, fish ponds, sale of game, menageries and zoos, game bird farms, and fur farms).

AUTH: 23-1-105, 23-1-106, 87-1-301, 87-1-303, MCA

IMP: 23-1-105, 23-1-106, 87-1-303, MCA

- NEW RULE IV GENERAL POLICY (1) Department lands belong to the people of Montana and the department manages these sites and associated resources in trust for the benefit of current and future generations of the people. The department's primary responsibility is to provide benefits to the public from these sites and to maintain or enhance the resources of these sites, now and in the future.
- (2) Some types of commercial use can help the department to achieve its resource management goals and/or provide desired services to the public when properly managed. Commercial use must be managed to ensure that the commercial use does not conflict with, or detract from, public use and the intended purposes of a site.
- (3) Commercial use on department lands is a privilege, not a right. Authorization to conduct commercial use may be denied, amended, or revoked at any time. Historical commercial use of a site does not convey a right to conduct commercial use in the future and does not guarantee that the department shall allocate opportunities for commercial use if rationing becomes necessary.
- (4) The department may prohibit, restrict, condition, or otherwise manage commercial use, including placing stipulations on the type, timing, location, duration, and quantity of commercial use, for the purposes of:
- (a) protecting resources or mitigating impacts to resources;
  - (b) preventing or minimizing conflicts with the intended purpose for which the department acquired, maintains, or manages a site;
  - (c) preserving the public's ability to recreate on or otherwise use a site;
  - (d) providing for the public's safety and welfare; or

(e) other purposes identified by the department.

(5) Restrictions, including prohibitions, on water-based outfitters and guides on rivers and fishing access sites shall be governed by the department's statewide river recreation rules.

(6) The purpose and management objectives can vary from one type of department land to another and from one site to another. The public's use and expectations can vary from one type of department land to another and from one site to another. The opportunities to conduct commercial use may be different depending upon where the use would occur, and the department may develop policies that provide additional guidance for managing commercial use at fishing access sites, state parks, wildlife management areas, and other department lands.

(7) The department may establish special criteria for a particular site or prohibit commercial use altogether based on the management objectives and conditions of that site.

(8) If a management plan has been written for a site and the management plan is more restrictive than these commercial use rules, the management plan takes precedence.

(9) The department may prohibit or condition commercial use that would displace the general public. The department may temporarily alter public use opportunities to accommodate commercial use on a case-by-case basis in the interest of public safety and security or when there is the potential for short-term conflicts.

(10) The department must comply with federal aid requirements when authorizing commercial use on department lands purchased or managed with federal aid.

(11) Commercial hunting outfitting is prohibited on all department lands and water bodies that are located entirely within the boundaries of department lands. This does not apply to commercial use that is solely for the purpose of assisting the public in the retrieval of legally harvested game animals.

AUTH: 23-1-105, 23-1-106, 87-1-301, 87-1-303, MCA

IMP: 23-1-105, 23-1-106, 87-1-303, MCA

NEW RULE V COMMERCIAL USE PERMITS (1) A permit is required in advance to conduct commercial use on lands under the control, administration, and jurisdiction of the department. The department may waive the commercial use permit requirement if the person is authorized under some other form of permit or contract issued by the department or other government agency.

(2) The department administers two types of commercial use permits:

(a) fishing access site permit; and

(b) restricted use permit.

(3) The department may issue a commercial use permit to a person, entity, or business.

(4) A commercial use permit is not a property right and may be revoked, amended, or suspended at any time. The recipient of a commercial use permit is not guaranteed future use of the permit.

(5) The availability, terms, and conditions of a commercial use permit may vary based on the regulations and management plan in place at the site where the use would occur. The department may refuse applications for a permit if the use would occur at a site where commercial use is rationed and there are no additional opportunities to conduct such use.

(6) The department may require commercial users to report their use of department lands. The department may require commercial users to maintain and have on their person for department inspection a logbook for recording commercial use. The department shall include specific reporting requirements as permit or contract stipulations.

(7) A commercial use permit and any associated units of use may only be used by the holder of the permit. The permit holder may hire or contract persons to provide authorized services provided that said persons do not recruit clients, make agreements with clients concerning monetary consideration or services provided, collect fees from clients, or advertise any business other than the permitted business when conducting the permitted use.

(8) A commercial use permit is not transferable.

(9) The recipient of a commercial use permit may not sell, lease, rent, or otherwise receive compensation from another person or entity for the opportunity to use the permit or associated use units.

(10) If the recipient of a commercial use permit sells or transfers their permitted business in its entirety, the department shall issue a commercial use permit to the new owner so long as they agree to the terms of the permit. Any rationed units of use that have been allocated to the seller shall be transferred to the new owner of that business. Upon the sale or transfer of a permitted business, the person selling or transferring the business shall notify the new owner that the use of rationed units of use is subject to change pursuant to rules adopted by the commission and that no property right attaches to the rationed units of use.

(11) A person selling or transferring a business is no longer eligible to receive a restricted use permit unless he/she acquires another permitted business in its entirety.

AUTH: 23-1-105, 23-1-106, 87-1-301, 87-1-303, MCA

IMP: 23-1-105, 23-1-106, 87-1-303, MCA

NEW RULE VI FISHING ACCESS SITE PERMIT (1) A fishing access site permit is required to conduct water-based outfitting and guiding at fishing access sites that provide access to a nonrestricted water body.

(2) A fishing access site permit authorizes a water-based outfitter to conduct water-based outfitting at any fishing access site in the state that provides access to a nonrestricted water body. A water-based outfitter must obtain a restricted use permit to conduct water-based outfitting at a fishing access site that provides access to a restricted water body.

(3) A fishing access site permit authorizes a water-based guide, operating under the authority of a water-based outfitter, to conduct water-based guiding at any fishing access site in the state that provides access to a nonrestricted water body. A

water-based guide must obtain a restricted use permit to conduct water-based guiding at a fishing access site that provides access to a restricted water body.

(4) A fishing access site permit is an annual permit that is valid for the calendar year in which the permit is issued.

AUTH: 23-1-105, 23-1-106, 87-1-301, 87-1-303, MCA

IMP: 23-1-105, 23-1-106, 87-1-303, MCA

NEW RULE VII FISHING ACCESS SITE PERMIT: APPLICATION PROCESS (1) A fishing access site permit may be obtained at a department regional office or through the department's internet licensing system so long as the applicant provides the required application information and remits the required permit fee.

(2) The department may require the following when applying for a fishing access site permit:

- (a) a completed permit application form;
- (b) an outfitter or guide license number if providing angling services;
- (c) an automated license system number;
- (d) permit fee; and
- (e) proof of insurance that indemnifies the state from any liability.

AUTH: 23-1-105, 23-1-106, 87-1-301, 87-1-303, MCA

IMP: 23-1-105, 23-1-106, 87-1-303, MCA

NEW RULE VIII FISHING ACCESS SITE PERMITTING DECISIONS (1) There shall be no limit on the number of fishing access site permits issued.

(2) The regional supervisor may deny or revoke a fishing access site permit for failure to comply with the terms of the permit, violating department rules and regulations or other infractions identified by the department, or when a nonrestricted water body is reclassified as a restricted water body.

AUTH: 23-1-105, 23-1-106, 87-1-301, 87-1-303, MCA

IMP: 23-1-105, 23-1-106, 87-1-303, MCA

NEW RULE IX RESTRICTED USE PERMIT (1) A restricted use permit is required for the following:

(a) water-based outfitting or guiding at a fishing access site that provides access to a restricted water body; and

(b) all other types of commercial use at a fishing access site, state park, wildlife management area, or department administrative site.

(2) A restricted use permit authorizes the recipient of the permit to conduct commercial use of the type, and at the locations, designated on the permit.

(3) A restricted use permit is valid for the time period specified on the permit, not to exceed five years. The department may modify the terms of the permit at any time. The permit holder may also request changes to a multi-year permit through submission of an updated plan of operation or other material.

(4) The department may place stipulations on the restricted use permit, including but not limited to the type, timing, location, duration, and volume of the use. The department's statewide river recreation rules shall govern the development of stipulations for water-based outfitters and guides on rivers and fishing access sites.

(5) The department may authorize the recipient of a restricted use permit to conduct use at more than one location.

AUTH: 23-1-105, 23-1-106, 87-1-301, 87-1-303, MCA

IMP: 23-1-105, 23-1-106, 87-1-303, MCA

#### NEW RULE X RESTRICTED USE PERMIT: APPLICATION PROCESS

(1) A restricted use permit application must be submitted to the regional office that oversees the site where the use would occur.

(2) The completed application should be submitted at least 45 days before the use is intended to begin or at least ten days before a special event, filming activity, or incidental commercial use lasting less than five days. The department shall attempt to process applications received after these time periods on a case-by-case basis. The department may require additional time to process an application if the applicant fails to provide the required information, or the department determines that an environmental analysis is required.

(3) The department may require the following when applying for a restricted use permit:

- (a) a completed restricted use permit application;
- (b) an outfitter or guide license number if providing angling services;
- (c) an automated license system number;
- (d) permit fee;
- (e) deposit or damage security bond;
- (f) proof of insurance that indemnifies the state from any liability;
- (g) information explaining how the proposed use would benefit the public's resources or the public's enjoyment of the site; and
- (h) other relevant information in sufficient detail to allow the department to evaluate the nature and impact of the proposed activity, including measures the applicant will use to prevent or mitigate adverse impacts.

AUTH: 23-1-105, 23-1-106, 87-1-301, 87-1-303, MCA

IMP: 23-1-105, 23-1-106, 87-1-303, MCA

NEW RULE XI RESTRICTED USE PERMITTING DECISIONS (1) The department has discretion over whether to issue a restricted use permit. Permitting decisions are based on the following factors to the extent that they are relevant:

- (a) conformance with laws, rules, policies, management plans, and land use plans;
- (b) contribution to the overall mission, goals, and objectives of the site;
- (c) public safety;
- (d) conflicts with other users in regard to type of use, timing, duration, location, site capacity, and other similar considerations;
- (e) resource impacts and protection;



- (f) extent to which the public interest is served;
  - (g) effects on adjacent lands;
  - (h) whether in the past the applicant complied with the terms of his/her permit or other authorization from the department and other agencies;
  - (i) whether the department has the fiscal and human resources to oversee the proposed use; and
  - (j) such other circumstances that the department finds appropriate.
- (2) The availability, terms, and conditions of a restricted use permit may vary based on the regulations and management plan in place at the site where the use would occur.
- (3) Permitting decisions that would ration or otherwise restrict water-based outfitting and guiding opportunities on rivers and fishing access sites shall be governed by the department's statewide river recreation rules. This does not include permitting decisions when the applicant or permit holder has violated the terms of a permit or violated department rules or regulations.
- (4) Upon adoption of these rules, the department may issue a restricted use permit to any person or entity that was authorized to conduct commercial use prior to the adoption of these rules on department lands now requiring a restricted use permit so long as the person submits the required application material and fees.
- (5) When a restricted use permit expires, the department may issue a new restricted use permit to the permit holder.
- (6) The regional supervisor, in consultation with the appropriate division administrator, shall be responsible for restricted use permitting decisions.
- (7) A person who has been denied a restricted use permit or a person whose commercial use permit has been suspended or cancelled may appeal the permitting decision in writing to the director within 30 days of the date of mailing of the notice of the permitting decision. Persons not appealing within 30 days have waived their right to appeal.
- (8) The director or the director's designee shall issue a written decision on the appeal. The director's decision is final.

AUTH: 23-1-105, 23-1-106, 87-1-301, 87-1-303, MCA  
IMP: 23-1-105, 23-1-106, 87-1-303, MCA

- NEW RULE XII CONCESSION CONTRACT (1) The department may develop a concession contract to authorize a commercial business on department land. The department shall waive the requirement to obtain a commercial use permit when the commercial use is authorized through a concession contract.
- (2) The department shall honor the terms set forth in contracts established prior to the adoption of these rules. The department shall apply these rules when those contracts expire.
- (3) When developing and administering concession contracts, the department shall follow the state purchasing and contracting guidelines.

AUTH: 23-1-105, 23-1-106, 87-1-301, 87-1-303, MCA  
IMP: 23-1-105, 23-1-106, 87-1-303, MCA

NEW RULE XIII COMMERCIAL USE FEES (1) The department may require payment of fees for conducting commercial use on lands owned or managed by the department. Permit fees pursuant to this rule shall be established through commission rulemaking. The department shall establish concession contract fees on a case-by-case basis.

(2) The department may waive commercial use fees on a case-by-case basis when:

(a) the sole purpose of the use is for educational purposes and the monetary benefits from the use or event do not exceed the cost of providing the use or event; or

(b) the proceeds from the use or event are allocated to the maintenance, management, or the improvement or development of facilities, at the site where the use occurs.

(3) The department may waive or adjust commercial use fees when a service provider donates their services for a charitable cause and is not compensated for the service.

(4) The commission may adjust permit fees as necessary to reflect changes in costs and the market and in situations where the department has an agreement or joint-permit system with other agencies.

(5) The department may charge a processing fee for recovery of costs associated with preparing an environmental analysis document when processing a permit application.

(6) Applicants must pay the required fees by the deadlines established in the fee rule.

AUTH: 2-4-102, 23-1-105, 23-1-106, 87-1-301, 87-1-303, MCA

IMP: 2-4-102, 23-1-105, 23-1-106, 87-1-303, MCA

NEW RULE XIV RATIONING AND ALLOCATION OF COMMERCIAL USE

(1) The department's statewide river recreation rules shall govern the rationing and allocation of commercial use on rivers, including fishing access sites that provide access to rivers.

(2) The regional supervisor, in consultation with the appropriate division administrator, director, and the commission, may ration and allocate commercial use at a state park, wildlife management area, or department administrative site. The regional supervisor may consider the following when making rationing and allocation decisions:

- (a) laws, rules, policies, management plans, and land use plans for the site;
- (b) overall mission, goals, and objectives of the site;
- (c) input from the public;
- (d) public safety concerns;
- (e) biological conditions;
- (f) social conditions;
- (g) use conflicts;
- (h) past performance of commercial users;
- (i) public demand for commercial use; and
- (j) other factors as determined by the department.

(3) The regional supervisor shall describe why rationing is necessary and how rationing of use would address a particular problem or concern.

(4) To the extent possible, the department must monitor and evaluate commercial use of a site to determine whether rationing is necessary and to assess whether rationing has improved conditions.

AUTH: 23-1-105, 23-1-106, 87-1-301, 87-1-303, MCA

IMP: 23-1-105, 23-1-106, 87-1-303, MCA

NEW RULE XV COORDINATING WITH OTHER AGENCIES (1) The department may design a commercial use permit system for a site in coordination with another agency so long as the permit system complies with department rules and regulations and the permitted commercial use is consistent with department restrictions on commercial use.

AUTH: 23-1-105, 23-1-106, 87-1-301, 87-1-303, MCA

IMP: 23-1-105, 23-1-106, 87-1-303, MCA

#### ALTERNATIVE B

Under Alternative B, all the proposed rules are identical to those proposed in Alternative A except those listed below. The rules in this alternative differ in that commercial use is not provided for in wildlife management areas.

NEW RULE II APPLICABILITY OF COMMERCIAL USE RULES (1) The following rules shall govern commercial use, as defined in [NEW RULE I], that occurs on lands under the control, administration, and jurisdiction of the department. Unless otherwise noted in these rules, these rules apply to fishing access sites, state parks, administrative sites, and other lands under the control, administration, and jurisdiction of the department. Commercial use on wildlife management areas is prohibited.

(2) The department may apply these rules to leased lands when the department has authorization to manage use of these lands. This does not include block management lands or lands under a conservation easement.

AUTH: 23-1-105, 23-1-106, 87-1-301, 87-1-303, MCA

IMP: 23-1-105, 23-1-106, 87-1-303, MCA

NEW RULE IV GENERAL POLICY (1) Department lands belong to the people of Montana and the department manages these sites and associated resources in trust for the benefit of current and future generations of the people. The department's primary responsibility is to provide benefits to the public from these sites and to maintain or enhance the resources of these sites, now and in the future.

(2) Some types of commercial use can help the department to achieve its resource management goals and/or provide desired services to the public when properly managed. Commercial use must be managed to ensure that the commercial use does not conflict with, or detract from, public use and the intended purposes of a site.

(3) Commercial use on department lands is a privilege, not a right. Authorization to conduct commercial use may be denied, amended, or revoked at any time. Historical commercial use of a site does not convey a right to conduct commercial use in the future and does not guarantee that the department shall allocate opportunities for commercial use if rationing becomes necessary.

(4) The department may prohibit, restrict, condition, or otherwise manage commercial use, including placing stipulations on the type, timing, location, duration, and quantity of commercial use, for the purposes of:

- (a) protecting resources or mitigating impacts to resources;
- (b) preventing or minimizing conflicts with the intended purpose for which the department acquired, maintains, or manages a site;
- (c) preserving the public's ability to recreate on or otherwise use a site;
- (d) providing for the public's safety and welfare; or
- (e) other purposes identified by the department.

(5) Restrictions, including prohibitions, on water-based outfitters and guides on rivers and fishing access sites shall be governed by the department's statewide river recreation rules.

(6) The purpose and management objectives can vary from one type of department land to another and from one site to another. The public's use and expectations can vary from one type of department land to another and from one site to another. The opportunities to conduct commercial use may be different depending upon where the use would occur, and the department may develop policies that provide additional guidance for managing commercial use at fishing access sites, state parks, and other department lands.

(7) The department may establish special criteria for a particular site or prohibit commercial use altogether based on the management objectives and conditions of that site.

(8) If a management plan has been written for a site and the management plan is more restrictive than these commercial use rules, the management plan takes precedence.

(9) The department may prohibit or condition commercial use that would displace the general public. The department may temporarily alter public use opportunities to accommodate commercial use on a case-by-case basis in the interest of public safety and security or when there is the potential for short-term conflicts.

(10) The department must comply with federal aid requirements when authorizing commercial use on department lands purchased or managed with federal aid.

(11) Commercial hunting outfitting is prohibited on all department lands and water bodies that are located entirely within the boundaries of department lands. This does not apply to commercial use that is solely for the purpose of assisting the public in the retrieval of legally harvested game animals.

AUTH: 23-1-105, 23-1-106, 87-1-301, 87-1-303, MCA

IMP: 23-1-105, 23-1-106, 87-1-303, MCA

NEW RULE IX RESTRICTED USE PERMIT (1) A restricted use permit is required for the following:

(a) water-based outfitting or guiding at a fishing access site that provides access to a restricted water body;

(b) all other types of commercial use at a fishing access site, state park, or department administrative site.

(2) A restricted use permit authorizes the recipient of the permit to conduct commercial use of the type, and at the locations, designated on the permit.

(3) A restricted use permit is valid for the time period specified on the permit, not to exceed five years. The department may modify the terms of the permit at any time. The permit holder may also request changes to a multi-year permit through submission of an updated plan of operation or other material.

(4) The department may place stipulations on the restricted use permit, including but not limited to the type, timing, location, duration, and volume of the use. The department's statewide river recreation rules shall govern the development of stipulations for water-based outfitters and guides on rivers and fishing access sites.

(5) The department may authorize the recipient of a restricted use permit to conduct use at more than one location.

AUTH: 23-1-105, 23-1-106, 87-1-301, 87-1-303, MCA

IMP: 23-1-105, 23-1-106, 87-1-303, MCA

NEW RULE XI RESTRICTED USE PERMITTING DECISIONS (1) The department has discretion over whether to issue a restricted use permit. Permitting decisions are based on the following factors to the extent that they are relevant:

(a) conformance with laws, rules, policies, management plans, and land use plans;

(b) contribution to the overall mission, goals, and objectives of the site;

(c) public safety;

(d) conflicts with other users in regard to type of use, timing, duration, location, site capacity, and other similar considerations;

(e) resource impacts and protection;

(f) extent to which the public interest is served;

(g) effects on adjacent lands;

(h) whether in the past the applicant complied with the terms of his/her permit or other authorization from the department and other agencies;

(i) whether the department has the fiscal and human resources to oversee the proposed use; and

(j) such other circumstances that the department finds appropriate.

(2) The availability, terms, and conditions of a restricted use permit may vary based on the regulations and management plan in place at the site where the use would occur.

(3) Permitting decisions that would ration or otherwise restrict water-based outfitting and guiding opportunities on rivers and fishing access sites shall be governed by the department's statewide river recreation rules. This does not include permitting decisions when the applicant or permit holder has violated the terms of a permit or violated department rules or regulations.

(4) Upon adoption of these rules, the department may issue a restricted use permit to any person or entity that was authorized to conduct commercial use prior to the adoption of these rules on department lands now requiring a restricted use permit so long as the person submits the required application material and fees. Commercial use occurring on wildlife management areas prior to the adoption of these rules is no longer allowed.

(5) When a restricted use permit expires, the department may issue a new restricted use permit to the permit holder.

(6) The regional supervisor, in consultation with the appropriate division administrator, shall be responsible for restricted use permitting decisions.

(7) A person who has been denied a restricted use permit or a person whose commercial use permit has been suspended or cancelled may appeal the permitting decision in writing to the director within 30 days of the date of mailing of the notice of the permitting decision. Persons not appealing within 30 days have waived their right to appeal.

(8) The director or the director's designee shall issue a written decision on the appeal. The director's decision is final.

AUTH: 23-1-105, 23-1-106, 87-1-301, 87-1-303, MCA

IMP: 23-1-105, 23-1-106, 87-1-303, MCA

#### NEW RULE XIV RATIONING AND ALLOCATION OF COMMERCIAL USE

(1) The department's statewide river recreation rules shall govern the rationing and allocation of commercial use on rivers, including fishing access sites that provide access to rivers.

(2) The regional supervisor, in consultation with the appropriate division administrator, director, and the commission, may ration and allocate commercial use at a state park, or department administrative site. The regional supervisor may consider the following when making rationing and allocation decisions:

- (a) laws, rules, policies, management plans, and land use plans for the site;
- (b) overall mission, goals, and objectives of the site;
- (c) input from the public;
- (d) public safety concerns;
- (e) biological conditions;
- (f) social conditions;
- (g) use conflicts;
- (h) past performance of commercial users;
- (i) public demand for commercial use; and
- (j) other factors as determined by the department.

(3) The regional supervisor shall describe why rationing is necessary and how rationing of use would address a particular problem or concern.

(4) To the extent possible, the department must monitor and evaluate commercial use of a site to determine whether rationing is necessary and to assess whether rationing has improved conditions.

AUTH: 23-1-105, 23-1-106, 87-1-301, 87-1-303, MCA

IMP: 23-1-105, 23-1-106, 87-1-303, MCA

4. ARM 12.8.211 which can be found on page 12-509 of the Administrative Rules of Montana is proposed to be repealed because it is going to be covered under the new rules.

AUTH: 23-1-105, 23-1-106, 87-1-301, 87-1-303, MCA

IMP: 23-1-105, 23-1-106, 87-1-303, MCA

5. The purpose of these rules is to provide direction to the department when managing commercial use that occurs on lands under the control, administration, and jurisdiction of the commission or department.

The commercial use of department land is a complex issue that has challenged the agency for some time now. In part this is due to the lack of any overarching rules to guide decision-makers. The department does not have a framework for evaluating proposals to conduct commercial use. Nor does the department have any overarching guidelines for administering commercial use when it is authorized.

Commercial use is already occurring on some department sites. Fishing outfitters frequently use fishing access sites to launch float trips and a limited amount of commercial use occurs within state parks and wildlife management areas. The department permits outfitters on the Alberton Gorge, Blackfoot, Beaverhead, Big Hole, and Smith rivers. In places where commercial use is already occurring, the department is frequently challenged with questions related to the administration of a permit system. Key issues, such as the leasing of client days or the transfer of a commercial use permit, have thus far been addressed in a piecemeal fashion or not addressed at all.

The lack of overarching rules is also a problem for decision-makers when determining whether to authorize commercial use at a particular site. For example, people have requested permission to conduct nonconsumptive types of commercial use on wildlife management areas, such as bird watching tours at Freezeout Lake. Currently the department does not have a clear basis for evaluating these types of proposals and determining whether they are compatible with the intended purposes of a particular site.

This is a complex issue that poses different questions and concerns for each division of the agency. Key issues need to be considered, such as complying with federal aid requirements, liability, and fees. While the rules need to be comprehensive, they must also provide enough flexibility for decision-makers to take into account the specific needs of a particular site.

The department conducted public meetings prior to the development of these rules for the purpose of identifying the issues. Commercial use on wildlife management areas generated considerable discussion and comments both at the public meetings and at department staff meetings. Due to the wide range of interests and viewpoints on this issue, the commission is proposing two alternative sets of rule language for

commercial use on wildlife management areas. Alternative A would allow commercial use, except commercial hunting outfitting, to occur on wildlife management areas and identifies criteria for evaluating, approving or not approving, and managing such use. Alternative B would prohibit commercial use on wildlife management areas altogether. The commission is seeking public comments on both alternatives.

The commission is proposing to repeal ARM 12.8.211. ARM 12.8.211 sought to regulate livestock and commercial use on department lands but did not provide the comprehensive approach proposed by New Rules I - XV. New Rules I - XV propose to replace ARM 12.8.211.

6. Concerned persons may present their data, views, or arguments, either orally or in writing, at the hearings. Written data, views, or arguments may also be submitted to Charlie Sperry, Fish, Wildlife and Parks, 1420 East Sixth Avenue, P.O. Box 200701, Helena, MT; telephone (406) 444-3888; fax (406) 444-4952; or e-mail at [csperry@mt.gov](mailto:csperry@mt.gov) and must be received no later than September 12, 2006.

7. Charlie Sperry, or another hearing officer appointed by the department, has been designated to preside over and conduct the hearings.

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

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

/s/ M. Jeff Hagener  
M. Jeff Hagener, Secretary  
Fish, Wildlife and Parks  
Commission

/s/ Rebecca Dockter  
Rebecca Dockter  
Rule Reviewer

Certified to the Secretary of State July 17, 2006



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

In the matter of the proposed amendment	)	NOTICE OF PUBLIC HEARING
of ARM 24.138.301 definitions, 24.138.402,	)	ON PROPOSED AMENDMENT,
24.138.403, and 24.138.406 general provisions,	)	ADOPTION, AND REPEAL
24.138.502, 24.138.503, 24.138.506 through	)	
24.138.512, 24.138. 514, 24.138.515,	)	
24.138.519, and 24.138.530 licensing,	)	
24.138.2101 and 24.138.2105	)	
renewals and continuing education,	)	
24.138.2302 unprofessional conduct,	)	
24.138.2402 screening panel, 24.138.3202	)	
and 24.138.3206 anesthesia rules, proposed	)	
adoption of NEW RULES I – IX professional	)	
assistance program, NEW RULE X reactivation	)	
of a lapsed license, NEW RULE XI reactivation	)	
of an expired license, NEW RULE XII definition	)	
of nonroutine application, NEW RULE XIII fee	)	
abatement, and proposed repeal of 24.138.516	)	
reinstatement of license for nonpayment of	)	
renewal fee, 24.138.517 denturist license	)	
reinstatement, and 24.138.2401 complaint	)	
procedure	)	

TO: All Concerned Persons

1. On August 17, 2006, at 9:00 a.m., a public hearing will be held in room 489, Park Avenue Building, 301 South Park, Helena, Montana to consider the proposed amendment, adoption, and repeal of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Dentistry (board) no later than 5:00 p.m. on August 11, 2006, to advise us of the nature of the accommodation that you need. Please contact Sharon McCullough, Board of Dentistry, 301 South Park, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2390; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail dlibsdden@mt.gov.

3. GENERAL STATEMENT OF REASONABLE NECESSITY: As part of a periodic review, the board is proposing a substantial number of revisions to the board's administrative rules. Some of the amendments are technical in nature, such as the modification of punctuation and style according to the administrative rules for rule writing as designated by the Secretary of State. Other technical changes

substitute modern language for archaic phrasing, update obsolete or gender specific language and inaccurate statutory references, and achieve greater consistency in terminology use within the rules. It is reasonable and necessary to amend the rules throughout to specify that the board will accept proof of an applicant holding either a current CPR or ACLS card, when required. Other rule amendments and repeals propose to delete or amend language that duplicates, conflicts with, or creates confusion with recently adopted department rules that implement Chapter 467 L. 2005 (HB 182). Authority and implementation cites are being amended to accurately reflect all statutes implemented through the rules, to provide the complete sources of the board's rulemaking authority, and to delete references to repealed statutes. Accordingly, the board believes reasonable necessity exists to generally amend and repeal certain existing rules. Where additional specific bases for a proposed action exist, the board will identify those reasons immediately following that rule.

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

24.138.301 DEFINITIONS For the purposes of this chapter, the following definitions apply:

(1) through (5) remain the same.

(6) "Material fact" is any fact that an ordinary, reasonable, and prudent person would need to know or rely upon in making an informed decision concerning dental care or the selection of a dentist to serve ~~his or her~~ the patient's particular needs.

(7) "Prophylaxis" is a preventative and therapeutic dental health treatment process by which gingival irritants, including any existing combination of calculus deposits, plaque, material alba, accretions, and stains are removed supragingivally and/or subgingivally from the natural and restored surfaces of teeth by a method or methods, which may include scaling, root planing, and subgingival curettage, that are most suitable for the patient, by an appropriately licensed dentist or licensed dental hygienist.

(8) remains the same.

(9) "Volunteer licensee" is a dentist or dental hygienist licensed according to rule to provide dental healthcare related diagnosis, care, or treatment without receiving or expecting to receive, compensation or any other form of remuneration.

AUTH: 37-1-131, 37-4-205, 37-4-340, 37-29-201, MCA

IMP: 37-4-101, 37-4-205, 37-4-340, 37-4-408, 37-29-201, MCA

24.138.402 FEE SCHEDULE (1) through (4) remain the same.

~~(5) Written examination fee for denturists paid~~  
~~directly to testing agency~~ 200

(6) through (18) remain the same but are renumbered (5) through (17).

AUTH: 37-1-131, 37-1-134, 37-4-205, 37-4-340, 37-4-405, MCA

IMP: 37-1-134, 37-1-141, 37-4-301, 37-4-307, 37-4-340, 37-4-402, 37-4-405, ~~37-4-406~~, MCA

REASON: It is reasonable and necessary to amend this rule and delete (5) to clarify that dentist applicants pay examination fees directly to the testing agency and the board has no involvement in this process.

24.138.403 MANDATORY CPR (1) All licensed active status dentists, dental hygienists, and denturists shall possess a current cardiopulmonary resuscitation (CPR) or advanced cardiac life support (ACLS) card.

(2) remains the same.

(3) Licensees shall affirm the expiration date of the CPR or ACLS card on the ~~annual~~ renewal. The board may audit a licensee for compliance of a current CPR or ACLS card. An active licensee who practices without a current CPR or ACLS card may be subject to disciplinary action by the board.

(4) Internet CPR courses will be accepted if a hands-on evaluation of clinical competency is also included.

AUTH: 37-1-131, 37-4-205, 37-29-201, MCA

IMP: 37-4-307, ~~37-4-406~~, 37-29-401, MCA

REASON: The board has determined it is reasonable and necessary to amend this rule to remove the specification of an annual license renewal period. Section 37-1-141, MCA, requires that license renewal dates be set by department rule and ARM 24.101.413 contains the renewal date and frequency for the board's licensees. This amendment eliminates the possibility of having conflicting timeframes between department and board rules. It is reasonably necessary to add (4) to clarify in what circumstances the board will accept internet CPR courses in satisfaction of the requirements of this rule.

24.138.406 FUNCTIONS FOR DENTAL AUXILIARIES (1) Allowable functions for a dental auxiliary practicing under the direct supervision of a licensed dentist shall include dental procedures as allowed by board rule and subject to (2) ~~below~~, in which:

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

(b) initiating, adjusting, and monitoring nitrous oxide flow for a patient who has been prescribed and administered nitrous oxide by a licensed dentist;

(c) through (3)(e) remain the same.

(f) placing, carving, or condensing any permanent restorations;

(g) taking final impressions of the involved arch for crowns, bridges, implant prosthesis, partial, or complete dentures;

(h) through (8) remain the same.

(a) has graduated from an accredited program of dental assisting, dental hygiene, or dentistry accredited by the Commission on Dental Accreditation or its successor; or

(b) and (c) remain the same.

(d) has successfully completed a board-approved radiology written and ~~practical~~ examination. The written examination must be passed prior to the dentist

allowing the auxiliary to expose radiographs. ~~To prepare for the examination, the auxiliary may, in any combination:~~

- ~~(i) complete an available didactic course in radiology;~~
- ~~(ii) complete an available clinical course in radiology;~~
- ~~(iii) train didactically with the supervising dentist;~~
- ~~(iv) train clinically with the supervising dentist.~~

(9) and (10) remain the same.

(11) The board will accept documentation of (8)(a) through (c) ~~above~~ as certification for radiographic exposure. The board will issue a certificate to those auxiliaries who complete (8)(d) as their means to qualify for radiographic exposure.

AUTH: 37-4-205, 37-4-408, MCA

IMP: 37-4-408, MCA

REASON: The board has determined that there exists reasonable necessity to amend this rule to eliminate the clinical examination requirement for dental auxiliaries. Following lengthy consideration and discussion, the board concluded that the clinical exam is no longer necessary as dental auxiliaries are adequately prepared and tested through the required training period and written exam.

24.138.502 INITIAL LICENSURE OF DENTISTS BY EXAMINATION (1) ~~All applicants shall submit a~~ A completed application ~~on the form furnished by the board or its designee. The application must include the following:~~

(a) through (c) remain the same.

(d) verification of graduation from a dental school accredited by the American Dental Association Commission on Dental Accreditation, or its successor.

Verification must consist of an original dental school transcript ~~and a diploma~~ or a letter from the dean of the school of dentistry, program director, or the dean's equivalent attesting to the program of study, and that graduation status was attained;

(e) remains the same.

~~(f) copies of all other state professional licenses that are held by the applicant;~~

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

~~(h)~~ (g) a copy of the applicant's current CPR or ACLS card;

~~(i) a photograph of the applicant;~~

(j) and (k) remain the same but are renumbered (h) and (i).

(2) The applicant shall not be physically or mentally impaired by use of addictive drugs, alcohol, or any other drug or substance, or by mental or physical illness which in the determination of the board renders the individual unfit or incapable of practicing dentistry.

~~(3) A jurisprudence examination must be taken once the application for licensure has been approved.~~ Applicants shall successfully pass the jurisprudence examination with a final grade of at least 75 percent, prior to issuance of a license.

(4) remains the same.

AUTH: 37-1-131, 37-4-205, ~~37-4-301~~, MCA

IMP: 37-1-131, 37-4-301, MCA

REASON: It is reasonably necessary to amend ARM 24.138.502, 24.138.503, 24.138.506, 24.138.511, and 24.138.530, to eliminate the requirement of submitting copies of other state licenses held. The board determined that requiring separate submission of the licenses is unnecessary, as they are obtained through the board's license verification process. The board is removing from ARM 24.138.502, 24.138.503, and 24.138.511, the requirement for licensure applicants to submit their photographs. It is reasonably necessary to delete this requirement to facilitate the electronic application process and achieve consistency in the licensure requirements of dentists, dental hygienists, and denturists.

24.138.503 INITIAL LICENSURE OF DENTAL HYGIENISTS BY EXAMINATION (1) ~~Each applicant shall submit a~~ A completed application ~~on a form furnished by the board or its designee. The application must include the~~ following:

- (a) and (b) remain the same.
- (c) affidavits from ~~three~~ two persons not related to the candidate, of the candidate's good moral character;
- (d) verification of graduation from a dental hygiene school accredited by the American Dental Association Commission on Dental Accreditation, or its successor. Verification must consist of an original dental hygiene school transcript ~~and a diploma~~ or a letter from the dean of the school of dental hygiene, program director, or dean's equivalent attesting to the program of study, and that graduation status was attained;
- (e) remains the same.
- (f) ~~copies of all other state professional licenses that are held by the applicant;~~
- (g) remains the same but is renumbered (f).
- ~~(h)~~ (g) a copy of the applicant's current CPR or ACLS card;
- ~~(i) a photograph of the applicant;~~
- (j) and (k) remain the same but are renumbered (h) and (i).
- (2) The applicant shall not be physically or mentally impaired by use of addictive drugs, alcohol, or any other drugs or substances, or by mental or physical illness, which in the determination of the board renders the individual unfit or incapable of practicing dental hygiene.
- (3) ~~A jurisprudence examination must be taken once the application for licensure has been approved.~~ Applicants must successfully pass the jurisprudence examination with a final grade of at least 75 percent, prior to issuance of a license.
- (4) remains the same.

AUTH: 37-1-131, 37-4-205, ~~37-4-402, 37-4-403~~, MCA  
IMP: 37-4-401, 37-4-402, ~~37-4-403~~, MCA

REASON: It is reasonable and necessary to amend this rule and change the number of required moral character affidavits from three to two to comply with the statutory requirements for dental hygiene licensure at 37-4-402, MCA.

24.138.506 DENTAL HYGIENIST LICENSURE BY CREDENTIALS

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

~~(h) copies of all other state professional licenses;~~

(i) and (j) remain the same but are renumbered (h) and (i).

(2) The applicant may not be physically or mentally impaired by use of addictive drugs, alcohol, or any other drugs or substances, or by mental or physical illness, which in the determination of the board renders the individual unfit or incapable of practicing dental hygiene.

~~(3) The jurisprudence examination must be successfully passed once the application for licensure has been approved.~~ Applicants shall successfully pass the jurisprudence examination with a final grade of at least 75 percent, prior to issuance of a license.

(4) remains the same.

AUTH: 37-1-131, 37-4-205, ~~37-4-402~~, MCA

IMP: 37-1-304, MCA

24.138.507 DENTIST LICENSURE BY CREDENTIALS FOR SPECIALISTS

(1) and (2) remain the same.

AUTH: 37-1-131, 37-4-205, ~~37-4-301~~, MCA

IMP: 37-1-304, 37-4-301, MCA

24.138.508 DENTAL HYGIENE LOCAL ANESTHETIC AGENT

CERTIFICATION (1) No licensed dental hygienist shall administer local anesthetic agents during a dental procedure or a dental-surgical procedure unless and until ~~he or she~~ the hygienist possesses a local anesthetic permit issued by the board.

(2) Application for a local anesthetic ~~certificate~~ certification by examination shall be made on an application form ~~provided by the board~~ and must include the following:

(a) remains the same.

(b) a copy of the applicant's current CPR or ACLS card;

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

(b) a copy of the applicant's current CPR or ACLS card;

(c) through (g) remain the same.

(4) An applicant who wishes to ~~reactivate a~~ convert an inactive status local anesthesia certification in conjunction with the ~~reactivation or reinstatement~~ conversion of a an inactive dental hygiene license shall:

(a) and (b) remain the same.

(c) submit a copy of the applicant's current CPR or ACLS card;

(d) through (f) remain the same.

AUTH: 37-1-131, 37-4-205, 37-4-402, MCA

IMP: 37-4-401, 37-4-402, MCA

24.138.509 DENTAL HYGIENE LIMITED ACCESS PERMIT (1) ~~A Montana licensed dental hygienist may submit a completed application for a limited access permit (LAP) on a form provided by the board.~~

(2) (1) The board shall issue a limited access permit (LAP) to a Montana licensed dental hygienist who:

(a) and (b) remain the same.

(c) provides the name of the applicant's current liability insurance carrier, and policy number, and expiration date;

(d) and (e) remain the same.

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

(4) Pursuant to 37-4-405, MCA, the board identifies the following additional public health facilities and programs at which services under a LAP may be provided:

(a) Dodson School;

(b) Harlem Elementary School; and

(c) Harlem Junior/Senior High School.

AUTH: 37-1-131, 37-4-205, ~~37-4-301~~, 37-4-405, MCA

IMP: 37-4-405, MCA

REASON: The board has determined it is reasonable and necessary to amend this rule to clarify that limited access permits will be issued only to applicants who are licensed in Montana as dental hygienists prior to applying for a LAP. Following a licensee's request to provide dental hygiene services under a LAP in an alternative setting, the board is amending the rule to specifically delineate three additional public health facilities and programs at which services can be provided under a LAP.

24.138.510 DENTURIST EXAMINATION (1) The examinations approved by the board for licensure shall include a written examination, a clinical/practical examination on a live patient, and a jurisprudence examination.

(2) Grading ~~will~~ shall be done by Montana licensed dentists and denturists conducting the examination or the board's designees.

(3) and (4) remain the same.

(5) In order to guarantee security of the test papers and protect the privacy of the applicant, examination papers may not be copied or duplicated by the applicant or the licensee.

(6) through (11) remain the same.

AUTH: 37-1-131, 37-29-201, MCA

IMP: 37-1-131, 37-29-201, ~~37-29-305~~, MCA

REASON: It is reasonably necessary to amend this rule to clarify that applicants and licensees are prohibited from copying examination paperwork and that this prohibition does not apply to staff or test administrators.

24.138.511 DENTURIST APPLICATION REQUIREMENTS (1) ~~Written application for denturist licenses shall be made on forms prescribed by the board~~

and provided by the department. Each applicant shall submit a completed application.

(2) The application fee and required documentation must ~~be submitted to the board of dentistry and must~~ include:

(a) official transcripts from all colleges or educational institutions ~~must be provided~~ sent directly to the board office by the college or institution;

(b) through (i) remain the same.

(j) license verification(s) from all jurisdictions where the licensee has held/ or holds a license;

~~(k) copies of all other state licenses that are held by the licensee;~~

~~(l) (k)~~ a copy of a current CPR or ACLS card;

~~(m) (l)~~ three affidavits from three persons not related to the candidate, of the candidate's good moral character;

(n) remains the same but is renumbered (m).

~~(o) photograph of the applicant;~~

(p) and (q) remain the same but are renumbered (n) and (o).

~~(3) Licensee must successfully pass the jurisprudence examination.~~

~~(4) (3)~~ Licensee Applicant shall submit a copy of the board approved intern application including intern reports, showing internship clinical training, which are signed by the monitoring licensed denturist.

~~(5) (4)~~ The board may require application materials to be updated prior to the applicant taking the jurisprudence examination.

(5) Applicants must successfully pass the jurisprudence examination with a final grade of at least 75 percent, prior to the issuance of a license.

AUTH: 37-1-131, 37-29-201, MCA

IMP: 37-29-303, ~~37-29-304~~, 37-29-306, MCA

REASON: The board has determined it is reasonable and necessary to amend this rule to promote consistency in licensure requirements among the three professions regulated by the board.

24.138.512 DENTURIST INTERN (1) To be eligible for internship, the applicant must have completed all requirements for licensure set forth in 37-29-303~~(4)~~, MCA.

(2) A denturist intern is a person engaged in a clinical training program under the direct supervision of a Montana licensed denturist.

(a) Such training program shall consist of 2000 clock hours of training and performance in at least the following fields of practice:

~~(a)~~ (i) patient charting

36 hours minimum

(ii) through (d) remain the same.

(3) An intern shall file a monthly report with the board, on a form ~~provided by the department~~ and attested to by his the intern's supervising denturist. The report shall state the number of hours or units completed in each field of practice identified in (2) ~~above~~.



(4) No licensed dentist may supervise more than one intern at a time interns than is reasonable and appropriate to provide the necessary internship skill needed for licensure.

(5) Each intern shall be provided a separate work station in the laboratory area, containing standard dentistry equipment, i.e., lathe, torch, and storage space. Operatory facilities and other equipment will be shared with the intern. ~~The intern shall provide his own necessary hand tools~~ The necessary hand tools shall be provided by the intern.

(6) No intern may practice once the internship has been completed until after successful passage of the clinical examination and the applicant has met all other requirements for licensure.

AUTH: 37-1-131, 37-29-201, 37-29-303, MCA

IMP: 37-29-303, MCA

REASON: It is reasonably necessary to amend this rule to clarify that a Montana licensed dentist may supervise more than one dentist intern as long as the supervision terms are reasonable and appropriate. Similar supervision requirements currently exist in rule for dentist supervision of dental auxiliaries.

24.138.514 APPLICATION TO CONVERT AN INACTIVE STATUS LICENSE TO AN ACTIVE STATUS LICENSE (1) remains the same.

(2) An inactive status license does not entitle the holder to practice dentistry, dental hygiene, or dentistry in the state of Montana.

(3) The board may consider a licensee request to convert an inactive status license to active status for reactivation upon written request to the board if the applicant provides, but is not limited to, the following:

- (a) a completed form ~~approved by the board;~~
- (b) through (5) remain the same.

AUTH: 37-1-319, 37-4-205, MCA

IMP: 37-1-319, 37-4-307, 37-4-406, 37-29-201, MCA

24.138.515 CONSIDERATION OF REAPPLICATION FOR A LICENSE AFTER PREVIOUS DENIAL OR REVOCATION (1) through (1)(f) remain the same.

AUTH: 37-1-136, ~~37-4-301~~, 37-4-402, 37-29-201, MCA

IMP: 37-1-136, 37-1-137, MCA

24.138.519 GROUNDS FOR DENIAL OF A LICENSE (1) through (1)(b) remain the same.

- (c) having another person appear in the applicant's place for examination; or
- ~~(d) failure to pass the licensure examination; or~~
- ~~(e) (d)~~ (d) conduct that qualifies as grounds for discipline.

AUTH: 37-1-131, 37-4-205, 37-29-201, MCA

IMP: 37-1-137, 37-29-201, MCA

REASON: It is reasonably necessary to amend this rule and delete failure to pass a licensure examination as grounds to deny licensure. The board does not intend to deny licensure if an applicant fails an exam, retakes and subsequently passes the exam, and applicants may retake licensure examinations until successful.

24.138.530 LICENSURE OF RETIRED OR NONPRACTICING DENTIST OR DENTAL HYGIENIST FOR VOLUNTEER SERVICE (1) Retired or nonpracticing dentists and dental hygienists seeking to practice under a volunteer license shall submit, ~~on forms provided by the board,~~ a complete application and the following documentation:

- (a) remains the same.
- ~~(b) copies of other state licenses held;~~
- (c) through (f) remain the same but are renumbered (b) through (e).
- ~~(g) (f) a copy of a current ACLS or CPR or ACLS card; and~~
- (h) remains the same but is renumbered (g).
- ~~(2) The board may exempt applicants not meeting the above requirements of~~
- ~~(1) on a case-by-case basis until July 1, 2005.~~
- (3) through (5) remain the same, but are renumbered (2) through (4).

AUTH: 37-1-131, 37-4-204, 37-4-340, MCA

IMP: 37-4-340, MCA

24.138.2101 DEFINITION OF CONTINUING EDUCATION (1) remains the same.

- (a) review existing concepts and techniques; ;
- (b) convey information beyond the basic professional education; ; and
- (c) update knowledge on advances in dental, medical and dental hygiene sciences, and dentistry practices.
- (2) remains the same.

AUTH: 37-1-319, 37-4-205, 37-29-201, MCA

IMP: 37-1-306, 37-1-319, 37-4-205, 37-29-306, MCA

24.138.2105 REPORTING PROCEDURES (1) remains the same.  
(2) Licensees are required to keep a ~~record~~ certificate of attendance of continuing education completed and make this available to the board if so requested.

(3) Licensees shall affirm their understanding of and compliance with continuing education requirements with the ~~annual~~ license renewal.

(4) Failure of licensee to produce ~~records~~ certificates of attendance of required continuing education may result in disciplinary action. Following an audit failure, the licensee will be afforded a one-year period to gain the appropriate continuing education requirements. If compliance is not attained, disciplinary action pursuant to 37-1-312, MCA, will be taken.

(5) remains the same.

AUTH: 37-1-319, 37-4-205, MCA

IMP: 37-1-306, 37-4-205, MCA

REASON: The board has determined that reasonable necessity exists to amend this rule and clarify for licensees what is acceptable to the board as documentation of CE attendance for random audits.

24.138.2302 UNPROFESSIONAL CONDUCT FOR DENTURISTS

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

(i) testifying in court on a contingency-witness fee basis; and

~~(j) fitting, attempting to fit or advertising to fit a prosthesis on or over a dental implant; and~~

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

AUTH: 37-1-136, 37-1-319, 37-29-201, MCA

IMP: 37-1-316, 37-29-402, 37-29-403, MCA

REASON: It is reasonable and necessary to amend this rule to clarify that placement of dentures on or over dental implants is not considered unprofessional conduct for denturists. Following review and discussion, the board concluded that there is no statutory prohibition on this placement and that it is within the scope of practice of Montana licensed denturists.

24.138.2402 SCREENING PANEL (1) ~~The board~~ screening panel shall consist of three dentists, one dental hygienist, one public member, and one dentist. The presiding officer of the screening panel may reappoint ~~screening panel members~~, or replace screening panel members as necessary at the presiding officer's discretion.

(2) The screening panel shall not consider anonymous complaints.

AUTH: 37-4-205, 37-29-201, MCA

IMP: 37-1-307, MCA

REASON: It is reasonable and necessary to amend this rule to specify that the board does not consider anonymous complaints. This is not a new board policy, but was formerly included in ARM 24.138.2401 that is proposed for repeal in this notice.

24.138.3202 PERMIT REQUIRED FOR ADMINISTRATION OF ANESTHESIA (1) ~~In order to~~ To administer general anesthesia or conscious sedation, a Montana licensed dentist must possess a permit ~~from the board to do so~~. ~~Such a permit must be renewed every year.~~

(2) ~~In order to~~ To obtain a permit, the dentist makes application ~~on a form provided by the board~~ and must meet specific minimum qualifying standards as set forth in the rules.

(3) Anesthesia administration permits must be renewed every year.

~~(3)~~ (4) The board may grant to a Montana licensed dentist, upon receipt of an application and payment of the initial inspection fee, a temporary permit

authorizing the dentist to administer general anesthesia, light general anesthesia, or conscious sedation for a period not to exceed 120 days or until the inspectors are able to make the inspection, ~~whichever event occurs first~~. This temporary permit may be extended upon board approval.

AUTH: 37-1-131, 37-4-205, MCA

IMP: 37-1-131, 37-4-101, 37-4-511, MCA

REASON: It is reasonable and necessary to amend this rule to specify that only Montana licensed dentists qualify for full or temporary anesthesia administration permits. This is not a new requirement, but is being specifically identified to alleviate confusion among applicants and licensees.

24.138.3206 ON-SITE INSPECTION OF FACILITIES (1) Each facility where conscious sedation or general anesthesia is to be provided shall be initially inspected by a team appointed by the board prior to the initial issuance of the appropriate permit to administer anesthesia on the premises, and at intervals not to exceed five years. Adequacy of the facility and competency of the anesthesia team will be evaluated by the inspection team. The inspection team shall consist of at least two individuals. Any dentist whose facility is to be inspected shall be notified at least 30 days prior to the inspection and the names of the inspection team shall be provided to ~~him~~ the dentist.

(2) The on-site inspection shall include a test of the applicant and ~~his~~ the applicant's staff on their abilities to recognize and manage complications likely to occur considering the techniques being used. Early recognition of complications will be emphasized. The facility must be inspected for the presence of drugs and equipment appropriate for the level of sedation or anesthesia to be provided. Monitoring assistants shall be examined for their knowledge of their respective roles in normal operating procedures and in various emergency situations. The inspection team shall evaluate office staff in proficiency in handling emergency procedures. The inspection team shall evaluate the accuracy of anesthesia record keeping.

(3) If the on-site inspection team finds deficiencies present in the inspected office, the facility shall be given 30 days to address the deficiencies ~~comply with the recommendations of the inspection team~~. If, at the completion of this 30-day period, the deficiencies have not adequately been rectified, the board will limit the practitioner's permit to apply general anesthesia or conscious sedation only in qualifying facilities.

(4) through (6) remain the same.

AUTH: 37-1-131, 37-4-205, MCA

IMP: 37-1-131, 37-4-101, 37-4-511, MCA

REASON: The board has determined that it is reasonable and necessary to amend this rule to clarify that anesthesia inspectors only note deficiencies and they do not make any decisions nor recommendations for the board.

5. The proposed new rules provide as follows:

NEW RULE I REHABILITATION PROGRAM PURPOSE

(1) The board approves a program to provide assistance, rehabilitation, and aftercare monitoring to all licensed healthcare providers under the jurisdiction of the board who are suspected and/or found to be physically or mentally impaired by habitual intemperance or the excessive use of addictive drugs, alcohol, or any other drug or substance, or by mental or chronic physical illness.

(2) The board encourages and permits the rehabilitation of licensees based upon the extent to which the public health, safety, and welfare can be assured. Early intervention and referral are paramount to promoting public health, safety, and welfare.

AUTH: 37-1-131, 37-4-205, 37-29-201, MCA

IMP: 37-1-131, 37-1-312, 37-4-311, 37-4-312, 37-4-313, 37-4-314, MCA

REASON: The board determined that reasonable necessity exists to adopt New Rules I through IX. Pursuant to 37-4-311, MCA, these new rules will delineate the protocol for the referral of licensees found to be impaired by drugs, alcohol, mental illness, or chronic physical illness to a board approved rehabilitation program. The new rules clarify for licensees and license applicants, who are participants or prospective participants of the rehabilitation program, the processes, procedures, and requirements of the board and the rehabilitation program.

NEW RULE II RESPONSIBILITIES OF BOARD APPROVED

REHABILITATION PROGRAM (1) The board approved rehabilitation program (program) as set forth in 37-4-311 and 37-4-312, MCA, shall fulfill terms to be set by contract with the board to include, but not limited to the following:

- (a) provide two tracks for assistance of licensee or license applicants under the board's jurisdiction:
    - (i) a disciplinary track; and
    - (ii) a nondisciplinary track;
  - (b) provide recommendations to the licensee or license applicant for appropriate evaluation and treatment facilities;
  - (c) recommend to the board terms and conditions of treatment, rehabilitation, and monitoring of licensees or license applicants known to the board; and
  - (d) monitor all aftercare of participants under contract to ensure public safety and compliance with agreed treatment recommendations propounded by one or all of the following:
    - (i) the board, through stipulations and/or final orders;
    - (ii) treatment centers; and
    - (iii) the program.
- (2) The program shall consult with the board regarding program processes and procedures to ensure that program responsibilities are met consistent with board orders, requests, and contract terms.
- (3) The program shall provide information to and consult with the board upon the board's request.

AUTH: 37-1-131, 37-4-205, 37-29-201, MCA

IMP: 37-1-131, 37-1-312, 37-4-311, 37-4-312, 37-4-313, 37-4-314, MCA

### NEW RULE III REPORTING OF SUSPECTED IMPAIRMENT

(1) Individuals, entities, or associations may report information to the board of suspected impairment of a licensee or license applicant as provided in 37-4-312, MCA.

(2) Individuals, entities, or associations may report information of suspected impairment of a licensee or license applicant to the appropriate personnel of the program in lieu of reporting to the board as provided by 37-4-312, MCA.

(3) Reports received by the board of suspected impaired licensees or license applicants may be referred to the program at the board's discretion through the nondisciplinary track without formal disciplinary action against the licensee or license applicant.

AUTH: 37-1-131, 37-4-205, 37-29-201, MCA

IMP: 37-1-131, 37-1-312, 37-4-311, 37-4-312, 37-4-313, 37-4-314, MCA

NEW RULE IV PROTOCOL FOR SELF-REPORTING TO A BOARD APPROVED REHABILITATION PROGRAM (1) If a licensee or license applicant chooses to self-report to the program and the program has determined that the licensee or license applicant needs assistance or supervision, the licensee or license applicant shall be required to:

(a) enter into an aftercare contract with the program for the specified length of time determined by the program; and

(b) abide by all the requirements set forth by the program.

(2) Self-reporting by a licensee or license applicant may still result in disciplinary action if:

(a) the program determines that the self-reporting licensee or license applicant poses a danger to the licensee or license applicant or to the public;

(b) the licensee or license applicant is in noncompliance with a contract for aftercare monitoring;

(c) a licensee or license applicant has not completed evaluation, treatment, or aftercare monitoring as recommended by the program; or

(d) the screening panel otherwise determines that disciplinary action is warranted.

(3) The program shall notify and disclose to the board the identity of a licensee participating in the program, along with providing to the board all relevant facts and documentation, when any of the following occur:

(a) the participant engages in actionable behavior as described in 37-4-312, MCA;

(b) the participant is noncompliant with the aftercare monitoring contract; or

(c) there are credible allegations that patient safety or public harm is at risk by the participant's continued practice.

(4) The program shall notify and disclose to the board the identity of a new license applicant who is determined by the program to have significant impairment issues.

AUTH: 37-1-131, 37-4-205, 37-29-201, MCA

IMP: 37-1-131, 37-1-312, 37-4-311, 37-4-312, 37-4-313, 37-4-314, MCA

NEW RULE V PROTOCOL FOR DISCIPLINARY TRACK (1) All licensees or license applicants under the jurisdiction of the board who participate in the program as defined in 37-4-311, MCA, under the disciplinary track shall be reported to the board by name.

(2) Licensees or license applicants are admitted to the disciplinary track through one or more of the following:

- (a) as a condition of licensure;
- (b) as a result of a sanction imposed by a board final order;
- (c) as a result of noncompliance with the licensee or license applicants' aftercare contract with the program; or
- (d) as determined by the board and/or program.

AUTH: 37-1-131, 37-4-205, 37-29-201, MCA

IMP: 37-1-131, 37-1-312, 37-4-311, 37-4-312, 37-4-313, 37-4-314, MCA

NEW RULE VI PROTOCOL FOR NONDISCIPLINARY TRACK (1) A licensee or license applicant under the jurisdiction of the board who participates in the program as defined in 37-4-311 and 37-4-312, MCA, under the nondisciplinary track shall be reported to the board by participant number.

(2) A participant who is noncompliant or refuses a reasonable request by the program shall be reported by name to the board.

(3) If the board determines that a participant does not abide by all terms and conditions of the program, the participant will be referred to the screening panel of the board for appropriate action under the disciplinary track.

AUTH: 37-1-131, 37-4-205, 37-29-201, MCA

IMP: 37-1-131, 37-1-312, 37-4-311, 37-4-312, 37-4-313, 37-4-314, MCA

NEW RULE VII REPORTING TO THE BOARD (1) The screening panel and the full board shall receive an appropriate written compliance status report from the program at intervals established by contract with the board and program regarding each program participant:

- (a) under a monitoring agreement;
- (b) referred to the program; or
- (c) in the process of evaluation or treatment.

(2) The identity of a participant in the nondisciplinary track must be withheld from the board unless the participant does not meet one of the requirements set forth in [NEW RULE VI].

(3) A participant in the disciplinary track shall be reported to the board as required in [NEW RULE V].

AUTH: 37-1-131, 37-4-205, 37-29-201, MCA

IMP: 37-1-131, 37-1-312, 37-4-311, 37-4-312, 37-4-313, 37-4-314, MCA

NEW RULE VIII DISCHARGE REQUIREMENTS (1) The program shall facilitate participant discharge from the program.

(2) The discharge criteria are determined by the board in conjunction with the program recommendations.

(3) Upon the discharge of a participant from the program, the program shall report to the board the discharge of the participant, and if applicable, provide to the board:

(a) verification of the participant's satisfactory completion of monitoring and program requirements as appropriate for public safety;

(b) verification of the participant's completion of board final order terms and conditions with recommendation of the program for discharge; and/or

(c) notification that the participant is transferring to another jurisdiction.

AUTH: 37-1-131, 37-4-205, 37-29-201, MCA

IMP: 37-1-131, 37-1-312, 37-4-311, 37-4-312, 37-4-313, 37-4-314, MCA

NEW RULE IX RELAPSE (1) The program shall define relapse and determine when relapse has occurred.

(2) The program may report to the board a participant with a single episode of relapse and/or early detection of relapse, with nominal substance abuse.

(a) Even in cases where the program does not report participants under (2), the program shall reevaluate the participant and document any further treatment recommended by the program.

(3) A participant who has second or severe relapse shall be reported to the board screening panel for review.

(4) A participant's relapse may necessitate the participant's:

(a) withdrawal from practice;

(b) further evaluation and/or treatment as determined by the program;

(c) monitoring terms being reassessed and/or modified by the program;

(d) compliance with other recommendations as determined by the program;

or

(e) discipline as imposed by a board final order.

AUTH: 37-1-131, 37-4-205, 37-29-201, MCA

IMP: 37-1-131, 37-1-312, 37-4-311, 37-4-312, 37-4-313, 37-4-314, MCA

NEW RULE X REACTIVATION OF A LAPSED LICENSE (1) To reactivate a lapsed license, a licensee shall meet the requirements of 37-1-141, MCA, and submit the following:

(a) a copy of a current CPR or ACLS card; and

(b) proof of CE as follows:

(i) a dentist shall submit 60 hours of CE obtained in the most recent three years;

(ii) a dental hygienist shall submit 36 hours of CE obtained in the most recent three years; and



(iii) a denturist shall submit 36 hours of CE obtained in the most recent three years.

AUTH: 37-1-141, 37-4-205, 37-29-201, MCA  
IMP: 37-1-141

REASON: The board has determined that it is reasonable and necessary to adopt New Rules X and XI to further implement 37-1-141, MCA. The new rules identify additional board requirements for the reactivation of lapsed and expired licenses.

NEW RULE XI REACTIVATION OF AN EXPIRED LICENSE (1) To reactivate an expired license, a licensee shall meet the requirements in 37-1-141, MCA, and submit the following:

- (a) a copy of a current CPR or ACLS card;
- (b) a license verification from all jurisdictions where the licensee is licensed or has held a license; and
- (c) proof of CE as follows:
  - (i) a dentist shall submit 60 hours of CE obtained in the most recent three years;
  - (ii) a dental hygienist shall submit 36 hours of CE obtained in the most recent three years; and
  - (iii) a denturist shall submit 36 hours of CE obtained in the most recent three years.

AUTH: 37-1-141, 37-4-205, 37-29-201, MCA  
IMP: 37-1-141

NEW RULE XII DEFINITION OF NONROUTINE APPLICATION (1) A nonroutine application includes all criteria as defined in ARM 24.101.402.

(2) The board may consider applications as nonroutine in any of the following instances:

- (a) the applicant does not meet the license criteria in the specified statute or rule regarding licensure;
- (b) the dental hygiene applicant does not meet the practice hours required by board rule;
- (c) the applicant has graduated from a nonaccredited school as defined by board statute or rule; or
- (d) any other criteria as determined by the board.

(3) All dental credentialing applications are considered nonroutine.

(4) All denturist applications are considered nonroutine.

AUTH: 37-1-131, 37-4-205, 37-29-201, MCA  
IMP: 37-1-101, 37-1-131, 37-4-301, 37-4-402, 37-29-306, MCA

REASON: It is reasonable and necessary to adopt New Rule XII to further implement 37-1-101, MCA, which states the department will process routine licensure applications on behalf of the board. This new rule identifies additional

criteria determined by the board to characterize nonroutine applications and therefore require the board's consideration for processing.

NEW RULE XIII FEE ABATEMENT (1) The Board of Dentistry 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, 37-4-205, 37-29-201, 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 resulting from unexpectedly high licensing levels or other nontypical events. Abatement in these cases will allow the licensees who have paid fees into the board's program to receive temporary relief provided by abatement. Adoption of this 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.

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

24.138.516 REINSTATEMENT OF A LICENSE FOR NONPAYMENT OF RENEWAL FEE found at ARM page 24-12051.

AUTH: 37-1-131, 37-4-205, 37-4-402, MCA  
IMP: 37-4-307, 37-4-406, MCA

24.138.517 DENTURIST LICENSE REINSTATEMENT found at ARM page 24-12052.

AUTH: 37-1-141, 37-29-201, MCA  
IMP: 37-1-141, MCA

24.138.2401 COMPLAINT PROCEDURE found at ARM page 24-12227.

AUTH: 37-4-205, 37-29-201, MCA  
IMP: 37-1-308, 37-1-309, MCA

REASON: It is reasonable and necessary to repeal these rules to avoid duplication and remain in compliance with department rules implementing HB182. The board is incorporating any remaining necessary provisions into other rules as appropriate.

7. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Dentistry, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to [dlibsdden@mt.gov](mailto:dlibsdden@mt.gov), and must be received no later than 5:00 p.m. August 25, 2006.

8. An electronic copy of this Notice of Public Hearing is available through the department and board's site on the World Wide Web at [www.dentistry.mt.gov](http://www.dentistry.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 technical difficulties in accessing or posting to the e-mail address do not excuse late submission of comments.

9. 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 Dentistry administrative rulemaking proceedings or other administrative proceedings. Such written request may be mailed or delivered to the Board of Dentistry, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2305, e-mailed to [dlibsdden@mt.gov](mailto:dlibsdden@mt.gov), or may be made by completing a request form at any rules hearing held by the agency.

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

11. Darcee L. Moe, attorney, has been designated to preside over and conduct this hearing.

BOARD OF DENTISTRY  
PAUL SIMS, D.D.S, PRESIDENT

/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 July 17, 2006

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

In the matter of the proposed amendment ) NOTICE OF PUBLIC HEARING  
of ARM 24.174.401 fees and 24.174.402 ) ON PROPOSED AMENDMENT  
dangerous drug fee schedule )

TO: All Concerned Persons

1. On August 17, 2006, at 1:00 p.m., a public hearing will be held in room 489, 301 South Park Avenue, Helena, Montana to consider the proposed amendment 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 August 11, 2006, to advise us of the nature of the accommodation that you need. Please contact Marilyn Kelly-Clark, Board of Pharmacy, 301 South Park Avenue, 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 dlibsdpba@mt.gov.

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

24.174.401 FEE SCHEDULE

(1) Application for licensure transfer	<del>\$250</del> <u>300</u>
(2) Original registration for pharmacist	<del>60</del> <u>120</u>
(3) Pharmacist annual renewal fee	<del>55</del> <u>110</u>
(4) Certified pharmacy original certification (includes original, change in location, and change in ownership)	<del>200</del> <u>400</u>
(5) Certified pharmacy annual renewal fee	<del>100</del> <u>200</u>
(6) remains the same.	
(7) Intern registration	<del>40</del> <u>80</u>
(8) NAPLEX examination fee (paid directly to exam service)	<del>360</del> <u>465</u>
(9) NAPLEX examination processing fee (paid to board)	<del>25</del> <u>35</u>
(10) Multistate pharmacy jurisprudence examination (MPJE) exam fee (NABP - <del>\$130</del> <u>185</u> ; board - <del>\$15</del> <u>25</u> )	<del>145</del> <u>210</u>
(11) Utilization plan approval fee	<del>150</del> <u>200</u>
(12) Annual utilization plan renewal fee	<del>75</del> <u>100</u>
(13) Pharmacy technician and technician-in-training registration fee	<del>40</del> <u>60</u>
(14) Pharmacy technician renewal fee	<del>25</del> <u>50</u>
(15) Wholesale drug distributor license	<del>150</del> <u>300</u>
(16) Annual wholesale drug distributor renewal	<del>75</del> <u>175</u>
(17) Out-of-state mail service pharmacy/telepharmacy initial license	<del>200</del> <u>400</u>

- (18) Out-of-state mail service pharmacy/telepharmacy renewal    ~~400~~ 200  
(19) Certification of grades/transfer of internship hours                ~~40~~ 20  
(20) through (22) remain the same.

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

IMP: 37-1-134, ~~37-1-144~~, 37-7-201, ~~37-7-302~~, 37-7-321, 37-7-703, 50-32-314, MCA

24.174.402 DANGEROUS DRUG FEE SCHEDULE (1) The fees to be assessed for registration to manufacture, distribute, dispense, conduct research, or analyze, a dangerous drug shall be assessed according to the following schedule:

<u>REGISTRATION</u>	<u>ANNUAL FEE</u>
(a) manufacture	<del>\$400</del> <u>150</u>
(b) distribute	<del>400</del> <u>150</u>
(c) dispense - pharmacies	<del>35</del> <u>75</u>
(d) conduct research/analyze	<del>50</del> <u>100</u>

AUTH: 37-1-134, 37-7-201, 50-32-103, MCA

IMP: 37-1-134, 37-7-201, ~~37-7-303~~, 37-7-321, 50-32-103, MCA

REASON: The board determined it is reasonably necessary to amend ARM 24.174.401 and 24.174.402 to ensure the board's fees remain at a level commensurate with associated costs as required by 37-1-134, MCA, and to comply with recommendations of the Legislative Auditor. The board has not increased the fees in ARM 24.174.401 since 2002, nor made adjustment to the dangerous drug fee schedule in ARM 24.174.402 since 1998. Board expenditures totaled \$479,630 in fiscal year (FY) 2005 and \$506,914 in FY 2006. The board's executive director position was part time in FY 2005, and the position was vacant for six months in FY 2006. In FY 2007, the executive director will become a full time position which will result in an increase in expenses. The fee increase is estimated to result in an annual revenue increase of \$260,995 and a projected annual revenue of \$560,695. The board's appropriation for FY 2007 is \$543,487.

The board estimates that the proposed fee increases will affect applicants, licensees, and business entities as follows:

Reciprocity of pharmacists into Montana: approximately 27 applicants affected by the \$50 fee increase for an estimated annual revenue increase of \$1,350.

Pharmacist intern registration: approximately 76 applicants affected by the \$40 fee increase for an estimated annual revenue increase of \$3,040.

Pharmacist original license: approximately 75 applicants affected by the \$60 fee increase for an estimated annual revenue increase of \$4,500.

Pharmacist examination fees: approximately 57 applicants affected by the \$20 fee increase for the NAPLEX and the MPJE for an estimated annual revenue increase of \$1,140.

Pharmacist renewal: approximately 1450 licensees affected by the \$55 fee increase for an estimated annual revenue increase of \$79,750.

Technician in training registration: approximately 141 applicants affected by the \$20 fee increase for an estimated annual revenue increase of \$2,820.

Certified technician original or transfer: approximately 46 applicants affected by the \$20 fee increase for an estimated annual revenue increase of \$920.

Certified technician renewal: approximately 569 licensees affected by the \$25 fee increase for an estimated annual revenue increase of \$14,225.

Pharmacy original license: approximately 28 applicants affected by the \$200 fee increase for an estimated annual revenue increase of \$5,600.

Pharmacy renewal: approximately 312 licensees affected by the \$100 fee increase for an estimated annual revenue increase of \$31,200.

Mail order pharmacy original license: approximately 63 applicants affected by the \$200 fee increase for an estimated annual revenue increase of \$12,600.

Mail order pharmacy renewal: approximately 238 licensees affected by the \$100 fee increase for an estimated annual revenue increase of \$23,800.

Wholesale distributor original: approximately 61 applicants affected by the \$150 fee increase for an estimated annual revenue increase of \$9,150.

Wholesale distributor renewal: approximately 401 licensees affected by the \$100 fee increase for an estimated annual revenue increase of \$40,100.

Technician utilization plan original: approximately 59 applicants affected by the \$50 fee increase for an estimated annual revenue increase of \$2,950.

Technician utilization plan renewal: approximately 250 licensees affected by the \$25 fee increase for an estimated annual revenue increase of \$6,250.

Certification of grades/transfer of internship: approximately 15 applicants affected by the \$10 fee increase for an estimated annual revenue increase of \$150.

All other fees in ARM 24.174.401 remain unchanged.

Dangerous drug manufacture/distribute: approximately 208 applicants affected by the \$50 increase in the annual registration fees for manufacturing and distributing dangerous drugs for an estimated annual revenue increase of \$10,400.

Dangerous drug dispenser: approximately 275 applicants affected by the \$40 annual registration fee increase for an estimated annual revenue increase of \$11,000.

Dangerous drug researcher/analyst: approximately one applicant affected by the \$50 annual registration fee increase for an estimated annual revenue increase of \$50.

The board has reviewed and researched licensing fees from surrounding states. With the proposed fee increases, Montana fees are comparable to those charged by Colorado, Idaho, North Dakota, South Dakota, Wyoming, and Utah, and, in several categories, Montana's fees will remain lower than surrounding states.

In addition to the above, the board finds that it is reasonably necessary to amend the AUTH and IMP citations in the rules to appropriately reflect legislation changes made in Chapter 429, L. of 2005 (House Bill 189) clarifying and standardizing the roles of the department and the board with respect to the establishment of various fees.

4. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to 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 [dlibsdpha@mt.gov](mailto:dlibsdpha@mt.gov), and must be received no later than 5:00 p.m., August 25, 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 [www.pharmacy.mt.gov](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 technical difficulties in accessing or posting to the e-mail address do not excuse late submission of comments.

6. 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 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 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, do not apply.

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

BOARD OF PHARMACY  
WILLIAM BURTON, R. Ph., CHAIRPERSON

/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 July 17, 2006



BEFORE THE BOARD OF RADIOLOGIC TECHNOLOGISTS  
DEPARTMENT OF LABOR AND INDUSTRY  
STATE OF MONTANA

In the matter of the proposed amendment of ) NOTICE OF PUBLIC HEARING  
ARM 24.204.408 applications, 24.204.501 ) ON PROPOSED AMENDMENT  
limited permit applications - types, 24.204.504 ) AND ADOPTION  
permits - practice limitations, 24.204.511 )  
permit examinations, and adoption of NEW )  
RULE I renewal - proof of good standing )

TO: All Concerned Persons

1. On August 21, 2006, at 9:00 a.m., a public hearing will be held in room 489, 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 Radiologic Technologists (board) no later than 5:00 p.m., on August 16, 2006, to advise us of the nature of the accommodation that you need. Please contact Helena Lee, Board of Radiologic Technologists, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2385; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail dlibsdrts@mt.gov.

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

24.204.408 RADIOLOGIC TECHNOLOGISTS APPLICATIONS

(1) Applications shall be made on printed forms provided by the ~~board office~~ department and signed by the applicant, with the signature acknowledged before a notary public.

(2) The application must be typed or legibly written in ink, ~~and~~ accompanied by the appropriate fee(s), and contain sufficient evidence that the applicant possesses the qualifications set forth in Title 37, chapter 14, MCA, and rules promulgated thereunder.

(3) The board shall review fully-completed nonroutine applications for compliance with board law and rules. The board may request additional information or clarification of information provided in the application as it deems reasonably necessary. Incomplete applications shall be returned to the applicant with a statement regarding incomplete portions.

(4) through (5)(c) remain the same.

(d) evidence of certification by the American Registry of Radiologic Technologists (ARRT) in x-ray technology. This evidence shall consist of the applicant being listed in the current ARRT directory. When the applicant is not listed

in the current ARRT directory, ~~he or she~~ the applicant shall submit to the board a certified copy issued by the ARRT of the original registration certificate; or (e) and (6) remain the same.

AUTH: 37-1-131, 37-14-202, MCA  
IMP: 37-14-302, 37-14-305, MCA

REASON: It is reasonable and necessary to amend this rule as a means of keeping with the intent of House Bill (HB) 182 (Chapter 467, L. 2005) which became effective July 1, 2005. HB 182 generally revised and consolidated professional and occupational and licensing laws and provided distinction between department and board duties regarding licensure; requirement of standardized forms and removal of specific board references if duties are assigned to the department or provided generally to all boards. The amended rule implements the change in distinction between department and board.

The rule is further amended to make references gender neutral and comply with punctuation requirements.

24.204.501 LIMITED PERMIT APPLICATION - TYPES (1) A temporary practice permit as provided in 37-14-306~~(3)~~, MCA, may be obtained by radiologic technologist course graduates who have completed all requirements for licensure other than passage of the American Registry of Radiologic Technologists (ARRT) examination. In reference to 37-14-306, MCA, when the examination has been taken, the temporary permit is valid until notification by the examination service that the person either fails the first license examination for which the person is eligible following issuance of the temporary permit, or passes the examination and is granted a license.

(2) A limited practice permit as provided in 37-14-306~~(1) and (2)~~, MCA, may be obtained by:

(a) graduates of the ~~40~~ 88-hour course set forth in ARM 24.204.507; or

(b) students who have completed ~~12 months of a 24-month board approved x-ray course~~ half of a radiologic technologist program accredited by a mechanism recognized by the ARRT.

(3) A temporary regional hardship permit as provided in 37-14-306~~(4)~~, MCA, may be sought by applicants under the circumstances set forth in ARM 24.204.414.

(4) and (5) remain the same.

AUTH: 37-1-131, 37-14-202, 37-14-306, MCA  
IMP: 37-14-306, MCA

REASON: It is reasonable and necessary to amend ARM 24.204.501(2)(a) because it clarifies the 48-hour course requirements comprised within each limited x-ray procedure, as identified in ARM 24.204.507(3)(a) - (g) are not included with the 40-hour fundamental course approved by the board, as identified in ARM 24.204.507(2)(a) - (h).

ARM 24.204.501(2)(b) is amended because term length at educational facilities varies between semesters and quarters, therefore, the board clarifies the length of time that a student must have completed of a radiologic technologist program accredited by a mechanism recognized by the American Registry of Radiologic Technologists (ARRT), prior to filing an application for a limited permit.

The rule is further amended to delete internal references to specific MCA sections. Removal of these references is preferred to eliminate the potential for references to be incorrect if the statute is amended and to necessitate the amendment of a rule only to modify this specific reference.

24.204.504 PERMITS - PRACTICE LIMITATIONS (1) remains the same.

(a) in the chest area, consisting of the thoracic region including the lungs, AP (anterior posterior) or PA (posterior anterior) views, lateral and apical lordotic routine chest exposures, and other views as needed by the ordering physician or interpreting radiologist, but in no case involving mammography procedures;

(b) of the extremities, AP or PA, lateral, and oblique routine exposures;

(c) of the spine, AP, lateral, and oblique routine exposures of the cervical, thoracic, and lumbar areas;

(d) through (f) remain the same.

(2) A limited practice permit holder or applicant may perform bone densitometry examinations upon successful completion of the bone densitometry equipment operators examination administered by the American Registry of Radiologic Technologists (ARRT) or the International Society of Clinical Densitometry (ISCD).

(3) ~~Forty-hour limited~~ Limited permit holders who completed the 88-hour training are not authorized or permitted to perform fluoroscopy procedures due to the difficulty in monitoring, limiting, and controlling the accumulative doses of ionizing radiation.

(4) and (5) remain the same.

AUTH: 37-1-131, 37-14-202, MCA

IMP: 37-14-301, 37-14-306, MCA

REASON: It is reasonable and necessary to amend this rule because ARM 24.204.504(2) clarifies that applicants for a limited permit who only want to perform bone densitometry procedures, are not required to hold a limited permit in a selected anatomic region prior to taking the bone densitometry examination.

ARM 24.204.504(3) clarifies the 48-hour course requirements comprised within each limited x-ray procedure, as identified in ARM 24.204.507(3)(a) - (g) are not included with the 40-hour fundamental course approved by the board, as identified in ARM 24.204.507(2)(a) - (h).

The rule is further amended to comply with punctuation requirements.

24.204.511 PERMIT EXAMINATIONS (1) All limited permit applicants shall take and pass the ARRT limited scope of ~~practice in radiology~~ core examination.

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

(iii) skull/ and sinuses;

(iv) remains the same.

(v) abdomen, gastrointestinal tract, and hip/ and pelvis (state combined examination).

(3) "Combined examination" as used in this rule means the examination consisting of abdomen (AB), gastrointestinal tract (GI) (postfluoroscopy films only), and hip/ and pelvis examinations.

(4) and (5) remain the same.

(6) Applicants for an 40 ~~88~~-hour course permit who fail any portion of the ARRT limited scope examination (core or any module examination) on two attempts shall be required to successfully complete additional coursework in the failed area(s) of the examination before being allowed to retake the failed portion(s) of the examination a third time.

(a) and (7) remain the same.

(a) the limited scope core examination;

(b) through (10) remain the same.

AUTH: 37-1-131, 37-14-202, MCA

IMP: 37-14-306, MCA

REASON: It is reasonable and necessary to amend this rule because this amended rule clarifies the 88-hour board approved course requirement as outlined in ARM 24.204.507. The permit examinations as outlined in ARM 24.204.511(1) accurately reflects the 40-hour mandatory requirement for the fundamentals and core exam and (2) allows for specific x-ray procedures in selected anatomic regions in which the applicant has completed the hour requirement pursuant to ARM 24.204.507(3) and qualifies the applicant to be administered that selected anatomic region exam.

The rule is further amended for clarity, to make references to the examination consistent, and to comply with punctuation requirements.

4. The proposed new rule provides as follows:

NEW RULE I RENEWAL - PROOF OF GOOD STANDING (1) A radiologic technologist license renewal must include a statement that affirms the licensee possesses a current copy of the American Registry of Radiologic Technologists (ARRT) pocket card.

AUTH: 37-1-131, MCA

IMP: 37-1-141, MCA

REASON: The board considers it to be reasonably necessary for the public's health, safety, and welfare, for the board to require that an individual prove that the licensee is a radiologic technologist in good standing with current continuing education and

no disciplinary action attached to the licensee's credential from the national ARRT registry.

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 Radiologic Technologists, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to [dlibsdrts@mt.gov](mailto:dlibsdrts@mt.gov), and must be received no later than 5:00 p.m., August 29, 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.radiology.mt.gov](http://www.radiology.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 technical difficulties in accessing or posting to the e-mail address do not excuse late submission of comments.

7. The Board of Radiologic Technologists 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 administrative rulemaking proceedings or other administrative proceedings. Such written request may be mailed or delivered to the Board of Radiologic Technologists, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2305, e-mailed to [dlibsdrts@mt.gov](mailto:dlibsdrts@mt.gov), or made by completing a request form at any rules hearing held by the agency.

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

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

BOARD OF RADIOLOGIC TECHNOLOGISTS  
ANNE DELANEY, CHAIRPERSON

/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 July 17, 2006

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

In the matter of the proposed amendment ) NOTICE OF PROPOSED  
of ARM 24.210.602 examination ) AMENDMENT  
)  
) NO PUBLIC HEARING  
) CONTEMPLATED

TO: All Concerned Persons

1. On October 4, 2006, the Board of Realty Regulation proposes to amend the above-stated rule.

2. The Department of Labor and Industry (department) 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 Board of Realty Regulation no later than 5:00 p.m., on September 29, 2006, to advise us of the nature of the accommodation that you need. Please contact Barb McAlmond, Board of Realty Regulation, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2325; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2323; e-mail realestate@mt.gov.

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

24.210.602 EXAMINATION (1) through (5) remain the same.

~~(6) The score upon which the pass-fail determination is made shall be 80 percent on broker uniform and state portions and salesperson uniform portion of the examination and 70 percent on salesperson state portion, all as may be scaled and equated for each specific examination by the board or testing entity providing or administering the examination.~~ For the broker examination, the pass-fail score is 80 percent.

(7) For the salesperson examination, the pass-fail score is:

(a) 80 percent for the uniform examination portions; and

(b) 70 percent for the state examination portion.

(8) All test scores may be scaled and equated for the specific examination either by the board or by the testing agency that provides or administers the examination.

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

IMP: 37-51-202, 37-51-302, 37-51-303, MCA

REASON: It is reasonably necessary to amend this rule to allow the board to offer a broker's examination that contains a single part, rather than the two part exam

currently required by rule. The board is proposing to eliminate two parts to the broker examination and require passing an examination more in agreement with the statute (37-51-303, MCA) which requires the broker examination to be of a "more exacting nature and scope and more stringent than the examination for a salesperson's license." This amendment would allow the board the option of requiring an alternative examination format while fulfilling the purpose of the examination.

4. Concerned persons may submit their data, views, or arguments concerning the proposed rule in writing to the Board of Realty Regulation, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2323, or by e-mail to [realestate@mt.gov](mailto:realestate@mt.gov), to be received no later than 5:00 p.m., August 25, 2006.

5. If persons who are directly affected by the proposed action wish to express their data, views, and arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments they have to the Board of Realty Regulation, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2323, or by e-mail to [realestate@mt.gov](mailto:realestate@mt.gov). The comments must be received no later than August 25, 2006.

6. If the Board of Realty Regulation receives requests for a public hearing on the proposed rule from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed rule; 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 600 persons based on approximately 6000 licensees.

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

8. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the 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 administrative rulemaking proceedings or other administrative proceedings. Such written request may be mailed or delivered to the Board of Realty Regulation, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2323, e-mailed to [realestate@mt.gov](mailto:realestate@mt.gov), or made by completing a request form at any rules hearing held by the agency.

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

BOARD OF REALTY REGULATION  
TEDDY BEEBE, CHAIRPERSON

/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 July 17, 2006



BEFORE THE BOARD OF OIL AND GAS CONSERVATION  
THE DEPARTMENT OF NATURAL RESOURCES  
AND CONSERVATION OF THE STATE OF MONTANA

In the matter of the proposed	)	NOTICE OF PROPOSED
amendment of ARM 36.22.1242 relating	)	AMENDMENT
to privilege and license tax rates on oil	)	
and gas	)	NO PUBLIC HEARING
	)	CONTEMPLATED

To: All Concerned Persons

1. On October 1, 2006, the Department of Natural Resources and Conservation proposes to amend ARM 36.22.1242 relating to privilege and license tax rates for oil and gas production.

2. The Board of Oil and Gas 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 board no later than 5:00 p.m. on August 3, 2006, to advise us of the nature of the accommodation that you need. Please contact Terri Perrigo; P.O. Box 201601, Helena, MT 59620; telephone (406) 444-6675; fax (406) 444-2453; or e-mail [tperrigo@mt.gov](mailto:tperrigo@mt.gov).

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

36.22.1242 REPORTS BY PRODUCERS – TAX REPORT – TAX RATE

(1) Each owner or operator of an oil or gas well or any other well (except an injection well reported on Form No. 5) shall file or cause to be filed with the board on or before the last day of each month following the month being reported on Form No. 6 containing all information required by said form and accurately reporting the status of each well thereon as of the last day of the month reported.

(2) The privilege and license tax on each barrel of crude petroleum and each 10,000 cubic feet of natural gas produced, saved, and marketed, or stored within the state or exported therefrom shall be ~~60.00 per cent~~ 30.00 percent ~~(1.8/10ths~~ .09/10 of 1%) of the rate authorized in 82-11-131, MCA, ~~(3/10ths~~ of 1%) of the market value thereof. This rule is effective on all crude petroleum and natural gas produced on and after ~~July 1, 2005~~ October 1, 2006.

AUTH: 82-11-111, MCA

IMP: 82-11-123, 82-11-131, 82-11-133, MCA

4. REASONABLE NECESSITY: The board is proposing to amend ARM 36.22.1242 to reduce its privilege and license tax rate because the increase in the value of oil and gas has resulted in the current tax rate generating revenue in excess of that needed by the board to support its operations. HB 758, passed during the 2005

regular session, directs that the funds associated with this tax rate reduction go to the oil, gas, and coal natural resource account for distribution to the counties.

While reduction of the board's privilege and license tax rate does not decrease the amount of taxes paid by Montana operators, it does result in additional monies being distributed to Montana counties. Three hundred fifty oil and gas operators will be affected. The added amount that will be distributed to counties according to HB 758 is estimated to be \$615,035 per quarter (assuming price and production levels remain similar to levels existing 2005 ending quarters for September and December).

5. Concerned persons may submit their data, views, or arguments concerning the proposed amendment in writing to Terri Perrigo, 1625 11th Ave, Helena, MT 59620; telephone (406) 444-6675. Comments must be received no later than 5:00 p.m. on August 24, 2006.

6. If persons who are directly affected by the proposed amendment wish to express their data, views, and arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments they have to Terri Perrigo, 1625 11th Ave, Helena, MT 59620; telephone (406) 444-6675; or e-mail [tperrigo@mt.gov](mailto:tperrigo@mt.gov). A written request for the hearing must be received no later than August 24, 2006.

7. 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, the 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 35 persons based on 350 active oil and gas operators in the state of Montana.

8. An electronic copy of this Notice of Public Hearing is available through the department's site on the World Wide Web at <http://www.dnrc.mt.gov>. The department strives to make the electronic copy of this Notice of Public Hearing 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.

9. The agency maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding conservation districts and resource development, forestry, oil and gas conservation, trust land management, water resources, or a combination thereof. Such written request may be mailed or delivered to Legal Unit, Department of Natural Resources and Conservation, P.O. Box 201601, 1625 11th Avenue, Helena,

MT 59620-1601, faxed to the office at (406) 444-2684, or may be made by completing a request form at any rules hearing held by the agency.

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

DEPARTMENT OF NATURAL  
RESOURCES AND CONSERVATION

BOARD OF OIL AND  
GAS CONSERVATION

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

/s/ Terri Perrigo  
TERRI PERRIGO  
Executive Secretary,  
Board of Oil and Gas

/s/ Tommy H. Butler  
Tommy H. Butler  
Rule Reviewer

Certified to the Secretary of State July 17, 2006.

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

In the matter of the amendment of ARM        )  
37.82.101, and 37.82.701 pertaining to        )  
Medicaid eligibility                                )

NOTICE OF PUBLIC HEARING  
ON PROPOSED AMENDMENT

TO: All Interested Persons

1. On August 17, 2006, at 11:00 a.m., a public hearing will be held in the auditorium of the Department of Public Health and Human Services Building, 111 N. Sanders, Helena, Montana to consider the proposed amendment of the above-stated rules.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice or provide reasonable accommodations at the public hearing site. If you need to request an accommodation, contact the department no later than 5:00 p.m. on August 7, 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; e-mail dphhslegal@mt.gov.

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

37.82.101 MEDICAL ASSISTANCE, PURPOSE AND INCORPORATION OF POLICY MANUALS (1) remains the same.

(2) The department adopts and incorporates by reference the state policy, namely the Family Medicaid Manual and the ~~SSI Aged/Blind/Disabled (ABD)~~ Medicaid Manual manuals governing the administration of the ~~m~~Medicaid program ~~effective dated July 1, 2005~~ 2006. The Family Medicaid Manual, the ~~SSI ABD~~ Medicaid Manual, and the proposed manual updates are available for public viewing at each local Office of Public Assistance or at the Department of Public Health and Human Services, Human and Community Services Division, ~~4400 Broadway~~ 111 N. Jackson St., P.O. Box ~~202952~~ 202925, Helena, MT 59620-~~2952~~ 2925. The proposed manual updates are also available on the department's website at [www.dphhs.mt.gov/legalresources/proposedmanualchange.shtml](http://www.dphhs.mt.gov/legalresources/proposedmanualchange.shtml).

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

IMP: 53-6-101, 53-6-131, 53-6-141, MCA

37.82.701 GROUPS COVERED, NONINSTITUTIONALIZED FAMILIES AND CHILDREN (1) Medicaid will be provided to:

(a) remains the same.

(b) individuals who have been receiving assistance in the nonmedically

needy family ~~may~~ Medicaid program and whose assistance is terminated because of earned income. These individuals may continue to receive ~~may~~ Medicaid for any or all of the 12 calendar months immediately following the month in which nonmedically needy family ~~may~~ Medicaid is last received, providing:

(i) in cases where assistance was terminated due to earned income, a member of the assistance unit continues to be employed during the 12 months; however, eligibility may continue even though no member of the assistance unit is employed if there was a good cause as defined in ~~ARM 37.78.508~~ the family-related Medicaid manual, section 1509-1, as incorporated by reference in ARM 37.82.101, for the termination or loss of employment;

(ii) remains the same.

(iii) there continues to be an eligible child in the assistance unit. This coverage group is known as the "~~extended medicaid group~~ family-extended".

(c) individuals under age 19 who live with a specified caretaker relative as defined in ~~ARM 37.78.103~~ the family-related Medicaid manual, section 305-1, as incorporated by reference in ARM 37.82.101, and who meet all other eligibility requirements;

(d) a pregnant woman whose pregnancy has been verified and whose family income and resources meet the requirements listed in ARM 37.82.1106, 37.82.1107, and 37.82.1110. This coverage group is known as the "qualified pregnant woman group";

(i) The unborn child shall be considered an additional member of the ~~assistance~~ filing unit for purposes of determining eligibility.

(e) a pregnant woman whose pregnancy has been verified, whose family income does not exceed 133% of the federal poverty guidelines, and whose countable resources do not exceed \$3,000. This coverage group is known as the "~~poverty level pregnant woman~~ pregnancy group";

(i) The unborn child shall be considered an additional member of the ~~assistance~~ filing unit for purposes of determining eligibility.

(ii) through (g)(i) the same.

(h) a child born on or after October 1, 1983, who has attained age six but has not yet reached age 19, whose family income does not exceed 100% of the federal poverty guidelines and whose countable resources do not exceed ~~\$3,000~~ \$15,000. This coverage group is known as the "~~poverty six child~~ child-age six to 19 group";

(i) a child through the month of the sixth birthday whose family income does not exceed 133% of the federal poverty guidelines and whose countable resources do not exceed ~~\$3,000~~ \$15,000; this group is known as the "~~poverty level child~~ child-under age six group";

(j) through (k) remain the same.

(l) needy caretaker relatives as defined in ~~ARM 37.78.103~~ the family-related Medicaid manual, section 305-1, as incorporated by reference in ARM 37.82.101, who have in their care an individual under age 19 who is eligible for ~~may~~ Medicaid, and whose countable income does not exceed the state's family ~~may~~ Medicaid standards as defined in the ~~family-related~~ may Medicaid manual, section 002;

(m) a child through the month of the child's 19th birthday, who lives in a household whose income and resources do not exceed the medically needy income and resource standards specified in ARM 37.82.1106, 37.82.1107, and 37.82.1110,

~~regardless of whether provided that~~ the child does not lives with a parent or specified caretaker relative as defined in ~~ARM 37.82.103~~ the family-related Medicaid manual section 305-1. This coverage group is known as the "Ribicoff child-medically needy group";

(n) women, under the age of 65 who have been screened through the Montana Breast and Cervical Health Program who:

(i) and (ii) remain the same.

(iii) have countable income that does not exceed 200% of the federal poverty level at the time of screening and enrollment into the Montana Breast and Cervical Health Program; and

(iv) are not eligible for any other nonmedically needy ~~m~~Medicaid coverage group. This coverage group is known as "breast and cervical cancer treatment"; and

(o) through (2) remain the same.

~~(3) Medicaid will continue for one year for newborn children providing:~~

~~(a) the mother was eligible for and receiving medicaid at the time of the newborn's birth;~~

~~(b) the mother of the newborn remains eligible;~~

~~(c) the child remains in the same household as the mother; and~~

~~(d) the mother remains a Montana resident.~~

~~(4)~~ (3) Medicaid may be provided for up to three months prior to the date of application for individuals listed in (1)(a), (1)(c), (1)(d), (1)(g), (1)(h), (1)(i), (1)(j), (1)(k), (1)(l), and (1)(m) if all financial and nonfinancial eligibility criteria are met as of the date medical services were received in each of those months.

AUTH: 53-4-212, 53-6-113, MCA

IMP: 53-4-231, 53-6-101, 53-6-131, 53-6-134, MCA

3. The Montana Medicaid program is a joint federal-state program that pays medical expenses for eligible low-income individuals. To qualify for the Montana Medicaid Program, an individual must meet the eligibility requirements set forth in ARM Title 37, chapter 82. Additionally, the Family Medicaid Manual and the Aged/Blind/Disabled (ABD) Medicaid Manual, formerly known as the SSI Medicaid Manual set forth information about the eligibility requirements for Medicaid that is more detailed than that in administrative rules. These state policy manuals are published by the department to provide guidance to employees of the local offices of public assistance who determine eligibility for Medicaid.

ARM 37.82.101 adopts and incorporates by reference the Medicaid policy manuals. By incorporating these manuals into the administrative rules, the department gives interested parties and the public general notice and an opportunity to comment on policies governing Medicaid eligibility. Additionally, as a result of the incorporation of the manuals into the administrative rules, the policies contained in the Family Medicaid Manual and the ABD Medicaid Manual have the force of law in case of litigation between the department and a Medicaid applicant or recipient concerning the applicant or recipient's eligibility for Medicaid.

ARM 37.82.101 currently adopts and incorporates by reference the Medicaid policy

manuals dated July 1, 2005. On June 12, 2006, the department filed a Notice of Public Hearing on Proposed Amendment, MAR Notice No. 37-385, which proposed amending ARM 37.82.101 to adopt and incorporate by reference the Medicaid policy manuals dated July 1, 2006. In MAR Notice No. 37-385 the department discussed certain changes in the manuals dated July 1, 2006 and explained why these changes were necessary.

The department now proposes to further amend its Medicaid policy manuals to make additional changes contained in the manuals dated July 1, 2006 that are not addressed in MAR Notice No. 37-385. The proposed amendments to ARM 37.82.101 are therefore necessary in order to incorporate into the Administrative Rules of Montana the revised sections of the policy manuals and to permit all interested parties to comment on the department's policies and to offer suggested changes. It is estimated that changes to the Family Medicaid and ABD Medicaid Manuals could affect 82,147 Medicaid recipients. Manuals and draft manual material are available for review in each local office of public assistance and on the department's website at [www.dphhs.mt.gov](http://www.dphhs.mt.gov). Following is a brief overview of the changes being made to each manual section for the Family Medicaid Manual and the ABD Medicaid Manual.

#### Family Medicaid Manual

Fiscal impact based on the changes below is expected to be zero, unless noted otherwise.

FMA 001 General Resource Limitation It is necessary to update this manual section to reflect that the resource limit for children's poverty-related Medicaid (known as Child-Under Age 6 and Child-Age 6 to 19), which is currently \$3,000, will be increased to \$15,000 beginning July 1, 2006. This increase in the resource limit is necessary to implement House Bill 552 passed by the 59th Montana Legislature and codified at section 53-6-113, MCA, which is effective July 1, 2006. It provides that the department may not use a resource limit below \$15,000 for children's poverty-related Medicaid. Increasing the resource limit is expected to allow an additional 3775 children to receive Medicaid at an estimated cost of \$7,761,272 (3775 children x \$168.24 average monthly cost x 12 months) for SFY 2007. The state share is estimated to be \$1,824,917 to be funded with State Special Revenue from I-149, the Tobacco Initiative, which increased taxes on cigarettes and tobacco products.

FMA 103-4 Verification and Documentation This section is being updated to reflect that income and resources must be verified at application, redetermination, and anytime a change is reported. Current policy is that income and resources must only be verified at application and redetermination; and that "client statement" is sufficient at all other times. This change is necessary for two reasons. The first is that state Medicaid reviewers are discovering eligibility errors caused by not requiring verification of changes in income and/or resources. The current Medicaid error rate is approximately 13%. Federal Medicaid Quality Control is slated to begin in 2008 in Montana. At that time, Montana will be expected to have an error rate of

3% or less. Implementing this change now will allow time for the state to lower the current error rate prior to federal reviews taking place. The second reason for this change is in preparation for the new Medicaid eligibility system, CHIMES (Combined Healthcare Information and Montana Eligibility System). CHIMES is a rules-based system and cannot differentiate between when it is appropriate to allow "client statement" and when it is necessary to require other verification.

Other minor changes were also made to remove coding specific to the current eligibility system, TEAMS, in preparation for CHIMES and to clarify that an application cannot be denied for failing to provide verification until the application is at least 45 days old. Federal law provides that the state Medicaid agency generally must determine eligibility for family-related Medicaid within 45 days of the date of application. Since the state agency has 45 days to process the application, there is no reason to deny the application before the 45 days are up due to lack of verification. It is preferable to give the applicant the full 45 days to provide verification of information needed to determine eligibility.

FMA 400 Resources Overview It is necessary to update this manual section to reflect that the resource limit for children's poverty-related Medicaid (known as Child-Under Age 6 and Child-Age 6 to 19), which is currently \$3,000, will be increased to \$15,000 beginning July 1, 2006. This increase in the resource limit is necessary to implement House Bill 552 passed by the 59th Montana Legislature and codified at section 53-6-113, MCA, which is effective July 1, 2006. It provides that the department may not use a resource limit below \$15,000 for children's poverty-related Medicaid. Increasing the resource limit is expected to allow an additional 3775 children to receive Medicaid at an estimated cost of \$7,761,272 (3775 children x \$168.24 average monthly cost x 12 months) for SFY 2007. The state share is estimated to be \$1,824,917 to be funded with State Special Revenue from I-149, the Tobacco Initiative, which increased taxes on cigarettes and tobacco products.

FMA 1501-1 Reporting Changes This section has also been updated to reflect that income and resources must be verified at application, redetermination, and anytime a change is reported. This change is necessary for the same reasons as stated above, under FMA 103-4. This section is also being revised to clarify that changes affecting coverage level must also be timely reported and that the date the change is reported is used to determine retroactive eligibility for the higher coverage level. Family-related Medicaid has two coverage levels, basic Medicaid and full Medicaid. Basic Medicaid generally does not cover certain services that are covered by full Medicaid, such as dental and eyeglass services. Most adults receiving family-related Medicaid have basic coverage, but pregnant women are entitled to the higher level of coverage provided by full Medicaid during their pregnancy. Thus, the fact that a Medicaid recipient has become pregnant or is no longer pregnant is a change which would affect coverage level. The date a change resulting in a higher coverage level is reported determines when full Medicaid coverage begins.

For example, if a Medicaid recipient with basic coverage became pregnant in April but did not report her pregnancy until November, she would be entitled to full



Medicaid coverage retroactively for the three months prior to the month she reported the change, November. Thus, she would have full coverage beginning in August, although she could have had full coverage beginning in April if she had reported the change earlier. This policy is based on the federal rule that retroactive Medicaid coverage is available only for the three months immediately preceding the month of application. The recipient receiving basic Medicaid is in effect applying for the higher coverage level by reporting the change, so full Medicaid coverage can be granted retroactively for no more than three months prior to the month the change is reported. Minor corrections were made to correct form and notice numbers mentioned in the section.

#### ABD Medicaid Manual

Fiscal impact of the following proposed changes is expected to be zero. Although these changes include increases to the Medicare Savings Programs (poverty level based), these standards are required to match the federal standards as published. These increases do not result in an increase in the number of eligible individuals, but only retain eligibility for those already receiving these benefits, as any cost of living increases to Social Security benefits received by recipients of Medicare Savings Programs are disregarded when determining ongoing eligibility prior to the publishing of new federal poverty standards.

The following sections were updated to incorporate the 2006 federal poverty standards:

- MA 003 *Qualified Medicare Beneficiaries*
- MA 004 *Special Low Income Medicare Beneficiaries*
- MA 007 *Qualified Disabled Working Individuals*
- MA 010 *Poverty Guidelines*
- MA 012 *Qualifying Individuals (QI-1)*

The eligibility standards for these programs are based on the federal poverty standards as published by the U.S. Department of Health and Human Services annually and therefore must change when the federal standards change. The federal standards are revised annually to reflect increases in the cost of living. The higher eligibility standards do not result in an increase in the number of eligible individuals, but only retain eligibility for those already receiving these benefits.

MA 0-4 Glossary This section has been amended to clarify the definition of a dependent adult child to be an adult child who is financially dependent upon his/her parents, and is claimed on the parents' income tax return. The definition of home has been changed to clarify that only mobile homes actually being resided in are excluded as part of an individual's home. The previous definition implied that all mobile homes situated on the home real estate of an individual were eligible to receive the home exclusion. A definition of 'actuarially sound' has been added. These revisions are merely clarifications, not changes in policy and should, by themselves, have no fiscal impact. The fiscal impact is discussed in the policy

sections to which these definitions relate.

MA 001 *Categorically Needy Standard* This section has been updated to indicate that an individual in a residential medical institution is categorically needy for Medicaid only if their income is at or below the Supplemental Security Income (SSI) payment amount of \$30 for an institutionalized individual. Individuals in residential medical institutions who have income over \$30, but less than the Medically Needy Income Level of \$525 are considered medically needy without an incurment. This change has no fiscal impact, as it will not affect who is eligible for Medicaid and who is not eligible for Medicaid in a residential medical institution. It only affects whether a person is considered medically needy or categorically needy for reporting to the Centers for Medicare and Medicaid Services.

MA 005 *Nursing Home Residents* When a married individual enters a nursing home or other institution and applies for Medicaid, 42 U.S.C. 1396r-5 provides special rules governing the counting of income and resources to ensure that the applicant's spouse who is still residing in the community, known as the community spouse, retains enough income and resources to meet the community spouse's own needs. The community spouse income maintenance allowance is the amount of income the community spouse is entitled to keep for that spouse's needs. The Basic Shelter Allowance and Basic Needs Standard are used in determining the community spouse income maintenance allowance. Section MA 005 is being updated to include the increased Basic Shelter Allowance and Basic Needs Standard published by the Centers for Medicare and Medicaid Services (CMS). The increased Basic Shelter Allowance and Basic Needs Standard will be used as of July 1, 2006. There is expected to be no fiscal impact because the increases merely address inflationary increases in the cost of living. This section has also been corrected to indicate that the categorically needy standard for a person living in an institution is \$30, rather than \$603. The categorically needy standard is the SSI Standard Payment Amount, which varies by a person's living situation, and this had not been reflected in past policy. This change does not have any fiscal impact because coverage levels are the same whether a person is categorized as medically needy or categorically needy, and their liability toward cost of care in a facility is also not impacted by these standards.

MA 402-1 *Countable and Excluded Resources* This section has been updated to incorporate changes mandated by the Deficit Reduction Act (DRA) of 2005. The state will now only exclude as resources annuities that belong to the Medicaid recipient, and not those owned by deemed parents or ineligible or community spouses. Annuities purchased after February 8, 2006 for the benefit of either a nursing home/waiver recipient or a community spouse must make the state of Montana Medicaid program a primary residual beneficiary, with only a community spouse or minor or blind/disabled child allowed to be named in a position superior to the State of Montana Medicaid Program. Any annuity purchased after that date that is not amended will be treated as an uncompensated asset transfer, and a penalty will be imposed against the nursing home spouse, even if the community spouse owns the annuity and the 90-day transfer period for spousal impoverishment has

expired. The financial impact of this change is included in the explanation in MA 404-1 below.

The home exclusion has changed in accordance with section 6014 of the DRA which provides that an individual shall not be eligible for nursing home and home and community based services if the individual's equity interest in the individual's home exceeds \$500,000. Thus, this section is being changed to say that home equity of only \$500,000 is excluded for applicants for or recipients of nursing home and home and community based services. Any additional equity is countable as a resource. There remains no limit on the home equity exclusion for Medicaid applicants and recipients who are not seeking coverage for nursing home care or home and community based services. The DRA provides that the \$500,000 limit will be adjusted annually to account for inflation beginning in 2011. This change should affect few individuals at present time. One group that will be affected is individuals who are temporarily in a nursing facility (i.e., have been in the facility for six months or less), because they may qualify for the home exclusion based on the possibility that they may return to the home. Individuals who are permanently residing in a facility (i.e., have been residing there for more than six months) are not eligible for the home exclusion, so this change in the law will have no effect on them. The other group that will be affected is individuals who have a spouse or other family member residing in the home, and whose home equity exceeds the \$500,000 limit. We anticipate this will primarily be those whose homes are on a farm or ranch. The agency believes this may impact as many as 20 individuals per year, or cost savings of \$381,740 total annually, or a State General Fund savings of \$103,069.80. The Deficit Reduction Act of 2005 requires this change.

Another change in policy mandated by the DRA relates to the purchase of a life estate in another individual's home. Section 6016(d) of the DRA provides that the purchase of a life estate in another's person's property by a Medicaid applicant or recipient within the look back period will result in an uncompensated asset transfer penalty unless the applicant or recipient resides in the home for a period of at least 12 full months after the date of purchase of the life estate. This particular 'estate planning' strategy has not been used, to our knowledge, in Montana. Therefore, we do not believe that this change will have any fiscal impact on the state budget.

Section 6016(c) of the DRA also provides that a loan given by a Medicaid applicant or recipient will be considered an uncompensated transfer of assets unless the repayment plan is actuarially sound, provides for payments to be made in equal amounts during the term of the loan with no balloon payment at the end, and does not provide for cancellation of the loan upon the death of the applicant. Section 6016(c) further specifies that the value of such an uncompensated transfer for determining the period of time a Medicaid applicant will be ineligible due to the transfer will be the outstanding balance on the loan as of the date the individual applies for Medicaid nursing home or home and community based waiver services. Montana has treated loans that do not meet specific criteria as uncompensated asset transfers for some time, so the manual is merely being revised to specify that the federal criteria will be used to determine what loans will be considered

uncompensated transfers and to incorporate the federal method for determining the value of the transfer. The change in federal law simply supports the department's existing policy, and this change therefore should have no fiscal impact.

Currently basic maintenance items (household goods and personal effects) with a value of \$2,000 or less are not counted a resource to a Medicaid applicant, but the value of any basic maintenance items over \$2,000 is counted. This section is being revised to provide that the resource exclusion for basic maintenance items will no longer be limited to \$2000 in value. This change is being made because the Supplemental Security Income (SSI) program has changed its policy to eliminate the \$2,000 limit on the exclusion of basic maintenance items. The departmental rules governing eligibility for ABD Medicaid adopt by reference the SSI regulations regarding the treatment of income and resources, so the change in SSI policy results in a change in ABD Medicaid policy as well. Montana does not require documentation of the value of an applicant's household goods and personal effects and has assumed the value is less than \$2000. This change simply makes that assumption unnecessary. This change thus will have no fiscal impact.

MA 402-4 Conditional Assistance This section adds explanation of instances when conditional assistance can be granted retroactively. In order for the conditional assistance resource exclusion to apply to a retroactive period, the property covered by the conditional assistance benefit must have been listed for sale during the retroactive month. Property not listed for sale in the retroactive months cannot be excluded under a conditional assistance agreement. This change has no fiscal impact because the total number of months of conditional assistance is not affected. This change simply affects which months can be counted toward the conditional assistance period and so would be subject to recovery from the sale of the property.

MA 404-1 Asset Transfers This section has been amended to include provisions mandated by the Deficit Reduction Act of 2005. These provisions include expanding the look back period for asset transfers to five years for assets transferred on or after February 8, 2006 and the policy that the purchase of an annuity on or after February 8, 2006 by a Medicaid applicant/recipient or his/her spouse must be considered an uncompensated asset transfer unless the following conditions are met: annuity payments must be made to the Medicaid applicant/recipient or his/her spouse and the payments must be made in equal periodic installments with no deferrals or balloon payments, the payment schedule must be actuarially sound, the annuity must be irrevocable and nonassignable, and the state of Montana Medicaid program must be named as the irrevocable first position residual beneficiary of the annuity (with the exception that the community spouse and/or a minor or disabled/blind child can be a residual beneficiary in a position primary to the state of Montana Medicaid program). Annuities purchased by community spouses after Medicaid eligibility has been established for an institutionalized spouse, which do not meet the above criteria, will result in an asset transfer penalty being applied to the nursing home spouse, regardless of other policies that exclude asset transfers by spouses from causing ineligibility for an institutionalized Medicaid recipient.

According to a survey done in 2004, 74 individuals had applied in the past six months who had transferred assets that would have caused ineligibility under these proposed changes governing the look back period and annuities. Based on that information, if we assume these changes would affect 148 individuals annually upon full implementation in February 2011, the savings would be \$762,792 in state general fund annually---a total savings of all Medicaid dollars totaling \$2,824,876 each year. The DRA provides that the longer look back period of five years applies only to transfers made on or after February 8, 2006, the date on which the DRA was enacted. Thus, the department will still be looking back only three years until three years after February 8, 2009. The look back period will increase incrementally beginning on February 8, 2006. For example, an application submitted on March 8, 2009 will have a look back period of three years, one month, an application submitted on April 8, 2009 would have a look back period of three years, two months, and so on. The department will be able to use the full five-year look back period only for applications submitted on or after February 8, 2011. However, since the federal regulation only applies the new policy of a five-year look back and penalty beginning in the month of the individual being otherwise eligible for institutionalized or waiver Medicaid, the state will realize incremental savings in the next five years. Twenty percent of the projected savings above is anticipated in 2006-2007 (\$152,558 in General Fund/ \$564,975 in total Medicaid dollars), 40% in 2007-2008 (\$305,117 in General Fund/ \$1,129,950 in total Medicaid dollars), 60% in 2008-2009 (\$457,675 in General Fund/ \$1,844,926 in total Medicaid dollars), and 80% in 2009-2010 (\$610,234 in General Fund/ \$2,259,901 in total Medicaid dollars). Some individuals who will transfer funds will simply choose not to apply for Medicaid at all until the five-year look back has expired. Others will apply and establish their penalty period and serve it after the onset of illness. Both situations will result in cost-savings to the state.

Aside from the Deficit Reduction Act of 2005 changes, some other changes have been made as well. A statement has been added explaining that estate planning is a process designed to help manage and preserve a person's assets while alive and to conserve and control their distribution after death. For purposes of the determination of Medicaid eligibility, "estate planning" actions must be considered as specifically for preserving assets from long term care costs via Medicaid. The state believes this addition to the manual, and therefore the Administrative Rules of Montana will clarify the intention of the policy. Also, the fact that payments from trusts to or for the benefit of people or entities other than the Medicaid applicant or recipient who is beneficiary of the trust has been added to the list of actions to which the five-year look back period applies for pre-February 8, 2006 asset transfers. This requirement was in the federal law prior to the passage of the DRA but had not been included in the text of the policy manual. We do not believe that this change results in any fiscal change.

MA 404-2 Penalty Periods for Asset Transfers The Deficit Reduction Act of 2005 requires that penalties for asset transfers made on or after February 8, 2006 and within the look back period for Medicaid asset transfers, begin to apply to the Medicaid applicant/recipient only when the individual or one member of a couple

meets all of the following criteria: applies for Medicaid, is institutionalized, and meets all other Medicaid eligibility criteria. This is a change from the policy that applies to asset transfers made prior to February 8, 2006, in which the asset transfer penalty begins in the month of the asset transfer, regardless of whether the person or couple who made the transfer otherwise qualified for Medicaid, resided in an institution, or otherwise qualified for Medicaid (most did not qualify for Medicaid until later). See fiscal impact explained under MA 404-1, as the changes to these two sections are combined into that discussion.

MA 904-2 Post-Eligibility Treatment of Income for Institutionalized Spouses This section is amended to include the updated/increased Basic Shelter Allowance and Basic Needs Standard announced by the Centers for Medicare and Medicaid Services (CMS). The Basic Shelter Allowance and Basic Needs Standard are used in determining community spouse income maintenance allowance and family income maintenance allowance. The increased Basic Shelter Allowance and Basic Needs Standard will be used as of July 2006. Compliance with these standards is required by 42 U.S.C. 1396r-5. There is expected to be no fiscal impact because the increases merely address inflationary increases in the cost of living. The section is also being revised to clarify that a family member can only be allowed a family income maintenance allowance from one Medicaid person in any given month. This prevents duplication of this allowance, which would be against federal intent. The order of expenses allowed to offset the nursing home resident's income has been adjusted to match federal regulations. This will not affect the amount of the individual's liability toward cost of care, but recognizes that an individual's income is first used to meet the individual's needs and only then allowed to meet the needs of others. This will have no fiscal impact to the agency or state.

MA 904-3 Post-Eligibility Treatment of Income for Institutionalized Individuals This section is being amended to remove reference to Family Maintenance Allowance as a possible deduction for an institutionalized individual. Federal law has always limited the Family Maintenance Allowance to situations where the dependent family members are living with a community spouse, and therefore the deduction is not available to an institutionalized individual. Instead, allowable payments to dependents not living with a community spouse are limited to deductions for legally obligated child support. The provision in the current manual that allows the deduction for an institutionalized individual is incorrect. We know of no individuals in nursing homes who have dependent family members who have been using this deduction at this time. The agency does not believe this erroneous policy was ever utilized while it was included in the manual, and therefore the removal of the allowance would carry no fiscal impact.

MA 907-1 Montana State Hospital This section is amended to include Medicaid coverage of people who attain age 21 while being treated as an inpatient at Montana State Hospital. Individuals who turn 21 while in Montana State Hospital should retain eligibility for Medicaid coverage of services through the date they turn 22 or are unconditionally released from Montana State Hospital, whichever is sooner, if they continue to meet all other financial and nonfinancial eligibility criteria for

Medicaid. This is according to 42 CFR 441.151. The Medicaid manual had previously indicated Medicaid coverage stopped for patients at Montana State Hospital at age 21. The fiscal impact to the program is expected to be as follows. Within the last year, we have had only one individual who met this exception. The net result to the state is an increase in revenue to the state, as ineligibility for these individuals results in 100% General Fund payment for services. If we assume that this would affect, at most, 12 months of eligibility for one person each fiscal year, with the daily rate at Montana State Hospital being \$383, then the total cost for one person's care is \$139,795. Federal Medicaid contribution will be roughly 70% of that, or \$97,856.50, which is a dollar-for-dollar savings to the state general fund.

MA 1501-1 Reporting Changes This section is being updated to reflect that income and resources must be verified at application, redetermination, and anytime a change is reported. Current policy is that income and resources must only be verified at application and redetermination, and that "client statement" is sufficient at all other times. This change is necessary for two reasons. The first is that state Medicaid reviewers are discovering eligibility errors caused by not requiring verification of changes in income and/or resources. The current Medicaid error rate is approximately 13%. Federal Medicaid Quality Control is slated to begin in 2008 in Montana. At that time, Montana will be expected to have an error rate of 3% or less. Implementing this change now will allow time for the state to lower the current error rate prior to federal reviews taking place. The second reason for this change is in preparation for the new Medicaid eligibility system, CHIMES (Combined Healthcare Information and Montana Eligibility System). CHIMES is a rules-based system and cannot differentiate between when it is appropriate to allow 'client statement' and when it is necessary to require other verification. Other changes to this section include adding that changes affecting coverage level must also be reported timely, and that the date reported, or coverage request date is used to determine retro eligibility for the higher coverage level. See discussion under Section FMA 1501-1 for an explanation of what is meant by a higher coverage level. Additionally, minor corrections were made to correct form and notice numbers mentioned in the section.

ARM 37.82.701 Groups Covered, Noninstitutionalized Families and Children ARM 37.82.701 is being updated to change countable resource limits for two children's Medicaid programs, as required by HB 552 codified at section 53-6-113, MCA. The resource limits for the children's poverty-related programs (known as Child-Under Age 6 and Child-Age 6 to 19) is increasing from \$3000 to \$15000 effective July 1, 2006. Increasing the resource limit is expected to allow an additional 3775 children to receive Medicaid at an estimated cost of \$7,761,272 (3775 children x \$168.24 average monthly cost x 12 months) for SFY 2007. The state share is estimated to be \$1,824,917 to be funded with State Special Revenue from I-149, the Tobacco Initiative, which increased taxes on cigarettes and tobacco products.

Other changes have been made throughout ARM 37.82.701 to update program names in preparation for the new Medicaid eligibility system, CHIMES. The program names are being changed to be more reflective of the group covered and to remove 'poverty' from them. Some program definitions have also been corrected as errors

were discovered while researching for CHIMES and from conversations with CMS (Center for Medicare and Medicaid Services) in Denver.

It was necessary to update (1)(d)(i) and (1)(e)(i) to reflect that the unborn is considered an additional filing unit member, not an additional assistance unit member as the unborn increases the household size, but does not receive Medicaid benefits.

ARM 37.82.701(1)(f)(i)(A) was updated to correct the Human and Community Services Division address.

Subsection (1)(n)(iii) was updated to reflect that the 200% FPL income limit is applicable only at the time of screening. This was necessary as income changes after initial screening by the Montana Breast and Cervical Health Program do not affect the woman's eligibility for Medicaid under the Montana Breast and Cervical Cancer Treatment Program.

Section (3) is being removed, as it is duplicative of (1)(e)(ii).

4. The department intends that the amendments to ARM 37.82.101 addressed in this notice be applied retroactively to February 8, 2006, the date on which the mandatory provisions of the Deficient Reduction Act of 2005 took effect, with the exception of the amendments to Sections FMA 001 and FMA 400 of the Family Medicaid Manual. The provisions of Sections FMA 001 and FMA 400 relate to the increase in the resource limit from \$3,000 to \$15,000 for children's poverty-related Medicaid, which was mandated by House Bill 552 to take effect on July 1, 2006. The department therefore intends that the amendments to Sections FMA 001 and FMA 400 of the Family Medicaid Manual be applied retroactively to July 1, 2006.

5. Interested persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210, no later than 5:00 p.m. on August 24, 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](mailto:dphhslegal@mt.gov). The department also maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. For placement on the mailing list, please write the person at the address above.

6. The office of legal affairs, Department of Public Health and Human Services has been designated to preside over and conduct the hearing.



/s/ Barbara Hoffmann  
Rule Reviewer

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

Certified to the Secretary of State July 17, 2006.

BEFORE THE DEPARTMENT OF PUBLIC SERVICE REGULATION  
OF THE STATE OF MONTANA

In the matter of the proposed	)	NOTICE OF PUBLIC HEARING
amendment of ARM 38.5.3301,	)	ON PROPOSED AMENDMENT
38.5.3302, 38.5.3320, 38.5.3330,	)	AND REPEAL
38.5.3331, 38.5.3332, 38.5.3334,	)	
38.5.3335, 38.5.3336, 38.5.3339,	)	
38.5.3350, 38.5.3353, 38.5.3360,	)	
38.5.3361, 38.5.3362, 38.5.3371,	)	
and repeal of ARM 38.5.3333,	)	
38.5.3337, 38.5.3338, 38.5.3341,	)	
38.5.3343, 38.5.3352, and 38.5.3370,	)	
all pertaining to Telecommunications	)	
Service Standards	)	

TO: All Concerned Persons

1. On August 29, 2006, at 1:30 p.m., a public hearing will be held in the Bollinger Room, Public Service Commission (PSC) offices, 1701 Prospect Avenue, Helena, Montana, to consider the amendment and repeal of the above-stated rules.

2. The PSC 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 PSC no later than 5:00 p.m., August 22, 2006, to advise us of the nature of the accommodation that you need. Please contact Connie Jones, PSC Secretary, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601, telephone number (406) 444-6170, TTD number (406) 444-6199, fax number (406) 444-7618, e-mail conniej@mt.gov.

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

38.5.3301 PURPOSE (1) Section 69-3-201, MCA, requires every public utility to furnish reasonably adequate service and facilities. The purpose of these rules is to establish certain minimum standards for determining if regulated telecommunications service provided on a retail basis is adequate. The commission will liberally construe these rules and may require additional standards when necessary to provide adequate service.

(2) Except as may be otherwise provided in a specific rule, these These service rules apply to any carrier operating in Montana and subject to the commission's jurisdiction.

(3) If the application of any rule results in an unreasonable hardship to a carrier or a customer, either may apply for waiver ~~under ARM 38.2.305~~ of the rule.

AUTH: 69-3-103, MCA

IMP: 69-3-102, 69-3-201, MCA

Rationale: The amendments are reasonably necessary to clarify the applicability of these rules.

38.5.3302 DEFINITIONS In the interpretation of these rules, the following definitions shall be used:

~~(1) "Automatic dialing -- announcing device" means any automatic terminal equipment which is capable of:~~

~~(a) storing numbers to be called or producing numbers to be called using a random or sequential number generator, and with the ability to call such numbers, and;~~

~~(b) delivering a prerecorded message to the number called with or without manual assistance. "Billing aggregator" has the meaning as provided in 69-3-1302(2), MCA.~~

(2) remains the same.

(3) "Carrier" means any local exchange carrier, interexchange carrier, operator service provider, inmate calling provider, or other telecommunications provider which provides regulated telecommunications services pursuant to 69-3-803, MCA. The term does not include a rural cooperative carrier or a wireless carrier.

(4) remains the same.

(5) "Channel" means a path for telecommunications between two or more customers or central offices.

(6) "Competitive local exchange carrier" means a carrier providing regulated local exchange service through any means, but is not the incumbent local exchange carrier.

~~(6) (7)~~ "Customer" means any person, firm, partnership, corporation, municipality, cooperative, organization, governmental agency, or other legal entity which has applied for, been accepted, and is currently receiving telecommunications service.

~~(7) (8)~~ "Customer trouble report" means any oral or written report from a customer or user of telecommunications services relating to a physical defect or to difficulty or dissatisfaction with the operation of the utility's facilities. ~~One report shall be counted for each oral or written report received even though it may duplicate a previous report or merely involve an inquiry concerning progress on a previous report.~~

~~(8) (9)~~ "Exchange" means a service area established by an incumbent local exchange carrier for the administration of telecommunications services in a specified area for which a separate local rate schedule is provided. It may consist of one or more central offices together with associated plant facilities used in furnishing telecommunications services in that area. An exchange has one point designated for the purpose of rating toll calls for all subscribers in the exchange.

~~(9) "Exchange carrier" means a telecommunications utility that provides local exchange service.~~

~~(10) "Flat rate service" means telecommunications service furnished at a fixed monthly recurring charge.~~

~~(11) "Grade of service" means the number of customers served on a telecommunications channel such as one-party, two-party, four-party, etc.~~

(10) "Incumbent local exchange carrier" means, with respect to an area, the local exchange carrier that:

(a) on February 8, 1996, provided telephone exchange service in the area; and

(b) on February 8, 1996, was considered to be a member of the Exchange Carrier Association pursuant to 47 CFR 69.601(b) or is a person or entity that, after that date, became a successor or assign of a member of the Exchange Carrier Association.

(11) "Installation order" means a request for new or transferred primary or additional residential or business service, but does not include change orders or requests for features to be added to existing service.

(12) through (14) remain the same.

(15) "Local exchange service" means telecommunications service provided within local exchange service areas ~~in accordance with the tariffs~~. It includes the use of ~~exchange~~ facilities required to establish connections between customer locations within the exchange and between customer locations and interexchange trunks serving the exchange.

(16) remains the same.

~~(17) "Nonregulated services" means telecommunications services that are not regulated by the commission or that have been deregulated under the provisions of the Montana Telecommunications Act.~~

(17) "Out of service trouble report" means a trouble report concerning no dial tone, an inability to make or receive calls, or a deterioration of transmission quality to the point that communication is not workable.

~~(18) "Primary service order" means an application for voice-grade telecommunications service to be provided at a customer location which does not have telecommunications service.~~

~~(19) "Private line" means a channel provided to furnish telecommunications service between two or more customer locations, and not having connection with central office switching apparatus.~~

(18) "Service provider" has the meaning as provided in 69-3-1302(7), MCA.

~~(20)~~ (19) "Tariff" means the entire body of rates, tolls, rentals, charges, classifications, and rules filed by the carrier and approved by the commission.

~~(21) "Telecommunications utility" means any person, firm, partnership or corporation engaged in the business of furnishing telecommunications services to the public by the authority of and under the jurisdiction of the Montana public service commission.~~

~~(22) "Traffic" means telecommunications volume, based on number of calls and duration of messages.~~

AUTH: 69-3-103, MCA

IMP: 69-3-102, 69-3-201, MCA

Rationale: The amendments are reasonably necessary to update the existing definitions and eliminate definitions of terms that no longer exist in the amended rules.

38.5.3320 DATA TO BE FILED WITH THE COMMISSION (1) ~~Exchange maps.~~ In addition to tariffs as required by 69-3-301, MCA, each incumbent local exchange carrier must file with the commission a map showing the boundaries of the local exchange service area and showing base rate area and zone boundaries from which all customer locations can be determined and mileage or zone charges quoted for each exchange within the state. Boundary lines must be located by appropriate measurement to an identifiable location if not otherwise located on section lines, waterways, railroads, roads, etc. Maps must include location of highways, section lines, geographic township and range lines, railroads, and waterways outside municipalities and show the map scale and other detail. An exchange map and the applicable rates for local service must be available at the business office serving the exchange area. ~~Each exchange carrier filing an original or revised map shall submit proof of notice of the proposed boundary to any other telecommunications utility adjoining the area in which a boundary line is to be established or changed.~~

(2) ~~Service reports.~~ Each carrier must furnish to the commission, at such times and in such form as the commission requires, the results of any service-related tests, summaries, or records in its possession. The carrier ~~shall~~ must also furnish the commission with any information concerning the utility's facilities or operations which may be requested.

(3) ~~Service disruption reports.~~ Each facilities-based carrier must report promptly to the commission and to a the nearest radio station or other local news media any specific occurrence or development which disrupts the service of a substantial number of its customers (the smaller of 25 percent or 100 customers) for a time period in excess of two hours. This rule shall not apply to interexchange carriers in the case of an outage affecting local service.

AUTH: 69-3-103, MCA

IMP: 69-3-102, 69-3-201, MCA

Rationale: The amendments are reasonably necessary to clarify that the exchange map filing requirement applies to incumbent local exchange carriers only. The notification requirements for boundary changes are not necessary because the rarely-filed exchange map revisions that might be proposed are filed with and noticed by the commission, a process which provides other carriers with the opportunity to comment. The amendments are reasonably necessary to remove internal catchphrases, which are not allowed in Montana administrative rule formatting (see, ARM 1.2.215).

38.5.3330 RATE AND SPECIAL CHARGES INFORMATION (1) Each carrier whose tariff or price list is filed with the commission must have its tariff or price list available for viewing at each business office. If the carrier has no local

business office in Montana, the Montana tariff or price list must be posted on its website.

~~(2) The exchange~~ A carrier must provide all information and assistance needed by applicants, customers, or others to determine the lowest cost telecommunications service available from the exchange carrier that meets their stated needs. The exchange carrier must ~~immediately provide a commission approved catalog of available services and prices~~ written rate information in response to all service orders, at the request of customers, and as otherwise required by the commission.

~~(a) (3)~~ Prior to taking any action or offering any service, the local exchange carrier must notify customers of any connection charge or other charge and must provide an estimate of the initial bill for flat monthly services and other applicable charges. The carrier shall inform the customer whether or not taxes and other fees are included in the estimate.

~~(2) (4)~~ The carrier must offer to give an applicant a written estimate of special charges for services not established by tariff, such as construction charges, which are levied on an actual cost basis.

AUTH: 69-3-103, MCA

IMP: 69-3-102, 69-3-201, MCA

Rationale: The substantive amendments are, for the most part, existing requirements that have been moved to this rule and are reasonably necessary to ensure public availability of tariff or price list information. The amendments are also reasonably necessary to expand applicability of the rate information parts of the rule to all regulated carriers.

38.5.3331 BUSINESS OFFICES AND TOLL-FREE TELEPHONE INFORMATION (1) Each carrier, billing aggregator, and service provider, ~~operator service provider and inmate calling provider~~ must have at least one business office to provide customers and others with access to personnel who can provide information on services and rates, accept and process service applications, explain customers' bills, adjust errors, and generally represent the carrier entity. If one business office serves several exchanges or states, toll-free calling to that office must be provided and the office must be staffed during Montana business hours.

(2) Exchange Local exchange carriers which provide billing services for other carriers, billing aggregators, or service providers shall include in such bills the toll-free telephone numbers of such carriers or service providers or alternatively, the toll-free numbers of their billing aggregators, which are provided to the local exchange carriers in accordance with (3).

(3) Carriers, billing aggregators, or service providers which bill through local exchange carriers are required to provide the toll-free telephone numbers required in (1) to all such local exchange carriers. ~~Such carriers may also provide the toll-free telephone number of their billing agent.~~

(4) Local exchange Exchange carriers and billing aggregators must provide a carrier's or service provider's toll-free number to a customer, upon request, at no charge, for any entity for which it bills.

AUTH: 69-3-103, MCA  
IMP: 69-3-102, 69-3-201, MCA

Rationale: The amendments are reasonably necessary to update the rule to reflect changes in state law regarding billing entities that have occurred since the original rule was adopted.

38.5.3332 CUSTOMER BILLING (1) Billing Carriers and billing aggregators are required to bill in accordance with the following procedures- :

(a) ~~Typed or machine-printed bills~~ Bills must be issued monthly, unless there ~~are no charges during the month~~ the carrier has obtained the customer's consent for bills to be issued on an alternative billing schedule.

(b) Residential and single-line business bills must itemize ~~by tariff element~~ the charges for all services and products. The bill must clearly provide the following information:

(i) through (iii) remain the same.

(iv) a statement that ~~regulated services~~ local exchange service may not be disconnected for nonpayment of ~~nonregulated~~ unregulated services, toll services, or services provided by other carriers, except for ~~other carriers' regulated services that cannot be disconnected or discontinued separate from local service~~ when a local exchange carrier's local, toll, or unregulated services are combined into one service package at a single rate;

(v) remains the same.

(c) If ~~an~~ a local exchange carrier bills and collects for any interexchange carrier, including itself, all toll calls must be itemized showing the date, the time, the length in minutes, discounts if applicable, and the destination of the call, unless the customer has subscribed to a service option which does not require itemization of each call. For collect and/or third party calls, the point of origin and the telephone number of origin must be stated.

(d) A Upon request, a carrier must notify the commission of the name and address of all entities for which it provides billing and collection services. If ~~an~~ a local exchange carrier bills and collects for ~~an interexchange~~ another carrier or service provider, the ~~two carriers entities must establish an efficient method of resolving customer disputes. The local exchange carrier must, upon request, be able to provide the customer with the name, address, and telephone number of an interexchange carrier employee or the other carrier's or service provider's~~ department responsible for customer dispute resolution.

(e) Charges contained in telephone bills must be accompanied by a brief, clear, nonmisleading, plain-language description of the service rendered. If the bill includes charges from an entity that did not bill the customer for service during the customer's previous billing cycle, the name of the new provider and the charges billed must be printed in a clear and conspicuous manner.

~~(e)~~ (f) If a customer has subscribed to local measured service, the bill must detail any and all charges in excess of the basic local measured service monthly charge, including, at a minimum, the total minutes and total charges in each rate category.

(2) ~~Inaccurately billed service.~~ If telecommunications service has been underbilled because of the carrier's error, omission, or negligence and the amount owed exceeds \$25, the carrier must offer the customer a reasonable payment arrangement. If telecommunications service has been overbilled, the carrier must credit the customer's future bills for the amounts overbilled, unless the customer requests a cash refund of the credit balance. In either case (underbilling or overbilling), the carrier shall abide by the applicable statute of limitations, and 69-3-221, MCA.

(3) ~~Service interruption.~~ If a customer's service is interrupted for any reason other than the customer's negligence or willful act and service remains out for more than 24 hours after being reported, appropriate adjustments shall be made to the customer's bill upon determination of the outage. For the purpose of administering this rule, every month is considered to have 30 days.

(4) ~~Billing dispute.~~ The carrier may require the customer to pay the undisputed portion of the bill to avoid discontinuance of service for nonpayment. The carrier must investigate the dispute and report the result to the customer. If the billing dispute is not resolved, the carrier must advise the customer that the commission is available for review and disposition of the matter.

(5) ~~Billing.~~ Telecommunications Local exchange service regulated by the Montana public service commission cannot be denied or terminated because of nonpayment of for nonregulated unregulated services, toll services, or services provided by other carriers, ~~except for other carriers' regulated services that cannot be disconnected or discontinued separate from local service.~~ A telecommunications provider's carrier's bill to its customer shall clearly distinguish between regulated and nonregulated unregulated service. ~~Regulated and nonregulated service may appear on the same bill but must be presented as separate line items.~~

(a) Undesignated partial payments of a bill shall be applied first to local exchange carrier regulated local exchange services and then to service other than local exchange carrier regulated local exchange services in such percentage as each other service provider's charges represent of the total charges ~~to the customer for services other than local exchange carrier regulated services.~~ Regulated service ~~may not be affected by billing disputes over nonregulated service or service provided by other carriers.~~

(6) ~~Late billing.~~ If a carrier bills a customer for a service more than 60 days after the service is provided and the customer contacts the carrier (or its billing agent) to question or dispute the late-billed charges, the carrier (or its billing agent) must offer the customer a payment plan that allows an equal period of time to pay the late-billed charges as it took the carrier to bill the customer. During this period, late payment charges must not be assessed on the late-billed service charges, and the carrier is prohibited from taking any collection actions against the customer other than monthly notice by mail of the unpaid charges. Any such monthly notice must not threaten any further collection action, and must contain a verbatim statement of this subsection inform the customer that the carrier will arrange a payment plan in accordance with this rule upon customer request.

(7) All carriers are prohibited from charging any amount for incomplete or unanswered calls.



AUTH: 69-3-103, MCA

IMP: 69-3-102, 69-3-201, 69-3-221, MCA

Rationale: The amendments are reasonably necessary to update the rule to reflect changes in state law or in carrier and customer billing options since the original rule was adopted, including a new truth-in-billing provision and provisions to prioritize maintenance of local phone service.

38.5.3334 CUSTOMER DEPOSITS FOR TELECOMMUNICATIONS SERVICES (1) Deposit requirements for business and residential service must comply with ARM 38.5.1101, et seq. A carrier may not collect a deposit in order to initiate local exchange service to a subscriber who participates in the Montana Telephone Assistance Program and who has also subscribed to toll blocking, except that a deposit may be required for optional local calling features and services subscribed to by the program participant.

AUTH: 69-3-103, MCA

IMP: 69-3-102, 69-3-201, MCA

Rationale: The new language is reasonably necessary to bring the rule into compliance with federal Lifeline program requirements.

38.5.3335 COMPLAINTS AND APPEALS (1) ~~Complaints.~~ All carriers must promptly investigate customer complaints and inform the customer of proposed action. If requested, the carrier must provide a written statement of its action on the complaint.

(2) ~~Appeals.~~ A carrier must inform a customer that a review by supervisory personnel of an unfavorable action on a bill or complaint is available. If requested, the carrier must provide a written statement of the supervisor's action on the complaint. The written statement must also inform the customer that commission review is available and provide the commission's telephone number and address.

(3) remains the same.

AUTH: 69-3-103, MCA

IMP: 69-3-102, 69-3-201, MCA

Rationale: The amendments are reasonably necessary to remove internal catchphrases, which are not allowed in Montana administrative rule formatting per ARM 1.2.215.

38.5.3336 DIRECTORIES (1) An incumbent local exchange carrier must provide its customers telephone directories at regular intervals (not to exceed 18 months), listing all customers' names, addresses, and telephone numbers, except public telephones, addresses, and telephone service not published at the customer's request.

(2) ~~The~~ Each local exchange carrier must list its customers (except those customers requesting otherwise) with the directory assistance operators within three

business days of service connection. If directory assistance (DA) is provided by another company, the local exchange carrier must submit the DA listing updates to the DA provider within three business days and the DA provider must update its listings within the following three business days.

(3) Upon issuance, a copy of each directory shall be distributed free to all customers served by that directory ~~and to the commission~~. Free copies shall also be made available to any public library in the state requesting a directory. ~~In the case of hotels, motels and other multi-line locations, one directory per access line or up to two directories for each installed station will be provided at no charge, upon request.~~

~~(4) The name of the exchange carrier, the area included in the directory and the month and year of issue must appear on the front cover. Information pertaining to emergency calls, such as for the police and fire departments, must be conspicuously printed on the inside front cover of the directory.~~

(5) ~~(4)~~ The directory must contain instructions on placing local and long distance calls, calls to repair and directory assistance services, and locations and telephone numbers of exchange carrier business offices within the appropriate service area.

~~(6) (5)~~ Exchange Incumbent local exchange carriers shall make available at a reasonable charge space in the front part of the directory for interexchange other carriers' information and rates ~~on long distance calling, directory assistance, operator services, discount periods, billing inquiries, etc.~~

~~(7) (6)~~ Each directory must contain, in the instructional section, the commission's address and telephone number and an explanation of the customer's right to bring complaints and inquiries to the commission.

~~(8) (7)~~ If there is an error in the directory listing for a customer, the local exchange carrier must intercept all calls to the listed number at no charge, for six months or until a new directory is published, whichever occurs first. Alternatively, the local exchange carrier may forward all calls to the listed number to the correct number. If there is an error or omission in the name listing of a customer, the correct name and telephone number must be placed in the files of the directory assistance and/or intercept operators and the correct number furnished the calling party upon request or interception. Competitive local exchange carriers are exempt from this requirement if technically unable to comply with it.

~~(9) If a customer's telephone number is changed after a directory is published, the exchange carrier must offer to intercept all calls to the former number for a reasonable period of time and give the calling party the new number unless the customer directs otherwise.~~

~~(10) (8)~~ When additions or changes in plant or changes to any other local exchange carrier operations necessitate changing telephone numbers to a group of customers, reasonable notice must be given to all affected customers.

AUTH: 69-3-103, MCA

IMP: 69-3-102, 69-3-201, MCA

Rationale: The amendments are reasonably necessary to clarify that only incumbent local exchange carriers must provide directories to their customers, to remove unnecessarily detailed requirements regarding directory format and

distribution, to clarify that all local exchange carriers must list their customers with directory assistance, to provide an alternative method for local exchange carriers to mitigate directory listing errors, and to recognize that competitive local exchange carriers may be technically unable to provide intercept services. Elimination of (9) is reasonably necessary because it is appropriately the responsibility of a customer who changes his or her telephone number, for whatever reason, to make arrangements for discretionary call intercept services until a new directory is issued.

38.5.3339 TERMINATION OF SERVICE (1) A carrier may interrupt service without notice only in emergency situations, if the service has been abandoned by the customer, or if the service was obtained without the carrier's authorization.

(2) ~~Grounds for termination.~~ Subject to the requirements of these rules, telecommunications services may be discontinued, after notice, as provided in ~~ARM 38.5.3339(5)~~, for the following reasons:

(a) through (e) remain the same.

(3) ~~Grounds that do not support termination. None of the following constitute sufficient grounds for discontinuing regulated local exchange service. A carrier may neither terminate nor refuse to provide regulated local exchange service based on the following:~~

(a) The failure of any person, other than the customer against whom termination is sought, to pay any charges due to the ~~telecommunications utility carrier.~~

(i) and (b) remain the same.

(c) Failure to pay for ~~nonregulated~~ unregulated service or service provided by other carriers, except when the unregulated service was part of a local exchange carrier's service package that combined its local, toll, or unregulated services at a single rate.

(4) remains the same.

(5) Notice of termination of service must comply with the following: -

(a) and (b) remain the same.

(c) If a customer, to avoid disconnection, enters into a deferred payment agreement with a carrier, then fails to comply with the terms of the agreement, the carrier may terminate service to the customer without further notice.

(6) ~~Exception to seven-day notice requirement, excessive toll usage accompanied by risk of nonpayment.~~ Excessive toll usage accompanied by a risk of nonpayment justifies an exception to the seven-day notice requirement. The seven-day notice requirement shall be excused when service is to be terminated for excessive toll usage and an identifiable risk of nonpayment exists, as defined herein.

(a) ~~Toll usage.~~ For purposes of this rule, toll usage "toll usage" includes regulated toll charges whether already billed or as yet unbilled, but excludes all amounts owed or owing for ~~nonregulated~~ unregulated services or services provided by other carriers, except for other carriers' regulated services that cannot be disconnected or discontinued separate from local service.

(b) ~~Excessive toll usage.~~ For purposes of this rule, "excessive toll usage" is ~~defined as toll usage for an estimated one month billing period that:~~

(i) and (ii) remain the same.

(c) ~~Risk of nonpayment.~~ For purposes of this rule, "risk of nonpayment" is established by the presence of any one of the following:

(i) ~~No deposit. Risk of nonpayment exists when there is no customer deposit and ARM 38.5.1103 permits the requirement of such a deposit. ; or~~

(ii) ~~Historical deficiency. Risk of nonpayment exists when, during the preceding 12 months, any of the following conditions existed:~~

(A) through (C) remain the same.

(d) ~~Contact with customer.~~ The carrier shall not terminate service under the provisions of this rule without first contacting or making a diligent effort to contact the customer. Such contact will be for the purposes of:

(i) through (iii) remain the same.

(e) ~~Adequate assurance of payment.~~ For purposes of this rule, ~~adequate assurance shall include~~ "adequate assurance of payment" includes:

(i) through (iii) remain the same.

(f) ~~Termination of service.~~ If the carrier is unable to contact the customer, ~~it~~ the carrier may terminate service three days (not including those days when there is no mail delivery) after the mailing of a notice consistent in form with the requirements of ~~ARM 38.5.3339(5)~~. If the carrier is able to contact the customer and no adequate assurance is supplied, the carrier may terminate service not less than 24 hours after such contact.

AUTH: 69-3-103, MCA

IMP: 69-3-102, 69-3-201, MCA

Rationale: The amendments are reasonably necessary to identify and provide a resolution for certain situations that may arise concerning service termination.

### 38.5.3350 CONSTRUCTION (1) ~~Engineering and construction standards.~~

In determining standard engineering and construction practice, the commission will be guided by the provisions of the American National Standards Institute, the National Electrical Code, the National Electrical Safety Code, the ~~exchange carriers standards association~~ Exchange Carriers Standards Association, the ~~rural electrification administration~~ Rural Electrification Administration, and such other codes and standards as are generally accepted by the industry, except as modified by this commission or by municipal regulations within their jurisdiction. The telecommunications plant shall be designed, constructed, maintained, and operated in accordance with these standards, and in such manner to best accommodate the public, and to prevent interference with and from service furnished by other public utilities insofar as practical. The carrier shall design and construct the telecommunications facilities to reduce or prevent electromagnetic interference from AC power systems. The carrier shall engage in prior coordination with power utilities in the area before placing new plant or making major changes in existing plant likely to be impacted by the power utility's facilities. Such coordination shall be governed by the latest issue of ANSI/IEEE 776 Guide for Inductive Coordination of Electric Supply and Communications Lines.

~~(2) Automatic number identification. Exchange carriers shall have as an objective the provision of automatic number identification in all exchanges. All exchange carriers shall file a report with the commission within six months following adoption of this rule, and every six months thereafter, including the status of current exchanges and plans to comply with this provision.~~

~~(3) Party line service. Where party line service is provided, no more than four customers shall be connected to any one channel, unless such action is approved by the commission. The exchange carrier may regroup customers in such a way as may be necessary to carry out the provisions of this rule. Upon completion or delay in the meeting of this requirement a report to that effect shall be filed with the commission.~~

~~(4) Selective carrier denial. Exchange carriers shall have as an objective the provision of selective carrier denial in all exchanges. All exchange carriers shall file a report with the commission within 18 months following adoption of this rule, and every 6 months thereafter, including progress towards compliance and timetable for completion of implementation.~~

AUTH: 69-3-103, MCA

IMP: 69-3-102, 69-3-201, MCA

Rationale: Elimination of (2), (3), and (4) is reasonably necessary because they are unnecessary and outdated -- automatic numbering identification and selective carrier denial are deployed throughout the state and party-line service is an anachronism.

38.5.3353 NETWORK INTERFACE (1) Each local exchange carrier providing service by means of its own facilities to the customer's location shall establish a point of demarcation between the utility facilities and a customer's premises wiring and equipment. It shall be the responsibility of the utility to install and maintain a network interface device (NID) in accordance with commission guidelines, the local exchange carrier's tariff, and with rules established by the federal communications commission Federal Communications Commission.

(2) and (3) remain the same.

~~(4) For simple one- and two-line business and residence service, all wiring on the customer's premises shall connect to the telephone network through a NID.~~

~~(5) A NID shall be installed on all new services when a visit to the customer premises is necessary to establish service. For party line services a selective ringing module will be installed.~~

~~(6) Work load permitting, a NID, and selective ringing module where appropriate, shall be installed on all maintenance visits to a customer premises.~~

AUTH: 69-3-103, MCA

IMP: 69-3-102, 69-3-201, MCA

Rationale: Amendment to this rule is reasonably necessary to clarify applicability and eliminate unnecessary network interface device installation requirements.

38.5.3360 CUSTOMER TROUBLE REPORTS (1) Each carrier shall provide for the receipt of customer trouble reports at all hours and make a full and prompt investigation of and response to all complaints. The ~~telecommunications utility~~ carrier shall maintain an accurate record of trouble reports made by its customers for a period of two years. This record shall include appropriate identification of the customer or service affected, the time, date, and nature of the report, the action taken to clear trouble or satisfy the complaint, and the date and time of trouble clearance or other disposition. This record shall be available to the commission or its authorized representatives upon request at any time within the period prescribed for retention of such records. Trouble reports shall be cleared in accordance with service objectives listed in ARM 38.5.3371(7) ~~of these rules~~.

(2) and (3) remain the same.

AUTH: 69-3-103, MCA

IMP: 69-3-102, 69-3-201, MCA

Rationale: Amendment of this rule is reasonably necessary to make language among these rules consistent.

38.5.3361 INSPECTIONS AND TESTS (1) Each carrier providing services by means of its own facilities shall adopt a program of periodic tests, inspections, and preventive maintenance aimed at achieving efficient operation of its system and the rendition of safe, adequate, and continuous service.

(2) Each facilities-based carrier shall maintain or have access to test facilities enabling it to determine the operating and transmission capabilities of all equipment and facilities, both for routine maintenance and for trouble location. The actual transmission performance of the network shall be monitored in order to determine if the carrier's established objectives and operating requirements are met. This monitoring function shall consist of, but not be limited to, circuit order tests prior to placing trunks in service, routine periodic trunk maintenance tests, tests of actual switched trunk connections, periodic noise tests of a sample of customer loops in each exchange, and transmission surveys of the network.

AUTH: 69-3-103, MCA

IMP: 69-3-102, 69-3-201, MCA

Rationale: Amendment of this rule is reasonably necessary to clarify the rule's applicability.

38.5.3362 SERVICE INTERRUPTIONS (1) In the event that service must be interrupted for over four hours for planned work on the facilities or equipment, the work shall be done at a time which will cause minimal inconvenience to customers. ~~Emergency service shall be available, as required, for the duration of the interruption.~~ In the event that local exchange service must be so interrupted, the local exchange carrier shall attempt to notify each affected customer at least 24 hours in advance of the interruption.

AUTH: 69-3-103, MCA  
IMP: 69-3-102, 69-3-201, MCA

Rationale: Amendment of this rule is reasonably necessary because it has never been clear how a carrier could provide emergency phone service when service in an area is interrupted due to planned work.

38.5.3371 SERVICE OBJECTIVES AND SURVEILLANCE LEVELS REQUIREMENTS (1) These rules establish required service objectives quality requirements for local exchange carriers providing service by means of their own facilities. The rules include surveillance levels which indicate a need for the telecommunications utility to investigate, take appropriate corrective action, and provide a report of such activities to the commission. The telecommunications utility carrier shall be expected to meet generally accepted industry standards for quality on any service provided by the telecommunications utility carrier that is not covered by these rules.

(2) Service measurements. Each carrier shall make regular, periodic measurements to determine the level of service for each item included in these rules. Measurements and summaries thereof for any of the items included herein shall be provided upon request of the commission or its representatives. Records of these measurements and summaries shall be retained by the telecommunications utility for a period of at least two years. Based on commission receipt of consumer complaints or other relevant information about the level of service being provided by a carrier to which these service quality requirements apply, the commission may require the carrier to begin documenting its compliance with any or all of these service requirements and providing periodic service quality reports containing such documentation to the commission. If a carrier is required by the commission to provide records or documentation regarding its compliance, the records or documentation must be reported on individual exchange and statewide aggregate bases.

(3) Installation of service. Regarding installation of local exchange service, the carrier shall complete 95 percent of its installation orders within five business days of the application date, excluding those orders where the customer specifically requests a later due date. Ninety-five percent of the orders where the customer specifically requested a later due date must be completed on the customer-requested due date.

(a) Ninety percent of the exchange carrier's service order installations not requiring construction or special engineering shall be completed within three business days after appropriate pre-installation fees are paid. The intervals commence with the receipt of application (unless a later date is requested by the applicant). The carrier shall complete 100 percent of all orders for service installation, excluding those orders where the customer specifically requested a later due date, within 180 calendar days of the application date.

(i) Surveillance level: Eighty-five percent in an exchange area for a period of three consecutive months.

~~(b) Ninety-five percent of the exchange carrier's service orders requiring construction or special engineering shall be filled no later than 30 days after the customer has made such application (except where the customer requests a later date) after appropriate pre-installation fees are paid. In the event of the exchange carrier's inability to so fill such an order, the customer will be advised and furnished the date when it will be available.~~

~~(i) Surveillance level: Ninety percent in an exchange area for a period of three consecutive months.~~

~~(c) Each exchange carrier shall make commitments to customers as to the date of installation of all service orders. Ninety percent of such commitments shall be met (excepting customer caused delays and acts of God).~~

(c) Violations of the installation requirements do not exist if the carrier is unable to comply due to customer reasons, or work stoppages directly affecting provision of service in Montana, or other circumstances outside the carrier's control that can be documented by the carrier. A carrier may not exclude orders from this measurement in those instances where the installation required access to the customer's location and no access was available, but the carrier either did not schedule an installation appointment with the customer for on-premises access or did schedule an appointment, which may not exceed a four-hour appointment window, but did not arrive at the customer's premises at the appointed time.

~~(i) Surveillance level: Eighty-eight percent in an exchange area for a period of three consecutive months.~~

(d) A carrier shall not cancel customer installation orders at its own discretion. An installation order received by a carrier shall remain a pending order until the installation is completed or the customer requests cancellation at his or her own initiative or in response to the carrier's inquiry.

~~(4) Operator handled calls.~~ Calls requiring timing shall be accurately timed. Each carrier shall maintain adequate personnel to provide an average operator answering performance on a monthly basis as follows:

(a) Eighty-five percent of toll and/or local assistance operator calls answered within ten seconds (equivalent measurements as approved by the commission may be used).

~~(i) Surveillance level: Eighty percent (or equivalent) for an answering location for a period of three consecutive months.~~

(b) Eighty percent of directory assistance and intercept calls shall be answered within ten seconds (equivalent measurements as approved by the commission may be used).

~~(i) Surveillance level: Seventy-five percent (or equivalent) at an answering location for a period of three consecutive months.~~

(5) ~~Network call completion requirements.~~ Sufficient central office and interoffice channel capacity and equipment shall be provided by the carrier to meet the following requirements during the average busy season, busy hour without encountering blockages, or equipment irregularities:

(a) Dial tone within three seconds on 98 percent of calls.

~~(i) Surveillance level: Ninety-seven and four tenths percent for a central office or remote switch for a period of three consecutive months.~~

(b) Proper completion of 97 percent of correctly dialed intraoffice calls.



~~(i) Surveillance level: Ninety-five percent for a central office or remote switch for a period of three consecutive months.~~

(c) Proper completion of 97 percent of correctly dialed interoffice calls within the local calling area.

~~(i) Surveillance level: Ninety-five percent for a central office or remote switch for a period of three consecutive months.~~

(d) Proper completion of 97 percent of correctly dialed interexchange toll calls.

~~(i) Surveillance level: Ninety-five percent for a central office or remote switch for a period of three consecutive months.~~

(6) ~~Transmission and noise requirements.~~ All facilities shall meet accepted industry design standards and shall conform to the following transmission and noise design parameters:

(a) ~~Subscriber lines.~~ Newly constructed and rebuilt subscriber lines shall be designed for no more than 8 dB transmission loss at 1000 + 20 Hz from the serving central office to the customer premises network interface. Subscriber lines shall be maintained so that transmission loss does not exceed 8 dB. Subscriber lines shall be designed and constructed so that metallic noise does not exceed 25 dB above reference noise level ("C" message weighting) on 90 percent of the lines. Subscriber lines shall be maintained so that metallic noise does not exceed 30 dB above reference noise level ("C" message weighting).

~~(b) PBX and multiline trunk circuits. PBX and multiline trunk circuits shall be designed and maintained so that transmission loss from the central office to the point of connection with customer equipment shall not exceed 5 dB (or 6.5 dB loss through a coupling device provided by the exchange carrier). These circuits shall be designed and constructed so that metallic noise does not exceed 25 dB above reference noise level ("C" message weighting) on 90 percent of the lines. They shall be maintained so that metallic noise does not exceed 30 dB above reference noise level ("C" message weighting).~~

~~(c) Interoffice local calling area. Excluding calls between central offices in the same building, 95 percent of the measurements on interoffice calls within a local calling area shall have from 2 to 10 dB transmission loss at 1000 + 20 Hz and no more than 30 dB metallic noise above reference noise level ("C" message weighting). This measurement shall be made from the line terminals of the originating central office to the line terminals of the terminating central office.~~

~~(d) Interexchange toll calls. Ninety-five percent of the transmission measurements on interexchange calls, measured end-to-end, established via trunk-side access connections shall have between 3 and 9 dB loss at 1000 + 20 Hz, and shall have no metallic noise greater than 30 dB above reference noise level ("C" message weighting).~~

(7) Customer trouble reports regarding local exchange service must meet, at the minimum, the following requirements: -

(a) Service shall be maintained by the carrier in such a manner that the monthly rate of all customer trouble reports, excluding reports concerning interexchange calls or nonregulated customer premises equipment, does not exceed six per 100 local access lines per month per exchange. ~~For the purpose of~~

~~administering this rule, each party line customer shall be considered to have one local access line.~~

~~(i) Surveillance level: Eight per one hundred local access lines per month per exchange for a period of three consecutive months.~~

(b) Ninety percent of out of service trouble reports shall be cleared within 24 hours, excluding Sunday (except where access to the customer's premises is required but not available, or where interruptions are caused by unavoidable casualties and acts of God affecting large groups of customers).

~~(i) Surveillance level: Eighty-five percent in an exchange area for a period of three consecutive months.~~

(c) The carrier shall provide to the customer a commitment time by which the trouble will be cleared. ~~Ninety percent of the repair commitments shall be met (excepting customer caused delays and acts of God affecting large groups of customers).~~

~~(i) Surveillance level: Eighty-five percent in an exchange area for a period of three consecutive months.~~

(d) Carriers may charge customers for investigating trouble reports only when:

(i) dispatch of carrier personnel to the customer site is required;

(ii) the customer has been notified, prior to the dispatch, that a charge may apply;

(iii) the carrier is able to identify the exact nature of the problem that prompted the trouble report; and

(iv) the problem exists on the customer side of the service.

AUTH: 69-3-103, MCA

IMP: 69-3-102, 69-3-201, MCA

Rationale: Amendment of this rule is reasonably necessary to clarify the rule's applicability, to make clear the standards established herein are requirements, not objectives, and to eliminate surveillance levels, which experience has shown do not provide a useful or effective tool for ensuring compliance with the standards. No longer mandating a carrier to make periodic service measurements is reasonably necessary in an effort to reduce burdensome requirements for carriers that provide service at a level that causes no concern for their customers or the commission. The service requirements for completion of installation orders are changed to simplify the rule by eliminating the distinction in the existing rule between routine service orders and orders requiring construction. The allowable installation intervals are longer, but the percentages of orders that must be completed within those time frames are higher. New provisions to clarify which orders may be excluded from the service measurements and that carriers may not cancel orders at their own discretion are added. Some service requirements that carriers have indicated are outdated are deleted. A new provision concerning when carriers may charge customers for trouble report investigation is added to extend to all local exchange carriers these requirements that now apply only to Qwest.

4. The rules proposed to be repealed are as follows, with the ARM page

number at which the complete rule may be found identified:

38.5.3333 PUBLIC INFORMATION found at ARM page 38-879.

AUTH: 69-3-103, MCA

IMP: 69-3-102, 69-3-201, MCA

Rationale: Repeal of this rule is reasonably necessary to avoid duplicative rules, as the requirements within it already exist in other rules or are being moved to other rules (e.g., public availability of rate information and exchange maps has been moved to ARM 38.5.3320).

38.5.3337 PAY TELEPHONES found at ARM page 38-889.

AUTH: 69-3-103, MCA

IMP: 69-3-102, 69-3-201, MCA

Rationale: It is reasonably necessary to repeal this rule for a combination of reasons. As the PSC has determined in PSC Orders 6050a and 6051a in PSC Dockets D97.2.33 and D97.4.65, the first sentence of (1) and the entirety of (2) are untenable under the 1996 Telecommunications Act (federal) and related Federal Communications Commission payphone orders. The PSC has said those provisions would be eliminated in a future rulemaking. The rule provisions that impose requirements for pay telephone equipment are being eliminated because pay telephones are customer-owned equipment not regulated by the PSC. The elimination of (7) is reasonably necessary because the requirements for local exchange carriers to conduct pay telephone inspections and file annual reports are unnecessarily burdensome. The remainder of the eliminated provisions are unnecessary because they are already requirements of either federal laws and rules or state laws and rules, or both.

38.5.3338 AUTOMATIC DIALING - ANNOUNCING DEVICES found at ARM page 38-890.

AUTH: 69-3-103, MCA

IMP: 69-3-102, 69-3-201, MCA

Rationale: It is reasonably necessary to repeal this rule because automatic dialing-announcing devices are customer-owned equipment that are not regulated by the PSC and the rule's provisions are unenforceable because neither the local exchange carrier nor the PSC can know when these devices are connected to the telephone network.

38.5.3341 UNANSWERED CALLS found at ARM page 38-894.

AUTH: 69-3-103, 69-3-822, MCA

IMP: 69-3-102, 69-3-201, 69-3-802, MCA

Rationale: Repeal is necessary to avoid duplication of rules, as this provision has been moved to the billing rule, ARM 38.5.3332.

38.5.3343 EMERGENCY CALL ROUTING found at ARM page 38-894.

AUTH: 69-3-103, 69-3-822, MCA

IMP: 69-3-102, 69-3-201, 69-3-802, MCA

Rationale: Repeal of this rule is reasonably necessary in recognition of the fact that customers with emergencies call 911, not the operator.

38.5.3352 CONSTRUCTION WORK NEAR EXCHANGE CARRIER FACILITIES found at ARM page 38-910.

AUTH: 69-3-103, MCA

IMP: 69-3-102, 69-3-201, MCA

Rationale: Repeal of this rule is reasonably necessary because laws commonly referred to as "call-before-you-dig" or "one-call" laws (e.g., 69-4-503, MCA) make this rule unnecessary.

38.5.3370 GENERAL found at ARM page 38-929.

AUTH: 69-3-103, MCA

IMP: 69-3-102, 69-3-201, MCA

Rationale: Repeal of this rule is reasonably necessary because the inspections and tests rule (ARM 38.5.3361), as well as the general requirement that carriers meet industry-accepted standards, adequately addresses the concern that carriers provide sufficient equipment and resources.

5. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments (original and ten copies) may also be submitted to Legal Division, Public Service Commission, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601, and must be received no later than August 29, 2006, or may be submitted to the PSC through the PSC's web-based comment form at <http://psc.mt.gov> (go to "consumer assistance," "talk to us," "pending proceeding comments," then complete and submit the form) no later than August 29, 2006.

(PLEASE NOTE: When filing comments pursuant to this notice please reference "Docket No. L-06.5.2-RUL.")

6. The PSC, a commissioner, or a duly appointed presiding officer may preside over and conduct the hearing.

7. The Montana Consumer Counsel, 616 Helena Avenue, P.O. Box 201703,

Helena, Montana 59620-1703, phone (406) 444-2771, is available and may be contacted to represent consumer interests in this matter.

8. The PSC maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the PSC. 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: electric utilities, providers, and suppliers; natural gas utilities, providers, and suppliers; telecommunications utilities and carriers; water and sewer utilities; common carrier pipelines, motor carriers, and rail carriers; and administrative procedures. Such written request may be mailed or delivered to Public Service Commission, Legal Division, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601, faxed to Connie Jones at (406) 444-7618, e-mailed to [conniej@mt.gov](mailto:conniej@mt.gov), or may be made by completing a request form at any rules hearing held by the PSC.

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

/s/ Greg Jergeson  
Greg Jergeson, Chairman  
Public Service Commission

/s/ Robin A. McHugh  
Reviewed by Robin A. McHugh

Certified to the Secretary of State July 17, 2006.

BEFORE THE DEPARTMENT OF ADMINISTRATION  
OF THE STATE OF MONTANA

In the matter of the adoption of new       ) NOTICE OF ADOPTION  
rules I through VIII concerning the       )  
Montana Land Information Act            )

TO: All Concerned Persons

1. On April 21, 2006, the Department of Administration published MAR Notice No. 2-2-362 regarding a public hearing on the proposed adoption of the above-stated rules at page 950, 2006 Montana Administrative Register, issue number 8.

2. The department has adopted New Rules I (2.12.301), II (2.12.302), IV (2.12.304), VI (2.12.306), and VIII (2.12.308) exactly as proposed. The department has adopted New Rules III (2.12.303), V (2.12.305), and VII (2.12.307) as proposed, but with the following changes, stricken matter interlined, new matter underlined:

NEW RULE III (2.12.303) APPOINTMENT OF LAND INFORMATION PLAN  
AND GRANT REVIEW SUBCOMMITTEES (1) through (1)(e) remain as proposed.

(f) a member representing a Montana association of geographic information  
systems (GIS) professionals; and

(g) through (4) remain as proposed.

AUTH: 90-1-413, MCA

IMP: 90-1-404, MCA

NEW RULE V (2.12.305) ESTABLISHING THE GRANT APPLICATION AND  
GRANTING PROCESS (1) through (5) remain as proposed.

(6) The department shall ~~disperse~~ disburse available grant funds to grant applicants in the order of priority set forth under (5). Available grant funds in excess of the funding necessary for the applications that meet the grant criteria shall be added to the available grant funds for the subsequent grant period.

AUTH: 90-1-413, MCA

IMP: 90-1-404, MCA

NEW RULE VII (2.12.307) ESTABLISHMENT OF STANDARDS AND  
GRANT COMPLIANCE WITH STANDARDS, STATUTES, AND RULES (1) ~~The department, with advice from the council, will establish any appropriate standards through an approved state standard setting process~~ Policies, standards, procedures, and guidelines will be established in accordance with ARM 2.12.204.

(2) All grants must comply with ~~accepted state or federal standards unless waived, for cause, by the department~~ established state of Montana rules, policies, standards, or procedures unless waived through procedures defined in ARM

2.12.205.

~~(3) All standards waivers will be reviewed with the council at the next general meeting of the council.~~

AUTH: 90-1-413, MCA

IMP: 90-1-404, MCA

3. The following comments were received and appear with the department's responses:

COMMENT NO. 1: Appointment of Land Information Plan and Grant Review Subcommittees (Rule III(1)(f)) states "a member representing a Montana association of GIS professionals; and ...". The acronym GIS is never defined in the document. The recommendation was to replace GIS with "geographic information systems".

RESPONSE NO. 1: The department concurs and revised the rule as shown above.

COMMENT NO. 2: Compliance with Standards, Statutes, and Rules (Rule VII). The following comment on this rule was received: "Section 90-1-406 of the MLIA [Montana Land Information Act] legislations [sic] states the MLIAC will 'advocate for the development of consistent policies, standards, and guidelines for land information'. The Administrative Rules of the Montana Information Technology Act (2.12.206) defines the process for establishing policies, standards, procedures, and guidelines. These are also defined in Section 2.12.201. My assumption is that the portion of the MLIA funds collected by the State of Montana are state funds and thus must comply with state policies, standards, procedures, guidelines, and rules. Thus, an administrative rule for establishing policies, standards, procedures, and guidelines already exists and should be referenced. This Rule also defines the notification process for waivers."

RESPONSE NO. 2: The department concurs and revised the rule as shown above:

4. In addition to the comments received, the department is correcting a grammatical error in NEW RULE V(6).

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

/s/ Dal Smilie  
DAL SMILIE, Rule Reviewer

Certified to the Secretary of State July 17, 2006.





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

In the matter of the adoption of new	)	NOTICE OF ADOPTION,
rules I through IV; the amendment of	)	AMENDMENT, REPEAL, AND
ARM 12.9.802; the repeal of ARM	)	TRANSFER
12.9.801 and 12.9.808; and the transfer	)	
of ARM 12.9.810 pertaining to game	)	
damage hunts, management seasons,	)	
and game damage response and	)	
assistance	)	

TO: All Concerned Persons

1. On May 4, 2006, the Fish, Wildlife and Parks Commission (commission) published MAR Notice No. 12-319 regarding the proposed adoption, amendment, repeal, and transfer of the above-stated rules at page 1105 of the 2006 Montana Administrative Register, Issue No. 9. On May 18, 2006, the commission published MAR Notice No. 12-320 regarding the notice of extension of comment period at page 1201 of the 2006 Montana Administrative Register, Issue No. 10.

2. The commission has adopted new rule I (ARM 12.9.803) exactly as proposed.

3. The commission has adopted new rule II (ARM 12.9.804), new rule III (ARM 12.9.804A) and new rule IV (ARM 12.9.1101) with the following changes, stricken matter interlined, new matter underlined:

NEW RULE II (ARM 12.9.804) GAME DAMAGE HUNTS (1) remains as proposed.

(2) The following conditions apply to game damage hunts:

(a) through (f) remain as proposed.

(g) a person who is contacted by the department for the purpose of a damage hunt may waive the opportunity to participate, but may not be considered again until all other interested persons have been contacted; ~~and~~

(h) any weapons restrictions or area closures that apply during general hunting seasons to areas included in game damage hunts will also apply to hunting conducted during game damage hunts in those same areas: ; and

(i) damage hunts may include the harvest of male and female game animals.

AUTH: 87-1-225, MCA

IMP: 87-1-225, MCA

NEW RULE III (ARM 12.9.804A) GAME DAMAGE HUNT ROSTER (1) A game damage hunt roster will be ~~utilized~~ used to provide a list of hunters available to participate in game damage hunts and management seasons, according to the following procedures:

(a) hunters interested in participating in game damage hunts and management seasons will apply through the department website between June 15 and July 15 annually. A roster will be established through a computerized random selection of applicant names, with roster results being made available on-line by August 1 annually. Hunters without internet access may apply at any department regional or Helena office between June 15 and July 15 annually. If necessary, the department may establish additional sign-up periods;

(b) through (2) remain as proposed.

AUTH: 87-1-225, MCA

IMP: 87-1-225, MCA

NEW RULE IV (ARM 12.9.1101) MANAGEMENT SEASONS (1) and (2) remain as proposed.

(3) Management seasons may be implemented under the following conditions:

(a) hunting occurs during the time period August 15 through February 15;

(b) the season will provide for dispersal and limited harvest of animals;

(c) hunting ~~will~~ may include opportunities for specified numbers of hunters to harvest either-sex and antlerless game animals;

(d) through (f) remain as proposed.

~~(3)~~ (4) Hunters eligible to hunt during a management season will be selected from the game damage hunt roster under procedures outlined in ARM 12.9.804A. If sufficient numbers of hunters cannot be identified through use of the game damage hunt roster, the department may ~~utilize~~ use other established means of hunter selection, including first-come, first-served advertised opportunities and unsuccessful special permit applicant lists.

AUTH: 87-1-225, MCA

IMP: 87-1-225, MCA

4. The agency has amended ARM 12.9.802 with the following changes, stricken matter interlined, new matter underlined:

12.9.802 GAME DAMAGE (1) through (4) remain as proposed.

(5) In response to damage complaints qualifying for assistance under 87-1-225, MCA, and ARM 12.9.803, a regional supervisor may address the problem in the following ways:

(a) by herding ~~may be employed~~ as a temporary measure;

(b) by employing a variety of animal dispersal methods ~~may be employed~~, such as airplanes, snowmobiles, cracker shells, and scareguns;

(c) by using repellents ~~be employed~~ as temporary solutions;

(d) by using fencing options ~~may be utilized~~ if the problem is chronic and involves haystacks and other stored crops; ÷

~~(i) stackyards may be used as a permanent solution in cases where records show haystack damage occurs annually. The department will furnish the property owner with posts and wire. It is the landowner's responsibility to construct the fence~~

~~and to provide proper maintenance. In situations where stackyards enclose several acres, particularly those surrounding round bales, permanent stackyards may not be the most desirable treatment of the problem;~~

~~(ii) electric fencing may be the most feasible solution in situations where a large area is being used as a bale stackyard as round bale storage. The department will provide the charger and fencing materials. On the initial installation, the department will assist in setting up the fence. The storage and care of this equipment is the responsibility of the rancher, and with proper care, materials should last three years. If game damage does not recur in succeeding winters, the department will pick up the charger for use in other areas;~~

~~(iii) if a haystack has straight sides, a four or six foot snowfence works well. In the case of elk, eight foot panels may be used. It is reasonable to assume the snowfence or panels will last for a minimum of three winters if properly cared for. Rolling and storage are the rancher's responsibility. Depending upon the size of the area and availability, the department will furnish the snowfence or panels, and the property owner will be responsible to put it up, take it down, and provide maintenance;~~

~~(iv) it will be the responsibility of the landowner to store materials furnished by the department in a manner consistent with proper care, with reasonable wear expected. A signed agreement with the landowner will record any planned actions and serve as a receipt for any materials that are provided. These agreements will be sent to the individuals. Fence fabric shall be returned to the department when it is no longer needed for protection from wildlife damage. Materials will be replenished when reasonable wear makes them ineffective;~~

~~(e) a kill permit may be considered to be the best immediate solution and may be activated without first exhausting any of the previously mentioned methods. Authorization for kill permits is issued by regional supervisors by authorizing kill permits;~~

~~(f) through (7) remain as proposed.~~

AUTH: 87-1-225, MCA

IMP: 87-1-225, MCA

5. The commission has repealed ARM 12.9.801 and 12.9.808 as proposed.

6. The commission has transferred the following rules as proposed:

<u>OLD</u>	<u>NEW</u>	
12.9.810	12.9.1105	Hunting Seasons Extensions

7. A total of 43 people made formal comments on the proposed rules. A summary of the comments received during the rulemaking process appears below with the commission's responses:

Comment 1: Two comments suggested that hearings should have been held in towns different from the ones selected.

Response: The hearing sites were selected with the intention of providing the best opportunity for people affected by chronic game damage situations to participate.

Comment 2: Three comments suggested that hunters should be allowed to select more than one district or an entire region per species on the game damage hunt roster.

Response: By having hunters select only one district per species, the commission hopes that the roster will provide the department with a list of people who will be able to respond quickly to the primary area where they can best assist in helping to resolve a damage situation.

Comment 3: Three comments suggested that new rule II (ARM 12.9.804) should clarify that the department may authorize the harvest of both male and female game animals during a damage hunt if necessary.

Response: The commission agrees and has changed the rule to include language to that effect.

Comment 4: Three comments cited concerns about the limited amount of time that hunters have to sign up for the game damage hunt roster.

Response: The commission has inserted new language into the rule to allow the department, if necessary, to establish additional sign-up periods. The commission proposed the sign-up period in new rule III (ARM 12.9.804A) to avoid confusing hunters with time period requirements associated with special permit drawings.

Comment 5: Two comments raised questions about why kill permits referenced in ARM 12.9.802 should necessarily be given priority over other methods of addressing game damage.

Response: Specific circumstances of individual game damage situations determine what might be the best remedy for a particular problem. The commission has changed the rule to simply reflect that kill permits may be issued by regional supervisors.

Comment 6: One comment voiced concern about a single commissioner being authorized to decide whether or not a game damage hunt or management season may be implemented.

Response: While the commission understands the basis for the comment, the proposed rule is consistent with rules that have been in place for the past twenty years.

Comment 7: Three comments raised questions about what licenses a hunter would have to possess to sign up for the game damage hunt roster.

Response: New rule II (ARM 12.9.804) does not specify that hunters have to possess any specific license to sign up for the roster. Under this rule, the department will require a hunter to have an automated license (ALS) number and a current conservation license to sign up for the roster. This rule specifies that to participate in a hunt, hunters will have to possess a valid, unused license specific to the species being hunted. The circumstances of the hunt will determine what license or permit is required for that particular hunt.

Comment 8: Three comments raised questions about how public hunting restrictions will be judged, and whether or not a landowner should be required to enroll in Block Management or provide some type of documentation of hunting use to be eligible for assistance.

Response: The proposed rule explains what some of the restrictions referred to in the law (87-1-225, MCA) might be, for use by the department in determining a landowner's eligibility to receive game damage assistance. There is no legal basis for requiring a landowner to participate in a particular department program in order to be eligible for assistance. The commission does not believe it is necessary to require documentation of hunting use for most situations. If, upon evaluation, the department determines it may be useful in some situations to require documentation, a policy to that effect can be adopted.

Comment 9: Three comments raised questions about whether or not a landowner could select hunters from the game damage hunt roster.

Response: The department will select hunters from the roster after names have been randomized through a computerized process. A landowner may encourage specific hunters to enter their names on the roster for a particular district. Department selection of a hunter for participation in a game damage hunt or management season only identifies that person as being eligible to participate. A private landowner determines who has permission to hunt on property under his or her control.

Comment 10: One comment suggested hunters on the game damage hunt roster should have to respond to the hunt within 24 or 48 hours.

Response: Hunters will be encouraged to respond quickly to damage situations. The department will evaluate how effectively this process works, and if necessary, may adopt additional policies or rules that might place additional requirements on hunters wishing to participate in game damage hunts.

Comment 11: One comment suggested that anyone under 16 or over 65 should be given first priority in participating in a damage hunt.

Response: Damage hunts and management seasons are designed to address a specific damage situation. Damage hunts are not intended to provide special

hunting opportunities, but instead are implemented to prevent or reduce damage in the most efficient manner.

Comment 12: One comment suggested public hunting for eligibility should only be public hunting of animals causing damage.

Response: Public hunting required for game damage assistance eligibility must be public hunting that will help manage area game populations. Game damage may occur due to many factors, including severe weather conditions, high animal populations, specific forage conditions, etc. Animals that may cause damage are part of the overall population that requires management through public hunting.

Comment 13: Two comments suggested that the rules either could or should allow landowners to set fees for damage hunts or be provided with permits that could be sold for fees.

Response: New rule I (ARM 12.9.803) specifies that one of the restrictions that may significantly reduce public hunting and that could affect a landowner's eligibility to receive game damage assistance is "fees charged" for allowing hunting. Under the new rules as adopted by the commission, no permits could or would be issued to landowners for sale to another person.

Comment 14: One comment suggested that shotguns, pistols, and muzzle loaders must be included in all game damage hunts and management seasons.

Response: Under the rules, shotguns, pistols, and muzzle loaders may be used during all game damage hunts and management seasons unless any weapons restrictions or area closures are imposed on the same area during the general hunting season.

Comment 15: One comment suggested adding language that would allow archery, shotgun, muzzle loaders, or other weapons to be used as an alternative hunting method "when animal damage needs managed but doesn't require the kill expected with rifle hunting."

Response: The department already has the authority to determine which weapons are appropriate for use to address a game damage situation. No additional authority is needed or gained by adding the suggested language.

Comment 16: Two comments suggested that damage permits needed to be in addition to general season tags, and that the permits should be available over-the-counter.

Response: During the season-setting process, the commission grants authority for the department to issue a specified number of deer, elk, and antelope licenses for use in addressing potential game damage situations. These licenses are in addition to general season "tags." In some districts, different types of permits are made

available over the counter, depending upon actions taken during the season-setting process. The specific game damage hunt or management season will determine what type of license or permit is required for participation in the hunt.

Comment 17: One comment suggested that language in new rule I (ARM 12.9.803) and new rule IV (ARM 12.9.1101), the language “not significantly reduce public hunting,” should be removed, and that landowners should be allowed to impose a safety zone restriction.

Response: The statute authorizing the department to provide game damage assistance, 87-1-225, MCA, contains the language “not significantly reduce public hunting through imposed restrictions.” Therefore, the commission must adopt administrative rules that conform to that law. Under current law, a landowner may establish a safety zone on property under his or her control.

Comment 18: One comment suggested a regional supervisor should not need to obtain permission from the area Fish, Wildlife, and Parks commissioner before authorizing a game damage hunt, due to “the dark shadow of bio-politics.”

Response: The commission understands the concern of the person commenting, as it relates to enabling the department to respond to damage situations in a timely fashion. However, the department has operated under a similar rule for the past twenty years, without problems.

Comment 19: Thirteen comments were too general in nature to identify any specific suggestion, were comments on issues not directly related to the proposed rules, or were statements of opinion regarding the relationships between landowners and hunters, landowners and the department, or landowners and wildlife.

Response: The commission appreciates members of the public making the effort to comment on all issues.

Comment 20: Eight comments cited general support for the commission’s effort to address the issue of game damage through some or all of the proposed rules.

Response: The commission appreciates members of the public making the effort to comment on proposed rules.

/s/ Tim Mulligan  
Tim Mulligan  
Vice Chairman, Fish, Wildlife and  
Parks Commission

/s/ Rebecca Dockter  
Rebecca Dockter  
Rule Reviewer

Certified to the Secretary of State July 17, 2006

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW  
AND THE DEPARTMENT OF ENVIRONMENTAL QUALITY  
OF THE STATE OF MONTANA

In the matter of the amendment of ARM )	CORRECTED NOTICE OF
17.24.132, 17.24.133, 17.24.134, )	AMENDMENT
17.24.136, 17.24.1206, 17.24.1211, )	
17.24.1218, 17.24.1219, 17.24.1220, )	(AIR QUALITY)
17.56.121 and the repeal of 17.24.1212 )	(ASBESTOS)
pertaining to revising enforcement )	(HAZARDOUS WASTE)
procedures under the Montana Strip and )	(JUNK VEHICLES)
Underground Mine Reclamation Act, the )	(MAJOR FACILITY SITING)
Metal Mine Reclamation Laws and the )	(METAL MINE RECLAMATION)
Opencut Mining Act, and the )	(OPENCUT MINING)
amendment of ARM 17.30.2001, and )	(PUBLIC WATER SUPPLY)
17.30.2003, repeal of 17.24.1212, )	(SEPTIC PUMPERS)
17.30.2005, 17.30.2006, and 17.38.606, )	(SOLID WASTE)
and the adoption of new rules I through )	(STRIP AND UNDERGROUND
VII pertaining to providing uniform )	MINE RECLAMATION)
factors for determining penalties )	(SUBDIVISIONS)
)	(UNDERGROUND STORAGE
)	TANKS)
)	(WATER QUALITY)

TO: All Concerned Persons

1. On December 22, 2005, the Board of Environmental Review and the Department of Environmental Quality published MAR Notice No. 17-239 regarding a notice of public hearing on the proposed amendment, repeal, and adoption of the above-stated rules at page 2523, 2005 Montana Administrative Register, issue number 24. On May 4, 2006, the board and department published the notice of amendment, repeal, and adoption of the rules at page 1139, 2006 Montana Administrative Register, issue number 9.

2. This corrected notice of amendment is being published to add references to a new rule that was inadvertently omitted in the adoption notice and to correct a numbering error. ARM 17.30.2003 and 17.56.121 were proposed with a reference to New Rules I through VII. In the notice of adoption, the board and department deleted the language from New Rule VI and placed it in New Rule VIII. However, the addition of New Rule VIII was inadvertently omitted from ARM 17.56.121. ARM 17.30.2003 and 17.56.121 should read as follows, new material underlined, stricken material interlined:

17.30.2003 ENFORCEMENT ACTIONS FOR ADMINISTRATIVE  
PENALTIES (1) through (7)(b)(ii) remain as amended.

~~(7)~~ (8) The department shall calculate a penalty in accordance with [NEW  
RULES I through ~~VII~~ VIII] (ARM 17.56.301 through 17.56.308).



(9) remains as amended.

17.56.121 DETERMINATION OF ADMINISTRATIVE PENALTIES

(1) remains as amended.

(2) For each violation, the department shall assess a penalty as provided in [NEW RULES I through ~~VII~~ VIII] (ARM 17.56.301 through 17.56.308) , and allow the time for corrective action, specified in the table in this rule. Pursuant to 75-11-525(4), MCA, the department may suspend a portion of the maximum administrative penalty based on the cooperation and degree of care exercised by the person assessed the penalty, how expeditiously the violation was corrected, and whether significant harm resulted to the public health or the environment from the violation.

The chart on pages 17-6040 and 17-6041 of the Administrative Rules of Montana remains as amended.

(3) and (4) remain as amended.

3. Replacement pages for this corrected notice were submitted to the Secretary of State for the June 30, 2006 deadline.

Reviewed by:

BOARD OF ENVIRONMENTAL REVIEW

/s/ James M. Madden

JAMES M. MADDEN  
Rule Reviewer

By: /s/ Joseph W. Russell

JOSEPH W. RUSSELL, M.P.H.,  
Chairman

DEPARTMENT OF ENVIRONMENTAL  
QUALITY

BY: /s/ Richard H. Oppen

RICHARD H. OPPER, Director

Certified to the Secretary of State, July 17, 2006.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY  
OF THE STATE OF MONTANA

In the matter of the amendment of ARM )  
17.74.343, the adoption of New Rules I )  
through XIX, and the repeal of ARM )  
17.74.302, 17.74.303, 17.74.307 through )  
17.74.310, 17.74.314 through 17.74.319, )  
17.74.325 through 17.74.331, 17.74.335 )  
through 17.74.338, 17.74.341 and )  
17.74.342 pertaining to the asbestos )  
control program )  
)

CORRECTED NOTICE OF  
ADOPTION

(ASBESTOS CONTROL)

TO: All Concerned Persons

1. On January 26, 2006, the Department of Environmental Quality published MAR Notice No. 17-242 regarding a notice of public hearing on the proposed amendment, adoption, and repeal of the above-stated rules at page 125, 2006 Montana Administrative Register, issue number 2. On June 22, 2006, the department published the notice of amendment, adoption, and repeal at page 1574, 2006 Montana Administrative Register, issue number 12.

2. This corrected notice of adoption is being published to correct an error in the earmarking of NEW RULE XV (17.74.364). The rule was not proposed with subsection (3)(c); however, the adoption notice read "(c) through (10) remain as proposed." The correct earmarking is shown below:

NEW RULE XV (17.74.364) TRAINING PROVIDER REQUIREMENTS

(1) and (2) remain as proposed.

(3) For department approval of a training course, instructors' qualifications must include:

(a) remains as proposed.

(b) current accreditation in the course(s) they teach.

(i) A training provider who is accredited as a contractor/supervisor may teach the asbestos project worker course without current accreditation as an asbestos project worker.

(4) through (10) remain as proposed.

3. Replacement pages for this corrected notice were submitted to the Secretary of State for the June 30, 2006 deadline.

Reviewed by:

DEPARTMENT OF ENVIRONMENTAL  
QUALITY

/s/ David Rusoff

DAVID RUSOFF

Rule Reviewer

By: /s/ Richard H. Opper

RICHARD H. OPPER

Director

Certified to the Secretary of State, July 17, 2006.

BEFORE THE TRANSPORTATION COMMISSION  
OF THE STATE OF MONTANA

In the matter of the adoption of new rules I ) NOTICE OF ADOPTION AND  
and II; and the amendment of ARM ) AMENDMENT  
18.6.202, 18.6.211, 18.6.212, 18.6.221, )  
18.6.232, 18.6.242, and 18.6.245 )  
regarding Outdoor Advertising )

TO: All Concerned Persons

1. On February 9, 2006, the Transportation Commission published MAR Notice No. 18-113 regarding a notice of public hearing on the proposed adoption and amendment of the above-stated rules at page 276 of the 2006 Montana Administrative Register, Issue Number 3.

2. On March 17, 2006, a public hearing on the proposed new rules and amendments was conducted in Helena. Several witnesses both for and against the proposals were timely received, as well as many e-mails and written comments. The hearing officer has issued his report of the hearing and comments.

3. On May 25, 2006, the Transportation Commission thoroughly considered the report and comments. The commission now adopts new rule I (18.6.247) exactly as proposed. The commission amends 18.6.211, 18.6.212, 18.6.221, 18.6.242, and 18.6.245 exactly as proposed.

4. The Transportation Commission has amended new rule II (18.6.248) and ARM 18.6.202 as proposed, but with the following changes, stricken matter interlined, new matter underlined:

RULE II (18.6.248) RECOGNITION OF SPONSORS, BENEFACTORS, AND SUPPORT GROUPS (1) An on-premise nonprofit sign owner may recognize the name of a sponsor, benefactor, or support group if:

(a) through (e) remain as proposed.

(2) A nonprofit owner means schools, churches, or local governments.

AUTH: 75-15-121, MCA

IMP: 75-15-111, 75-15-113, MCA

18.6.202 DEFINITIONS (1) remains as proposed.

(2) "Commercial electronic variable message signs" ~~(CMS)~~ means ~~electrical or electromechanical signs on which contain, include, or are illuminated by any flashing, intermittent, or moving light or lights, producing the illusion of movement by means of electronic, electrical, or electro-mechanical input messages can be changed remotely through hard wire or wireless communications and have the capability to present a large amount of text and/or symbolic imagery. Other names for CMS are "variable message signs" (VMS), "dynamic message signs" (DMS),~~

~~"smart boards" (SBS), "tri-vision" (TVS), or digital display (DD), and/or have the characteristics of one or more of the following classifications:~~

~~(a) through (13) remain as proposed.~~

5. The proposed changes to ARM 18.6.232 are not adopted.

6. The following comments were received and appear with the commission's and department's responses:

#### 18.6.202 DEFINITIONS

Comment No. 1: While no specific oral or written comments were made about any of the definitions, there were concerns about the ultimate changes to various other rules.

Response: Since the commission did not pass the proposed changes to ARM 18.6.232, commercial electronic variable message signs, the changes to (2) are deleted and the original language will remain. The new ARM 18.6.202(9) is, however, adopted as proposed.

#### 18.6.221 NEW SIGN ERECTION

Comment No. 2: Don Vanica made a written proposal concerning when the sign permit plaques needed to be fastened to the new signs.

Response: Yes, a separate identifying plaque is necessary on all new signs in order for the agency to track ownership.

#### 18.6.232 COMMERCIAL ELECTRONIC VARIABLE MESSAGE SIGNS

Comment No. 3: This one proposed rule change generated considerable oral and written comments both for and against its adoption.

Response: Since the commission voted not to adopt this rule change, no further response is needed at this time.

#### 18.6.242 RANCH AND RURAL DIRECTIONAL SIGNS

Comment No. 4: Save America's Visual Environment (SAVE) and Don Vanica submitted written comments concerning the size of these signs and the number.

Response: The MDT intends that the size will not exceed 4' x 8' which is consistent with Code of Federal Regulations (CFR) presently. The number of such signs allowed for a particular ranch will be determined on a case by case need. Probably no more than two signs will be allowed for a single ranch. The commission adopts as proposed.

#### 18.6.245 NONCOMMERCIAL SIGNS

Comment No. 5: Rich Munger was opposed to "Welcome To" signs on the interstate.

Response: The need for communities on the interstate system to use "Welcome To" signs is the same as the communities on the primaries. There would be no reason not to allow them to have signs.

18.6.247 OFFICIAL SIGNS

Comment No. 6: The Whitefish City Commission; Joan Vetter-Ehrenberg and several other persons made written comments about the size of the signs allowed under this rule change.

Response: The proposed new rule will only allow the sign size to be controlled by the Uniform Traffic Control Manual which is 180 square feet per sign. The agency has recommended, and the commission agrees with this proposal.

18.6.248 RECOGNITION OF SPONSORS, BENEFACTORS, AND SUPPORT GROUPS

Comment No. 7: The City of Whitefish and various other people made written comments about this proposal. The biggest concern is that the recognition of sponsors will not contain commercial advertising on the sign or reader board.

Response: The agency is aware of the concerns of the written comments. The proposed new rule as drafted has sufficient protections in it to ensure compliance of noncommercial activity and is restricted to entities who may use it. Violations can be addressed through the permitting process. The commission will adopt the new rule as proposed.

By: /s/ William T. Kennedy  
William T. Kennedy, Chair  
Transportation Commissioner

/s/ Lyle Manley  
Lyle Manley, Rule Reviewer

Certified to the Secretary of State July 17, 2006.

BEFORE THE BOARD OF ALTERNATIVE HEALTH CARE  
DEPARTMENT OF LABOR AND INDUSTRY  
STATE OF MONTANA

In the matter of the adoption of NEW ) NOTICE OF ADOPTION  
RULE I fee abatement and NEW )  
RULE II license renewal for activated )  
military reservists )

TO: All Concerned Persons

1. On March 23, 2006, the Board of Alternative Health Care (board) published MAR Notice No. 24-111-19 regarding the proposed adoption of the above-stated rules, at page 706 of the 2006 Montana Administrative Register, issue no. 6.
2. On April 13, 2006, a public hearing was held on the proposed adoption of the above-stated rules in Helena. No comments or testimony were received.
3. The board has adopted NEW RULE I (24.111.403) and NEW RULE II (24.111.2105) exactly as proposed.

BOARD OF ALTERNATIVE HEALTH CARE  
Michael Bergkamp, ND, Chairperson

/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 July 17, 2006





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

In the matter of the amendment of ARM	)	NOTICE OF AMENDMENT
36.11.304, equipment operation in the	)	AND ADOPTION
SMZ, ARM 36.11.305, retention of trees	)	
and clearcutting in the SMZ, ARM	)	
36.11.310, site-specific alternative	)	
practices, ARM 36.11.312, definitions,	)	
and the adoption of New Rule I	)	
regarding penalties for violation of the	)	
streamside management zone law	)	

To: All Concerned Persons

1. On February 23, 2006, the Department of Natural Resources and Conservation published MAR Notice No. 36-22-113 regarding the public hearing on the proposed amendment and adoption of the above-stated rules at page 499 of the 2006 Montana Administrative Register, Issue No. 4.

2. The department has amended ARM 36.11.304 and 36.11.310 as proposed.

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

36.11.305 RETENTION OF TREES IN THE SMZ – CLEARCUTTING

(1) through (4)(c) remain as proposed.

(d) all trees that have fallen through natural processes, across or in a Class 1 or 2 stream, must be retained, unless removal of such trees is conducted pursuant to ARM 36.11.304~~(5)~~ (6), is approved as a site-specific alternative practice, and is conducted consistently with other applicable federal and state laws and regulations.

(5) and (6) remain as proposed.

36.11.312 DEFINITIONS Wherever used in this subchapter, unless a different meaning clearly appears from the context:

(1) through (7) remain as proposed.

(8) “Department,” as defined at 77-5-302(2), MCA, means “the Department of Natural Resources and Conservation provided for in 2-15-3301, MCA.”

(9) through (16) remain as proposed.

(17) “Operator,” as defined at 77-5-302(4), MCA, means “a person responsible for conducting forest practices. An operator may be the owner or a person who, through contractual agreement with the owner, is obligated to or entitled to conduct forest practices or carry out a timber sale.”

(18) and (19) remain as proposed.

(20) "Owner," as defined at 77-5-302(5), MCA, means "an individual, firm, partnership, corporation, or association of any nature that holds an ownership interest in forest land or timber."

(21) through (31) remain as proposed.

4. The department has adopted New Rule I (36.11.313) as proposed but with the following changes from the original proposal, matter to be stricken interlined, new matter underlined:

NEW RULE I (36.11.313) PENALTIES (1) remains as proposed.

(2) Upon determining that a violation may have occurred, the department will, prior to issuing a formal warning or repair-order, make a reasonable attempt to contact, by telephone, letter, electronic mail, or other means, the owner and operator.

(a) If the department is not successful in making contact with the owner and/or with the operator, it will proceed in the appropriate manner, including but not limited to, the issuance of a formal warning, repair-order, and/or assessment of a civil penalty.

(b) If the department determines that a violation does not warrant a civil penalty, as calculated in (5), it may seek voluntary compliance and site rehabilitation through warning, conference, or other appropriate means.

(3) through (5) remain as proposed.

5. The following comments were received and appear with DNRC's responses:

COMMENT 1: DNRC received several comments in opposition to New Rule I, Penalties. All five commenters stated that they feel DNRC does not possess the authority or ability to adopt New Rule I, Penalties. The commenters stated that the legislature intended that DNRC adopt rules to implement enforceable standards for streamside management zones, adopt rules governing the harvest of timber in streamside management zones (hereinafter "SMZs") to ensure the retention of merchantable and submerchantable timber necessary to maintain the integrity of the SMZ, and adopt rules under which owners and operators can receive approval for alternative practices for the standards provided in 77-5-303, MCA. One commenter stated that he did not believe, based on consultation with legal counsel, that DNRC has the ability or the authority to generate rules dealing with penalties. Another commenter stated that any proposed penalty matrix and expanded penalty authority must be passed by the Montana State Legislature.

One commenter stated that absent in the intent is any reference to rulemaking with respect to penalties and that the reason for its absence was the need for significant penalties for noncompliance if the department was unable to achieve voluntary cooperation and appropriate site rehabilitation. This commenter noted that the maximum penalty pursuant to 77-5-305(2), MCA, is \$1,000 per day.

RESPONSE 1: DNRC agrees and disagrees. While the SMZ law, at 77-5-307, MCA, provides that DNRC shall adopt rules for the reasons described by the commenters in Comment 1, there is also a requirement that DNRC adopt rules that provide specific direction necessary for owners and operators to understand and comply with the management standards, including additional definition of the SMZ and the forest practices permissible within the SMZ. DNRC feels that the New Rule I provides the specific direction required because it describes the specific manner DNRC will assess civil penalties that are less than \$1,000.00. An understanding of the management standards implies an understanding of what will happen if the management standards are violated.

Section 77-4-303(2), MCA, provides that DNRC shall adopt rules implementing the streamside management standards set forth in 77-5-303(1), MCA. Because commission of the practices set forth in 77-5-303(1), MCA, is a violation of the SMZ law and subject, pursuant to 77-5-305(2), MCA, to a civil penalty not to exceed \$1,000.00 per day, New Rule I further implements the streamside management standards by providing notice of the manner in which DNRC will assess civil penalties that are less than the maximum civil penalty of \$1,000.00 per day. If the legislature had intended DNRC to impose only \$1,000.00 fines it would not have employed the words "not to exceed" in modifying "\$1,000." Further, New Rule I also allows DNRC to assess civil penalties that are less than \$1,000.00 in a nonarbitrary manner.

Additionally, pursuant to 2-4-305(6), MCA, DNRC has implied rulemaking authority and the ability to adopt New Rule I and does not need to seek passage by the Montana legislature of New Rule I. In *Bick v. State of Montana* (1986), 224 Mont. 455, 458, 730 P.2d 418, 420, the Montana Supreme Court held that 2-4-305(6), MCA, provides implied authority to adopt rules such as New Rule I. Pursuant to this Supreme Court opinion, if a statute provides for a penalty, but provides no express authority to adopt rules to implement it, administrative agencies possess implied authority to adopt rules that provide a procedure pursuant to which they will assess the penalty. In sum, New Rule I provides "more precise notice of what conduct will be sanctioned and promotes equality of treatment among similarly situated" persons. 224 Mont. at 459, 730 P.2d at 421 (citing *Dixon v. Love* (1977), 431 U.S. 105, 115, 97 S.Ct. 1723, 1729, 52 L.Ed.2d 172, 182).

COMMENT 2: A commenter stated that the SMZ law was never intended to be a reason for DNRC to penalize owners and operators. This commenter stated that he understood consistency to be one of DNRC's concerns and that the single-most important aspect of the SMZ law and its successful implementation is DNRC's service foresters continuing to work cooperatively with operators and landowners on the ground. This commenter stated that penalties were not to be a part of that equation.

RESPONSE 2: DNRC disagrees. Section 77-5-305(2), MCA, provides for the assessment of a maximum civil penalty of \$1,000.00 per day for a violation of the SMZ law, rules adopted to implement that SMZ law or an order issued pursuant to

77-5-305, MCA. While cooperative efforts are an important aspect of the SMZ law, the legislature, in addition to providing DNRC the authority to work cooperatively with owners and operators regarding potential violations of the SMZ law, expressly augmented the cooperative aspect of the law with a penalty-assessment aspect. The legislature also clearly intended and foresaw that DNRC would assess civil penalties that are less than \$1,000.00, as it provided in 77-5-305(2), MCA, that violations shall be subject to a civil penalty “not to exceed \$1,000.” New Rule I does nothing to alter this balance. As stated in DNRC’s response to Comment 1, New Rule I provides DNRC a means to assess, in a fair, consistent and nonarbitrary manner, civil penalties that are less than the statutory maximum of \$1,000.00 per day.

COMMENT 3: A commenter stated that New Rule 1 proposes to expand the DNRC’s authority to levy fines on operators for infractions of the SMZ rules, and commented further that the rule adds impermissible language regarding the scope of regulatory authority and activities of operators in or adjacent to SMZs.

RESPONSE 3: DNRC disagrees. New Rule I does not expand DNRC’s regulatory authority. New Rule I provides a fair, consistent, and nonarbitrary manner for DNRC to assess civil penalties that are less than the statutory maximum of \$1,000.00 per day. New Rule I does not provide for civil penalties that are larger than the statutory maximum, nor does it add management standards or prohibited acts not already enacted by the Montana legislature. Further, there is no impermissible language in New Rule I regarding the scope of regulatory authority and the activities of operators in or adjacent to SMZs. Indeed, New Rule I does not address the activities of operators in or adjacent to SMZs.

COMMENT 4: A commenter stated that with the adoption of New Rule I, it appears more likely that DNRC will assess civil penalties. In a similar comment, another commenter stated that there is far too much emphasis placed on penalties, that there is an implication in New Rule I that every infraction, however major or minor, will be accompanied by a civil penalty, and that not enough emphasis is placed on voluntary compliance with the SMZ law and rules.

RESPONSE 4: DNRC disagrees. New Rule I, as stated in the response to Comments 1 and 2, provides a fair, consistent and nonarbitrary manner for DNRC to assess, when appropriate, civil penalties that are less than the statutory maximum. New Rule I does not provide that civil penalties are appropriate more frequently, nor does it direct DNRC to assess civil penalties more frequently. DNRC will continue to base whether a violation warrants voluntary compliance and site rehabilitation through warning, conference, or other appropriate means, on the one hand, or the assessment of civil penalties and/or site rehabilitation, on the other, on the site-specific facts that arise.

COMMENT 5: A commenter stated that there is no consistency in the law and the ability to really look at a possible violation.

RESPONSE 5: DNRC disagrees. To the extent inconsistency exists, New Rule I will assist DNRC in ensuring that civil penalties, when appropriate, are assessed in a consistent, fair and nonarbitrary manner. The SMZ law and its rules expressly provide DNRC the ability to look at and address any alleged violation.

COMMENT 6: A commenter stated that should DNRC adopt New Rule I, it should include a definition for what a “day” is because there is no direction regarding whether a day is from the inception of the infraction or from the time an owner or operator is notified of the infraction.

RESPONSE 6: DNRC does not feel that New Rule I must define the word “day.” The legislature has defined “day” at 1-1-301(1), MCA, as follows: “the period of time between any midnight and the midnight following.” This is the definition of “day” on which DNRC relies. If an owner or operator violates the SMZ law and DNRC issues an order directing that certain site rehabilitation take place by a date certain, for every day, or twenty-four hour period, beyond the date certain that the site rehabilitation has not taken place, there exist additional violations subject to additional civil penalties. Sections 77-5-305(2) and (3), MCA, provide that a day begins once an owner or operator violates the SMZ law, its rules or an order issued pursuant to 77-5-305, MCA, not at the time the owner or operator receives notice of the violation.

COMMENT 7: A commenter stated that there is still a two fine penalty for meeting what “you guys ask us to do.” This commenter stated that if DNRC foresters are going to prescribe some sort of action, that if the person who violates the SMZ law follows that recommendation, DNRC should “give to him – you know, try and determine what’s more than what you asked. You know, if you said plant 20 trees, and you plant 21, does it go from two to zero? See, I think that’s another area, if you do end up with a matrix like this, that you probably need to define that a little bit better. And, I don’t think you should penalize them for doing what somebody told you to do.”

RESPONSE 7: DNRC cannot discern the exact meaning of this comment. To the extent the commenter implies that DNRC may assess two civil penalties for one violation, DNRC disagrees. If DNRC orders the planting of twenty trees and the owner or operator plants twenty-one trees, DNRC treats that owner or operator as having complied with that aspect of the site-rehabilitation portion of its order. However, if DNRC orders the planting of twenty trees and the owner or operator plants something less than twenty trees, DNRC may treat that as a violation of an order subject to a separate civil penalty. DNRC does not feel that the penalty formula set forth in New Rule I needs to address that issue because 77-5-305(2), MCA, and New Rule I already address it.

COMMENT 8: A commenter asked whether, pursuant to the proposed New Rule I, if the responsible party has done exactly what DNRC has prescribed for site rehabilitation, must he or she pay a civil penalty?

RESPONSE 8: If an SMZ order issued by DNRC requires both site rehabilitation and the payment of a civil penalty, and the responsible party complies with the required site rehabilitation, that party must still pay the civil penalty. Pursuant to 77-5-305(2) and (3), MCA, the legislature has treated civil penalties and site rehabilitation as separate matters, either or both of which DNRC may address in an SMZ order. New Rule I does not and may not change that legislative pronouncement.

COMMENT 9: A commenter stated that it is unclear whether the Penalty Formula proposed in New Rule I is based on application or effectiveness.

RESPONSE 9: DNRC is not certain it understands the comment. In an effort to address the comment, however, DNRC responds that the penalty formula proposed in New Rule I is based on the amount and/or severity of on-the-ground damage and impacts to the functions of the SMZ. In other words, if there is major and prolonged damage, the penalty would be higher than if there is minor and temporary damage.

COMMENT 10: A commenter voiced concerns over the language in New Rule I regarding dividing the SMZ into 100-lineal feet segments for purposes of assessing civil penalties, and, in particular, raised a question regarding where the 100-lineal feet segments begin. This commenter stated that as a practical matter most service foresters take a 300-foot strip and utilize the average, although the language in the proposed rules is silent in that regard.

RESPONSE 10: In general, the division into 100-lineal foot segments of the SMZ begins where harvesting within the SMZ begins. The approach used may vary specific to each site, but the division of the SMZ into 100-lineal foot segments is carried out in a manner that does not bias up or down the assessment of civil penalties.

COMMENT 11: A commenter stated that there are a couple of errors in MAR Notice No. 36-22-113. On page 502 in ARM 36.11.304(4)(d), the reference to ARM 36.11.304(5) is incorrect and should reference ARM 36.11.304(6).

RESPONSE 11: DNRC agrees and amends ARM 36.11.305(4)(d) accordingly.

COMMENT 12: A commenter stated that rules cannot reiterate statutory language, and pointed to the definition of “owner” and “operator” in the proposed rules.

RESPONSE 12: DNRC agrees and disagrees with this comment. While the Montana Administrative Procedure Act, at 2-4-305(2), MCA, provides that rules may not unnecessarily repeat statutory language, it also provides that when it is necessary to refer to statutory language in order to convey the meaning of a rule interpreting the language, the reference must clearly indicate the portion of the language that is statutory and the portion that is an amplification of the language. DNRC feels that the recitation in the proposed rules of the statutory definitions of “owner” and “operator” is necessary because these terms are employed frequently in the SMZ rules. Nonetheless, DNRC amends ARM 36.11.312 as set forth in paragraph 4 above to identify the portion of the definitions that are statutory.

COMMENT 13: A commenter stated that the proposed amendment to ARM 36.11.304(1) suggests that operation of wheeled or tracked equipment in the SMZ, except on established roads, be prohibited except as provided in rules. This commenter also stated that there are often old road systems located within the SMZ, and existing operational guidelines under the current SMZ regulations, coupled with the use of Best Management Practices, must be protected.

RESPONSE 13: DNRC has not proposed an amendment to ARM 36.11.304(1). The proposed amendments to ARM 36.11.304 are to sections (5), (6), (7), and (8). Nonetheless, DNRC does not feel that ARM 36.11.304, as proposed, erodes any protections already afforded to existing operational guidelines under the current SMZ rules, coupled with the voluntary use of Best Management Practices.

COMMENT 14: A commenter stated that if there is a situation in which there is decking individual logs or small groups of logs "below the SMZ" he could not find the definition for "small groups." The commenter wondered whether this could be construed as only a few logs.

RESPONSE 14: DNRC responds that depending on the site-specific circumstances, a few logs may be considered to be a "small group." DNRC feels that imposing a numeric definition of "small groups of logs" would be too administratively cumbersome and would, therefore, potentially impede enforcement of the proposed rule in question, ARM 36.11.304(5).

COMMENT 15: A commenter stated that he has always opposed the aspect of the SMZ law that applies it to only the commercial harvest of trees. The commenter stated that he feels that the SMZ law should apply to any harvest along the SMZ.

RESPONSE 15: DNRC appreciates this comment, but is without the authority to address that point through the adoption of rules. Only the Montana legislature may amend the SMZ law as suggested.

COMMENT 16: One commenter stated that what also needs to be defined is "if there is a possible violation to occur, there needs to be language added to this that states how a possible person would be the owner and the operator that's responsible for the job."

RESPONSE 16: DNRC is not sure it understands the comment, but provides the following response in an attempt to respond. Sections 77-5-305(1) and (2), MCA, provide that unless a written contract between an owner and operator provides that the operator is responsible for compliance with laws related to forest practices, it is the owner of land who is responsible for compliance with the SMZ law and its rules. DNRC may not, through rules, alter this legislative pronouncement.

COMMENT 17: A commenter asked what the correct procedures are for a service forester to notify someone of an alleged SMZ violation. The commenter stated that

he has received scratchy cell phone messages that he was going to be fined, and that there would be an on-ground audit. The following day, the commenter stated that he called the service forester to discuss the matter and was allegedly told not to worry. The commenter stated that a subsequent site visit was carried out, the results of which showed that no SMZ violation had occurred.

The commenter also stated that he was involved in a project in which he was the holder of a Hazard Reduction Agreement and had assumed responsibility. Another landowner who lived a quarter mile away from this project had conducted some slash burning which turned into a broadcast burn alongside a Class 1 stream. The commenter stated that he received notice that he would be fined for broadcast burning in the SMZ even though it took place a quarter-mile from the project on which the commenter was working.

RESPONSE 17: DNRC thanks the commenter for his observations. Pursuant to 77-5-305, MCA, DNRC may provide notice through the mail for more serious violations, and/or through warning, conference, or other appropriate means, verbally by phone and/or in person and/or in writing, for less serious violations. In order to take into account the commenter's concerns, DNRC amends New Rule I accordingly.

COMMENT 18: A commenter asked who determines if a water quality violation has taken place.

RESPONSE 18: The Montana Department of Environmental Quality has jurisdiction over water quality violations.

COMMENT 19: A commenter suggested that DNRC does not need to work on fines and penalties, but on consistency in its service foresters better understanding the law, and how an owner or operator will be notified, through the mail or by telephone.

RESPONSE 19: DNRC appreciates this comment and will continue to ensure that its service foresters better understand the SMZ law.

COMMENT 20: A commenter stated that he was not sure how the word was disseminated that there would be a public hearing regarding MAR Notice No. 36-22-113 and that he did not receive notice.

RESPONSE 20: As required by the Montana Administrative Procedure Act, DNRC published MAR Notice No. 36-22-113, the notice of the public hearing, in the Montana Administrative Register on February 23, 2006.



DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

/s/ Mary Sexton

MARY SEXTON

Director, Natural Resources and Conservation

/s/ Tommy H. Butler

Tommy H. Butler

Rule Reviewer

Certified to the Secretary of State July 17, 2006.

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

In the matter of the amendment of ARM        )  
37.30.405 pertaining to Vocational            )  
Rehabilitation Program Payment for         )  
Services    )

NOTICE OF AMENDMENT

TO: All Interested Persons

1. On May 18, 2006, the Department of Public Health and Human Services published MAR Notice No. 37-381 at page 1223 of the 2006 Montana Administrative Register, issue number 10, regarding the proposed amendment of the above-stated rule.

2. The department has amended ARM 37.30.405 as proposed with the following changes from the original proposal. Matter to be added is underlined. Matter to be deleted is interlined.

37.30.405 VOCATIONAL REHABILITATION PROGRAM: PAYMENT FOR SERVICES (1) through (3) remain as proposed.

(4) The department may pay for the costs for the provision of any services that are authorized to be provided to the consumer through the consumer's IPE to the extent that the consumer's income and financial resources, determined as provided in this rule and ARM 37.30.407, do not exceed the maximum amounts allowable for income and for financial resources calculated by the department as provided for in (4)(a) and (b).

(a) The maximum allowable level for income is a prospective 12 month annual income calculated at 250% of the ~~2005~~ 2006 U.S. Department of Health and Human Services poverty guidelines for households of different sizes.

(b) through (6)(a) remain as proposed.

AUTH: 53-7-102, 53-7-206, 53-7-315, MCA

IMP: 53-7-102, 53-7-105, 53-7-108, 53-7-310, MCA

3. The department proposed to revise the maximum level of allowable income. The proposed amendment would revise this level by replacing the 2003 guidelines with the 2006 guidelines. While the department is still adopting the new 2006 guidelines, it noticed that the text incorrectly reflected that the current version of the guidelines was shown to be the 2003 guidelines, when in fact the guidelines that were being updated were the 2005 guidelines. Currently the rule provides that the maximum level is 250% of the 2003 U.S. Department of Health and Human Services poverty guidelines for households. The department is therefore correcting the rule to show that the 2005 guidelines are being updated to the 2006 guidelines, for the same reasons as proposed in the proposal notice.

4. No comments or testimony were received.

/s/ Cary Lund  
Rule Reviewer

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

Certified to the Secretary of State July 17, 2006.

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

In the matter of the amendment of ARM	)	NOTICE OF AMENDMENT
37.86.1001, 37.86.1006, 37.86.1807,	)	
37.86.2105, 37.86.2217, 37.86.2402,	)	
37.86.2405, 37.86.2602, and	)	
37.86.2605 pertaining to Medicaid	)	
Dental Services, Durable Medical	)	
Equipment, Eyeglass Services,	)	
Ambulance Services, and	)	
Transportation	)	

TO: All Interested Persons

1. On May 4, 2006, the Department of Public Health and Human Services published MAR Notice No. 37-380 pertaining to the public hearing on the proposed amendment of the above-stated rules, at page 1126 of the 2006 Montana Administrative Register, issue number 9.

2. The department has amended ARM 37.86.1001, 37.86.1006, 37.86.1807, 37.86.2105, 37.86.2217, 37.86.2402, 37.86.2405, 37.86.2602, and 37.86.2605 as proposed.

3. The department has thoroughly considered all commentary received. The comments received and the department's response to each follow:

COMMENT #1: We support the proposed changes to the rules governing the EPSDT program as drafted in MAR Notice No. 37-380 and appreciate the opportunity to participate in the rulemaking process.

RESPONSE: The department acknowledges and appreciates the comment.

COMMENT #2: The commentor described a situation regarding a licensed nurse providing unreimbursed care for her child because of the difficulty securing qualified private duty nursing services. The commentor supported the proposed changes to the EPSDT private duty nursing rules.

RESPONSE: The department acknowledges and appreciates the comment.

4. These amendments will be applied retroactively to July 1, 2006.

/s/ Russell E. Cater  
Rule Reviewer

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

Certified to the Secretary of State July 17, 2006.

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

In the matter of the adoption of Rules I        )  
through XIV pertaining to the State        )  
Trauma Care System        )

NOTICE OF ADOPTION

TO: All Interested Persons

1. On March 23, 2006, the Department of Public Health and Human Services published MAR Notice No. 37-374 at page 723 of the 2006 Montana Administrative Register, issue number 6, regarding the proposed adoption of the above-stated rules.

2. The department has adopted new rules I (37.104.3001), II (37.104.3002), III (37.104.3006), IV (37.104.3007), V (37.104.3012), VI (37.104.3020), VII (37.104.3021), VIII (37.104.3022), IX (37.104.3025), X (37.104.3013), XI (37.104.3030), XII (37.104.3031), XIII (37.104.3034), and XIV (37.104.3014) as proposed.

3. The department has thoroughly considered all commentary received. The comments received and the department's response to each follow:

COMMENT #1: It is fairly standard to not require Advanced Trauma Life Support (ATLS) for physicians who are already board certified in emergency medicine. We use board certification for our credentialing, which we believe is acceptable with the American College of Surgeons. Other than that the rules look great, and a lot of work went into them.

RESPONSE: The department agrees. Appendix I of the State Trauma Plan containing the Trauma Facility Resource Criteria requires physicians who are board certified or board eligible in emergency medicine to complete an ATLS course as required by the American College of Surgeons' "Resources for Optimal Care of the Injured Patient: 1999". Appendix I does not require current verification in ATLS. In an effort to clarify this point, the following footnote was added to this criterion in Appendix I: "All physicians, physician assistants, and nurse practitioners providing emergency trauma care are expected to have completed an ATLS student course. Current ATLS verification or course completion is recommended for all physicians, physician assistants, and nurse practitioners who work in the emergency department and are board certified in a specialty other than emergency medicine."

COMMENT #2: I think you should make ATLS essential for the Trauma Receiving Facility.

RESPONSE: The department agrees that completion of an ATLS course is essential for those providing emergency trauma care at any designated trauma

facility, including a Trauma Receiving Facility. Current verification or course completion of ATLS is recommended in Appendix I of the State Trauma Plan containing the Trauma Facility Resource Criteria, but currently there are an insufficient number of ATLS courses in Montana to allow the opportunity for all emergency care providers to maintain current ATLS verification or course completion. The following footnote was added to Appendix I for clarification: "All physicians, physician assistants, and nurse practitioners providing emergency trauma care are expected to have completed an ATLS student course. Current ATLS verification or course completion is recommended for all physicians, physician assistants, and nurse practitioners who work in the emergency department and are board certified in a specialty other than emergency medicine."

COMMENT #3: An emergency physician is required for an Area Trauma Hospital, but no definite criteria exist. Someone may construe that emergency physicians are required to possess board certification in emergency medicine.

RESPONSE: The department has listed the criteria for the emergency physician in an Area Trauma Hospital in Appendix I of the State Trauma Plan containing the Trauma Facility Resource Criteria. The desired criteria for the emergency physician is having one who is board certified or board eligible in any recognized specialty. In lieu of board certification, Appendix I allows having a physician who has completed an approved residency program, is licensed to practice medicine, is approved by the hospital credentialing committee, and has experience caring for trauma patients followed in the quality/performance improvement program. The required criteria in Appendix I includes that the emergency department should be covered by physicians qualified to care for patients with traumatic injuries who can initiate resuscitative measures.

COMMENT #4: I have concern about requiring physicians in Regional Trauma Centers to be board certified in emergency medicine. Are there enough of these physicians to cover all the positions required by the State Trauma Plan?

RESPONSE: The department agrees with this concern and that this Montana trauma facility resource criterion should be consistent with the ACS requirements. The emergency medicine criterion in Appendix I of the State Trauma Plan containing the Trauma Facility Resource Criteria was changed to require that these physicians be board certified or board eligible in a recognized specialty, but it does not require that certification to be in emergency medicine.

COMMENT #5: Appendix I states that having emergency physicians attend 50% of the trauma committee meetings in the Community Trauma Hospital is desirable. An emergency physician is not required for Community Trauma Hospitals, therefore these facilities may not be able to comply with the attendance requirements.

RESPONSE: Appendix I of the State Trauma Plan containing the Trauma Facility Resource Criteria lists as essential the requirement of staffing the emergency department in a Community Trauma Hospital with physicians who can initiate

resuscitative measures for patients with traumatic injuries. While these Community Trauma Hospital physicians are required, they are not mandated to provide in-house emergency department coverage. Therefore, since a physician is required, the department feels that requiring a physician who covers the emergency department to attend 50% of the trauma meetings is not unreasonable.

/s/ Michelle Maltese  
Rule Reviewer

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

Certified to the Secretary of State July 17, 2006.



## **NOTICE OF FUNCTION OF ADMINISTRATIVE RULE REVIEW COMMITTEE**

### **Interim Committees and the Environmental Quality Council**

Administrative rule review is a function of interim committees and the Environmental Quality Council (EQC). These interim committees and the EQC have administrative rule review, program evaluation, and monitoring functions for the following executive branch agencies and the entities attached to agencies for administrative purposes.

#### **Economic Affairs Interim Committee:**

- Department of Agriculture;
- Department of Commerce;
- Department of Labor and Industry;
- Department of Livestock;
- Office of the State Auditor and Insurance Commissioner; and
- Office of Economic Development.

#### **Education and Local Government Interim Committee:**

- State Board of Education;
- Board of Public Education;
- Board of Regents of Higher Education; and
- Office of Public Instruction.

#### **Children, Families, Health, and Human Services Interim Committee:**

- Department of Public Health and Human Services.

#### **Law and Justice Interim Committee:**

- Department of Corrections; and
- Department of Justice.

#### **Energy and Telecommunications Interim Committee:**

- Department of Public Service Regulation.

**Revenue and Transportation Interim Committee:**

- Department of Revenue; and
- Department of Transportation.

**State Administration and Veterans' Affairs Interim Committee:**

- Department of Administration;
- Department of Military Affairs; and
- Office of the Secretary of State.

**Environmental Quality Council:**

- Department of Environmental Quality;
- Department of Fish, Wildlife, and Parks; and
- Department of Natural Resources and Conservation.

These interim committees and the EQC have the authority to make recommendations to an agency regarding the adoption, amendment, or repeal of a rule or to request that the agency prepare a statement of the estimated economic impact of a proposal. They also may poll the members of the Legislature to determine if a proposed rule is consistent with the intent of the Legislature or, during a legislative session, introduce a bill repealing a rule, or directing an agency to adopt or amend a rule, or a Joint Resolution recommending that an agency adopt, amend, or repeal a rule.

The interim committees and the EQC welcome comments and invite members of the public to appear before them or to send written statements in order to bring to their attention any difficulties with the existing or proposed rules. The mailing address is PO Box 201706, Helena, MT 59620-1706.

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

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

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

### Use of the Administrative Rules of Montana (ARM):

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

## ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through March 31, 2006. This table includes those rules adopted during the period April 1 through June 30, 2006 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 or Register).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through March 31, 2006, this table, and the table of contents of this issue of the MAR.

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

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## BOARD APPOINTEES AND VACANCIES

Section 2-15-108, MCA, passed by the 1991 Legislature, directed that all appointing authorities of all appointive boards, commissions, committees and councils of state government take positive action to attain gender balance and proportional representation of minority residents to the greatest extent possible.

One directive of 2-15-108, MCA, is that the Secretary of State publish monthly in the ***Montana Administrative Register*** a list of appointees and upcoming or current vacancies on those boards and councils.

In this issue, appointments effective in June 2006 appear. Vacancies scheduled to appear from August 1, 2006, through October 31, 2006, are listed, as are current vacancies due to resignations or other reasons. Individuals interested in serving on a board should refer to the bill that created the board for details about the number of members to be appointed and necessary qualifications.

Each month, the previous month's appointees are printed, and current and upcoming vacancies for the next three months are published.

### IMPORTANT

Membership on boards and commissions changes constantly. The following lists are current as of July 1, 2006.

For the most up-to-date information of the status of membership, or for more detailed information on the qualifications and requirements to serve on a board, contact the appointing authority.

## BOARD AND COUNCIL APPOINTEES FROM JUNE 2006

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Board of Regents</b> (Higher Education)			
Ms. Janine Pease Billings Qualifications (if required): resident of District 2	Governor	Foster	6/16/2006 2/1/2011
<b>Concealed Weapon Advisory Council</b> (Corrections)			
Commissioner Albert Brown Bridger Qualifications (if required): public representative	Governor	Marbut	6/26/2006 0/0/0
Mr. Clyde Byerly Great Falls Qualifications (if required): gun owner	Governor	Clark	6/26/2006 0/0/0
Mr. Pete Hansen Billings Qualifications (if required): gun owner	Governor	reappointed	6/26/2006 0/0/0
Sheriff Cheryl Liedle Helena Qualifications (if required): law enforcement representative	Governor	Jones	6/26/2006 0/0/0
Ms. Sherry Matteucci Billings Qualifications (if required): public representative	Governor	Clancy	6/26/2006 0/0/0

## BOARD AND COUNCIL APPOINTEES FROM JUNE 2006

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Concealed Weapon Advisory Council</b> (Corrections) cont.			
Attorney General Mike McGrath	Governor	Batista	6/26/2006
Helena			0/0/0
Qualifications (if required): law enforcement representative			
Ms. Cyndee Peterson	Governor	Lambert	6/26/2006
Havre			0/0/0
Qualifications (if required): law enforcement representative			
Ms. Pat Seidlitz	Governor	Frank	6/26/2006
Chester			0/0/0
Qualifications (if required): gun owner			
<b>District Court Judge 4th Judicial District Department 2</b> (Justice)			
Judge Robert L. Deschamps III	Governor	Henson	6/8/2006
Missoula			12/31/2006
Qualifications (if required): none specified			
<b>Economic Development Advisory Council</b> (Commerce)			
Ms. Estelle Tafoya	Governor	Curry	6/15/2006
Red Lodge			7/23/2008
Qualifications (if required): public representative			
<b>Interagency Coordinating Council for State Prevention Programs</b> (Public Health and Human Services)			
Ms. Diane Cashell	Governor	Lucich	6/16/2006
Bozeman			6/16/2008
Qualifications (if required): prevention programs/services representative			



## BOARD AND COUNCIL APPOINTEES FROM JUNE 2006

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Interagency Coordinating Council for State Prevention Programs</b> (Public Health and Human Services) cont.			
Ms. Tootie Welker	Governor	Snell	6/16/2006
Thompson Falls			6/16/2008
Qualifications (if required): prevention programs/services representative			
<b>Montana Heritage Preservation and Development Commission</b> (Commerce)			
Mr. F.W. Bill Howell	Governor	reappointed	6/2/2006
West Yellowstone			5/23/2009
Qualifications (if required): tourist facility manager			
Ms. Mary Oliver	Governor	reappointed	6/2/2006
Ennis			5/23/2009
Qualifications (if required): business person			
<b>Postsecondary Scholarship Advisory Council</b> (Higher Education)			
Mr. LeRoy Schramm	Governor	reappointed	6/15/2006
Helena			6/20/2009
Qualifications (if required): experience in postsecondary education			
<b>Publishing Policy Committee</b> (Administration)			
Director Jim Lynch	Governor	not listed	6/16/2006
Helena			1/1/2009
Qualifications (if required): department director			
<b>State Employee Group Benefits Advisory Council</b> (Administration)			
Mr. Steve Barry	Director	not listed	6/1/2006
Helena			12/31/2006
Qualifications (if required): representing State Employees			

## BOARD AND COUNCIL APPOINTEES FROM JUNE 2006

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>State Employee Group Benefits Advisory Council (Administration) cont.</b>			
Mr. Monte Brown	Director	not listed	6/1/2006
Helena			12/31/2006
Qualifications (if required): representing State Employees			
Mr. Bartley J. Campbell	Director	not listed	6/1/2006
Helena			12/31/2006
Qualifications (if required): representing the Legislative Branch			
Ms. Amy Carlson	Director	not listed	6/1/2006
Helena			12/31/2006
Qualifications (if required): representing State Employees			
Mr. Richard Cooley	Director	not listed	6/1/2006
Helena			12/31/2006
Qualifications (if required): representing State Employees			
Sen. Mike Cooney	Director	not listed	6/1/2006
Helena			12/31/2006
Qualifications (if required): representing the Legislature			
Ms. Mary Dalton	Director	not listed	6/1/2006
Helena			12/31/2006
Qualifications (if required): representing State Employees			
Mr. Eric Feaver	Director	not listed	6/1/2006
Helena			12/31/2006
Qualifications (if required): representing the Labor Organization			

## BOARD AND COUNCIL APPOINTEES FROM JUNE 2006

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>State Employee Group Benefits Advisory Council</b> (Administration) cont.			
Ms. Christi Jacobsen Helena	Director	not listed	6/1/2006 12/31/2006
Qualifications (if required): representing State Employees			
Mr. Thomas Schneider Helena	Director	not listed	6/1/2006 12/31/2006
Qualifications (if required): representing the Labor Organization			
Mr. Dale Taliaferro Helena	Director	not listed	6/1/2006 12/31/2006
Qualifications (if required): representing Retired State Employees			
Ms. Connie Welsh Helena	Director	not listed	6/1/2006 12/31/2006
Qualifications (if required): Ex-Officio Member			
<b>Teachers' Retirement Board</b> (Administration)			
Ms. Mona Bilden Miles City	Governor	not listed	6/16/2006 7/1/2011
Qualifications (if required): teacher			
Mr. Darrell Layman Glendive	Governor	not listed	6/16/2006 7/1/2011
Qualifications (if required): retired teacher			

## BOARD AND COUNCIL APPOINTEES FROM JUNE 2006

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Western Interstate Commission for Higher Education</b> (Higher Education) Sen. Dan W. Harrington Butte Qualifications (if required): legislator	Governor	Younkin	6/7/2006 6/19/2010
Ms. Mary Moe Great Falls Qualifications (if required): higher education representative	Governor	Stearns	6/7/2006 6/19/2009

## VACANCIES ON BOARDS AND COUNCILS -- AUGUST 1, 2006 through OCTOBER 31, 2006

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Board of Alternative Health Care</b> (Labor and Industry) Ms. Kathleen Dunham, Arlee Qualifications (if required): direct midwife	Governor	9/1/2006
Ms. Eloise Hargrove, Belgrade Qualifications (if required): public member	Governor	9/1/2006
<b>Board of Barbers and Cosmetologists</b> (Labor and Industry) Ms. Verna Dupuis, Bozeman Qualifications (if required): cosmetologist	Governor	10/1/2006
Ms. Karan Charles, Miles City Qualifications (if required): barber	Governor	10/1/2006
<b>Board of Medical Examiners</b> (Labor and Industry) Dr. Michael D. LaPan, Sidney Qualifications (if required): licensed podiatrist	Governor	9/1/2006
Dr. Arthur K. Fink, Glendive Qualifications (if required): doctor of osteopathy	Governor	9/1/2006
Dr. Anna Earl, Chester Qualifications (if required): doctor of medicine	Governor	9/1/2006
<b>Board of Outfitters</b> (Labor and Industry) Mr. Craig Madsen, Great Falls Qualifications (if required): fishing outfitter	Governor	10/1/2006

## VACANCIES ON BOARDS AND COUNCILS -- AUGUST 1, 2006 through OCTOBER 31, 2006

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Board of Outfitters</b> (Labor and Industry) cont. Mr. Russ Smith, Philipsburg Qualifications (if required): hunting and fishing outfitter	Governor	10/1/2006
<b>Board of Private Security Patrol Officers and Investigators</b> (Labor and Industry) Sheriff Ronald Rowton, Lewistown Qualifications (if required): representative of a county sheriff's department	Governor	8/1/2006
Ms. Linda Sanem, Bozeman Qualifications (if required): private investigator	Governor	8/1/2006
Ms. Mori Woods, Columbus Qualifications (if required): representative of a city police department	Governor	8/1/2006
<b>Board of Psychologists</b> (Labor and Industry) Dr. Jay Palmatier, Missoula Qualifications (if required): psychologist licensed in public health	Governor	9/1/2006
<b>Board of Veterans' Affairs</b> (Military Affairs) Mr. Donald Bogut, Kalispell Qualifications (if required): veteran	Governor	8/1/2006
Ms. Teresa Bell, Fort Harrison Qualifications (if required): Veterans Administration representative	Governor	8/1/2006
<b>Historical Records Advisory Board</b> (Historical Society) Mr. Kim Allen Scott, Bozeman Qualifications (if required): Public Representative	Governor	9/7/2006

## VACANCIES ON BOARDS AND COUNCILS -- AUGUST 1, 2006 through OCTOBER 31, 2006

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Historical Records Advisory Board</b> (Historical Society) cont. Ms. Jodie Foley, Helena Qualifications (if required): State Archivist	Governor	9/7/2006
<b>Lewis and Clark Bicentennial Commission</b> (Historical Society) Mr. John G. Lepley, Fort Benton Qualifications (if required): representative of the public	Governor	10/1/2006
Ms. Marcy Hamburg, Savage Qualifications (if required): public member	Governor	10/1/2006
<b>Montana Noxious Weed Trust Fund Advisory Council</b> (Agriculture) Sen. Mack Cole, Forsyth Qualifications (if required): at large representative	Director	10/20/2006
Mr. Bob Bushnell (city not listed) Qualifications (if required): sportsman/wildlife group representative	Director	10/20/2006
<b>Montana Vocational Rehabilitation Council</b> (Public Health and Human Services) Ms. Claudette Vance, Kalispell Qualifications (if required): Community Rehabilitation Provider	Director	10/1/2006
Ms. Shaunda Albert, Pablo Qualifications (if required): Native American Rehabilitation position	Director	10/1/2006
<b>Montana Wheat and Barley Committee</b> (Agriculture) Mr. Dan DeBuff, Shawmut Qualifications (if required): representative of District V and a Republican	Governor	8/20/2006

**VACANCIES ON BOARDS AND COUNCILS -- AUGUST 1, 2006 through OCTOBER 31, 2006**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Montana Wheat and Barley Committee</b> (Agriculture) cont. Mr. Brian Kaae, Dagmar Qualifications (if required): representative of District I and a Democrat	Governor	8/20/2006
Ms. Karen Schott, Broadview Qualifications (if required): representative of District VI and a Democrat	Governor	8/20/2006
<b>State Historic Preservation Review Board</b> (Historical Society) Mr. Douglas Johnson, Hamilton Qualifications (if required): having historic property administration expertise	Governor	10/1/2006
Mr. Conrad Fisher, Lame Deer Qualifications (if required): having traditional cultural property expertise	Governor	10/1/2006