

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 24

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 The Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

Page Number

TABLE OF CONTENTS

NOTICE SECTION

AGRICULTURE, Department of, Title 4

4-14-173 Notice of Proposed Amendment - Seed Civil Penalties Matrix. No Public Hearing Contemplated. 2996-2998

COMMERCE, Department of, Title 8

8-94-54 Notice of Public Hearing on Proposed Adoption - Administration of the 2007-2008 Federal Community Development Block Grant (CDBG) Program. 2999-3001

ENVIRONMENTAL QUALITY, Department of, Title 17

17-256 (Board of Environmental Review) (Water Quality) Notice of Proposed Amendment - Incorporations by Reference - Concentrated Animal Feeding Operations. No Public Hearing Contemplated. 3002-3005

LABOR AND INDUSTRY, Department of, Title 24

24-111-20 (Board of Alternative Health Care) Notice of Public Hearing on Proposed Amendment and Adoption - General Provisions - Certification for Specialty Practice of Naturopathic Childbirth Attendance - Licensing and Scope of Practice for Direct-entry Midwifery - Continuing Education - Unprofessional Conduct - Additional Recommended Screening Procedures - Nonroutine Applications. 3006-3021

LABOR AND INDUSTRY, Continued

24-207-27 (Board of Real Estate Appraisers) Notice of Public Hearing on Proposed Amendment - Fees - Adoption of USPAP by Reference - Appraisal Review - Mentor Requirements. 3022-3025

PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

37-397 Notice of Public Hearing on Proposed Amendment - Temporary Assistance for Needy Families (TANF) Incorporation of Policy Manuals. 3026-3030

REVENUE, Department of, Title 42

42-2-769 Notice of Public Hearing on Proposed Amendment and Repeal - Liquor Vendors, Purchasing, and Distribution. 3031-3043

42-2-770 Notice of Public Hearing on Proposed Adoption and Amendment - Regulations of Liquor Licensees. 3044-3050

42-2-771 Notice of Public Hearing on Proposed Adoption, Amendment, and Repeal - Waiver of Penalties and Interest. 3051-3064

RULE SECTION

ADMINISTRATION, Department of, Title 2

AMD (State Compensation Insurance Fund) Classifications of Employments - Individual Loss Sensitive Dividend Plans. 3065

AMD Retention of Bank Records. 3066-3067

NEW Retention of Credit Union Records. 3068-3069

EDUCATION, Department of, Title 10

NEW (Superintendent of Public Instruction) General Fund: Quality
AMD Educator Payments - At Risk Student Payments - Indian Education for All Payments - American Indian Achievement Gap Payments - School Finance. 3070-3071

ENVIRONMENTAL QUALITY, Department of, Title 17

AMD (Board of Environment Review) (Water Quality) Temporary Water Quality Standards. 3072-3073

AMD (Hazardous Waste) Incorporation by Reference of Current Federal Regulations into the Hazardous Waste Program. 3074

ENVIRONMENTAL QUALITY, Continued

AMD	(Alternative Energy) Alternative Energy Revolving Loan	
NEW	Program.	3075-3076

LABOR AND INDUSTRY, Department of, Title 24

NEW	Summary Judgment Practice and Procedure.	3077
-----	--	------

PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

NEW	Medicaid Reimbursement of Hospitals, Provider Based	
AMD	Entities, and Birthing Centers.	3078-3100

REVENUE, Department of, Title 42

NEW	General Provisions and Certification Requirements for	
AMD	Appraising Property.	3101

NEW	Low Income Property - Disabled Veterans Tax Exemptions -	
AMD	Energy Related Tax Incentives - New Industrial Property.	3102

NEW	Valuation of Real Property - Classification of Nonproductive	
AMD	Patented Mining Claims, Agricultural Land, and Forest Land.	3103-3107

AMD	Personal Property.	3108
-----	--------------------	------

NEW	Hospital Utilization Fee for Inpatient Bed Days.	3109-3111
-----	--	-----------

SECRETARY OF STATE, Office of, Title 44

AMD	Scheduled Dates for the 2007 Montana Administrative Register.	3112-3113
-----	---	-----------

SPECIAL NOTICE AND TABLE SECTION

Function of Administrative Rule Review Committee.	3114-3115
---	-----------

How to Use ARM and MAR.	3116
-------------------------	------

Accumulative Table.	3117-3126
---------------------	-----------

Boards and Councils Appointees.	3127-3131
---------------------------------	-----------

Vacancies on Boards and Councils.	3132-3143
-----------------------------------	-----------

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the proposed	)	NOTICE OF PROPOSED
amendment of ARM 4.12.3013 relating to)	)	AMENDMENT
the seed civil penalties matrix)	
	)	NO PUBLIC HEARING
	)	CONTEMPLATED

TO: All Concerned Persons

1. On January 20, 2007, the Montana Department of Agriculture proposes to amend the above-stated rule.

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. January 4, 2007, to advise us of the nature of the accommodation that you need. Please contact Gregory H. Ames at the Montana Department of Agriculture, 303 North Roberts, P.O. Box 200201, Helena, MT 59620-0201; Phone: (406) 444-3144; Fax: (406) 444-5409; or e-mail: agr@mt.gov.

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

4.12.3013 CIVIL PENALTIES - MATRIX

<u>Type of Violation</u>	1st Offense	2nd Offense	Subsequent Offenses
(1) through (5) remain the same.			
(a) authority of the owner; and	\$200 <u>1000</u>	\$500 <u>1000</u>	\$1000
(b) the required seed certification.	\$200 <u>1000</u>	\$500 <u>1000</u>	\$1000
(6) through (16) remain the same.			

AUTH: 80-5-139, MCA

IMP: 80-5-136, MCA

REASON: New seed variety development requires a substantial investment, which is recovered through strategic pricing of the new seed varieties. Companies that breed and develop seed varieties, including the Montana State University, own varieties protected under the Plant Variety Protection Act (PVPA). The Montana Seed Act provides necessary protection of new seed varieties and makes it a violation of the Montana Seed Act to sell or transport protected varieties without the permission of the owner. Montana's seed industry believes that these types of violations are occurring and that the current civil penalties are not sufficient to deter

these violations. The department concurs that increasing the civil penalties may deter violations.

Based on the past five years, increasing these civil penalty amounts will not have a significant economic impact on the industry or the department. In the past five years, the department has investigated six claims of Plant Variety Protection Act violations with no civil penalties assessed. Obviously, if a violation is proven, the penalty would be increased by 500 percent for the first offense and 200 percent for the second offense. The department does not foresee an increase in civil penalties assessed without a coordinated effort from variety owners and the seed industry in providing documentation of alleged violations.

While there is potential for an increase in revenue based on the increased civil penalty fees, in the past five years, we have not assessed a penalty; therefore, we anticipate no financial impact. Those potentially affected by this rule change include 316 licensed seed dealers, conditioners and seed growers in the state, and an unknown number of persons unauthorized to sell plant variety protected seed.

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 January 18, 2007.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments they have to Gregory H. Ames at the Montana Department of Agriculture, 303 North Roberts, P.O. Box 200201, Helena, MT 59620-0201; Fax: (406) 444-5409; or e-mail: agr@mt.gov. A written request for hearing must be received no later than January 18, 2007.

6. If the department receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action; from the appropriate administrative rule review committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 32 persons based on 316 licensed seed dealers, conditioners, and growers in the state, and an unknown number of persons unauthorized to sell plant variety protected seed.

7. The Department of Agriculture maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person and specifies for which

program the person wishes to receive notices. Such written request may be mailed or delivered to Montana Department of Agriculture, 303 North Roberts, P.O. Box 200201, Helena, MT 59620-0201; Fax: (406) 444-5409; or e-mail: agr@mt.gov or may be made by completing a request form at any rules hearing held by the Department of Agriculture.

8. An electronic copy of this Notice of Proposed Amendment is available through the department's web site at www.agr.mt.gov, under the Administrative Rules section. The department strives to make the electronic copy of the Notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

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

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, December 11, 2006.

BEFORE THE DEPARTMENT OF COMMERCE
OF THE STATE OF MONTANA

In the matter of the proposed	)	NOTICE OF PUBLIC HEARING
adoption of a new rule pertaining to	)	ON PROPOSED ADOPTION
the administration of the 2007-2008)	
Federal Community Development)	
Block Grant (CDBG) Program)	

TO: All Concerned Persons

1. On January 31, 2007, at 1:30 p.m, the Department of Commerce will hold a Public Hearing in Room 226 of the Park Avenue Building, 301 South Park Avenue, at Helena, Montana, to consider the proposed adoption of the above-stated rule.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., January 24, 2007, to advise us of the nature of the accommodation that you need. Please contact Gus Byrom, Community Development Division, 301 South Park Avenue, P.O. Box 200523, Helena, Montana 59620-0523; telephone (406) 841-2777; fax (406) 841-2771; or e-mail gbyrom@mt.gov.

3. The proposed new rule provides as follows:

NEW RULE I INCORPORATION BY REFERENCE OF RULES FOR THE ADMINISTRATION OF THE 2007-2008 CDBG PROGRAM (1) The Department of Commerce adopts and incorporates by reference the Montana Community Development Block Grant Program 2008 Application Guidelines for Housing and Public Facilities Projects, the Montana Community Development Block Grant Program 2007 Application Guidelines for Housing and Public Facilities Planning Grants, the 2007 Application Guidelines for the Community Development Block Grant Economic Development Program, the Montana Community Development Block Grant Economic Development Program 2007 Application Guidelines for Planning Projects, and the Montana Community Development Block Grant Program 2007-2008 Grant Administration Manual published by it as rules for the administration of the CDBG program.

(2) The rules incorporated by reference in (1) relate to the following:

- (a) policies governing the program;
- (b) requirements for applicants;
- (c) procedures for evaluating applications;
- (d) procedures for local project start up;
- (e) environmental review of project activities;
- (f) procurement of goods and services;
- (g) financial management;
- (h) protection of civil rights;

- (i) fair labor standards;
- (j) acquisition of property and relocation of persons displaced thereby;
- (k) administrative considerations specific to public facilities, housing, and neighborhood renewal and economic development projects;

- (l) project audits;
- (m) public relations;
- (n) project monitoring; and
- (o) planning assistance.

(3) Copies of the rules adopted by reference in (1) may be obtained from the Department of Commerce, Community Development Division, 301 South Park Avenue, P.O. Box 200523, Helena, Montana 59620-0523 or from the Department of Commerce, Business Resources Division, 301 South Park Avenue, P.O. Box 200505, Helena, Montana 59620-0505.

AUTH: 90-1-103, MCA
IMP: 90-1-103, MCA

REASON: It is reasonably necessary to adopt this new rule because the federal regulations governing the state's administration of the 2007-2008 CDBG program and 90-1-103, MCA, require the department to adopt rules to implement the program. Local government entities must have these application guidelines before the entities may apply to the department for financial assistance under the CDBG program. The application guidelines describe the federal and state requirements with which local governments must comply in order to apply for CDBG funds. The Grant Administration Manual is primarily a restatement and explanation of existing federal and state statutory and regulatory requirements, as well as additional departmental requirements, with which local CDBG recipients must comply in administering their CDBG projects. The manual includes sample forms and letters, checklists, and explanatory text to help local government officials comply with the variety of requirements that apply to economic development, housing, and public facility projects.

4. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Community Development Division, 301 South Park Avenue, P.O. Box 200523, Helena, Montana 59620-0523; fax (406) 841-2771; or to the Business Resources Division, 301 South Park Avenue, P.O. Box 200505, Helena, Montana, 59620-0505; fax (406) 841-2731; or e-mail gbyrom@mt.gov, to be received no later than February 7, 2007.

5. Gus Byrom, Department of Commerce, has been designated to preside over and conduct the hearing.

6. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies for which

program the person wishes to receive notices. Such written request may be mailed or delivered to the Department of Commerce, 301 South Park Avenue, P.O. Box 200501, Helena, Montana 59620-0501, by fax to (406) 841-2701, by e-mail to lgregg@mt.gov, or by completing a request form at any rules hearing held by the department.

7. An electronic copy of this Notice of Proposed Adoption is available through the Secretary of State's website at <http://sos.mt.gov/ARM/Register>. The Secretary of State strives to make the electronic copy of the Notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the Secretary of State works to keep its 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.

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

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

/s/ ANTHONY J. PREITE
ANTHONY J. PREITE
DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State December 11, 2006.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of ARM)	NOTICE OF PROPOSED
17.30.1303 and 17.30.1330 pertaining to)	AMENDMENT
incorporations by reference and)	
concentrated animal feeding operations)	(WATER QUALITY)
)	
)	NO PUBLIC HEARING
)	CONTEMPLATED

TO: All Concerned Persons

1. On January 22, 2007, the Board of Environmental Review proposes to amend the above-stated rules.

2. The board 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 board secretary no later than 5:00 p.m., January 2, 2007, to advise us of the nature of the accommodation that you need. Please contact the board secretary at P.O. Box 200901, Helena, Montana, 59620-0901; phone (406) 444-2544; fax (406) 444-4386; or e-mail ber@mt.gov.

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

17.30.1303 INCORPORATIONS BY REFERENCE (1) through (6) remain the same.

(7) The list of incorporations by reference follows:

<u>ARM 17.30...</u>	<u>33 CFR ...</u>	<u>Description of Regulation</u>
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(a) remains the same.

<u>ARM 17.30...</u>	<u>40 CFR ...</u>	<u>Description of Regulation</u>
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(b) through (i) remain the same.

(j) 1330	Part 412 (July 1, 2004 <u>2006</u> edition)	Concentrated animal feeding operation (CAFO) point source category effluent limitations and guidelines.
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(k) through (aj) remain the same.

<u>ARM 17.30....</u>	<u>16 US Code (USC)</u>	<u>Description of Fed. Statute</u>
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(ak) and (al) remain the same.

<u>ARM 17.30....</u>	<u>Clean Water Act</u>	<u>Description of Fed. Statute</u>
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(am) through (at) remain the same.

(au) 1322	40 CFR 122.21(i)(1) (July 1, 2004 <u>2006</u> edition)	Application requirements for concentrated animal feeding operations (CAFOs).
(av) 1330	40 CFR 122.23 (July 1, 2004 <u>2006</u> edition)	Definitions and permit requirements for concentrated animal feeding operations (CAFOs).
(aw) 1343	40 CFR 122.42(e) (July 1, 2004 <u>2006</u> edition)	Additional conditions applicable to concentrated animal feeding operations (CAFOs).

AUTH: 75-5-304, MCA

IMP: 75-5-304, 75-5-401, MCA

17.30.1330 CONCENTRATED ANIMAL FEEDING OPERATIONS

(1) through (5) remain the same.

~~(6) The board adopts and incorporates 40 CFR Part 122.23 (July 1, 2004 edition), which is a federal agency rule setting forth criteria for determining whether a facility or operation merits classification as a CAFO. See ARM 17.30.1303 for additional information about all materials incorporated by reference.~~

AUTH: 75-5-201, 75-5-401, MCA

IMP: 75-5-401, MCA

REASON: The proposed amendments to ARM 17.30.1303 incorporate by reference the 2006 edition of the U.S. Environmental Protection Agency (EPA) rules applicable to concentrated animal feeding operations (CAFOs). The proposed incorporation by reference will adopt several new CAFO deadlines that EPA promulgated on February 10, 2006 (71 Federal Register 6978). In its February 2006 rules, EPA extended the date by which operations, which are defined as CAFOs as of April 14, 2003, and which were not defined as CAFOs prior to that date, must seek permit coverage. That date was extended from February 13, 2006, to July 31, 2007. EPA also extended the date for which operations that become CAFOs after April 14, 2003, must seek permit coverage. That date was extended from April 13, 2006, to July 31, 2007. Finally, EPA extended the deadline by which permitted CAFOs are required to develop and implement nutrient management plans. That date was extended from December 31, 2006, to July 31, 2007. The proposed amendments to ARM 17.30.1303 are necessary to ensure consistency between

state and federal CAFO rules, as required by 75-5-802, MCA. The proposed amendment to ARM 17.30.1330 eliminates a duplicative incorporation by reference. 40 CFR Part 122.23 has already been incorporated in ARM 17.30.1303(7)(av).

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to the Board of Environmental Review, P.O. Box 200901, Helena, Montana, 59620-0901, no later than January 18, 2007. To be guaranteed consideration, mailed comments must be postmarked on or before that date. Written data, views, or arguments may also be submitted by fax to (406) 444-4386 or electronically via e-mail addressed to the board secretary at ber@mt.gov, no later than 5:00 p.m. January 18, 2007.

5. If persons who are directly affected by the proposed action wish to express their data, views, and arguments orally or in writing at a public hearing, they shall make written request for a hearing and submit this request along with any written comments they have to the board secretary at P.O. Box 200901, Helena, Montana, 59620-0901; phone (406) 444-2544; fax (406) 444-4386; or e-mail ber@mt.gov. A written request for hearing must be received no later than 5:00 p.m., January 18, 2007.

6. If the board 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 ten based on the number of concentrated animal feeding operations in the state.

7. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supplies; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; openpit mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA; underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. Such written request may be mailed or delivered to the Board of Environmental Review, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901, faxed to the office at (406) 444-4386, e-mailed to the board secretary at ber@mt.gov or may be made by completing a request form at any rules hearing held by the board.

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

BOARD OF ENVIRONMENTAL REVIEW

By: /s/ Joseph W. Russell
JOSEPH W. RUSSELL, M.P.H.,
Chairperson

Reviewed by:

/s/ James M. Madden
JAMES M. MADDEN, Rule Reviewer

Certified to the Secretary of State, December 11, 2006.

BEFORE THE BOARD OF ALTERNATIVE HEALTH CARE
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the proposed amendment of) NOTICE OF PUBLIC HEARING
ARM 24.111.401 and 24.111.402 general) ON PROPOSED AMENDMENT
provisions, 24.111.510 certification for) AND ADOPTION
specialty practice of naturopathic childbirth)
attendance, 24.111.602, 24.111.604 and)
24.111.612 licensing and scope of practice)
for direct-entry midwifery, 24.111.2102 and)
24.111.2103 continuing education, and)
24.111.2301 unprofessional conduct, the)
proposed adoption of NEW RULE I additional)
recommended screening procedures, and)
NEW RULE II nonroutine applications)

TO: All Concerned Persons

1. On January 11, 2007, at 8:30 a.m., a public hearing will be held in room B-07, 301 South Park Avenue, Helena, Montana to consider the proposed amendment and adoption of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Alternative Health Care (board) no later than 5:00 p.m., on January 5, 2007, to advise us of the nature of the accommodation that you need. Please contact Cheryl Brandt, Board of Alternative Health Care, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2394; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail dlibsdahe@mt.gov.

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

24.111.401 FEES (1) Fees shall be transmitted by check are payable to the Board of Alternative Health Care. ~~The board assumes no responsibility for loss in transit of such remittances. Applicants not submitting the proper fees will be notified by the department.~~ Fees and are nonrefundable.

(2) The fees shall be are as follows:

(a) naturopathic <u>license</u> application	\$300
(b) naturopathic original license	200
(c) naturopathic <u>license</u> renewal	<u>550</u> 275
(d) naturopathic specialty certificate	100
(e) naturopathic specialty certificate renewal	25
(f) midwife <u>license</u> application	<u>300</u> 250

(g) midwife original license	<u>200</u> 50
(h) remains the same.	
(i) midwife <u>license</u> renewal	<u>550</u> 275
(j) midwife provisional	200
(k) (j) midwife apprentice <u>license application</u>	200
(l) (k) midwife apprentice <u>license</u> renewal	200
(m) (l) midwife exam proctor only fee	150
(3) remains the same.	

AUTH: 37-1-134, 37-26-201, 37-27-105, MCA

IMP: 37-1-134, 37-1-141, 37-26-201, 37-26-403, 37-27-203, 37-27-205, 37-27-210, MCA

REASON: The board determined that it is reasonably necessary to amend this rule to correct syntax, make the rule format internally consistent, accommodate electronic and other forms of payment of fees, delete provisions regarding clerical procedures for processing applications, delete the provisional license fee, and increase certain licensing fees. Implementation cites are being amended to accurately reflect all statutes implemented through this rule.

The midwife provisional license fee is being eliminated as this license type no longer exists. In 1989, the practice of direct-entry midwifery was added to the exemptions from the licensure requirements of 37-3-103, MCA. (Ch. 493, L. 1989). Direct-entry midwives could become authorized to practice in this state by submitting an affidavit to the department. The Direct-Entry Midwifery Licensing Act of 1991 (Ch. 550, L. 1991) provided for the immediate issuance of a provisional license to those who had previously filed the affidavit. The provisional license remained valid until results of the first licensing examination were reported. The purpose of the provisional license was to avoid any interruption in midwives' authorization to practice during the transition to a licensure program. The terms regarding provisional licensure were deleted from 37-27-205, MCA, during the 1999 Montana legislature, thus the need for a provisional license fee no longer exists.

The board has determined that there is reasonable necessity to raise certain license fees to comply with the provisions of 37-1-134, MCA, and keep the board's fees commensurate with program costs. Increased board expenses are attributable to increased recharges for services of department staff and attorneys and increases in rent, gas, utilities, and numerous miscellaneous expenses. The department, in providing administrative services to the board, has determined that unless the fees are increased as proposed, the board will have projected budget shortfalls of \$25,890 by the end of FY 2008, and \$58,494 by the end of FY 2009. The board estimates that approximately 71 naturopaths, 24 midwives, and three new midwife applicants per year will be affected by the fee increases and that the proposed fee increases will generate estimated additional annual revenue of \$26,725.

24.111.402 MANAGEMENT OF INFECTIOUS WASTE (1) Each naturopathic physician, ~~and direct-entry midwife, and direct-entry midwife apprentice~~ licensed by the board shall store, transport off the premises, treat, and dispose of infectious waste, as defined in 75-10-1003, MCA, in accordance with the

requirements of Title 75, chapter 10, part 10, MCA, and rules adopted by the Department of Environmental Quality pursuant thereto set forth in 75-10-1005, MCA.

~~(2) Used sharps are properly packaged and labeled within the meaning of 75-10-1005(1)(a), MCA, when this is done as required by the Occupational Safety and Health Administration (OSHA) regulations contained in 29 CFR 1910.1030 (1993), which are incorporated by reference. Copies of the federal regulations referenced above are available for public inspection in the office of the Board of Alternative Health Care, Federal Building, 301 South Park Avenue, P.O. Box 200513, Helena, MT 59620-0513.~~

AUTH: 37-26-201, 37-27-105, 75-10-1006, MCA

IMP: 75-10-1006, MCA

REASON: It is necessary to amend this rule and add apprentice midwives as all of the board's licensees are obligated to comply with Montana's Infectious Waste Management Act (Act) (Title 75, chapter 10, part 10, MCA). It is also necessary to add treatment of infectious waste to the scope of the rule in order to conform to the Act. By deleting the reference to 75-10-1005, MCA, in (1) and substituting a citation to the Act as a whole and the rules adopted pursuant to it, this rule will be consistent with 75-10-1004, MCA. Section (2) is unnecessary because packaging and labeling of sharps is covered under 75-10-1005, MCA. Incorporating federal regulations and keeping copies of those federal materials available for distribution is unnecessary in view of the fact that this rule implements 75-10-1006, MCA.

24.111.510 CERTIFICATION FOR SPECIALTY PRACTICE OF NATUROPATHIC CHILDBIRTH ATTENDANCE (1) A naturopathic physician licensed in Montana, or an applicant for a Montana naturopathic physician license, who wishes to practice natural childbirth must apply to and receive from the board, a certificate of specialty practice in naturopathic childbirth attendance. To receive and maintain a certificate, the applicant must fulfill the following requirements:

~~(a) All applications for certificate of specialty practice shall be made on printed forms prescribed and furnished by the board, and no applications made otherwise will be accepted. Applications shall be subscribed and sworn to before a notary public or other person qualified to administer oaths. Applications shall be accompanied by proper fees and the applicant's current Montana naturopathic physician license number, or documentation of applicant's concurrent application for a Montana naturopathic physician's license.~~ submit an application for the specialty certificate on a form furnished by the board together with the correct fee;

~~(b) Applicants must complete~~ provide an official transcript from an approved naturopathic medical college or hospital or a signed supervisor document showing completion of at least 100 clock hours (where 12 clock hours equal one quarter credit or equivalent semester credit) of academic coursework, internship, or preceptorship in obstetrics at an approved naturopathic medical college or hospital ~~in obstetrics or with an approved licensed physician and furnish a signed log showing evidence that (i) and (ii) below have been completed;~~

(c) provide a signed log of natural childbirths which contains:

(i) each baby's name;

- (ii) date of birth;
- (iii) county and state of birth;
- (iv) name and natural childbirth credentials of supervising physician; and
- (v) name of the primary birth attendant showing that the following experience was obtained under the direct supervision of a licensed naturopathic, medical, or osteopathic physician with specialty training in obstetrics and/or natural childbirth:
 - (i) (A) the applicant has taken part in the care of 50 women in both the prenatal and postnatal periods; and
 - (ii) (B) the applicant has observed and assisted with in the intrapartum care and delivery of in 50 natural childbirths in a hospital or alternative birth setting, including 25 births that document the applicant as the primary birth attendant. Of the 25 births for which the applicant was the primary birth attendant, three of the births must have occurred within the two years immediately preceding the submission of the application and in at least one of those three births, the applicant must have provided continuous care. For purposes of this rule, "continuous care" means at least five prenatal visits occurring on or before the 28th week of gestation, as determined by last menstrual period or sonogram, and one postnatal visit.
- ~~(c) Documentation of 100 clock hours of coursework, internship or preceptorship shall consist of an official transcript from an approved naturopathic medical college or hospital, or a signed supervisor document detailing hours of internship or preceptorship.~~
- ~~(d) A signed log of natural childbirth care in accordance with (i) and (ii) above shall consist of evidence the applicant has observed and assisted in the deliveries of 50 natural childbirths since 1980, including 25 as the primary birth attendant. Evidence shall be in the form of baby's name, date of birth, county and state of birth, and the name(s) of the primary birth attendants.~~
- ~~(e) (d) Applicants must pass provide proof of having passed a specialty examination in obstetrics given by or approved by the board, or the ACNO American College of Naturopathic Obstetrics' (ACNO) obstetrics specialty examination, or the NPLEX Naturopathic Physician Licensing Examination's (NPLEX) obstetrics specialty examination.~~
- ~~(f) Certificates of specialty practice shall expire concurrently with the licensee's naturopathic physician's license, and shall be renewed, as outlined in the general naturopathic physician's license renewal section, upon receipt of the renewal fee set by the board and submission of five hours of board-approved continuing education credits in obstetrics in addition to the 15 continuing education credits required for naturopathic physician renewal.~~

AUTH: 37-26-201, MCA

IMP: 37-26-304, MCA

REASON: The proposed amendments are necessary to clarify the requirements for obtaining a certificate of specialty practice in naturopathic childbirth. The proposed amendment deletes redundant provisions relating to certificate renewal and continuing education requirements already contained in ARM 24.111.2101 and 24.111.2102 and experience requirements duplicated within this rule. The board determined it is necessary for the protection of the public to amend the rule and

require that some of the applicant's natural childbirth experience has been recently obtained and includes a continuous care birth. These requirements ensure that the applicant's childbirth experience is sufficiently comprehensive in scope and not limited to catching babies at birth and also that the applicant's skills are fresh without tying the recentness of the experience to a specific calendar year.

24.111.602 DIRECT-ENTRY MIDWIFE APPRENTICESHIP REQUIREMENTS (1) through (7) remain the same.

(8) Direct-entry midwife apprenticeship applicants who have, at the time of application, through an apprenticeship or other supervisory setting, participated as the primary birth attendant at 25 births, 15 of which included continuous care, may enter directly into direct-entry midwife apprenticeship license Level III-B. The 25 births and 15 continuous care births shall be evidenced by the signed birth certificate as primary birth attendant, an affidavit from the birth mother or documented records from the applicant, as shown on the birth experience form ~~prescribed~~ furnished by the board.

(a) Documentation of 15 continuous care births must show at least five prenatal visits ~~beginning~~ occurring on or before the 28th week of gestation, as determined by last menstrual period or sonogram, and include one postnatal visit. Ten of the 15 continuous care births must have occurred under the ~~personal~~ direct supervision of a qualified supervisor.

(9) To be approved by the board as a supervisor of a direct-entry midwife apprentice, each supervisor shall:

(a) hold a current, unencumbered Montana license ~~be currently licensed in good standing as a direct-entry midwife, a certified nurse midwife, a licensed naturopathic physician who is certified for the specialty practice of naturopathic childbirth attendance, or a physician licensed under Title 37, chapter 3 as defined in 37-3-102, MCA.~~

(i) through (10) remain the same.

AUTH: 37-1-131, 37-27-105, MCA

IMP: 37-27-105, 37-27-201, 37-27-205, 37-27-321, MCA

REASON: It is necessary to amend this rule to clarify licensing processes and accuracy in terminology. The department develops the application forms to be as uniform as possible between and among the licensing boards. Therefore, the board is amending the rule to clarify that the board will furnish the forms rather than prescribe them.

In addition, the word "beginning" in (8)(a) was reportedly confusing to an applicant who sought to have one or more nonqualifying intrapartum visits counted as "prenatal" visits. Substituting "occurring" for "beginning" will make the rule clearer. It is necessary to change the term "personal" supervision to "direct" supervision in (8)(a) because effective 5/13/2005, the board divided personal supervision into two types, direct and indirect supervision, and defined all three terms in ARM 24.111.301. In the context of (8)(a) of this rule, use of the term "personal supervision" is no longer correct. In order to enter into Level III-B, the

experiences of the applicant must have been under the direct supervision of the supervisor, i.e., in the supervisor's physical presence.

The phrase "licensed in good standing" is being amended to "unencumbered license" because that term is more precise and it is used elsewhere in board rules. The amendment is part of the board's effort to be consistent in its use of terminology.

It is reasonably necessary to amend (9)(a) to specify that to receive board approval within a Montana direct-entry midwife apprenticeship program, apprentice supervisors must be licensed in Montana. Montana licensed apprentices sometimes travel to birthing centers in other states to acquire birthing experience and work in a supervisory setting with physicians or midwives in those states because the volume of cases there is greater. However, when a Montana licensed apprentice leaves Montana, the apprentice is not practicing in the other state under the apprentice's Montana license or as part of the Montana apprenticeship program governed by Montana statutes and rules. The board notes that documentation of birthing experiences obtained out-of-state may be submitted to the board for review when seeking board approval to advance from one apprenticeship level to another or with an application for full direct-entry midwife licensure. The board will determine whether any or all of the out-of-state experiences will be approved.

24.111.604 LICENSING BY EXAMINATION (1) through (1)(d) remain the same.

(i) documentation of 15 continuous care births must show at least five prenatal visits ~~beginning~~ occurring on or before the 28th week of gestation, as determined by last menstrual period or sonogram, and include one postnatal visit. Ten of the 15 continuous care births must have occurred under the ~~personal~~ direct supervision of a qualified supervisor.

(2) remains the same.

~~(3) All applicants shall comply with the adult and infant cardiopulmonary resuscitation certification requirements set forth in 37-27-201, MCA, and provide a photocopy of a current CPR card, which must remain valid throughout the license period.~~

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

AUTH: 37-27-105, MCA

IMP: 37-27-201, 37-27-202, 37-27-203, MCA

REASON: The board determined there is reasonable necessity to substitute "occurring" for "beginning" in (1)(d)(i) because it was reportedly confusing to an applicant who sought to have one or more nonqualifying intrapartum visits counted as "prenatal" visits. Substituting "occurring" for "beginning" will make the rule clearer. It is necessary to change the term "personal" supervision to "direct" supervision in (1)(d)(i) because effective 5/13/2005, the board divided personal supervision into two types, direct and indirect supervision, and defined all three terms in ARM 24.111.301. In the context of (1)(d)(i) of this rule, use of the term "personal supervision" is no longer correct. Section (3) of the rule merely repeats requirements in 37-27-201(5) and (6), MCA, as implemented in (1)(d) of this rule, and is being deleted as unnecessary.

24.111.612 VAGINAL BIRTH AFTER CESAREAN (VBAC) DELIVERIES

(1) remains the same.

(a) An informed consent statement, on a form ~~prescribed~~ furnished by the board, shall be signed by all prospective VBAC parents and the licensee, and retained in the licensee's records. The form shall include:

(i) through (2) remain the same.

AUTH: 37-27-105, MCA

IMP: 37-27-105, 37-27-311, MCA

REASON: It is necessary to amend this rule to clarify licensing processes and accuracy in terminology. The department develops the application forms to be as uniform as possible between and among the licensing boards. Therefore, the board is amending the rule to clarify that the board will furnish the forms rather than prescribe them. An implementation cite is being added to accurately reflect all statutes implemented by this rule.

24.111.2102 NATUROPATHIC PHYSICIAN CONTINUING EDUCATION REQUIREMENTS ~~(1) In accordance with 37-26-201(9), MCA, the Montana Board of Alternative Health Care hereby establishes requirements for the continuing education of licensed naturopaths as a condition of license renewal. Training for entry into the field is not considered adequate assurance of continued competence throughout a naturopath's career. Fulfillment of continuing education requirements is viewed as one necessary vehicle for maintaining standards of professional practice and for assuring the public of a high standard of naturopathic services.~~

~~(2) The board/staff will not preapprove continuing education programs or sponsors. Qualifying criteria for continuing education are specified in these rules. It is the responsibility of the licensees to select quality programs that contribute to their knowledge and competence which also meet these qualifications.~~

~~(a) The continuing education program must meet the following criteria:~~

~~(i) The activity must have significant intellectual or practical content. The activity must deal primarily with substantive naturopathic issues as contained in the scope of practice of naturopathy in Montana. In addition, the board may accept continuing education activities from other professional groups or academic disciplines if the licensee demonstrates that the activity is substantially related to his or her role as a naturopath. A continuing education program is defined as a class, institute, lecture, conference, workshop, cassette or videotape.~~

~~(ii) The activity itself must be conducted by an individual or group qualified by practical or academic experience.~~

~~(iii) All acceptable continuing education courses must issue a program or certificate of completion containing the following information: full name and qualifications of the presenter; title of the presentation attended; number of hours and date of each presentation attended; name of sponsor; and description of the presentation format.~~

~~(iv) Preparation for and presentment of a program shall be allowed at the rate of one continuing education credit for each hour of preparation or presentment,~~

limited to one presentation of the program. No more than three credits of continuing education presentations will be allowed.

~~(v) Excluded are programs that promote a company, individual or product (hosted programs are not approved), programs whose subject is practice economics except those programs specifically dealing with workers' compensation or public health, and programs primarily intended to educate the general public, i.e., CPR, first aid, etc.~~

~~(b) Implementation for continuing education shall be as follows:~~

~~(i) One continuing education credit shall be granted for each hour of participation in the continuing education activity excluding breaks and meals. A licensed naturopath must earn at least 15 continuing education credits within the 12 months prior to renewal on the date set by ARM 24.101.413. (Five must be in naturopathic pharmacy, five additional in obstetrics if licensee has childbirth specialty certificate.) A maximum of two credits by cassette or videotape per renewal period is allowed. A certificate of completion or an outline of course content must be submitted by the licensee for each cassette or videotape credit to be allowed. The total number of continuing education credits obtained via the Internet and/or correspondence courses will be limited to three credits per renewal period.~~

~~(ii) No continuing education is required for naturopaths renewing their license for the first time.~~

~~(iii) All licensed naturopaths must either attest to the board, on the renewal form, that they have obtained the required number of continuing education credits or submit a plan to complete CE credits. The board will review the renewal forms within six months of the renewal date of that same year, and notify the licensee regarding his/her noncompliance. Prior to the next consecutive year's license renewal date, those licensees who have not complied with continuing education requirements will not be granted license renewal. Those not receiving notice from the board regarding their continuing education may assume satisfactory compliance. Notices will be considered properly mailed when addressed to the last known address on file in the board office. No continuing education programs used to complete delinquent continuing education plan requirements for licensure may be used to meet the continuing education requirements for the next continuing education reporting period.~~

~~(iv) All licensees holding a certification for specialty practice of naturopathic childbirth attendance must complete an additional five hours of continuing education in obstetrics annually to continue certification, for a total of 20 hours.~~

~~(v) If a licensee is unable to acquire sufficient continuing education credits to meet the requirements, he or she may request a waiver. All requests for waiver will be considered by the Board of Alternative Health Care and evaluated on an individual basis.~~

~~(vi) It is the responsibility of the licensee to establish and maintain detailed records of continuing education compliance (in the form of programs and certificates of attendance) for a period of two years following submission of a continuing education report.~~

~~(vii) The board will randomly audit 20 percent of the licensees and will request documentation for continuing education credits as specified in board rule.~~

Any continuing education noncompliance determined by the audit may be handled by the board as a disciplinary matter.

(1) Naturopaths must obtain 15 continuing education credits each renewal period except as provided in (9). At least five of the credits must be in naturopathic pharmacy. If the naturopath holds a naturopathic childbirth specialty certification as provided in ARM 24.111.510, an additional five credits per renewal period must be obtained in obstetrics. One hour of education (excluding breaks) equals one continuing education credit.

(2) No more than five continuing education credits per renewal period may be obtained through electronic or other nonlive means of program delivery.

(3) No more than three continuing education credits per renewal period will be approved for preparation of and for a single presentation of a program meeting the requirements of this rule.

(4) Continuing education programs will not be preapproved by the board or staff.

(5) In order to be approved, a continuing education program must:

(a) have significant intellectual or practical content;

(b) relate to substantive naturopathic medicine topics within the scope of practice for naturopaths in Montana, except as otherwise provided herein;

(c) be presented by person(s) qualified by practical experience and academic credentials; and

(d) issue certificates of completion (except nonlive programs) and program agendas/syllabi containing the following information:

(i) title and date(s) of program;

(ii) name(s) and qualification of presenter(s);

(iii) outline of program content;

(iv) credit hours of instruction;

(v) description of presentation delivery (i.e., live or nonlive); and

(vi) identification of sponsoring organization.

(6) Continuing education programs from other professions or academic disciplines are eligible for approval if substantially related to the role of naturopaths.

(7) In accordance with 37-1-131, MCA, compliance with this rule shall be attested to by the naturopath on the renewal application except as provided in (8).

The board will conduct random audits after each renewal period closes of 20 percent of all naturopaths with renewed licenses, for documentary verification of compliance. Documentary evidence of program completion must be maintained by the naturopath for a period of two years for audit purposes.

(8) Prior to the renewal date set by ARM 24.101.413, a naturopath may apply to the board for an extension of time to complete continuing education requirements for the period then concluding. The request must enclose a detailed plan for completion of the requirements. The board may, in its sole discretion and for good cause shown, grant an extension of time of a specific duration. If granted, the naturopath must submit documentary verification of compliance by the extension deadline set by the board.

(9) No continuing education credits are required for a naturopath renewing the naturopath's Montana license for the first time.

(10) Continuing education credit will not be approved for programs:

(a) relating to general business or economic issues other than workers' compensation; or

(b) primarily intended to educate the general public such as CPR and first aid other than programs relating to public health issues.

AUTH: 37-1-131, 37-1-141, 37-1-319, 37-26-201, MCA

IMP: 37-1-131, 37-1-141, 37-1-306, MCA

REASON: It is necessary to amend and reorganize this rule for increased clarity among readers and to delete information that is already contained in statute or other rules or is of an administrative nature that need not be in rule. The majority of the amendments to this rule are grammatical or organizational in nature and do not reflect substantive changes to the former rule.

It is necessary to amend this rule regarding continuing education reporting and licensure renewal to comply with statutory continuing education provisions at 37-1-131, MCA. These amendments clarify that a request for an extension of time to complete the continuing education requirement for good cause will not hold up license renewal, thus conforming to 37-1-131, MCA. However, such request will trigger a postrenewal requirement for submission of documentary verification of compliance. This is necessary to ensure that requests for extensions of time are not abused and the burden is on the applicant to affirmatively demonstrate compliance with the terms of the board's grant of extension rather than on board staff to track the applicant's compliance.

The deletion of (2)(a)(v) reflects the board's decision to no longer exclude hosted programs that promote a company, individual, or product from eligibility for continuing education credits. The board decided this requirement is archaic and unnecessary and is also difficult to enforce because such promotion is to an extent an inevitable byproduct of an educational presentation about that product, its uses, and benefits.

24.111.2103 MIDWIVES CONTINUING EDUCATION REQUIREMENTS

~~(1) In accordance with 37-27-105(3)(h), MCA, the Montana Board of Alternative Health Care hereby establishes requirements for the continuing education of licensed direct-entry midwives as a condition of license renewal. Training for entry into the field is not considered adequate assurance of continued competence throughout a direct-entry midwife's career. Fulfillment of continuing education requirements is viewed as one necessary vehicle for maintaining standards of professional practice and for assuring the public of a high standard of midwifery services.~~

~~(2) The board/staff will not preapprove continuing education programs or sponsors. Qualifying criteria for continuing education are specified in these rules. It is the responsibility of the licensees to select quality programs that contribute to their knowledge and competence which also meet these qualifications.~~

~~(a) The continuing education program must meet the following criteria:~~

~~(i) The activity must have significant intellectual or practical content. The activity must deal primarily with substantive midwifery issues as contained in the scope of practice of direct-entry midwifery in Montana. In addition, the board may~~

accept continuing education activities from other professional groups or academic disciplines if the licensee demonstrates that the activity is substantially related to his or her role as a midwife. A continuing education program is defined as a class, institute, lecture, conference, workshop, cassette or videotape.

(ii) ~~The activity itself must be conducted by an individual or group qualified by practical or academic experience.~~

(iii) ~~All acceptable continuing education courses must issue a program or certificate of completion containing the following information: full name and qualifications of the presenter; title of the presentation attended; number of hours and date of each presentation attended; name of sponsor; and description of the presentation format.~~

(iv) ~~Preparation for and presentment of a program shall be allowed at the rate of one continuing education credit for each hour of preparation or presentment, limited to one presentation of the program. No more than three credits of continuing education presentations will be allowed.~~

(v) ~~Excluded are programs that solely promote a company, individual or product (hosted programs are not approved), CPR programs (required for licensure) and programs whose subject is practice economics, except those programs specifically dealing with workers' compensation or public health.~~

(b) ~~Implementation for continuing education shall be as follows:~~

(i) ~~One continuing education credit shall be granted for each hour of participation in the continuing education activity excluding breaks and meals. A licensed direct-entry midwife must earn at least 14 continuing education credits within the 12 months prior to the renewal date set by ARM 24.101.413. A maximum of two credits by cassette or videotape per renewal period is allowed. A certificate of completion or an outline of course content must be submitted by the licensee for each cassette or videotape credit to be allowed. The total number of continuing education credit obtained via the Internet and/or correspondence courses will be limited to three credits per renewal period.~~

(ii) ~~No continuing education is required for direct-entry midwives renewing their license for the first time.~~

(iii) ~~All licensed direct-entry midwives must either attest to the board, on the renewal form, that they have obtained the required number of continuing education credits or submit a plan to complete CE credits. The board will review the renewal forms within six months of the renewal date of that same year, and notify the licensee regarding his/her noncompliance. Prior to the next consecutive year's license renewal date, those licensees who have not complied with continuing education requirements will not be granted license renewal. Those not receiving notice from the board regarding their continuing education may assume satisfactory compliance. Notices will be considered properly mailed when addressed to the last known address on file in the board office. No continuing education programs used to complete delinquent continuing education plan requirements for licensure may be used to meet the continuing education requirements for the next continuing education reporting period.~~

(iv) ~~If a licensee is unable to acquire sufficient continuing education credits to meet the requirements, he or she may request a waiver. All requests for waiver will~~

be considered by the Board of Alternative Health Care and evaluated on an individual basis.

~~(v) It is the responsibility of the licensee to establish and maintain detailed records of continuing education compliance (in the form of programs and certificates of attendance) for a period of two years following submission of a continuing education report.~~

~~(vi) The board will randomly audit 20 percent of the licensees and will request documentation for continuing education credits as specified in board rule. Any continuing education noncompliance may be handled by the board as a disciplinary matter.~~

(1) Midwives must obtain 14 continuing education credits each renewal period except as provided in (9). One hour of education (excluding breaks) equals one continuing education credit.

(2) No more than five continuing education credits per renewal period may be obtained through electronic or other nonlive means of program delivery.

(3) No more than three continuing education credits per renewal period will be approved for preparation of and for a single presentation of a program meeting the requirements of this rule.

(4) Continuing education programs will not be pre-approved by the board or staff.

(5) In order to be approved, a continuing education program must:

(a) have significant intellectual or practical content;

(b) relate to substantive midwifery topics within the scope of practice for direct entry midwives in Montana, except as otherwise provided herein;

(c) be presented by person(s) qualified by practical experience and academic credentials; and

(d) issue certificates of completion (except nonlive programs) and program agendas/syllabi containing the following information:

(i) title and date(s) of program;

(ii) name(s) and qualification of presenter(s);

(iii) outline of program content;

(iv) credit hours of instruction;

(v) description of presentation delivery (i.e., live or nonlive); and

(vi) identification of sponsoring organization.

(6) Continuing education programs from other professions or academic disciplines are eligible for approval if substantially related to the role of midwives.

(7) In accordance with 37-1-131, MCA, compliance with this rule shall be attested to by the midwife on the renewal application except as provided in (8). The board will conduct random audits after each renewal period closes of 20 percent of all midwives with renewed licenses, for documentary verification of compliance. Documentary evidence of program completion must be maintained by the midwife for a period of two years for audit purposes.

(8) Prior to the renewal date set by ARM 24.101.413, a midwife may apply to the board for an extension of time to complete continuing education requirements for the period then concluding. The request must enclose a detailed plan for completion of the requirements. The board may, in its sole discretion and for good cause shown, grant an extension of time of a specific duration. If granted, the midwife

must submit documentary verification of compliance by the extension deadline set by the board.

(9) No continuing education credits are required for a midwife renewing his/her Montana license for the first time.

(10) Continuing education credit will not be approved for programs:

(a) relating to general business or economic issues other than workers' compensation; or

(b) primarily intended to educate the general public such as CPR and first aid other than programs relating to public health issues.

AUTH: 37-1-131, 37-1-141, 37-1-319, 37-27-105, MCA

IMP: 37-1-131, 37-1-141, 37-1-306, MCA

REASON: It is necessary to amend and reorganize this rule for increased clarity among readers and to delete information that is already contained in statute or other rules or is of an administrative nature that need not be in rule. The majority of the amendments to this rule are grammatical, organizational in nature, and do not reflect substantive changes to the former rule.

It is necessary to amend this rule regarding continuing education reporting and licensure renewal to comply with statutory continuing education provisions at 37-1-131, MCA. These amendments clarify that a request for an extension of time to complete the continuing education requirement for good cause will not hold up license renewal, thus conforming to 37-1-131, MCA. However, such request will trigger a postrenewal requirement for submission of documentary verification of compliance. This is necessary to ensure that requests for extensions of time are not abused and the burden is on the applicant to affirmatively demonstrate compliance with the terms of the board's grant of extension rather than on board staff to track the applicant's compliance.

The deletion of (2)(a)(v) reflects the board's decision to no longer exclude hosted programs that promote a company, individual, or product from eligibility for continuing education credits. The board decided this requirement is archaic and unnecessary and is also difficult to enforce because such promotion is to an extent an inevitable byproduct of an educational presentation about that product, its uses, and benefits. The authority cites are being amended to reflect the complete statutory sources of the board's rulemaking authority.

24.111.2301 UNPROFESSIONAL CONDUCT (1) The board defines unprofessional conduct for naturopathy and midwifery as follows:

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

~~(2)~~ (b) Incompetence, negligence, or use of any procedure in the practice of naturopathy or midwifery which creates an unreasonable risk of physical harm or serious financial loss to the patient;

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

(3)(a) through (3)(c) remain the same but are renumbered (c)(i) through (c)(iii).

(4) through (7) remain the same but are renumbered (d) through (g).

~~(8)~~ (h) Offering, undertaking or agreeing to cure or treat disease or affliction by a secret method, procedure, treatment, or the treating, operating, or prescribing for any health condition by a method, means, or procedure which the licensee refuses to divulge upon demand from the board;

~~(9)~~ (i) Abandoning, neglecting, or otherwise physically or emotionally abusing a client or patient requiring care;

(10) through (12) remain the same but are renumbered (j) through (l).

~~(13)~~ (m) Failure by a midwife to maintain a current and valid CPR card certifications in adult and infant cardiopulmonary resuscitation and neonatal resuscitation as provided by 37-27-201, MCA.

AUTH: 37-1-131, 37-1-319, 37-26-201, 37-27-105, MCA

IMP: 37-1-141, 37-1-316, 37-1-319, 37-26-201, 37-27-105, MCA

REASON: It is reasonably necessary to amend this rule to clarify that it is considered unprofessional conduct for licensees to fail to maintain current and valid certifications in adult and infant cardiopulmonary resuscitation as well as neonatal resuscitation as required by 37-27-201(5) and (6), MCA. The neonatal resuscitation certification is separate from adult and infant cardiopulmonary resuscitation certification(s). The current rule refers to a single CPR card and may be confusing. Specifying the three required certifications will make the rule clearer. In addition, the rule is being amended to comply with ARM formatting and punctuation requirements and the authority cites are being amended to reflect the complete statutory sources of the board's rulemaking authority.

4. The proposed new rules provide as follows:

NEW RULE I ADDITIONAL RECOMMENDED SCREENING PROCEDURES

(1) Consistent with generally accepted standards of practice and conduct, direct-entry midwives and direct-entry midwife apprentices shall recommend to their clients that the following tests, in addition to those in 37-27-312, MCA, be secured from an appropriate health care provider:

(a) a recommendation that mothers:

- (i) be screened prenatally for Hepatitis C;
- (ii) be screened prenatally for group "B" Beta Strep; and
- (iii) obtain a prenatal PAP smear; and

(b) a recommendation that infants:

- (i) be screened for bilirubin within 72 hours after birth;
- (ii) have expanded newborn metabolic tests within 72 hours after birth; and
- (iii) have a newborn hearing screening within one month after birth.

(2) When the above recommendations are required to be made to clients of Level I, II, or III-A apprentices or to clients of Level III-B apprentices who are not approved by the board for indirect supervision, such recommendations shall be made by the apprentice's supervisor. If the supervisor is a physician or nurse-midwife who is not subject to the board's jurisdiction, the recommendation shall be made by the apprentice.

(3) Level III-B apprentices approved by the board for indirect supervision shall always make the recommendations required by this rule to clients of the Level III-B apprentice.

(4) Documentation of compliance with this rule shall be maintained in the client record.

AUTH: 37-1-131, 37-27-105, MCA

IMP: 37-27-102, 37-27-105, 37-27-312, MCA

REASON: It is reasonable and necessary to adopt this rule to facilitate, through appropriate testing, the early detection of diseases or conditions that could impair the health of the mother, fetus, and/or newborn. Recommending these tests to the client is consistent with recognized standards of care applicable to direct-entry midwives and apprentices. Because the rule requires that licensees recommend the tests but does not purport to require the client to obtain them, adoption of the rule would have no direct financial impact. The board estimates that if a client followed the recommendations, the cost for the tests would be approximately \$350.

NEW RULE II NONROUTINE APPLICATIONS (1) All applications for licensure will be considered nonroutine in nature and will be reviewed and approved by the board prior to issuance of the license.

AUTH: 37-1-131, 37-26-201, 37-27-105, MCA

IMP: 37-26-401, 37-26-402, 37-26-403, 37-26-405, 37-27-201, 37-27-203, 37-27-205, MCA

REASON: Section 37-1-101, MCA, provides that the department is responsible for receipt and processing of routine license applications for all boards administratively attached to the department. It is reasonable and necessary to adopt this new rule to define "nonroutine applications" and clarify that all licensure applications are reviewed by the board. Board review of all applications is necessary because patient care information and information concerning the education and training of applicants require particularized evaluation by board members with special expertise that staff does not possess.

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 Alternative Health Care, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to dlibsdahc@mt.gov, and must be received no later than 5:00 p.m., January 19, 2007.

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.althealth.mt.gov. The department strives to make the electronic copy of this Notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed

text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems, and that technical difficulties in accessing or posting to the e-mail address do not excuse late submission of comments.

7. The board 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 Alternative Health Care administrative rulemaking proceedings or other administrative proceedings. Such written request may be mailed or delivered to the Board of Alternative Health Care, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2305, e-mailed to dlibsdahc@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. Lorraine Schneider, attorney, has been designated to preside over and conduct this hearing.

BOARD OF ALTERNATIVE HEALTH CARE
MICHAEL BERGKAMP, ND, CHAIRPERSON

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

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

Certified to the Secretary of State December 11, 2006

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

In the matter of the proposed amendment) NOTICE OF PUBLIC HEARING
of ARM 24.207.401 fees, 24.207.402) ON PROPOSED AMENDMENT
adoption of USPAP by reference,)
24.207.404 appraisal review, and)
24.207.518 mentor requirements)

TO: All Concerned Persons

1. On January 11, 2007, at 11:00 a.m., a public hearing will be held in room B-07, 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 Real Estate Appraisers (board) no later than 5:00 p.m., on January 5, 2007, to advise us of the nature of the accommodation that you need. Please contact Barb McAlmond, Board of Real Estate Appraisers, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2325; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2323; e-mail realestateappraiser@mt.gov.

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

24.207.401 FEES (1) The following fees will apply to all license/~~certificate~~ holders or applicants. Fees are not refundable or transferable.

- | | |
|---|---------------------------|
| (a) original license/ certificate application | \$400 |
| (b) address change/ <u>or</u> change of business | 15 |
| (c) remains the same. | |
| (d) course approval per course payable by course provider | 50 <u>100</u> |
| (e) course renewal approval per course | 25 <u>50</u> |
| (f) upgrade/ <u>or</u> downgrade fee | 150 <u>175</u> |
| (g) remains the same. | |
| (h) inactive license/ certification fee | 50 <u>100</u> |
| (i) remains the same. | |
| (j) license or certification renewal fee | 300 <u>375</u> |
| (k) through (m) remain the same. | |

AUTH: 37-1-131, 37-1-134, 37-54-105, MCA

IMP: 37-1-131, 37-1-134, 37-1-141, 37-54-105, 37-54-112, 37-54-201, 37-54-202, 37-54-212, 37-54-302, 37-54-310, 37-54-403, MCA

REASON: The board has determined that there is reasonable necessity to make the proposed fee changes in order to comply with the provisions of 37-1-134, MCA, and keep the board's fees commensurate with program costs. Currently the board is operating with a negative fund balance. The board estimates that the proposed fee increases will affect approximately 490 individuals renewing licenses or certificates, ten individuals holding inactive licenses or certificates, ten individuals upgrading or downgrading status, and the approval of 150 courses and renewal of 75 courses per year. The board estimates that the fee increases will generate approximately \$46,875 in annual revenue and will enable the board to operate with a positive fund balance.

24.207.402 ADOPTION OF USPAP BY REFERENCE (1) Upon review of the publication known as ~~the~~ Uniform Standards of ~~the~~ Professional Appraisal Practice (USPAP), published by The Appraisal Foundation, the board adopts and incorporates by reference the ~~2005~~ 2006 edition of USPAP. The board adopts and incorporates by reference the advisory opinions listed as an addendum to the USPAP publication, for the purpose of explaining and interpreting professional appraisal practice standards as required by 37-54-105, MCA.

(2) Upon review of the publication known as USPAP Frequently Asked Questions (USPAP FAQ), published by The Appraisal Foundation, the board adopts and incorporates by reference the ~~2005~~ 2006 edition of USPAP FAQ, for the purpose of explaining and interpreting the standards as provided by 37-54-105, MCA.

(3) remains the same.

(4) Copies of USPAP and USPAP ~~Frequently Asked Questions~~ FAQ may be obtained from The Appraisal Foundation, ~~1029 Vermont Avenue NW, Suite 900, 1155 15th Street NW, Suite 1111,~~ Washington, DC 20005-3317, or may be reviewed in the board office at 301 South Park, Helena, MT 59620-0513.

AUTH: 37-54-105, MCA

IMP: 37-54-105, 37-54-403, MCA

REASON: It is reasonably necessary to incorporate by reference the most current version of professional standards established by the Appraisal Standards Board of The Appraisal Foundation, as required by the provisions of 37-54-403, MCA. The board also determined it is reasonably necessary to incorporate by reference the most current version of various publications and documents which the board uses to explain and interpret the USPAP, as directed in 37-54-105(6), MCA. The board concluded that the USPAP are the generally accepted standards of professional appraisal practice.

24.207.404 APPRAISAL REVIEW (1) A licensed or certified appraiser who serves on the ~~screening panel or adjudication panel~~ for the Board of Real Estate Appraisers is exempt from writing an appraisal review in accordance with Uniform Standards of Professional Appraisal Practice (USPAP) as promulgated by The Appraisal Foundation Standards Rule 3 in the performance of their ~~screening or adjudication panel~~ board duties.

(2) remains the same.

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

IMP: 37-54-105, MCA

REASON: The board determined it is reasonably necessary to amend this rule to clarify that because all board members serve on either the screening or adjudication panel, the exemption in this rule applies to all board members.

24.207.518 MENTOR REQUIREMENTS (1) through (1)(b) remain the same.

(c) have a minimum of two years appraisal experience as a licensed or certified appraiser ~~appraisal experience appraiser~~;

(d) through (2) remain the same.

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

IMP: 37-1-131, 37-54-105, 37-54-201, 37-54-202, 37-54-301, 37-54-403, 37-54-411, 37-54-416, MCA

REASON: It is reasonably necessary to amend this rule to clarify that only certified appraisers qualify to mentor licensed real estate appraisal trainees. The board anticipated that licensed appraisers would qualify to serve as approved mentors only during the initial 18-month phase in process of this rule and that phase has expired.

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 Real Estate Appraisers, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2323, or by e-mail to realestateappraiser@mt.gov, and must be received no later than 5:00 p.m., January 19, 2007.

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.realestateappraiser.mt.gov. The department strives to make the electronic copy of this Notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems, and that technical difficulties in accessing or posting to the e-mail address do not excuse late submission of comments.

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 Real Estate Appraisers, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2323, e-mailed to realestateappraiser@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. A department attorney will be assigned to preside over and conduct this hearing.

BOARD OF REAL ESTATE APPRAISERS
KRAIG KOSENA, CHAIRPERSON

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

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

Certified to the Secretary of State December 11, 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 PUBLIC HEARING
37.78.102 and 37.78.807 pertaining to	)	ON PROPOSED AMENDMENT
temporary assistance for needy)	
families (TANF) incorporation of policy)	
manuals)	

TO: All Interested Persons

1. On January 12, 2007, at 10:00 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 January 2, 2007, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970; e-mail dphhslegal@mt.gov.

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

37.78.102 TANF: FEDERAL REGULATIONS ADOPTED BY REFERENCE

(1) ~~The TANF program shall be administered in accordance with the requirements of federal law governing temporary assistance for needy families (TANF) as set forth in Title IV of the Social Security Act, 42 USC 601 et seq., as amended by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 and the Balanced Budget Act of 1997.~~ The TANF program shall be administered in accordance with the requirements of federal law governing temporary assistance for needy families as set forth in Title IV of the Social Security Act, 42 USC 601 et seq., as amended by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, the Balanced Budget Act of 1997, and the Deficit Reduction Act of 2005.

(2) ~~The "Montana TANF Cash Assistance Manual" dated July 1, 2006~~ January 1, 2007 is adopted and incorporated by this reference. A copy of the Montana TANF Cash Assistance Manual is available for public viewing at each local Office of Public Assistance, and at the Department of Public Health and Human Services, Human and Community Services Division, 1400 Broadway, P.O. Box 202952, Helena, MT 59620-2952. Manual updates are also available on the department's web site at www.dphhs.mt.gov.

AUTH: 53-4-212, MCA

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

37.78.807 TANF CASH ASSISTANCE EMPLOYMENT AND TRAINING

ACTIVITIES (1) Participants in TANF cash assistance, regardless of whether they are members of a single parent or two-parent family, may, in accordance with their WoRC employability plan, subject to availability in their community, participate in the following activities:

(a) paid employment or self employment. ~~The hours counted for self employment beyond the first two months are the gross wages divided by minimum wage;~~ The hours counted for self employment beyond the first two months are the gross income minus business expenses divided by minimum wage;

(b) work experience placement (WEX) as defined at ARM 37.78.103;

(c) ~~job search as defined at ARM 37.78.103. Job search is limited for each participant in each federal fiscal year by federal rule;~~ job search and job readiness assistance as defined at ARM 37.78.103. Job search and job readiness assistance are limited for each participant in each federal fiscal year by federal rule;

(d) community service as defined at ARM 37.78.103;

(e) vocational educational training as defined at ARM 37.78.103. Vocational educational training is limited in a lifetime for each participant by Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Section 407;

(f) job skills training directly related to employment as defined at ARM 37.78.103. Job skills training related to employment is limited to ten hours per week per individual for single parent households and five hours per week per individual for two-parent households; and

(g) educational activities as defined at ARM 37.78.103;

(i) Educational activities are not limited for individuals under the age of 20 who do not have a high school diploma or GED.

(ii) Educational activities are limited for individuals 20 years of age or older to ten hours per week per individual for single parent households and five hours per week per individual for two-parent households; ~~and~~

(h) on the job training as defined at ARM 37.78.103.

(2) In addition, a limited number of participants in TANF cash assistance households may participate in Parents as Scholars as defined in ARM 37.78.812. The number of slots allowed, if any, may differ for single or two-parent households due to federal participation rate requirements for each and the penalties that would result from not meeting them.

AUTH: 53-4-212, MCA

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

3. ARM 37.78.102 currently adopts and incorporates by reference the TANF policy manual effective July 1, 2006. The department proposes to make some revisions to this manual that will take effect on January 1, 2007, based in part on the TANF Reauthorization regulations contained in the Deficit Reduction Act of 2005. The proposed amendments to ARM 37.78.102 are therefore necessary in order to incorporate into the Administrative Rules of Montana the revised versions of the

policy manuals and to permit all interested parties to comment on the department's policies and to offer suggested changes. It is estimated that changes to the TANF manual could affect approximately 9,317 TANF recipients. Manuals and draft manual material are available for review in each local Office of Public Assistance and on the department's web site at www.dphhs.mt.gov.

Following is a brief overview of the TANF manual sections with substantive changes.

TANF 701-1 - Family Investment Agreement/WoRC Employability Plan

TANF 701-1 is being updated to reflect who is a "work eligible" individual under the TANF Reauthorization regulations; therefore, mandated to participate in employment and training activities.

TANF 701-2 - WoRC Participation

TANF 701-2 is being updated to reflect the increased hours of participation based on the TANF Reauthorization regulations and the necessity to no longer attribute 12 hours toward each individual's participation hours for travel time to and from work activities and case management as these are not allowed within the new definition of allowable work activities. The increased hours of scheduled and verified participation will be 132 hours per month for single parent households and 152 hours per month per individual for two-parent households.

TANF 701-3 - Participation Components

TANF 701-3 is being updated to reflect the new work activity definitions based on the federal guidance as to what constitutes an allowable work activity in the TANF Reauthorization regulations contained in the Deficit Reduction Act of 2005. Under TANF Reauthorization states are limited as to what constitutes an allowable work activity for purposes of meeting the work participation rate as mandated by the Administration for Children and Families. Added several new work activity definitions, again, as allowed by TANF regulations.

TANF 701-4 - WoRC Participation and Reconciliation

TANF 701-4 is being updated to reflect the work activity reconciliation processes that are changing based on the TANF Reauthorization regulations. The system reconciliation involving closed TANF cases must be changed. Only the actual, verified hours of work activities will be reported in the TANF file.

TANF 702-1 - Conciliation

TANF 702-1 is being removed from the manual as the formal conciliation process is being discontinued. Based on the strict requirements for participation in work activities contained in the TANF Reauthorization regulations, it has been determined that noncompliance without good cause in work activities will lead to an immediate referral for sanction.

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

TANF 702-2 is being updated to reflect the removal of the conciliation process and emphasize the sanction committee review process and good cause situations and

procedures. TANF Reauthorization adds ten days of excused absences from work activities per calendar year for good cause reasons, which will resolve some participation concerns.

TANF 702-3 - Sanction

TANF 702-3 is being updated to reflect the removal of the conciliation process. TANF Reauthorization adds ten days of excused absences from work activities per calendar year for good cause reasons, which will resolve some participation concerns. This section is also being updated to reflect the requirement for a sanctioned parent, considered a work eligible under the TANF Reauthorization regulations, to contribute to participate in work activities.

ARM 37.78.807

This rule has been updated to correct the calculation used to determine the self employment hours that can be counted as an allowable work activity. The correct calculation is based on gross income minus allowable business expenses divided by minimum wage.

This rule has also been updated to reflect the changes in the number and definitions of "secondary" work activities TANF participants can be involved in while fulfilling the mandatory work requirements as outlined by TANF Reauthorization language contained in the Deficit Reduction Act of 2005. Participants must now participate in work activities a total of 132 hours per month for single parent households and 152 hours per month per individual for two-parent households. Primary activities, as designated by the federal regulations, can account for 23 hours per week for single parent households and 33 hours per week for two-parent households. The remaining hours of activities will be met in "secondary" work activities as defined in federal regulations, with a maximum limit of ten hours per week for single parent households and five hours per week for two-parent households.

This change will impact an average of approximately 3,072 TANF participants who currently are mandated to participate in work activities. There will be no additional cost to the state unless a penalty is imposed for failure to meet the work participation rate.

4. The TANF manual changes will be effective January 1, 2007.

5. Interested persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Gwen Knight, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 202951, Helena, MT 59620-2951, no later than 5:00 p.m. on January 18, 2007. Data, views, or arguments may also be submitted by facsimile (406)444-1970 or by electronic mail via the Internet to dphhslegal@mt.gov. The department also maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. For placement on the mailing list, please write the person at the address above.

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

/s/ Frank Clinch for
Rule Reviewer

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

Certified to the Secretary of State December 11, 2006.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the proposed amendment	)	NOTICE OF PUBLIC
of ARM 42.11.104, 42.11.105, 42.11.211,	)	HEARING ON PROPOSED
42.11.243, 42.11.245, 42.11.251, 42.11.402,	)	AMENDMENT AND REPEAL
42.11.405, 42.11.406, 42.11.409, 42.11.421,)	
42.11.422, 42.11.423, 42.11.424, and)	
42.11.425, and repeal of 42.11.201,)	
42.11.401, and 42.11.407 relating to liquor)	
vendors, purchasing, and distribution)	

TO: All Concerned Persons

1. On January 16, 2007, at 1:30 p.m., a public hearing will be held in the Director's (Fourth Floor) Conference Room of the Sam W. Mitchell Building, at Helena, Montana, to consider the amendment and repeal of the above-stated rules.

Individuals planning to attend the hearing shall enter the building through the east doors of the Sam W. Mitchell Building, 125 North Roberts, Helena, Montana.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Revenue no later than 5:00 p.m., January 5, 2007, to advise us of the nature of the accommodation that you need. Please contact Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-5828; fax (406) 444-3696; or e-mail canderson@mt.gov.

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

42.11.104 RETAIL SELLING PRICE WHOLESale PRICE (1) The ~~retail~~ selling wholesale price of liquor, other than fortified wine, ~~as defined in 16-1-106, MCA,~~ is determined by adding:

- (a) the department's base case cost; and
- (b) the state mark-up of 40% ~~on the department's base case cost.~~

(2) The ~~retail~~ wholesale selling price of fortified wine containing more than 16% but no greater than 24% alcohol by volume is determined by adding:

- (a) the department's base case cost; and
- (b) the state mark-up of 51%. ~~for fortified wine bottled in the following sizes:~~
 - (i) ~~1.50 liter is marked up at 42% on the department's base case cost plus 27 cents per bottle;~~
 - (ii) ~~1.0 and .750 liters are marked up at 51% on the department's base case cost plus 12 cents per bottle;~~
 - (iii) ~~.375 liter is marked up at 59% on the department's base case cost plus two cents per bottle.~~

- (c) ~~Fortified wine bottled as .720 liter is marked up the same as .750 liter.~~
- (3) ~~For liquor and fortified wine, the cost to the retail purchaser is the retail selling price plus applicable state taxes as provided in Title 16, chapter 1, part 4, MCA, the total of which is rounded up to the nickel.~~
- (4) ~~The department may reduce the retail selling wholesale price of products which the department has designated for closeout or are determined to be overstocked in order to encourage their purchase and elimination eliminate them from the state inventory. Closeout products are those that the department has removed from its published listing of classes, varieties, and brands of liquor to be kept for sale at any state agency liquor store. Overstocked products are those classes, varieties, and brands of liquor which are in the state's inventory in an amount greater than would be sold in a 12-month period.~~

AUTH: 16-1-103, 16-1-303, MCA

IMP: 16-1-103, 16-1-106, 16-1-302, 16-1-401, 16-1-404, 16-1-411, 16-2-301, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.11.104 to correct the mislabeled title as retail price when it actually describes the wholesale price and (2) to simplify the mark-up on fortified wine which would be revenue neutral and would create a uniform pricing structure for all bottle sizes. Section (3) is also found in ARM 42.11.409 so that text is not necessary in this rule.

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

- (1) "Adult" means a person 21 years of age or older.
- (2) "Bailment" means the product at the department's Helena warehouse that is owned by the vendor. All product shipped into the Helena warehouse will be received as bailment and will remain until depleted or redelivered to the vendor.
- (3) "Bailment warehouse" means the designated building in Helena where product is received, stored, and shipped from.
- (4) "Base case cost," as it applies to liquor and fortified wine, means the supplier's quoted price plus freight charges from the supplier to the state warehouse and the average department's current freight rate to all state agency liquor stores.
- (5) "Beyond vendor's control" means that a vendor has considered all mitigated measures.
- (6) "Broker" means a person, partnership, association, or corporation under contract to a vendor to arrange for the employment and registration of the vendor's representatives as provided by these rules and/or to supervise those representatives.
- (7) "Consumer advertising specialties" are items that are designed to be carried away by the consumer, such as trading stamps, nonalcoholic mixers, pouring racks, ash trays, bottle or can openers, cork screws, shopping bags, matches, printed recipes, pamphlets, cards, leaflets, blotters, post cards, pencils, shirts, caps, and visors.
- (8) "Discontinued product" means a product that is no longer available to the state.

(9) "Employ" means to engage the services of a person either through direct supervision and control of the person or through a contract for services with the person.

(10) "List" means to establish a product's availability according to one of the classifications in ARM 42.11.405.

(11) "Point of sale advertising materials" are items designed to be used within a retail establishment to attract consumer attention to the product. Such material includes, but is not limited to: posters, placards, designs, inside signs (electric, mechanical, or otherwise), window decorations, trays, coasters, mats, menu cards, meal checks, paper napkins, foam scrapers, back bar mats, thermometers, clocks, calendars, and alcoholic beverage lists or menus.

(12) "Posted price" as it applies to liquor and fortified wine, means the wholesale price of liquor and fortified wine sold to persons holding a liquor license issued by the department, and an excise tax and license tax as provided in Title 16, chapter 1, part 4, MCA, the total of which is rounded up to the next nickel increment.

(13) "Product" means a brand of liquor.

(14) "Promotional product" means a new product that is promoted.

(15) "Promote" means to:

(a) solicit product sales at state agency liquor stores, licensees, special events, and/or the general public;

(b) contribute to the growth of products through the state agency liquor stores, licensees, special events, and/or the general public;

(c) disseminate product information to state agency liquor stores, licensees, special events, and/or the general public; and

(d) distribute product samples in accordance with ARM 42.11.243.

(16) "Regular product" means products with the highest sales volumes.

(17) "Representative" means a person employed and registered, as provided by these rules, by a vendor to promote the sale of the vendor's product in Montana.

(18) "Sample" means a liquor product furnished by a liquor vendor to registered brokers and representatives for the purpose of promoting the product.

(19) "Special order product" means products that have sold less than 24 cases annually.

(20) "Vendor" means a person, partnership, association, or corporation selling liquor to the department and to whom the department makes payment for liquor received.

(21) "Vendor's permit" means a permit issued to a vendor entitling the vendor to promote the sale of its products in Montana through representatives registered in accordance with these rules.

(22) "Warehouse supply product" means products that are not regular products but sell 24 or more cases annually.

AUTH: 16-1-103, 16-1-303, MCA

IMP: 16-1-103, 16-1-104, 16-1-302, 16-1-401, 16-1-404, 16-1-411, 16-2-101, 16-2-201, 16-2-301, 16-3-107, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.11.105 to rewrite the definition of "base case cost" and add new definitions for

other terms contained in chapter 11. In compliance with the Legislature's request for agencies to reduce the number of administrative rules whenever possible, the department is proposing to move definitions contained in ARM 42.11.201 and 42.11.401 to this rule and repeal those rules. Some of these definitions have been amended for clarification of how they are applied to the other rules in this chapter.

42.11.211 REGISTRATION OF REPRESENTATIVES (1) remains the same.

(2) No person may be registered as a representative if he or she:

(a) ~~is~~ has a direct or indirect financial interest in:

(i) an alcoholic beverage retail licensee;

(ii) a state agency liquor store;

(iii) a ~~licensed~~ beer wholesaler's license;

(iv) a table wine distributor's license;

(v) a brewery; or

(vi) a licensed winery;

(b) and (c) remain the same.

(d) ~~has been convicted of violating laws and regulations;~~ or has a history that would affect the performance of the representative; or

(e) remains the same.

(3) through (6) remain the same.

(7) In addition to the definition of "resident" found in ARM Title 42, chapter 2, evidence of residency includes:

(a) qualification to vote in a Montana election; ~~or~~

(b) filing a Montana income tax return; or

(c) having a current Montana drivers license.

AUTH: 16-1-103, 16-1-303, MCA

IMP: 16-3-107, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.11.211 to add the term "license" where appropriate and to clarify what is required of registered representatives in Montana. The department is also proposing the addition of a Montana drivers license as an item that will be considered as a common identifier to determine residency.

42.11.243 SAMPLES (1) Sample products must be shipped to the state liquor warehouse for distribution purposes at no charge to the state.

(2) A sample of liquor may only be purchased through state agency liquor stores at the state posted price by a registered liquor representative. A separate order for a sample must be placed with a state agency liquor store agent by each registered representative whose name must appear on the order.

(3) The posted price for a sample liquor case is \$12.00 for shipping and handling.

(4) Sample products may only be given to retailers who have not purchased the brand within the last 12 months.

(5) Consumption of samples must take place at an establishment with an on-premise license.

AUTH: 16-1-103, 16-1-303, MCA
IMP: 16-3-103, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.11.243 to place additional guidelines on the control of the distributors who provide samples.

42.11.245 ADVERTISING SPECIALTIES (1) Registered representatives are allowed to distribute point of sale advertising materials and consumer advertising specialties to a retailer as set forth in Regulation number 6.84 of the Tobacco Tax and Trade Bureau (TTB), United States Department of the Treasury as set forth in 27 CFR as revised on April 1, 2000 2005, which is hereby incorporated by reference as though fully set forth herein as the regulations for consumer advertising specialties and retailer advertising specialties. Copies may be obtained by contacting the Department of Revenue, P.O. Box 5805, Helena, MT 59604-5805 at the United States Treasury web site located at www.ttb.gov/Regulations.

(2) ~~Vendors and representatives may distribute such advertising specialties to the extent allowed by regulation to the extent allowed by regulation 6.84 of 27 CFR, as revised on April 1, 2000~~ Registered representatives may not directly or indirectly pay or credit the retailer for using or distributing these materials or for any expense incidental to their use.

AUTH: 16-1-103, 16-1-303, MCA
IMP: 16-3-103, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.11.245 to clarify what registered representatives are allowed to do with regard to advertising specialties. The department also proposes to delete the department's address and add the correct web site where persons can obtain necessary information regarding what is allowed as advertising specialties.

42.11.251 UNLAWFUL ACTS (1) and (2) remain the same.

(a) to grant, allow, pay, or rebate merchandise or any other thing of value to any licensee ~~or the licensee's agents or employees, state liquor store agent or anyone affiliated with either,~~ including the purchase of merchandise at retail for delivery to a licensee;

(b) to grant, allow, or pay anything of value to a licensee, ~~or the licensee's agents or employees state liquor store agent, or anyone affiliated with either,~~ for the privilege of displaying advertising display;

(c) through (g) remain the same.

AUTH: 16-1-103, 16-1-303, MCA
IMP: 16-1-304, 16-2-105, 16-3-101, 16-3-103, 16-6-104, 16-6-301, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.11.251 to add "state liquor store agent or anyone affiliated" because that

reference better fits the language of the law.

42.11.402 INVENTORY POLICY (1) Liquor products that can be obtained without ~~prohibitive~~ substantial inventory investment ~~or freight charges to the department will be made available for sale through to state agency liquor stores in a manner consistent with the demand for and profitability of each product and consistent with distribution limitations established in the alcoholic beverage code.~~ based on historical demand.

(2) Notwithstanding any other criteria in this subchapter, products which are packaged, labeled, or advertised in a manner that by their nature appears to appeal to underage consumers or tends to blur the distinction between alcoholic and nonalcoholic products by emphasizing the features that are normally associated with nonalcoholic products and minimizing the product's alcoholic content will not be made available for sale. Including but not limited to:

(a) candies filled with liquor in liquid form;

(b) labels depicting Santa Claus, cartoon type characters, or other child like figures; or

(c) containers not approved by the department.

~~(3) Any interested party may contest a decision made to list, not list, or delist a product in accordance with the provisions for contested cases in the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, MCA.~~ All containers and packaging must be approved by the department prior to being accepted into the liquor warehouse.

AUTH: 16-1-103, 16-1-303, MCA

IMP: 16-1-103, 16-1-104, 16-1-302, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.11.402 to add inventory to the title to correctly describe its contents and (2) to clarify what inventory will be accepted into the department and make general housekeeping changes to bring the rule into compliance with the current business practices of the department and (3) provide the department with the sole authority on approving containers and packaging.

42.11.405 PRODUCT AVAILABILITY (1) Liquor products will be made available for sale in the following classifications:

(a) A "regular" product will be designated in the department's quarterly price list, and have sufficient supply maintained in the bailment warehouse in accordance with ARM 42.11.421~~;~~. An agent shall give an all-beverage licensee an 8% discount on a full case lot of a regular product.

(b) A "warehouse supply" product will be so designated in the department's quarterly price list, and will have supply maintained in the bailment warehouse to satisfy historical demand. ~~approximately 12 single bottle requests per month with no commitment to a minimum service level;~~ An agent shall not give an all-beverage licensee an 8% discount on a full case lot of a warehouse supply product.

(c) A "special order" product that has sold at least one case in the prior 12 months will be published in the department's quarterly price list. ~~It will not have~~

~~supply~~ Supply will not be maintained in the warehouse and will only be available on an order-by-order basis; and depending on supplier requirements and availability of a product, orders may take six weeks or more to be filled. An agent shall not give an 8% discount on a full case lot of a special order product.

~~(d) A "promotional" product will not be published in the department's quarterly price list. Supply will be maintained~~ may be available in the bailment warehouse if shipped by a vendor in advance of the sales promotion, and will be shipped to stores in the quantity approved for the promotion. An agent shall not give an all-beverage licensee an 8% discount on a full case lot of a promotional product.

AUTH: 16-1-103, 16-1-303, MCA
IMP: 16-1-103, 16-1-104, 16-1-302, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.11.405 to make general grammatical and housekeeping changes. The department also proposes to amend the rule to clarify when it is appropriate for the 8% discount to be given.

42.11.406 PRODUCT LISTING (1) A product listing will be listed as a "regular" product if it meets the minimum sales standards in ARM 42.11.407 unless it only meets those standards temporarily as a result of closeout or overstock sales in accordance with ARM 42.11.409 and if the product is maintained in the bailment warehouse in accordance with ARM 42.11.421. A product will retain this classification if a vendor maintains it in the bailment warehouse and the conditions in ARM 42.11.424 do not occur. determined by the number of case sales in the past 12 months prior to the review. The listings will be reviewed in January and July of each year. The results of the January review are effective May 1st. The results of the July review are effective November 1st. The listings will be categorized as follows:

~~(2) A product will be listed as a "warehouse supply" product if it is a specialty product meeting sales criteria and is maintained in the warehouse.~~

(a) "Regular" products are determined by the equivalent number of available locators in the state liquor warehouse if:

(i) product sales are not a result of closeout, overstock, or erratic sales and must show a six month sales pattern; and

(ii) product is available year-round.

(b) "Warehouse supply" products are:

(i) those products that do not meet the criteria of a regular list product; and

(ii) the product sales equal to or greater than the 24 case sales.

~~(3) A product will be listed as a (c) "Special order" products if it is rare or unusual and not maintained in the warehouse are products that do not meet criteria for regular list or warehouse supply items. Depending on supplier requirements, demand for a product, and availability of a product, orders may take six weeks or more to be filled.~~

~~(4)~~(2) A liquor product will be listed as a "promotional" product if the department receives and approves a written proposal that:

(a) is submitted by a vendor who has a Montana vendor permit in accordance with ARM 42.11.213 and has at least one representative registered in

accordance with ARM 42.11.205 and 42.11.211;

(b) states that the product is new to the state of Montana and will be maintained in the bailment warehouse in accordance with ARM 42.11.421;

(c) ~~has no major obstacles to merchandising the product; and~~

(d) provides the following information for each product by bottle size:

(i) a completed standard quotation and specification form ~~signed by the vendor or an officer of the vendor which:~~

(A) references the National Alcoholic Beverage Control Association control state code for the product;

(B) ~~makes the price firm for the first three months following the effective date of the listing; and~~

(C) ~~provides an agreement that subsequent price increases will be noticed not less than 60 days prior to a price list effective date;~~

(ii) a list of the test market locations proposed for the new product and the expected initial order amount; and

(iii) a description of the promotional strategy that the vendor and the vendor's registered representative will undertake during the six-month promotion period; and

(iv) if promotional products fail to sell at the proposed level after a six month promotion period, the department will notify the vendor and make arrangements to remove the excess stock from the warehouse at the vendor's expense. No additional promotions will be allowed until the stock is removed from the warehouse.

~~(5)(3)~~ Sample products, like all regular inventory products, must be shipped to the state liquor warehouse for distribution purposes. Sample products must meet the following criteria:

(a) samples are limited to bottles containing no more than 750 millimeter milliliters sizes or less; and

(b) limit of ~~six cases~~ 72 bottles per brand, per vendor, per calendar year in addition to ~~six cases~~ 720 bottles of 50 millimeters ~~milliliters~~ or 200 milliliters.

AUTH: 16-1-103, 16-1-303, MCA

IMP: 16-1-103, 16-1-104, 16-1-302, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.11.406 to make general housekeeping changes reflective of current business practices of the agency. The department also proposes to amend the rule to provide listing criteria that better reflects current business practices and to delete parts of the rule that are already contained in ARM 42.11.405.

42.11.409 ~~DELISTING~~, REVISED LISTING, CLOSEOUT, AND OVERSTOCK (1) A listed product that no longer meets the minimum sales standard in ARM 42.11.407, current criteria in ARM 42.11.406 and the conditions in ARM 42.11.424 will be listed in a classification commensurate with its sales volume unless the sales volume is projected to be less than that for a "warehouse supply" product, in which case the product will be delisted and closed out in accordance with ARM 42.11.104. and effective with the quarterly price book.

(2) A product that a vendor discontinues and is not marketed by another vendor will be ~~delisted and closed out~~ and removed from the quarterly price book in

accordance with ARM 42.11.104.

(3) Inventory in excess of the projected 12 months of sales for a product will be treated as overstock in accordance with ARM 42.11.104.

(4) The effective date of a ~~delisting, revised listing,~~ closeout sale, or overstock sale is as soon as written notice can be disseminated to state agency liquor stores.

(5) Products that have been discontinued may be sold to licensees at or below the department's last known posted price.

(6) Products that have been discontinued may be sold to the general public at any price.

AUTH: 16-1-103, 16-1-303, MCA

IMP: 16-1-103, 16-1-104, 16-1-302, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.11.409 to delete the internal reference to ARM 42.11.407 because the department is proposing to repeal that rule. The minimum sales standards are currently found in ARM 42.11.406, so the department is proposing to add that reference to this rule. The department is also proposing to amend portions of this rule as general housekeeping to bring the rule into compliance with the current business practices of the agency.

42.11.421 BAILMENT LIMITS (1) ~~Products listed as "regular,"~~ Regular products must be maintained in the bailment warehouse in an amount above the minimum level and below the maximum level.

(2) The minimum bailment level for ~~"regular" products~~ is a historical three-week supply based on past sales history case demand. The historical three-week case demand is calculated by taking the products past 12-months sales and dividing by 12 to obtain a monthly demand. This figure is divided by four to obtain a weekly demand and then multiplied by three to obtain a three-week demand.

(3) The maximum level is a historical 12-week case demand. The historical 12-week case demand is calculated by taking the products past 12 months sales and dividing by 12 to obtain a monthly demand. This figure is divided by four to obtain a weekly demand and then multiplied by 12 to obtain a 12-week demand. The maximum level may be exceeded from time to time if a vendor demonstrates that a larger amount is needed to obtain an economical shipment and the department agrees.

(4) ~~Vendors will be charged a space reservation fee of \$1 per case per day for each case below minimum for any product for which the department is unable to fill store orders~~ bailment fee equivalent to one dollar per case based on a historical three-week case demand for each day a regular product is out of stock. A space reservation bailment fee will not be charged if the unavailability of supply is due to an incident beyond the vendor's control for which it has no recourse against any other party or it is based on department error.

(5) Vendors will also be charged the costs incurred by the department when there is insufficient product to fill orders during sales periods.

~~(4) The maximum bailment level for "regular" products is an eight-week~~

supply based on warehouse space. The maximum bailment level may be exceeded from time to time if a vendor demonstrates that a larger amount is needed to obtain an economical shipment and the department agrees.

(5)(6) Fees and charges will be offset against department payments for products.

AUTH: 16-1-103, 16-1-303, MCA

IMP: 16-1-103, 16-1-104, 16-1-302, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.11.421 to clarify the process used by the department to determine the bailment levels for products.

42.11.422 BAILMENT RECEIVINGS (1) Vendors may ship products to the bailment warehouse only if they are listed as "regular," "warehouse," "special order," "sample" or "promotional" products upon approval and in accordance with ARM 42.11.406.

(2) Vendors must provide send the department a bill-of-lading for each shipment to the bailment warehouse by fax, e-mail, or mail post marked ten days in advance of the expected date of arrival ~~or send a telefacsimile copy of the bill of lading on the day of shipment.~~ The bill-of-lading must include the quantity, the National Alcoholic Beverage Control Association control state code, and description of each item shipped.

(3) The department will send vendors an acknowledgement of receipt within 24 hours of receipt. Any variance with the bill-of-lading, and the number of undamaged cases received, will be noted on the acknowledgement receipt.

(4) The number of ~~undamaged~~ cases received per product will be credited to the bailment warehouse ~~control account~~ inventory.

(5) Damaged cases will be adjusted to the ~~control account~~ bailment warehouse inventory. ~~Vendors will be given the opportunity to have damaged cases returned at their cost or destroyed.~~

AUTH: 16-1-103, 16-1-303, MCA

IMP: 16-1-103, 16-1-104, 16-1-302, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.11.422 to reflect general housekeeping changes and to make the terminology in the rule consistent with other rules in this chapter.

42.11.423 BAILMENT DEPLETIONS (1) The department may deplete products from the bailment warehouse if the department is purchasing a product from a vendor and ~~the vendor has affirmed an offer to sell prior to the week in which the department will deplete the products.~~

(2) Payment for a purchase less any fees or charges will be made within ~~30~~ 15 days of from the date close of the month that the department depletes the product from the bailment warehouse.

(3) remains the same.

(4) The number of cases depleted per product will be debited to the bailment warehouse ~~control account~~ inventory.

(5) Upon request, a vendor may be notified weekly of the amount and date a vendor's products were depleted from the bailment warehouse ~~during that same week~~.

AUTH: 16-1-103, 16-1-303, MCA

IMP: 16-1-103, 16-1-104, 16-1-302, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.11.423 to make general housekeeping changes reflective of current business practices of the agency. Most of the changes are terminology changes more commonly accepted by the agency and the industry.

42.11.424 BAILMENT ADJUSTMENTS (1) The bailment warehouse ~~control account~~ inventory will be adjusted for vendor product withdrawals, ~~redelivery of low volume products, discovery of deficient cases, purchases, receivings, defective merchandise, and errors.~~

(2) Vendors may withdraw ~~some or all of any of~~ their products from the bailment warehouse by sending a written request to the department to carry out their instructions.

(3) remains the same.

(4) ~~Withdrawals below the minimum supply will precipitate department action to delist a product or change its listing classification in accordance with ARM 42.11.409, and will result in a vendor being charged the fee in ARM 42.11.421 unless the withdrawal is the result of the department's approval of a vendor's request to delist a product.~~ Products in excess of a six month supply will be destroyed at the vendor's expense after ten days notice to the vendor.

(5) ~~Products in the bailment warehouse that fall below the minimum sales standards in ARM 42.11.407 may continue to be maintained in the bailment warehouse and continue their listing classifications until there is insufficient space in the warehouse to accommodate all products.~~

(6) ~~When there is insufficient space in the warehouse to accommodate all products, products will be delisted re-classified in accordance with ARM 42.11.409. These delisted products will be redelivered to the vendor at vendor's expense after 10 day's notice.~~

(7) A vendor may be notified weekly of the number of cases credited to the bailment warehouse ~~control account~~ inventory that were found to be deficient (i.e., hidden breakage, packed short, or have bottles with no fill or low fill) during the week. Vendors will be given the opportunity to have the deficient cases redelivered at their cost or destroyed.

~~(8)~~(6) A vendor may be notified weekly of the number of cases credited or debited to the bailment warehouse ~~control account~~ inventory in error during the week and an explanation of the errors that were found.

AUTH: 16-1-103, 16-1-303, MCA

IMP: 16-1-103, 16-1-104, 16-1-302, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.11.424 to make general housekeeping changes. Portions of this rule were moved to ARM 42.11.406 because that text more appropriately fits in ARM 42.11.406.

42.11.425 BAILMENT WAREHOUSE MANAGEMENT (1) remains the same.

(2) Vendors may arrange with the department for the temporary transfer of selected cases of product to a work area ~~separate from~~ within the bailment warehouse. Vendors or vendors' representatives may inspect or modify cases of their product in the work area. The department must approve any modifications that may affect documentation of balances in the bailment warehouse ~~control account~~ inventory. Vendors will be charged the direct and indirect costs the department incurs for transferring cases to and from the work area.

(3) and (4) remain the same.

(5) The department will take physical inventory in the bailment warehouse four times a year and reconcile the count with the bailment warehouse ~~control account~~ inventory.

AUTH: 16-1-103, 16-1-303, MCA

IMP: 16-1-103, 16-1-104, 16-1-302, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.11.425 to make general housekeeping changes only.

4. The department proposes to repeal the following rules:

42.11.201 DEFINITIONS which can be found on page 42-1121 of the Administrative Rules of Montana.

AUTH: 16-1-103, 16-1-303, MCA

IMP: 16-3-103, 16-3-107, MCA

REASONABLE NECESSITY: The department is proposing to repeal ARM 42.11.201 because the definitions in this rule have been moved to ARM 42.11.105, which contains all the definitions for chapter 11.

42.11.401 DEFINITIONS which can be found on page 42-1165 of the Administrative Rules of Montana.

AUTH: 16-1-103, 16-1-303, MCA

IMP: 16-1-103, 16-1-104, 16-1-302, MCA

REASONABLE NECESSITY: The department is proposing to repeal ARM 42.11.401 because the definitions contained in that rule have been moved to ARM 42.11.105.

42.11.407 MINIMUM SALES STANDARDS which can be found on page 42-1168 of the Administrative Rules of Montana.

AUTH: 16-1-103, 16-1-303, MCA

IMP: 16-1-103, 16-1-104, 16-1-302, MCA

REASONABLE NECESSITY: The department is proposing to repeal ARM 42.11.407 because sales standards are already determined by ARM 42.11.406.

5. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-5828; fax (406) 444-3696; or e-mail canderson@mt.gov and must be received no later than January 26, 2007.

6. Cleo Anderson, Department of Revenue, Director's Office, has been designated to preside over and conduct the hearing.

7. An electronic copy of this Notice of Public Hearing is available through the department's site on the World Wide Web at www.mt.gov/revenue, under "for your reference"; "DOR administrative rules"; and "upcoming events and proposed rule changes." The department strives to make the electronic copy of this Notice of Public Hearing conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

8. The Department of Revenue 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 particular subject matter or matters. Such written request may be mailed or delivered to the person in 5 above or faxed to the office at (406) 444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

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

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

/s/ Dan R. Bucks
DAN R. BUCKS
Director of Revenue

Certified to Secretary of State December 11, 2006

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the proposed adoption of	)	NOTICE OF PUBLIC
New Rules I through V and amendment of	)	HEARING ON PROPOSED
42.13.101, 42.13.111, 42.13.221, and	)	ADOPTION AND
42.13.222 relating to regulations of liquor	)	AMENDMENT
licensees)	

TO: All Concerned Persons

1. On January 16, 2007, at 2:30 p.m., a public hearing will be held in the Director's (Fourth Floor) Conference Room of the Sam W. Mitchell Building, at Helena, Montana, to consider the adoption and amendment of the above-stated rules.

Individuals planning to attend the hearing shall enter the building through the east doors of the Sam W. Mitchell Building, 125 North Roberts, Helena, Montana.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Revenue no later than 5:00 p.m., January 5, 2007, to advise us of the nature of the accommodation that you need. Please contact Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-5828; fax (406) 444-3696; or e-mail canderson@mt.gov.

3. The proposed new rules do not replace or modify any section currently found in the Administrative Rules of Montana. The proposed new rules provide as follows:

NEW RULE I CONSUMER PROMOTIONS (1) Industry members authorized to do business in the state are allowed to offer coupons and direct offerings as set forth in regulation number 6.96 of the Tobacco Tax and Trade Bureau (TTB), United States Department of the Treasury as set forth in 27 CFR, as revised on April 1, 2005, and incorporated by reference as fully set forth as the regulations for consumer promotions. Copies may be obtained at the United States web site located at www.ttb.gov/Regulations.

(2) Industry members may furnish to consumers coupons which are redeemable at a retail establishment as follows:

(a) all retailers within the market where the coupon offer is made may redeem such coupons; and

(b) an industry member does not reimburse a retailer for more than the face value of all coupons redeemed, plus a normal and customary handling fee for the redemption of coupons.

(3) Contest prizes, sweepstakes, refunds, premium offers, internet promotions, and like items may be offered by industry members directly to

consumers. Officers, employees, and representatives of wholesalers or retailers are excluded from participation in these direct offerings.

(4) Conditions that must be met for all types of promotions include but are not limited to:

- (a) the company offering the promotion must be a registered industry member authorized to do business in the state of Montana;
- (b) alcohol may not be awarded as a prize or given away to participants;
- (c) participants must be 21 years of age or older;
- (d) no purchase is necessary to participate in a sweepstakes or contest; and
- (e) all promotions must be approved by department personnel prior to the onset of the promotion.

AUTH: 16-1-303, MCA

IMP: 16-1-303, MCA

REASONABLE NECESSITY: The department is proposing to adopt New Rule I to clarify the question of whether promotions are permitted by the department. The rule will explain the process that a wholesaler or retailer must follow when conducting consumer promotions. It further explains that prior department approval is necessary before the promotion or contest may be started.

NEW RULE II DISTILLERIES (1) Every distillery must report to the department, on a form prescribed by the department, the following information:

- (a) the cost of the product per case price FOB Helena, Montana that the distillery intends to sell to the department;
- (b) the quantities of liquor shipped to the department; and
- (c) the total number of proof gallons manufactured, distilled, rectified, bottled, or processed and sold nationwide.

(2) The department will generate a posted price from the distillery's case cost. The posted price shall include excise and license taxes as provided in Title 16, part 4, MCA, rounded to the nearest nickel increment. The department shall advise the distillery of the per bottle tax amount.

(3) The distillery shall collect the tax for any retail sale made directly to the consumer.

(4) The posted price will remain the price until a revised form is submitted and approved by the department. A revised quote for regular listed products shall be submitted not less than 60 days prior to the effective date of the department's quarterly price book.

AUTH: 16-1-303, 16-1-424, MCA

IMP: 16-1-404, 16-4-311, 16-4-312, 16-4-501, MCA

REASONABLE NECESSITY: The department is proposing to adopt New Rule II because the 59th legislature enacted House Bill 517 which provides, under certain circumstances, the opportunity for individuals to obtain a license to distill liquor. The law provides distillery licensees the right to purchase, from the department, alcoholic beverages for blending and manufacturing purposes upon the terms determined by

the department. This rule addresses the necessary reporting form a distillery licensee must complete and provide to the department and how the tax is to be collected for each bottle sold. These rules are necessary to coordinate with the state's liquor wholesale operations.

NEW RULE III DOMESTIC DISTILLERIES - PRODUCT PRICING (1) The department will provide each distillery with a standard quotation and specification form to report the necessary information.

(2) The distillery will advise the department the cost per case FOB Helena, Montana that the distillery intends to sell the product to the department.

(3) The department will:

(a) generate the posted price per bottle from the distillery's case cost; and

(b) notify the distillery of the posted price per bottle.

(4) The distillery may not sell the product below the posted price.

(5) The posted price will remain the price until a revised form is submitted and approved by the department. A revised quote for regular listed products shall be submitted not less than 60 days prior to the effective date of the department's quarterly price book.

(6) Products offered by a distillery will be listed in an inventory class based on the criteria in accordance with ARM 42.11.406.

(7) The department will notify the distillery of the liquor excise and liquor license tax per bottle.

AUTH: 16-1-303, 16-1-424, MCA

IMP: 16-1-404, 16-4-311, 16-4-312, 16-4-501, MCA

REASONABLE NECESSITY: The department is proposing to adopt New Rule III to clarify the requirements for domestic distilleries concerning product pricing which is necessary to coordinate with the state's liquor wholesale operation. This rule is necessary because the 2005 legislature enacted new laws regarding domestic distilleries located in Montana.

NEW RULE IV DOMESTIC DISTILLERY - MONTHLY REPORTS (1) Each distillery shall file with the department a monthly tax report, as required by 16-1-424, MCA, showing the following information:

(a) the total number of proof gallons manufactured, distilled, rectified, bottled, or processed and sold nationwide;

(b) the total amount of liquor provided to consumers for on-premise consumption with or without charge at the distillery; and

(c) the total number of bottles sold to consumers at retail for off-premise consumption.

(2) The form must be accompanied by payment of the tax pursuant to 16-1-424, MCA, on or before the 15th day of each month for liquor sold during the previous month.

AUTH: 16-1-303, 16-1-424, MCA

IMP: 16-1-404, 16-4-311, 16-4-312, 16-4-501, MCA

REASONABLE NECESSITY: The department is proposing to adopt New Rule IV to clarify the requirements for domestic distilleries concerning the monthly reports that must be filed with the department. This rule generally parallels rules with small breweries because the law was written to mirror small breweries. This rule is necessary because the 2005 legislature enacted new laws regarding domestic distilleries located in Montana.

NEW RULE V DOMESTIC DISTILLERY - SAMPLES (1) Product samples may only be provided in the sample room as shown on the floor plan which has been submitted and approved by the department.

(2) A domestic distillery is not a retail licensee as defined in 16-4-201, MCA.

(3) A sample room may include a deck or patio, as long as the deck or patio is immediately adjacent to the distillery sample room and can only be accessed from the distillery. The deck or patio must be enclosed in such a manner as to restrict its access and view from the general public on the street or sidewalk.

AUTH: 16-1-303, MCA

IMP: 16-4-312, MCA

REASONABLE NECESSITY: The 2005 legislature enacted new laws regarding domestic distilleries located in Montana. The department wants to define where consumption of samples may occur. This rule generally parallels rules with small breweries because the law was written to mirror small breweries.

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

42.13.101 COMPLIANCE WITH LAWS AND RULES (1) through (6) remain the same.

(7) Mitigating circumstances in the case of sale to a minor could result in a reprimand for the first offense under Title 16, MCA, within the most current three-year period if the licensee has provided alcoholic beverage service training acceptable to the department to all of its employees and reinforces that training with each employee at least every two years. The licensee must demonstrate that the person who made the sale to a minor has completed alcoholic beverage service training prior to the department considering issuance of a reprimand. A written reprimand will be considered a first offense for the application of the progressive penalty schedule.

(8) through (11) remain the same.

AUTH: 16-1-303, MCA

IMP: 16-3-301, 16-4-406, 16-6-305, 16-6-314, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.13.101 because the previous policy in the rule was not an effective way to regulate licensees. The rule as revised, represents the department's current policy

regarding the possibility of a "written reprimand" for a first offense.

42.13.111 DEFINITIONS The following definitions apply to this subchapter:

(1) remains the same.

(2) "Coupons" are certificates or tickets entitling the holder to a specified right, as redemption for cash or gifts or reduced purchase price.

(3) "Industry member" is any person engaged in business as a manufacturer, importer, or wholesaler of distilled spirits, wine, or malt beverages.

(4) "Mitigating circumstances" means a justification or excuse for a violation of the code, but which, in fairness, may be considered as extenuating enough to reduce the penalty imposed for the purpose of ARM 42.13.101.

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

(6) "Posted price" as it applies to liquor and fortified wine, means the wholesale price of liquor and fortified wine for sale to persons who hold liquor licenses as fixed and determined by the department.

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

AUTH: 16-1-303, 16-1-424, MCA

IMP: 16-1-424, 16-3-302, 16-3-311, 16-4-312, 16-4-404, 16-4-406, 16-6-104, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.13.111 to add terms used in other rules of this chapter.

42.13.221 ADOPTION OF CERTAIN FEDERAL REGULATIONS (1) The United States Department of Treasury, ~~bureau of alcohol, tobacco, and firearms~~ Alcohol and Tobacco Tax and Trade Bureau regulations 1, 4, 5, 6, and 7, as set forth in 27 CFR, as revised April 1, 2003 ~~2006~~, available from the U.S. Government Printing Office, Washington, DC 20402-0001, are adopted by reference. These regulations apply to basic permit requirements, tied-house restrictions, labeling, sampling, and advertising of liquor (distilled spirits, wine, and malt beverages) sold within this state except where the provisions of these federal regulations may be contrary to or inconsistent with the provisions of Montana law or rules of the department.

AUTH: 16-1-303, MCA

IMP: 16-1-201, 16-3-103, 16-3-244, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.13.221 to reflect the current federal agency that now regulates alcohol and revise the current year for federal rules.

42.13.222 BEER WHOLESALER AND TABLE WINE DISTRIBUTOR RECORDKEEPING REQUIREMENTS (1) Beer wholesalers and table wine

distributors shall keep and maintain records at their place of business of all beer or table wine furnished or sold to retailers. These records must contain the following information:

- (a) name and address of retailer;
 - (b) item that was sold or furnished;
 - (c) date item was sold or furnished;
 - (d) date item was delivered;
 - (e) cost of item sold; ~~and~~
 - (f) date wholesaler or distributor received retailer's payment; and
 - (g) from which warehouse or subwarehouse the item was delivered.
- (2) Commercial records or invoices may be used if they contain the information listed in (1)(a) through ~~(f)~~ (g).
- (3) remains the same.

AUTH: 16-1-303, MCA

IMP: 16-3-220, 16-3-243, 16-3-404, 16-3-406, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.13.222 to accommodate a request of the licensed distributors. The department also agrees that this information is necessary.

5. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-5828; fax (406) 444-3696; or e-mail canderson@mt.gov and must be received no later than January 26, 2007.

6. Cleo Anderson, Department of Revenue, Director's Office, has been designated to preside over and conduct the hearing.

7. An electronic copy of this Notice of Public Hearing is available through the department's site on the World Wide Web at www.mt.gov/revenue, under "for your reference"; "DOR administrative rules"; and "upcoming events and proposed rule changes." The department strives to make the electronic copy of this Notice of Public Hearing conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

8. The Department of Revenue 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 particular subject matter or matters. Such written request may be mailed or delivered to the person in 5 above or faxed to the office at (406) 444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

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

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

/s/ Dan R. Bucks
DAN R. BUCKS
Director of Revenue

Certified to Secretary of State December 11, 2006

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the proposed adoption of	)	NOTICE OF PUBLIC HEARING ON
New Rule I; amendment of ARM	)	PROPOSED ADOPTION,
42.3.101, 42.3.102, 42.3.103, 42.3.104,	)	AMENDMENT, AND REPEAL
42.3.105, 42.3.106, 42.3.107, 42.3.108,)	
42.3.109, 42.3.110, 42.3.111, 42.3.113,)	
and 42.3.120; and repeal of ARM 42.3.112)	
and 42.3.114 relating to rules found in)	
chapter 3 regarding waiver of penalties)	
and interest)	

TO: All Concerned Persons

1. On January 17, 2007, at 1:00 p.m., a public hearing will be held in the Director's Office (Fourth Floor) Conference Room of the Sam W. Mitchell Building, at Helena, Montana, to consider the adoption, amendment, and repeal of the above-stated rules.

Individuals planning to attend the hearing shall enter the building through the east doors of the Sam W. Mitchell Building, 125 North Roberts, Helena, Montana.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Revenue no later than 5:00 p.m., January 8, 2007, to advise us of the nature of the accommodation that you need. Please contact Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-5828; fax (406) 444-3696; or e-mail canderson@mt.gov.

3. The proposed new rule does not replace or modify any section currently found in the Administrative Rules of Montana. The proposed new rule provides as follows:

NEW RULE I REASONABLE CAUSE FOR WAIVER OF LATE PAYMENT PENALTY FOR AMENDED TAX RETURNS AND PAYMENT OF DEBT WITHIN 30 DAYS (1) Reasonable cause exists for waiver of the late payment penalty if the taxpayer has voluntarily filed an amended tax return and paid the tax.

(2) Reasonable cause exists for waiver of the late payment penalty if the taxpayer pays tax and interest due when notified by the department within 30 days of the department's first Statement of Account (SOA). This reasonable cause provision only applies to the first SOA sent to the taxpayer. For example, the department mails monthly SOAs to taxpayers notifying them of any tax, penalty, and interest due. The department will only consider waiver of the late payment penalty for the first SOA mailed to the taxpayer for that tax period.

(3) Unless otherwise defined in these rules, under no circumstance will

interest be waived for tax due.

(4) In order to receive consideration for the waiver of the late payment penalty, the taxpayer will need to request the waiver on a form provided by the department or in writing.

(5) This rule only applies to late payment penalty and does not prohibit the taxpayer from seeking waiver or write-off of interest or additional penalties provided for in other department rules.

AUTH: 15-1-201, 15-1-217, MCA

IMP: 15-1-206, 15-1-216, MCA

REASONABLE NECESSITY: To ensure and encourage voluntary taxpayer compliance, the department is proposing that taxpayers who file an amended tax return and pay the associated tax and interest due are entitled to seek a waiver of the late payment penalty provide in 15-1-216, MCA. New Rule I would also apply to taxpayers that pay any additional tax and interest due within 30 days. The proposed new rule encourages taxpayers to voluntarily file accurate information and timely pay tax and interest due. This ultimately provides for efficient tax administration due to the fact that it encourages taxpayers to file correct information and to pay in a timely manner. Without the ability to waive the late payment penalty in these situations the department will be forced to use scarce resources to identify taxpayers that have incorrectly filed tax returns or track down taxpayers that have chosen not to pay any of their tax debt because of the late payment penalty.

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

42.3.101 PURPOSE DEFINITIONS The following definitions apply to terms used in this subchapter:

(1) ~~The taxes which the department enforces variously provide for the abatement or waiver of interest and/or penalties at the sound discretion of the department. These rules are guidelines for the uniform, fair, and equitable exercise of that discretion. It is a purpose of these rules to treat all similarly situated taxpayers in a similar manner. In evaluating each request for waiver or abatement of interest and/or penalty, the taxpayer's request will be considered on a case-by-case basis. Abatement or waiver of a penalty and/or interest will be considered the exception rather than the rule.~~ "Days" means calendar days. In computing any period of time prescribed or allowed by these rules, the day of the event after which the designated period of time begins to run is not to be included, but the last day of the period so computed is to be included, unless it is a Saturday, Sunday, or a legal holiday, in which event the period runs until the end of the next business day, except as otherwise provided by statute.

(2) ~~The purpose of a penalty and interest on a penalty is to secure the proper and timely filing of a tax return or statement and the prompt payment of the tax by penalizing the delinquent taxpayer. The purpose of interest on a tax is, in part, to compensate the state of Montana for the cost of money which is incurred while the tax is delinquent. Therefore, interest on the tax will rarely, if ever, be abated or~~

waived by the department for a taxpayer who:

- ~~(a) files a tax return or statement or makes a tax payment over five days late;~~
- ~~(b) has previously filed a late tax return or statement or made a late payment;~~

or

- ~~(c) has previously not complied with the tax law or regulations.~~

~~(3) Rules 42.3.101 through 42.3.114 are to be read, interpreted, and enforced as a whole in order to give full effect to each provision. A specific clause is not to be read or interpreted separately from the entire set of rules as a whole.~~

~~(4) Except as specifically provided by statute, the waiver or abatement of penalty and interest is a discretionary act by the department. "Discretion" means the power to do or to refrain from doing a certain thing. These rules do not make the exercise of the department's discretion to waive or abate penalty and interest mandatory or compulsory.~~

- ~~(3) "Economic hardship" is defined in ARM 42.2.304.~~

~~(4) "Good cause" and "sufficient cause" shall be considered synonymous with "reasonable cause", except where otherwise provided by statute or these rules.~~

~~(5) "Habitually" means more than once in a three-year period subsequent to notification by the department of a prior failure to file a return or to pay the tax due.~~

~~(6) "Purposely failing to file a return or pay the tax by the due date" includes, but is not limited to:~~

~~(a) habitually failing to file a return or to pay the tax due unless the taxpayer can establish that the failure was not done purposely or knowingly; or~~

- ~~(b) an attempt to evade or defeat the tax.~~

- ~~(7) "Reasonable cause" is defined in ARM 42.2.304.~~

~~(8) "Voluntary" means the taxpayer has filed a tax return without having been contacted by the department.~~

~~AUTH: 2-4-201, 15-1-201, 15-1-206, 15-30-305, 15-31-501, 15-35-122, 15-36-107, 15-37-108, 15-38-107, 15-53-104, 15-53-155, 15-54-111, 15-55-108, 15-56-111, 15-58-106, 15-59-106, 15-59-205, 15-60-104, 15-65-102 15-70-104, MCA~~

~~IMP: 2-4-201, 15-1-206, 15-1-216, 15-30-321, 15-31-502, 15-35-105, 15-36-107, 15-37-108, 15-38-107, 15-53-111, 15-53-155, 15-54-111, 15-55-108, 15-56-111, 15-58-106, 15-59-106, 15-59-205, 15-60-208, 15-61-205, 15-65-115 15-70-210, 15-70-330, MCA~~

REASONABLE NECESSITY: There is reasonable necessity to amend ARM 42.3.101 for housekeeping changes to comply with the requirements of 2-4-314, MCA, in conducting a biennial review of the department rules. Section 15-1-206, MCA, was amended in 1999 and reference to the terms "abate" and "abatement" were deleted and replaced with "waiver". The rule is being amended to reflect the changes in the law. The changes to the authority and implementing statutes are necessary because several of the statutes have been repealed and others enacted since the rules were adopted in 1985.

42.3.102 PURPOSE AND APPLICATION OF RULES 42.3.101 THROUGH 42.3.114 IN THIS CHAPTER (1) All references in rules 42.3.101 through 42.3.114 to "these rules" means rules 42.3.101 through 42.3.114 of the Administrative Rules

of Montana. At the discretion of the department, interest and/or penalties for taxes enforced by the department may be waived. These rules are guidelines for the uniform, fair, and equitable exercise of that discretion. It is the intent of the department to treat all similarly situated taxpayers in a similar manner. In evaluating each request for waiver of interest and/or penalty, the taxpayer's request will be considered on a case-by-case basis. Waiver of a penalty and/or interest will be considered the exception rather than the rule.

(2) The purpose of a penalty is to secure the proper and timely filing of a tax return or statement and the prompt payment of the tax by penalizing the delinquent taxpayer. The purpose of interest on a tax is, in part, to compensate the state of Montana for the cost of money incurred while the tax is delinquent.

(3) The rules in this subchapter are to be read, interpreted, and enforced as a whole in order to give full effect to each provision. A specific clause is not to be read or interpreted separately from the entire set of rules as a whole.

(4) Except as specifically provided by statute, the waiver of penalty and interest is a discretionary act by the department. These rules do not make the exercise of the department's discretion to waive penalty and interest mandatory or compulsory.

(5) These rules apply only to penalty, interest on a penalty, and interest on a tax which are due because the taxpayer failed to file a tax return or statement or failed to pay any tax on time.

(3)(6) These rules do not apply to any penalty, interest on penalty, or interest on a tax, due to any other failure to comply with the tax laws or rules. Specifically, these rules do not apply to penalty, interest on penalty, and interest on a tax assessed as a result of a deficiency assessment or assessed because of fraud or other violation of the law.

(4)(7) In addition, these rules do not apply to any of the following:

(a) to a penalty or interest associated with any license or fee which is not a tax and which is collected by the department;

(b) to any criminal sanction associated with the laws enforced by the department;

(c) to the collection of child support under Title 40, chapter 5, MCA, to welfare or medicaid fraud under Title 53, chapter 2, MCA, or to similar laws which are administered by the department;

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

(f) to any alcohol or tobacco tax, license, or fee collected under Title 16, any property tax collected under chapters 6, 7, 8, 9, 10, 15, 16, 17, 18, 23, or 24 of Title 15, or any other tax not found in Title 15.

(5)(8) Except as provided in 15-1-206(1), MCA, these rules do not apply to a tax which that has no provision for waiver or abatement of a penalty and/or interest.

AUTH: 2-4-201, 15-1-201, 15-1-206, 15-30-305, 15-31-501, 15-35-122, 15-36-107, 15-37-108, 15-38-107, 15-53-104, 15-53-155, 15-54-111, 15-55-108, 15-56-111, 15-58-106, 15-59-106, 15-59-205, 15-60-104, 15-65-102, 15-70-104 MCA

IMP: 2-4-201, 15-1-206, 15-1-216, 15-30-321, 15-31-502, 15-35-105, 15-36-107, 15-37-108, 15-38-107, 15-53-111, 15-53-155, 15-54-111, 15-55-108, 15-56-111, 15-58-106, 15-59-106, 15-59-205, 15-60-208, 15-61-205, 15-65-115, 15-70-

210, 15-70-330 MCA

REASONABLE NECESSITY: There is reasonable necessity to amend ARM 42.3.102 for housekeeping changes to comply with the requirements of 2-4-314, MCA, in conducting a biennial review of the department rules. Section 15-1-206, MCA, was amended in 1999 and reference to the terms "abate" and "abatement" were deleted and replaced with "waiver". The rule is being amended to reflect the changes in the law. The authority for the department to enforce child support and Medicaid fraud was transferred to other agencies several years ago. The statutory applicability regarding licenses and fees was repealed. The changes to the authority and implementing statutes are necessary because several of the statutes have been repealed and others have been enacted since the rules were adopted in 1985.

42.3.103 ABATEMENT OR WAIVER OF INTEREST ON THE TAX

(1) Except as otherwise provided by statute or rule, interest may be ~~abated or~~ waived by the department for the same reasons or causes as provided in these rules for the waiver ~~or abatement~~ of penalties. However, 15-1-206(2), MCA, forbids the ~~abatement or~~ waiver of more than \$100 in interest on the tax per applicable tax period. Therefore, under no circumstances will interest on a tax in excess of \$100 per applicable taxing period be ~~abated or~~ waived by the department.

AUTH: ~~2-4-201, 15-1-201, 15-1-206, 15-30-305, 15-31-501, 15-35-122, 15-36-107, 15-37-108, 15-38-107, 15-53-104, 15-53-155, 15-54-111, 15-55-108, 15-56-111, 15-58-106, 15-59-106, 15-59-205, 15-60-104, 15-65-102, 15-70-104~~ MCA

IMP: ~~2-4-201, 15-1-206, 15-1-216, 15-30-321, 15-31-502, 15-35-105, 15-36-107, 15-37-108, 15-38-107, 15-53-111, 15-53-155, 15-54-111, 15-55-108, 15-56-111, 15-58-106, 15-59-106, 15-59-205, 15-60-208, 15-61-205, 15-65-115, 15-70-210, 15-70-330~~ MCA

REASONABLE NECESSITY: There is reasonable necessity to amend ARM 42.3.103 for housekeeping changes to comply with the requirements of 2-4-314, MCA, in conducting a biennial review of the department rules. Section 15-1-206, MCA, was amended in 1999 and reference to the terms "abate" and "abatement" were deleted and replaced with "waiver". The rule is being amended to reflect the changes in the law. The changes to the authority and implementing statutes are necessary because several of the statutes have been repealed and others have been enacted since the rules were adopted in 1985.

42.3.104 WAIVER OR ABATEMENT OF PENALTIES OR INTEREST

ASSESSED AS THE RESULT OF LITIGATION (1) Except as specifically provided for by rule or statute, penalty and interest may be waived for the same reason or cause as provided for in these rules in legal actions prior to a final decision by the ~~state tax appeal board or state courts~~ Department of Revenue, another agency, or a court or tribunal of competent jurisdiction. However, when a final decision has been rendered by the State Tax Appeal Board or a state court ~~which that~~ found a tax, penalty, and interest to be due, the department may not waive the penalty and interest.

~~AUTH: 2-4-201, 15-1-201, 15-1-206, 15-30-305, 15-31-501, 15-35-122, 15-36-107, 15-37-108, 15-38-107, 15-53-104, 15-53-155, 15-54-111, 15-55-108, 15-56-111, 15-58-106, 15-59-106, 15-59-205, 15-60-104, 15-65-102, 15-70-104 MCA~~

~~IMP: 2-4-201, 15-1-206, 15-1-216, 15-30-321, 15-31-502, 15-35-105, 15-36-107, 15-37-108, 15-38-107, 15-53-111, 15-53-155, 15-54-111, 15-55-108, 15-56-111, 15-58-106, 15-59-106, 15-59-205, 15-60-208, 15-61-205, 15-65-115, 15-70-210, 15-70-330 MCA~~

REASONABLE NECESSITY: There is reasonable necessity to amend ARM 42.3.104 for housekeeping changes to comply with the requirements of 2-4-314, MCA, in conducting a biennial review of the department rules. Section 15-1-206, MCA, was amended in 1999 and reference to the terms "abate" and "abatement" were deleted and replaced with "waiver". The rule is being amended to reflect the changes in the law. The changes to the authority and implementing statutes are necessary because several of the statutes have been repealed and others enacted since the rules were adopted in 1985.

42.3.105 REASONABLE CAUSE FOR WAIVER OR ABATEMENT OF PENALTY AND INTEREST ON THE PENALTY (1) "Reasonable cause" for waiver or abatement of penalty and interest is construed in favor of the collection of the penalty and interest.

(2) ~~"Reasonable cause" exists for waiver or abatement of penalty and interest if the taxpayer exercised ordinary business care and prudence and was nevertheless unable to file the return and/or pay the tax within the prescribed time. What constitutes t~~The exercise of ordinary business care and prudence must be determined by the facts of a particular each case. The existence of "reasonable cause" will be determined on a case-by-case basis at the discretion of the department.

(3) ~~Except where otherwise provided by statute or these rules, "good cause" and "sufficient cause" shall be considered synonymous with "reasonable cause" as defined by these rules.~~

(4) ~~Except where otherwise provided by statute or by these rules, "neglect" means the failure to exercise ordinary business care and prudence.~~

(5) Examples of "reasonable cause" for failure by a taxpayer to file a tax return or report or pay a tax on the date required by statute ~~by a taxpayer~~ include, but are not limited to:

(a) where it can be substantiated that the return was mailed ~~in time~~ (whether or not the envelope bore sufficient postage) or electronically filed in time to reach the department of revenue in the normal course of mails business, within the legal period, (if the due date is a Saturday, Sunday, or holiday, the following business day is within the legal period);

(b) where it can be substantiated that the delay or failure was due to erroneous information given the taxpayer by an employee of the department of revenue according to the provisions provided in the taxpayer bill of rights found in 15-1-222, MCA;

(c) remains the same.

(d) where the delinquency was caused by the due to destruction by fire or other casualty of the taxpayer's place of business or business records;

(e) ~~where the taxpayer mailed the tax statement or return and/or the tax payment to the Internal Revenue Service or the tax collector of another state on time; or~~

(f) where a taxpayer is unable, for reasons beyond his the taxpayer's control, to obtain the records necessary to determine the amount of tax due.

~~(6)~~ (4) The examples stated in ~~subsection (5)~~ (3) are for illustrations only. Other reasonable causes may exist for failure to properly and timely file the tax statement or return and pay the tax. Each request for waiver ~~or abatement~~ will be considered on a case-by-case basis using the following criteria:

(a) ~~Do the taxpayer's reasons address the penalty and interest that was assessed?~~

(b) ~~Does the length of time between the event which was cited as a reason and the filing or payment date negate the event's effect?~~

(c) ~~Could the event that caused the taxpayer's noncompliance or increased liability~~ could have reasonably been anticipated?

(d) ~~Has the taxpayer~~ has provided sufficient detail (dates, relationships) to determine ~~whether he exercised~~ ordinary business care and prudence was exercised?

(e) ~~Has the taxpayer documented all pertinent facts?~~ and

(f) ~~Could the taxpayer~~ could have requested an extension or filed an amended return?

~~(7)~~ (5) The following are examples which do not constitute reasonable cause for ~~abatement or~~ waiver of penalty and interest and do demonstrate neglect:

(a) through (c) remain the same.

(d) the advent of new tax laws, regulations, or administrative requirements ~~which that~~ create complex problems and significantly delay the taxpayer in preparing returns;

(e) remains the same.

(f) a failure to secure the proper forms; or

(g) the taxpayer started to prepare the return in sufficient time but ~~finds~~ found that because of complicated issues ~~he the taxpayer~~ was unable to finish the return.

~~(8)~~ (6) The examples stated in ~~subsection (7)~~ (5) are for illustrations only. Other circumstances may exist which do not constitute reasonable cause for waiver ~~or abatement~~ of penalty and interest.

(9) and (10) remain the same but are renumbered (7) and (8).

AUTH: ~~2-4-201, 15-1-201, 15-1-206, 15-30-305, 15-31-501, 15-35-122, 15-36-107, 15-37-108, 15-38-107, 15-53-104, 15-53-155, 15-54-111, 15-55-108, 15-56-111, 15-58-106, 15-59-106, 15-59-205, 15-60-104, 15-65-102, 15-70-104~~ MCA

IMP: ~~2-4-201, 15-1-206, 15-1-216, 15-30-321, 15-31-502, 15-35-105, 15-36-107, 15-37-108, 15-38-107, 15-53-111, 15-53-155, 15-54-111, 15-55-108, 15-56-111, 15-58-106, 15-59-106, 15-59-205, 15-60-208, 15-61-205, 15-65-115, 15-70-210, 15-70-330~~ MCA

REASONABLE NECESSITY: There is reasonable necessity to amend ARM

42.3.105 for housekeeping changes to comply with the requirements of 2-4-314, MCA, in conducting a biennial review of the department rules. Section 15-1-206, MCA, was amended in 1999 and reference to the terms "abate" and "abatement" were deleted and replaced with "waiver". The rule is being amended to reflect the changes in the law. Reasonable cause is defined in Chapter 2 of these rules and therefore it is not necessary to redefine it in this rule. The changes to the authority and implementing statutes are necessary because several of the statutes have been repealed and others enacted since the rules were adopted in 1985.

42.3.106 HARDSHIP AS "REASONABLE CAUSE" (1) Unless otherwise specified by statute or these rules, hardship means economic hardship as defined in ARM 42.2.304. ~~"Economic hardship" means the financial inability of the taxpayer to pay a tax when the tax is due. Economic hardship alone is not reasonable cause for failure to file a tax return or report when that return or report is due by law.~~

~~Economic hardship will be considered as reasonable cause for abatement or waiver of a penalty and/or interest only when the taxpayer demonstrates the economic hardship was due to acts which were beyond the taxpayer's control and were not capable of being anticipated or provided for by an ordinary and prudent person.~~

(2) Examples of economic hardship ~~which~~ that may constitute reasonable cause for waiver ~~or abatement~~ of penalties and or interest include:

(a) through (e) remain the same.

(3) The examples given in ~~subsection (2)~~ are ~~for illustrations only~~. Other circumstances may exist which constitute economic hardship sufficient to waive ~~or abate~~ penalty and/or interest.

(4) Examples of economic hardship ~~which~~ that do not constitute reasonable cause for waiver ~~or abatement~~ of penalty and or interest include:

(a) through (c) remain the same.

(5) The examples given in ~~subsection (4)~~ are for illustration only. Other circumstances may exist ~~which~~ that do not constitute economic hardship sufficient to waive ~~or abate~~ penalty or interest.

(6) Economic hardship will be considered as reasonable cause for waiver ~~or abatement~~ of penalties and/or interest on the penalty only when the taxpayer has tendered full payment of the tax and interest on the tax.

(7) If the taxpayer pays the tax on a time-payment-plan, the decision on whether or not the penalty and/or interest on the penalty will be ~~abated or waived~~ will not be made until after the taxpayer has completed full payment of the tax and accrued interest on the tax.

AUTH: ~~2-4-201, 15-1-201, 15-1-206, 15-30-305, 15-31-501, 15-35-122, 15-36-107, 15-37-108, 15-38-107, 15-53-104, 15-53-155, 15-54-111, 15-55-108, 15-56-111, 15-58-106, 15-59-106, 15-59-205, 15-60-104, 15-65-102, 15-70-104~~ MCA

IMP: ~~2-4-201, 15-1-206, 15-1-216, 15-30-321, 15-31-502, 15-35-105, 15-36-107, 15-37-108, 15-38-107, 15-53-111, 15-53-155, 15-54-111, 15-55-108, 15-56-111, 15-58-106, 15-59-106, 15-59-205, 15-60-208, 15-61-205, 15-65-115, 15-70-210, 15-70-330~~ MCA

REASONABLE NECESSITY: There is reasonable necessity to amend ARM

42.3.106 for housekeeping changes to comply with the requirements of 2-4-314, MCA, in conducting a biennial review of the department rules. Section 15-1-206, MCA, was amended in 1999 and reference to the terms "abate" and "abatement" were deleted and replaced with "waiver". Economic hardship is defined in Chapter 2 of these rules and therefore it is not necessary to redefine it in this rule. The rule is being amended to reflect the changes in the law. The changes to the authority and implementing statutes are necessary because several of the statutes have been repealed and others enacted since the rules were adopted in 1985.

42.3.107 PROOF OF REASONABLE CAUSE OR LACK OF NEGLIGENCE

(1) The taxpayer who requests ~~abatement or~~ waiver of penalty and interest on a tax has the burden of proving to the department that reasonable cause exists for the failure to timely file the tax statement and report and/or timely pay the tax. The taxpayer also must prove ~~he~~ the taxpayer was not guilty of neglect when ~~he~~ the taxpayer failed to timely file the tax statement and report and/or timely pay the tax.

(2) Unless reasonable cause is apparent in the department's file or is public knowledge, all requests for waiver ~~or abatement~~ of penalty and interest must be in writing.

(3) The simple statement that "reasonable cause" existed for the failure to timely file the tax statement or return and/or to timely pay the tax is never sufficient to receive ~~an abatement or~~ waiver. All requests for ~~abatement or~~ waiver of penalty and interest must include the facts ~~which~~ the taxpayer believes demonstrate reasonable cause and lack of neglect.

AUTH: ~~2-4-201, 15-1-201, 15-1-206, 15-30-305, 15-31-501, 15-35-122, 15-36-107, 15-37-108, 15-38-107, 15-53-104, 15-53-155, 15-54-111, 15-55-108, 15-56-111, 15-58-106, 15-59-106, 15-59-205, 15-60-104, 15-65-102, 15-70-104~~ MCA

IMP: ~~2-4-201, 15-1-206, 15-1-216, 15-30-321, 15-31-502, 15-35-105, 15-36-107, 15-37-108, 15-38-107, 15-53-111, 15-53-155, 15-54-111, 15-55-108, 15-56-111, 15-58-106, 15-59-106, 15-59-205, 15-60-208, 15-61-205, 15-65-115, 15-70-210, 15-70-330~~ MCA

REASONABLE NECESSITY: There is reasonable necessity to amend ARM 42.3.107 for housekeeping changes to comply with the requirements of 2-4-314, MCA, in conducting a biennial review of the department rules. Section 15-1-206, MCA, was amended in 1999 and reference to the terms "abate" and "abatement" were deleted and replaced with "waiver". The rule is being amended to reflect the changes in the law. The changes to the authority and implementing statutes are necessary because several of the statutes have been repealed and others enacted since the rules were adopted in 1985.

42.3.108 INTEREST ACCRUING TO A COUNTY OR COUNTIES AND PENALTIES

(1) The ~~D~~department does not have authority to waive any penalty or interest which accrues to the benefit of a county or counties.

AUTH: ~~2-4-201, 15-1-201, 15-1-206, 15-30-305, 15-31-501, 15-35-122, 15-36-107, 15-37-108, 15-38-107, 15-53-104, 15-53-155, 15-54-111, 15-55-108, 15-56-~~

~~111, 15-58-106, 15-59-106, 15-59-205, 15-60-104, 15-65-102, 15-70-104 MCA~~
~~IMP: 2-4-201, 15-1-206, 15-1-216, 15-30-321, 15-31-502, 15-35-105, 15-36-~~
~~107, 15-37-108, 15-38-107, 15-53-111, 15-53-155, 15-54-111, 15-55-108, 15-56-~~
~~111, 15-58-106, 15-59-106, 15-59-205, 15-60-208, 15-61-205, 15-65-115, 15-70-~~
~~210, 15-70-330 MCA~~

REASONABLE NECESSITY: There is reasonable necessity to amend ARM 42.3.108 for housekeeping changes to comply with the requirements of 2-4-314, MCA, in conducting a biennial review of the department rules. The changes to the authority and implementing statutes are necessary because several of the statutes have been repealed and others enacted since the rules were adopted in 1985.

42.3.109 WHEN DECISION TO WAIVE OR ABATE IS MADE (1) The final decision to waive ~~or abate~~ penalty and/or interest will not be made until the taxpayer tenders full payment of the tax together with interest on the tax.

~~AUTH: 2-4-201, 15-1-201, 15-1-206, 15-30-305, 15-31-501, 15-35-122, 15-~~
~~36-107, 15-37-108, 15-38-107, 15-53-104, 15-53-155, 15-54-111, 15-55-108, 15-56-~~
~~111, 15-58-106, 15-59-106, 15-59-205, 15-60-104, 15-65-102, 15-70-104 MCA~~
~~IMP: 2-4-201, 15-1-206, 15-1-216, 15-30-321, 15-31-502, 15-35-105, 15-36-~~
~~107, 15-37-108, 15-38-107, 15-53-111, 15-53-155, 15-54-111, 15-55-108, 15-56-~~
~~111, 15-58-106, 15-59-106, 15-59-205, 15-60-208, 15-61-205, 15-65-115, 15-70-~~
~~210, 15-70-330 MCA~~

REASONABLE NECESSITY: There is reasonable necessity to amend ARM 42.3.109 for housekeeping changes to comply with the requirements of 2-4-314, MCA, in conducting a biennial review of the department rules. The changes to the authority and implementing statutes are necessary because several of the statutes have been repealed and others enacted since the rules were adopted in 1985.

42.3.110 PAYMENT WITH AN NSF CHECK IS NOT CONSIDERED A
PAYMENT OF TAXES (1) ~~If a check or other type of p~~Payment which is tendered to pay any tax due under Title 15, MCA, which is returned by the bank because of insufficient funds in the taxpayer's account or ~~the check is~~ otherwise dishonored by an operating bank or payor, ~~the tax payment is~~ shall be considered void, ~~and~~ ~~the~~ The taxpayer will be treated as if no payment had been received by the department. Collection of penalty in this case will be discretionary.

~~AUTH: 2-4-201, 15-1-201, 15-1-206, 15-30-305, 15-31-501, 15-35-122, 15-~~
~~36-107, 15-37-108, 15-38-107, 15-53-104, 15-53-155, 15-54-111, 15-55-108, 15-56-~~
~~111, 15-58-106, 15-59-106, 15-59-205, 15-60-104, 15-65-102, 15-70-104 MCA~~
~~IMP: 2-4-201, 15-1-206, 15-1-216, 15-30-321, 15-31-502, 15-35-105, 15-36-~~
~~107, 15-37-108, 15-38-107, 15-53-111, 15-53-155, 15-54-111, 15-55-108, 15-56-~~
~~111, 15-58-106, 15-59-106, 15-59-205, 15-60-208, 15-61-205, 15-65-115, 15-70-~~
~~210, 15-70-330 MCA~~

REASONABLE NECESSITY: There is reasonable necessity to amend ARM

42.3.110 for housekeeping changes to comply with the requirements of 2-4-314, MCA, in conducting a biennial review of the department rules. The changes to the authority and implementing statutes are necessary because several of the statutes have been repealed and others enacted since the rules were adopted in 1985.

42.3.111 CALCULATION OF TIME PERIODS AND FILING DATES

(1) ~~Except as otherwise provided by statute or these rules, a "day" means the normal working day for the department administration.~~

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

AUTH: ~~2-4-201, 15-1-201, 15-1-206, 15-30-305, 15-31-501, 15-35-122, 15-36-107, 15-37-108, 15-38-107, 15-53-104, 15-53-155, 15-54-111, 15-55-108, 15-56-111, 15-58-106, 15-59-106, 15-59-205, 15-60-104, 15-65-102, 15-70-104~~ MCA

IMP: ~~2-4-201, 15-1-206, 15-1-216, 15-30-321, 15-31-502, 15-35-105, 15-36-107, 15-37-108, 15-38-107, 15-53-111, 15-53-155, 15-54-111, 15-55-108, 15-56-111, 15-58-106, 15-59-106, 15-59-205, 15-60-208, 15-61-205, 15-65-115, 15-70-210, 15-70-330~~ MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.3.111 for housekeeping changes. This rule has not been amended since it was originally enacted in 1985 and several of the statutes identified as authority and implementing cites have been repealed and others have been enacted.

42.3.113 WAIVER FOR EXTRAORDINARY CIRCUMSTANCES AND IN THE INTEREST OF THE JUST AND EFFICIENT ENFORCEMENT OF THE LAW

(1) Except as otherwise provided by statute, the director ~~or the deputy director for operations~~ or the director's designee may, in their discretion waive a penalty and interest when the taxpayer demonstrates extraordinary circumstances which justify the waiver of the penalty and interest for ~~the~~ just and efficient enforcement of the law.

AUTH: ~~2-4-201, 15-1-201, 15-1-206, 15-30-305, 15-31-501, 15-35-122, 15-36-107, 15-37-108, 15-38-107, 15-53-104, 15-53-155, 15-54-111, 15-55-108, 15-56-111, 15-58-106, 15-59-106, 15-59-205, 15-60-104, 15-65-102, 15-70-104~~ MCA

IMP: ~~2-4-201, 15-1-206, 15-1-216, 15-30-321, 15-31-502, 15-35-105, 15-36-107, 15-37-108, 15-38-107, 15-53-111, 15-53-155, 15-54-111, 15-55-108, 15-56-111, 15-58-106, 15-59-106, 15-59-205, 15-60-208, 15-61-205, 15-65-115, 15-70-210, 15-70-330~~ MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.3.113 for housekeeping changes to comply with the requirements of 2-4-314, MCA, in conducting a biennial review of the department rules. The changes to the authority and implementing statutes are necessary because several of the statutes have been repealed and others enacted since the rules were adopted in 1985.

42.3.120 DEPARTMENT DETERMINATION THAT COLLECTION OF DELINQUENT ACCOUNTS IS NOT FOR COST EFFECTIVENESS AND

SUBSEQUENT ACCOUNT WRITE OFF ~~(1) The definitions which apply to the rule are:~~

~~(a) "Reasonable time" means within five years or the normal statute of limitation.~~

~~(b) "Write off of collection" means removal of an assessment from active department enforcement and monitoring procedures, and does not mean a tax assessment is forgiven.~~

~~(2) (1) The department may write off any tax, penalty, or interest, when it is determined that it is no longer cost effective to attempt further collection. The reason for such write off must be documented either in the system notes or the hard file.~~

~~(2) The decision of the department to write off collection of accounts is based upon the following:~~

~~(a) through (e) remain the same.~~

~~(3) Unpaid tax obligations, the collection of which is written off by the department are not forgiven and are still payable, but the department will no longer not actively incur further expense in collecting to attempt collection on these obligations. However, the department may resume active collection of an account if:~~

~~(a) remains the same.~~

~~(b) the department received receives information which significantly changes the original basis for write off as set forth in (2).~~

~~(4) remains the same.~~

~~(5) Upon the final decision of a United States bankruptcy court, barring further collection of a debt, the department shall write off collection of any tax, penalty, or interest upon which further collection has been barred by a decision of a court of proper jurisdiction of a United States bankruptcy court.~~

AUTH: 15-1-201, MCA

IMP: 15-1-207, 15-1-216, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.3.120 for housekeeping changes to comply with the requirements of 2-4-314, MCA, in conducting a biennial review of the department rules. The deleted language is now present in law and therefore not necessary in the rule.

5. The department is proposing to repeal the following rules:

42.3.112 A TAX WILL NOT BE WAIVED which can be found on page 42-318 of the Administrative Rules of Montana.

AUTH: 2-4-201, 15-1-201, 15-1-206, 15-30-305, 15-31-501, 15-35-122, 15-36-107, 15-37-108, 15-38-107, 15-53-104, 15-54-111, 15-55-108, 15-56-111, 15-58-106, 15-59-106, 15-59-205, 15-70-104, MCA

IMP: 2-4-201, 15-1-206, 15-30-321, 15-31-502, 15-35-105, 15-36-107, 15-37-108, 15-38-107, 15-53-111, 15-54-111, 15-55-108, 15-56-111, 15-58-106, 15-59-106, 15-59-205, 15-70-210, 15-70-330, MCA

REASONABLE NECESSITY: The department is proposing to repeal ARM 42.3.112 because this is covered by statute and the rule text would be redundant.

42.3.114 APPLICATION OF 15-1-206(1), MCA which can be found on page 42-319 of the Administrative Rules of Montana.

AUTH: 2-4-201, 15-1-201, 15-1-206, 15-30-305, 15-31-501, 15-35-122, 15-36-107, 15-37-108, 15-38-107, 15-53-104, 15-54-111, 15-55-108, 15-56-111, 15-58-106, 15-59-106, 15-59-205, 15-70-104, MCA

IMP: 2-4-201, 15-1-206, 15-30-321, 15-31-502, 15-35-105, 15-36-107, 15-37-108, 15-38-107, 15-53-111, 15-54-111, 15-55-108, 15-56-111, 15-58-106, 15-59-106, 15-59-205, 15-70-210, 15-70-330, MCA

REASONABLE NECESSITY: The department is proposing to repeal ARM 42.3.114 because the rule is no longer applicable. Section 15-1-206, MCA, allows the department, at its discretion, to waive, for reasonable cause, any penalty assessed by the department.

6. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-5828; fax (406) 444-3696; or e-mail canderson@mt.gov and must be received no later than January 26, 2007.

7. Cleo Anderson, Department of Revenue, Director's Office, has been designated to preside over and conduct the hearing.

8. An electronic copy of this Notice of Public Hearing is available through the department's site on the World Wide Web at www.mt.gov/revenue, under "for your reference"; "DOR administrative rules"; and "upcoming events and proposed rule changes." The department strives to make the electronic copy of this Notice of Public Hearing conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

9. The Department of Revenue 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 particular subject matter or matters. Such written request may be mailed or delivered to the person in 6 above or faxed to the office at (406) 444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

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

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

/s/ Dan R. Bucks
DAN R. BUCKS
Director of Revenue

Certified to Secretary of State December 11, 2006

BEFORE THE STATE COMPENSATION INSURANCE FUND
OF THE STATE OF MONTANA

In the matter of the amendment) NOTICE OF AMENDMENT
of ARM 2.55.320 pertaining to)
classifications of employments and)
ARM 2.55.502 pertaining to individual)
loss sensitive dividend plans)

TO: All Concerned Persons

1. On October 26, 2006, the Montana State Fund published MAR Notice No. 2-55-36 regarding the proposed amendment of the above-stated rules at page 2440 of the 2006 Montana Administrative Register, Issue Number 20.

2. The Montana State Fund Board of Directors has amended ARM 2.55.320 and 2.55.502 exactly as proposed.

3. No comments or testimony were received.

/s/ Nancy Butler
Nancy Butler, General Counsel
Rule Reviewer

/s/ Ed Henrich
Ed Henrich
Chairman of the Board

/s/ Dal Smilie
Dal Smilie, Chief Legal Counsel
Rule Reviewer

Certified to the Secretary of State December 11, 2006.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the amendment of ARM) NOTICE OF AMENDMENT
2.59.111 pertaining to retention of bank)
records)

TO: All Concerned Persons

1. On July 27, 2006, the Division of Banking and Financial Institutions published MAR Notice No. 2-2-375 regarding the public hearing on the proposed amendment of the above-stated rule at page 1762 of the 2006 Montana Administrative Register, issue number 14.

2. After consideration of the comments received, the Division of Banking and Financial Institutions has amended ARM 2.59.111 as proposed but with the following changes from the original proposal, matter to be stricken interlined, new matter underlined:

2.59.111 RETENTION OF BANK RECORDS (1) Records of customer accounts must be held in accordance with 32-1-491, MCA.

~~(4)~~ (2) The schedule Bank Records Publication Appendix "A" 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 by the commissioner. The ~~July 27, 2006~~ December 11, 2006, edition of the Bank 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) through (5) remain the same but are renumbered (3) through (6).

(7) "Customer accounts" means savings deposit accounts, checking, or demand deposit accounts, certificates of deposit, safety deposit boxes, and trust accounts.

AUTH: 32-1-218, MCA

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

3. The following comments were received and appear with the division's responses:

Comment 1: A comment was received in regard to possible conflict between 32-1-491, MCA, which require that banks keep customer records for eight years, and some of the provisions in the Appendix A.

Response 1: The division agrees that many items contained in the Appendix A would be considered customer records and are subject to the requirements of 32-1-

491, MCA. Any records on customer checking accounts, savings accounts, or any other depository accounts, safety deposit boxes, and trust accounts are subject to 32-1-491, MCA. ARM 2.59.111 and Appendix A have been modified to include only those bank records that are not considered customer account records.

Comment 2: A comment was received that several sections of the Appendix A contradict itself.

Response 2: The division reviewed Appendix A and modified those sections that may have been in conflict or inconsistent with other sections of Appendix A.

Comment 3: A comment was received in regard to the use of out-of-date terminology in Appendix A. In particular, many of the older forms of electronic data such as interface tapes and drums are no longer used.

Response 3: The division has modified the ARM 2.59.111(3) to include information stored electronically. The division is reluctant to remove those old terms because there may be some banks that still use some of those media to store data.

4. The division has amended one of the statutes implemented by ARM 2.59.111. The division made a typographical error in the Notice of Amendment by listing 32-9-492, MCA. The correct statute, 32-1-492, MCA, has now been listed in this Notice of Amendment.

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 December 11, 2006.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I)
pertaining to retention of credit union)
records)

NOTICE OF ADOPTION

TO: All Concerned Persons

1. On July 27, 2006, the Division of Banking and Financial Institutions published MAR Notice No. 2-2-374 regarding the public hearing on the proposed adoption of the above-stated rule at page 1759 of the 2006 Montana Administrative Register, issue number 14.

2. After consideration of the comments received, the Division of Banking and Financial Institutions has adopted the following new rule I (2.59.405) as proposed but with the following changes from the original proposal, matter to be stricken interlined, new matter underlined:

NEW RULE I (2.59.405) RETENTION OF CREDIT UNION RECORDS

(1) Credit unions are required to preserve or keep their records of nonmember accounts for at least eight years after January 1 of the year following the time that the records are made; however, records showing unpaid balances in favor of members may not be destroyed.

~~(4)~~ (2) The schedule Credit Union Records Publication Appendix "A" establishes the minimum period for retention of nonmember account records for all state-chartered credit unions ~~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~~ December 11, 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) through (5) remain the same but are renumbered (3) through (6).

(7) "Member accounts" mean share savings accounts, share draft accounts, share certificates, safety deposit boxes, and trust accounts.

AUTH: 32-3-201, MCA

IMP: 32-3-204, MCA

3. The following comments were received and appear with the division's responses:

Comment 1: A comment was received in regard to some records being listed under multiple categories.

Response 1: The division has reviewed the Appendix A and made corrections to ensure that records are not unnecessarily listed in multiple categories.

Comment 2: A comment was received that the Appendix A contained many bank-related records.

Response 2: The division reviewed Appendix A and deleted requirements that did not apply to credit unions. However, those requirements that could apply to credit unions or banks were not removed.

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 December 11, 2006.

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION
OF THE STATE OF MONTANA

In the matter of the	)	NOTICE OF ADOPTION AND
adoption of New Rule I Quality	)	AMENDMENT
Educator Payments - General Fund,)	
New Rule II At Risk Student Payments -)	
General Fund, New Rule III Indian)	
Education for All Payments - General)	
Fund, New Rule IV American Indian)	
Achievement Gap Payments - General)	
Fund, and the amendment of)	
ARM 10.7.106, 10.7.106A, 10.7.113)	
through 10.7.115, 10.10.301,)	
10.10.301B, 10.10.301D, 10.10.311,)	
10.10.318, 10.10.610, 10.10.611)	
through 10.10.615, 10.15.101,)	
10.16.3804, 10.16.3811, 10.16.3812,)	
10.16.3816, 10.20.102, 10.20.104,)	
10.20.105, 10.21.101B, 10.21.101E,)	
10.21.101G, 10.21.101I, 10.21.102B,)	
10.21.102E, 10.22.102, 10.22.204,)	
10.23.102 through 10.23.104,)	
10.23.108, 10.30.403, 10.30.406, and)	
10.30.415, relating to School Finance)	

TO: All Concerned Persons

1. On November 9, 2006, the Superintendent of Public Instruction published MAR Notice No. 10-7-115 regarding the public hearing on the proposed adoption and amendment of the above-stated rules at page 2728 of the 2006 Montana Administrative Register, Issue Number 21.

2. The Superintendent of Public Instruction has adopted the following new rules exactly as proposed:

NEW RULE I Quality Educator Payments - General Fund	ARM 10.21.201
NEW RULE II At Risk Student Payments - General Fund	ARM 10.21.202
NEW RULE III Indian Education for All Payments - General Fund	ARM 10.21.203
NEW RULE IV American Indian Achievement Gap Payments - General Fund	ARM 10.21.204

3. The Superintendent of Public Instruction has amended ARM 10.7.106, 10.7.106A, 10.7.113 through 10.7.115, 10.10.301, 10.10.310B, 10.10.301D, 10.10.311, 10.10.318, 10.10.610, 10.10.611 through 10.10.615, 10.15.101, 10.16.3804, 10.16.3811, 10.16.3812, 10.16.3816, 10.20.102, 10.20.104, 10.20.105,

10.21.101B, 10.21.101E, 10.21.101G, 10.21.101I, 10.21.102B, 10.21.102E, 10.22.102, 10.22.204, 10.23.102 through 10.23.104, 10.23.108, 10.30.403, 10.30.406, and 10.30.415 exactly as proposed.

4. No comments or testimony were received.

/s/ Linda McCulloch
Linda McCulloch
State Superintendent
of Public Instruction

/s/ Catherine K. Warhank
Rule Reviewer

Certified to the Secretary of State December 11, 2006.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of ARM)
17.30.630 pertaining to temporary water)
quality standards)

NOTICE OF AMENDMENT

(WATER QUALITY)

TO: All Concerned Persons

1. On August 24, 2006, the Board of Environmental Review published MAR Notice No. 17-250 regarding a notice of public hearing on the proposed amendment of the above-stated rule at page 1981, 2006 Montana Administrative Register, issue number 16.

2. The board has amended the rule exactly as proposed.

3. The following comments were received and appear with the board's responses:

COMMENT NO. 1: ASARCO, LLC, would like to go on record as being opposed to the repeal, so that would be opposed to the adoption of this rule.

RESPONSE: Comment noted.

COMMENT NO. 2: While acknowledging that many of the delays can be attributed to ASARCO, commentor mentioned that some of the delays were due to the U.S. Forest Service (USFS) and/or DEQ. As a point of emphasis, the time taken for DEQ to approve the 2006 Reclamation Work Plan was used as an example of an inaction that impacted the IP schedule. The commentor stressed that "it becomes very difficult to do projects when you can't start them until October or November each year."

RESPONSE: The proposed rulemaking is not based on one instance of failure to comply with the implementation plan. The failures have been chronic. In addition, numerous remedial activities have not been completed in accordance with the implementation plan schedule, including (1) the mine waste reclamation plan and removal for the Lower Mike Horse Creek (scheduled for completion in 2003); (2) the dispersed floodplain tailings reclamation plan and removal for the Beartrap Creek drainage (scheduled for completion in 2004); (3) the mine waste and possible adit discharge reclamation plan and removal on the Flosse and Louise patented claim (scheduled for completion in 2004); (4) the concentrated tailings reclamation plan and removal for the Upper Blackfoot River drainage near the confluence with Shave Creek (scheduled for completion in 2005); (5) the dispersed floodplain tailings reclamation plan and removal for the Upper Blackfoot River drainage (scheduled for completion in 2005); and (6) Stevens Gulch reclamation plan (scheduled for completion in 2006).

COMMENT NO. 3: ASARCO states that the repeal of the temporary standards will have little effect on moving the project forward. ASARCO

acknowledged that the water treatment system will not meet B-1 standards and that that was known at the time of construction. ASARCO added that it is prepared, in the event that the department does choose to repeal the temporary permits, to install a mechanical water treatment system that will meet the new permit limits.

RESPONSE: Revocation of the temporary standards can help move the cleanup project forward. Revocation will allow the state to require the installation of an adequate water treatment system or other remedy that will comply with B-1 standards.

COMMENT NO. 4: ASARCO states that there will be adverse consequences as a result of the repeal of the temporary standards; these are no more state-wide sampling and the lack of a schedule will result in "a disincentive to people doing anything."

RESPONSE: We presume that ASARCO is referring to adverse impact to commitment to further work. However, state and federal agencies will continue to assume responsibility and will proceed with cleanup at the Upper Blackfoot Mining Complex (UBMC) regardless of the temporary standards status. All activities that would have been covered under the implementation plan will be required under CECRA, and may include, but are not limited to, the development of a remedial alternative that will address adit discharge to the point of compliance with B-1 standards, annual site-wide sampling, and a schedule to accomplish remedial objectives as they are identified under CECRA.

Reviewed by:

BOARD OF ENVIRONMENTAL REVIEW

/s/ John F. North

JOHN F. NORTH

Rule Reviewer

/s/ Joseph W. Russell

JOSEPH W. RUSSELL, M.P.H.

Chairman

Certified to the Secretary of State, December 11, 2006.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment of ARM)	NOTICE OF AMENDMENT
17.53.105 pertaining to incorporation by)	
reference of current federal regulations)	(HAZARDOUS WASTE)
into the hazardous waste program)	

TO: All Concerned Persons

1. On October 5, 2006, the Department of Environmental Quality published MAR Notice No. 17-252 regarding a notice of public hearing on the proposed amendment of the above-stated rules at page 2288, 2006 Montana Administrative Register, issue number 19.

2. The department has amended ARM 17.53.105 as proposed, but with the following changes in numbering:

17.53.105 INCORPORATION BY REFERENCE (1) and (2) remain as proposed.

(3) References in this chapter that incorporate 40 CFR 60, 61, 63, 124, 260 through 266, 268, 270, 273, or 279 refer to the version of that publication revised as of July 1, 2006. References in this chapter to 40 CFR 124, 260 through 266, 268, 270, 273, or 279 that incorporate publications refer to the version of the publication as specified at 40 CFR 260.11. Provisions within 40 CFR 60, 61, and 63 that are referenced in 40 CFR 124, 260 through 266, 268, 270, 273, or 279 are also incorporated by reference.

(a) and (b) remain as proposed, but are renumbered (4) and (5).

(4) through (7) remain as proposed, but are renumbered (6) through (9).

3. No public comments or testimony were received.

Reviewed by:

DEPARTMENT OF ENVIRONMENTAL
QUALITY

/s/ David Rusoff
DAVID RUSOFF
Rule Reviewer

By: /s/ Richard H. Oppen
RICHARD H. OPPER
Director

Certified to the Secretary of State, December 11, 2006.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment of ARM)	NOTICE OF AMENDMENT AND
17.85.101, 17.85.103, 17.85.105,)	ADOPTION
17.85.107, 17.85.110, 17.85.111,)	
17.85.114, and the adoption of New Rule)	(ALTERNATIVE ENERGY)
I pertaining to the Alternative Energy)	
Revolving Loan Program)	

TO: All Concerned Persons

1. On July 6, 2006, the Department of Environmental Quality published MAR Notice No. 17-249 regarding a notice of proposed amendment and adoption of the above-stated rules at page 1678, 2006 Montana Administrative Register, issue number 13.

2. The department has amended ARM 17.85.101, 17.85.103, 17.85.105, 17.85.107, 17.85.110, 17.85.111, and 17.85.114, and adopted New Rule I (17.85.104) exactly as proposed.

3. The following comments were received and appear with the department's responses:

COMMENT NO. 1: A commentor asked about the elimination of a minimum loan amount in proposed ARM 17.85.107. The commentor asked if the department has considered that the cost of administration/due diligence/underwriting for a loan of \$100 is the same as one for \$40,000.

RESPONSE: The department has considered the financial impact of making small loans, and has allowed the financial contractor to adopt a minimum loan origination fee to cover its costs. The intent of the program is to allow Montanans to access loan funds for qualified projects, and there are very few renewable energy systems that would qualify for funding that would require less than a \$3,000 loan. To date, the smallest loan the program has financed was for a pellet stove system that cost between \$3,000 and \$4,000, so there has not been a problem with very small loans. The department is not changing the proposed rule.

COMMENT NO. 2: The same commentor concurred with the proposed amendments concerning loan conditions in ARM 17.85.114(4)(a) through (e). Further, the commentor recommended that the interest rate established each year be tied to the federal fund rate or the ten-year U.S. Treasury Bill rate on January 31 of each year.

RESPONSE: Under ARM 17.85.114(4)(e), which allows the department to evaluate other factors that it determines to be appropriate, the department may, if it determines them to be an appropriate factor, use the federal rates mentioned in the comment as one of the criteria used to set annual interest rates. The department is committed to keeping interest rates low enough to meet the intent of the law to

establish a low interest revolving loan program, and to keep rates attractive to potential borrowers. Because use of the federal rates may not always achieve this goal, the department is not changing the proposed rule.

Reviewed by:

DEPARTMENT OF ENVIRONMENTAL
QUALITY

/s/ John F. North

JOHN F. NORTH

Rule Reviewer

By: /s/ Richard H. Oppen

RICHARD H. OPPER

Director

Certified to the Secretary of State, December 11, 2006.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the adoption)
of NEW RULE I, related to)
summary judgment practice and)
procedure)

NOTICE OF ADOPTION

TO: All Concerned Persons

1. On October 5, 2006, the Department of Labor and Industry published MAR Notice No. 24-26-211 regarding the public hearing on the proposed adoption of the above-stated rule at page 2311 of the 2006 Montana Administrative Register, issue no. 19.
2. On November 3, 2006, the department held a public hearing in Helena regarding the above-stated rule. No comments were received at the public hearing and no written comments were received prior to the closing date of November 13, 2006.
3. The department has adopted NEW RULE I (24.26.213) exactly as proposed.

/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 December 11, 2006

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

In the matter of the adoption of New	)	NOTICE OF ADOPTION AND
Rules I through IV, and the amendment	)	AMENDMENT
of ARM 37.85.406, 37.86.105,)	
37.86.205, 37.86.506, 37.86.2801,)	
37.86.2803, 37.86.2901, 37.86.2905,)	
37.86.2912, 37.86.2918, 37.86.2943,)	
37.86.2947, 37.86.3001, 37.86.3005,)	
37.86.3007, 37.86.3009, 37.86.3016,)	
37.86.3018, 37.86.3020, 37.86.3025,)	
37.88.206, 37.88.306, 37.88.606, and)	
37.88.1106 pertaining to Medicaid)	
reimbursement of hospitals, provider)	
based entities, and birthing centers)	

TO: All Interested Persons

1. On November 9, 2006, the Department of Public Health and Human Services published MAR Notice No. 37-395 pertaining to the public hearing on the proposed adoption and amendment of the above-stated rules, at page 2793 of the 2006 Montana Administrative Register, issue number 21.

2. The department has adopted New Rules I (37.86.3031), and III (37.86.3035) as proposed.

3. The department has amended ARM 37.85.406, 37.86.105, 37.86.205, 37.86.506, 37.86.2801, 37.86.2803, 37.86.2901, 37.86.2905, 37.86.2912, 37.86.2918, 37.86.2943, 37.86.3005, 37.86.3007, 37.86.3016, 37.86.3018, 37.86.3025, 37.88.206, 37.88.306, and 37.88.606 as proposed.

4. The department has adopted the following rules as proposed with the following changes from the original proposal. Matter to be added is underlined. Matter to be deleted is interlined.

RULE II (ARM 37.86.3033) PROVIDER BASED ENTITY SERVICES,
RECIPIENT ACCESS AND NOTIFICATION (1) Hospitals granted a provider based status by the department may not restrict access to Medicaid clients ~~and must comply with antidumping rules in 42 CFR 489.20.~~

(2) A physician, clinic, or mid-level practitioner who practices primary care and is a provider based entity, except as described in (3) is required to participate in the Passport to Health and Team Care programs (ARM 37.86.5101 through 37.86.5120 and ARM 37.86.5201 through 37.86.5306). The provider:

(a) through (c) remain as proposed.

(d) ~~must set a Passport to Health caseload limit of at least 100 per physician~~

or mid-level unless the department grants approval for a lower level accept new Medicaid clients at the same rate non-Medicaid clients are accepted; and
(e) through (5)(a) remain as proposed.

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

RULE IV (37.86.3037) PROVIDER BASED ENTITY SERVICES, REIMBURSEMENT (1) and (2) remain as proposed.

(3) Provider based entity facilities must bill using revenue code 510 for CPT codes for Evaluation and Management services (E and M codes) and procedural codes ~~with the exception of laboratory services as in ARM 37.86.3007(3) as per~~ Medicare guidelines in Chapter III and in Appendix 3 of the Uniform Billing Editor. HCPCS/CPT codes must be mapped to the 510 revenue code when the procedure was performed in a provider based clinic setting unless Medicare issued instructions for use of another revenue code.

(4) Provider based entity professionals must bill using the correct site-of-service so that appropriate payment amounts may be determined as in ARM 37.86.105, 37.86.205, 37.86.506, 37.88.206, and 37.88.606.

(a) Unless otherwise noted, only CPT codes for Evaluation and Management services, professional components, and procedural codes may be billed for professional reimbursement in provider based entities.

(i) through (6) remain as proposed.

AUTH: 53-6-101, 53-6-113, MCA
IMP: 53-6-101, MCA

5. The department has amended the following rules as proposed with the following changes from the original proposal. Matter to be added is underlined. Matter to be deleted is interlined.

37.86.3001 OUTPATIENT HOSPITAL AND BIRTHING CENTER SERVICES, DEFINITIONS (1) and (2) remain as proposed.

(3) "Birthing center" means a facility that provides comprehensive obstetrical care for women in which births are planned to occur away from the mother's usual residence following normal, uncomplicated, low risk pregnancy and is either:

(a) a licensed outpatient center for primary care with medical resources as defined at 50-5-101, MCA,~~that is used; or~~

(b) a private office of a physician or certified nurse mid-wife that is accredited by a national organization as an alternative to a homebirth or a hospital birth.

(4) through (18) remain as proposed.

(19) For purposes of provider based entity billing, a professional is a physician, podiatrist, mid-level, licensed clinical social worker, licensed professional counselor, or a licensed psychologist.

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

37.86.3009 OUTPATIENT HOSPITAL SERVICES, PAYMENT METHODOLOGY, EMERGENCY VISIT SERVICES (1) For emergency visits that are not provided by exempt hospitals or critical access hospitals as defined in ARM 37.86.2901, reimbursement will be based on the ambulatory payment classifications APC methodology in ARM 37.86.3020, ~~(except) emergency room visits with CPT codes 99281 and 99282 will be reimbursed based on clinical fees for APC 00600~~ the lowest level clinical APC weight.

(a) and (2) remain as proposed.

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

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

37.86.3020 OUTPATIENT HOSPITAL AND BIRTHING CENTER SERVICES, OUTPATIENT PROSPECTIVE PAYMENT SYSTEM (OPPS) METHODOLOGY, AMBULATORY PAYMENT CLASSIFICATION (1) through (1)(h) remain as proposed.

(2) The department adopts and incorporates by reference the OPPS Schedules published by the Centers for Medicare and Medicaid Services (CMS) in 71 Federal Register ~~463~~ 226, ~~August 23~~ November 24, 2006, ~~proposed~~ effective date January 1, 2007. A copy may be obtained through the Department of Public Health and Human Services, Health Resources Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

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

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

37.88.1106 INPATIENT PSYCHIATRIC SERVICES, REIMBURSEMENT

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

(4) Reimbursement for inpatient psychiatric services provided to Montana Medicaid recipients in facilities located outside the state of Montana will be ~~reimbursed 50% of usual and customary billed charges for medically necessary services~~ as provided in ARM 37.86.2905.

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

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

6. The department is withdrawing the amendments proposed at the December 1, 2006 hearing to ARM 37.86.2947.

The department is making changes to ARM 37.86.3009 and 37.86.3020 based on changes to the adopted Medicare Payment Rules for Outpatient Hospital Services Federal Register 226, November 24, 2006 effective date January 1, 2007.

The department is not going ahead with its proposal to amend ARM 37.86.2820 Desk Reviews, Overpayments, and Underpayments, which would have changed the repayment period of cost reports from 30 days to 60 days. It will propose this

amendment in a future rulemaking notice.

The department is dropping its proposed amendment to ARM 37.86.2947 Out-of-State Inpatient Hospital Reimbursement, which would have clarified the proposal to exempt inpatient psychiatric services from the preferred out-of-state hospital rules. Out-of-state hospitals that provide mental health services may elect to become preferred out-of-state facilities and receive interim reimbursement at hospital specific cost to charge ratio and cost settlement up to 100% of costs. All inpatient mental health services for in-state, out-of-state preferred hospitals, and out-of-state diagnosis related group (DRG) hospitals must still obtain authorization from the department's designee (currently First Health). Out-of-state residential treatment centers will still be reimbursed at 50% of charges. The rule has been restored to its original condition.

7. The department has thoroughly considered all commentary received. The comments received and the department's response to each follows:

COMMENT #1: The department has proposed that provider based facilities notify the department within 30 days of staff changes. There are already sufficient measures in place to accommodate this request without placing another requirement on providers. In order for a physician or facility to provide reimbursable services to Medicaid recipients, an enrollment process must be completed. This enrollment process should be sufficient notification to the department.

RESPONSE: Once NPI (National Provider Identification) is in place June 2007, provider enrollment will track this information electronically. Until then, providers must notify the department directly because the department has no easy means of tracking the information.

COMMENT #2: The department is proposing that reimbursement of provider based entity services under revenue code 510 be 80% of the applicable rate. While we understand that the department is seeking to control expenditures, we don't feel that reducing payment on this particular revenue code should be implemented. Provider based reimbursement recognizes that facilities have extraordinary costs in delivering services. Reducing this to a lower level than would be allowed in other settings establishes a precedent that we believe is not in the best interest of the program. The department is proposing in Rule II (ARM 37.86.3033) that all provider based facilities not restrict access to Medicaid clients as well as maintain a substantial Passport caseload, so we believe that the providers should be compensated fairly under this arrangement.

RESPONSE: The department's proposed reduction in reimbursement for certain services in a provider based setting amounts to only 9.59% overall. This is still 27.1% more than received by freestanding physician clinics, which is the equivalent settling. The department feels that it is a fair trade off to require Passport enrollment and specific caseload requirements for this higher rate of reimbursement.

COMMENT #3: The proposed rules for reimbursement of provider based entities requires a minimum caseload of at least 100 Passport patients per physician. Physician availability and caseload management of Passport patients will vary greatly among physicians due to a number of variables such as:

- a. Number of established patients for a physician in the practice.
- b. Whether a physician is a full-time or part-time employee.
- c. Current case mix and medical complexity of established patient base.

We recommend that this requirement and caseload for a provider based practice be based on:

- a. Number of Passport patients in the area or region.
- b. Number of provider based clinics in the area served.
- c. Number of primary care physician or providers in the area.
- d. Wait times as well as access problems for current Passport patients in the service area.

A caseload limit by practice, based upon the number of full-time equivalent physicians and providers, as well as the current established patient base for each physician, would be a more practical and appropriate way to ensure access for Passport patients.

While we understand that the language for this requirement is taken from the Passport requirements, this has never been the practice of Medicaid. In recent communication with Montana Medicaid, we were told the minimum caseload is one patient. We would be happy to supply you with that information we received.

Montana hospitals employ or contract for services from providers to treat all patients regardless of their insurance status or ability to pay for care. The provider may be an employee or may merely be providing medical services on a part time basis. The provider may practice at more than one location. For example, a physician may provide some care in a hospital based clinic, and other services in private practice or at other hospitals.

RESPONSE: The department received a suggestion for alternative language to the caseload of 100 Passport to Health patients per physician or mid-level that we believe will meet our goal of ensuring access for Medicaid clients to the extent that services are available in the community. Please see the response to Comment #17 for further detail.

There was some misinformation provided regarding the current Passport rule. The current Passport rule has a maximum limit of 1000. The Centers for Medicare and Medicaid Services (CMS) has a maximum limit of 1500 per provider. It does not have a minimum limit. Currently, there is no minimum caseload requirement for participation in the Passport to Health program. We apologize for the confusion.

COMMENT #4: In Rule I(1) (ARM 37.86.3031) the department proposes to impose new administrative requirements on hospitals that seek provider based status for some clinic services. The requirements include providing notice to the department of provider based status conferred by the Centers for Medicare and Medicaid Services prior to billing services.

Montana Medicaid currently allows provider based clinic billing, and has done so for more than three years. It appears that the department intends merely to follow federal regulatory policy for these services. We are concerned that the department is proposing to apply the new rule retroactively to services provided back to August 1, 2003. We request that the department amend the rule to reflect the date the proposed rule is adopted.

RESPONSE: Section (1) was originally ARM 37.86.3025(6) and dates back to August 1, 2003. Sections (2), (3), and (4) are new to the rule effective January 1, 2007. The department does not intend to apply any portions of new Rules I through IV (ARM 37.86.3031, 37.86.3033, 37.86.3035, and 37.86.3037) retroactively. The other sections that were previously in ARM 37.86.3025(6) are already applicable since August 1, 2003.

COMMENT #5: Rule II(1) (ARM 37.86.3033) states that the hospital may not restrict access to Medicaid clients and must comply with antidumping rules in 42 CFR 489.20. This language is simply unnecessary. Hospitals, including their provider based entities must comply with antidumping rules as a matter of federal law. We request that the department strike this entire sentence from the regulation.

RESPONSE: Thank you for your comment. The department has considered this and decided to keep the section stating that the hospital may not restrict access to Medicaid clients (which dates back to the August 2003 rule) but will strike "and must comply with antidumping rules in 42 CFR 489.20".

COMMENT #6: Rule II (ARM 37.86.3033) states that hospitals may not "restrict access to Medicaid clients". This wording could be taken to mean that hospitals must serve patients other than those covered by Medicaid. In other words, the hospital could not establish a "Medicaid-only" clinic. An alternative meaning is that the department intends to grant unlimited access to care for Medicaid clients. The sentence could be taken to mean that a hospital could not deny services regardless of medical necessity or any other reason. Hospitals do attempt to restrict access to persons who are seeking unneeded medical care, including prescription drugs. Medical providers, including hospitals, already must comply with department rules provided in ARM Title 37, chapter 86, subchapters 2 and 3. These rules address access, medical necessity, and prohibit discrimination against Medicaid beneficiaries.

RESPONSE: The department does not believe that this sentence could be interpreted to mean anything other than a provider based facility must allow Medicaid recipients access to services as stated in Rule II(2) through (4) (ARM

37.86.3033). As the commenter noted, the department has specific rules in place in both the general Medicaid rule and the hospital rule that prohibit reimbursement of services that are not medically necessary.

COMMENT #7: The department has, since the inception of the Passport to Health program, barred hospitals from participating in this program. A physician that practices primary care at a hospital-based clinic is not himself alone a "provider based entity". If the department intends by this regulation to require a hospital to participate in the Passport program, the rule should be so worded, and the Passport regulations amended to reflect facility contracts rather than practitioner contracts. We suggest that the department allow the hospital to sign the Passport to Health contract instead of requiring each provider to sign a separate agreement. We are prepared to work with the department to create the appropriate participation criteria for hospitals and provider based entities.

RESPONSE: The goal of the Passport to Health program is to establish a medical home between the Medicaid client and the primary care provider. Primary care providers are eligible to be Passport to Health providers. The department intends to require physicians and mid-levels, while operating under the umbrella of the provider based entity, to participate in the Passport program unless exempted by the department.

COMMENT #8: We are not aware of any shortage of Passport to Health providers, especially in the hospital-based clinics that already exist. In fact, most hospital-based clinics have providers who are participating in the Passport to Health program. Further, some hospital-based clinics are the sole remaining practice setting open to new Medicaid clients. The department's proposal may actually be counterproductive to the access Medicaid clients now enjoy.

RESPONSE: The department has only identified one area (with a provider based entity) that consistently experiences an access problem. In the majority of areas with provider based entities, the Passport to Health providers associated with these provider based entities are carrying a larger case load than 100. However, some of these areas are nearing the point where access could become an issue. This proactive step would ensure our clients continue to experience access to care. Also, the department has had many conversations with the Montana Hospital Association (MHA) and hospital emergency rooms over the years. During those conversations MHA and hospital personnel frequently stated that it was necessary for clients to go to the emergency room because they did not have access to their Passport primary care physicians.

COMMENT #9: Rule II(5)(a) (ARM 37.86.3033) is redundant of federal requirements. A hospital is already required to notice Medicare-eligible patients of their deductible and co-payment obligations.

RESPONSE: A hospital is required to notify Medicare recipients under federal regulations but not Medicaid recipients. Montana Medicaid asked an in-state

hospital to comply with this regulation in regard to Medicaid recipients last year and was told that since the Medicaid regulation did not specifically require them to do so, they would not. We are requiring them to do so here.

COMMENT #10: We object to all of the provisions of Rule III (ARM 37.86.3035). We are unable to detect which provisions of this rule are redundant to existing regulatory sanctions imposed on providers and which are new standards. Further, a physician who provides care at the hospital may be responsible to bill their own services. The hospital should not be sanctioned by the department for the failure of a physician to fulfill the obligations imposed by the Passport to Health program (Rule II) (ARM 37.86.3033) or billing with the appropriate site of service codes (Rule IV) (ARM 37.86.3037). A physician that only provides minimal services at the provider based entity could fail to comply with Passport requirements elsewhere and end up bringing sanctions onto the hospital.

RESPONSE: The department intends this rule to apply to the provider based entity and only to the professionals when they are doing business under the umbrella of the provider based entity. If the professional is responsible for billing their own services yet is performing the service under the umbrella of the provider based entity, then the department would expect to sanction the entity (be the "parent" a hospital, a physician owned corporation, or any other type of owner) for the professional failure to comply with any parts of Rules I through IV (ARM 37.86.3031, 37.86.3033, 37.86.3035, and 37.86.3037). A professional providing minimal services in a provider based entity is subject to only certain provisions of Rule II (ARM 37.86.3033). The professional would however be subject to all provisions of Rule IV (ARM 37.86.3037) every time they perform a service for the provider based entity and bill that service to Montana Medicaid.

The department is adding a definition of professional to ARM 37.86.3001(19). For purposes of provider based entity billing, a professional is a physician, podiatrist, mid-level practitioner, licensed clinical social worker, licensed professional counselor, or a licensed psychologist.

COMMENT #11: We are also concerned about how the department intends to determine compliance with the proposed regulations, especially the federal requirements that are surveyed by CMS or where compliance is determined by the Joint Commission on Accreditation of Health Care Organizations (JCAHO). The department seems to indicate that this rule requires sanctions for any violation, in any circumstance for any patient. A hospital may be in substantial compliance with the body of regulation, but make an occasional error. This rule does not address how this circumstance will be addressed.

RESPONSE: Licensing requirements and CMS surveys are conducted by the Department of Public Health and Human Services (DPHHS) Quality Assurance Division (QAD). CMS requires Montana Medicaid to impose sanctions on any entity that fails a survey. The department will continue to follow CMS's lead in sanctions for surveys.

DPHHS Surveillance and Utilization Review unit (SURS) has in the past and will continue in the future to conduct periodic post payment audits to determine provider compliance with billing regulations. This will include review of compliance for Rule IV (ARM 37.86.3037).

COMMENT #12: The current regulations that enforce Medicaid rules are sufficient to police and impose remedial action on hospitals and physicians. We request that the department withdraw this proposed regulation (Rule III) (ARM 37.86.3035). In the alternative, the department should explain why the current body of state enforcement and appeals regulations fails to address department concerns.

RESPONSE: The department has decided to keep and enforce this rule. General rules do not cover all situations for provider based entities. Specifically, they do not cover enforcement of the new Passport rule.

COMMENT #13: The department proposes to require a hospital to bill provider based clinic services using revenue code 510 for E&M codes and for most procedural codes. The department then proposes to pay 80% of the ambulatory payment classification (APC) amount rather than the full APC currently paid to a provider based clinic. No payment change is proposed for the physician component of a provider based clinic service. Department staff questions why a hospital based service should be paid more than a community based physician service. At least some services are paid at greater amounts at hospitals than at private physician offices. There are, too, some services, such as certain infusion services, that are paid higher amounts when delivered by a private practice physician as compared to a hospital. This proposed regulation is objectionable for several reasons:

- The department proposes to reduce most payments to hospital provided care but does not correct underpayment circumstances.
- The amount of payment reduction is arbitrary. The result may be payments for some procedures that are lower than amounts paid to community physicians; and
- The policy, modified at the public hearing to apply to most procedures, may apply even when those services are not available or typically provided at private physician's offices.

The department revised the proposed rules to require adherence to standard coding procedures provided by a hospital based clinic. This language is an improvement to the original proposal. But there are some procedures that may be billed, at the option of the provider, with Revenue Code 510, or elsewhere. The modified regulation extends that discretion to the hospital. As such, a surgical procedure could be billed using revenue codes other than 510. We recommend that the department specify its coding instruction for Revenue Code 510 requires only those

procedures that are integral to the E&M code itself be reported under Revenue Code 510.

RESPONSE: The proposed modification by the department does not extend the choice of using Revenue Code 510 to the hospital's discretion. All evaluation and management (E&M) codes must map to revenue code 510. Procedure codes must be mapped to the 510 Revenue Code when the service was performed in a provider based clinic setting unless Medicare issued specific instructions to use another code. The department does not intend to change this requirement.

COMMENT #14: While the department is addressing its concern about payment fairness between a community based physician and a provider based service, we are concerned that the department maintain payment equity among hospitals for similar services. By example, we illustrate our concern:

Case 1: Hospital A, Physician B. No provider based clinic in place.

The physician sees a patient at the office and diagnoses the need for an outpatient surgical procedure to be performed at the hospital. The physician claim has the office E&M code with site of service office, plus a surgical procedure, site of service hospital. The physician is paid the full E&M fee, plus a fee for surgery with the amount reduced to reflect no practice expense relative value unit (RVUs) due to the hospital site of service.

The hospital bills the surgical procedure and is paid the full APC.

Case 2: Hospital C, Physician D, Service at a provider based clinic.

The physician sees a patient at the hospital clinic and diagnoses the need for an outpatient surgical procedure also to be performed at the hospital. The physician claim has the hospital clinic E&M code, with site of service hospital, plus a surgical procedure, also with site of service hospital. The physician claim is paid a reduced visit fee, plus a reduced fee for surgery, both to reflect no practice expense RVUs.

The hospital bills the facility component for E&M services plus the surgical procedure and is paid the full APC amount for both services. The APC paid for E&M clinic services is calibrated to reflect that only the technical component of the service is included in the payment.

Under the proposed Medicaid rule, Hospital A receives full payment for the surgery, although there is no facility component for the E&M service. But Hospital C receives a 20% reduction of the surgery and a 20% reduction for the E&M APC. This case shows that a hospital that offers a clinic could be paid less money for surgery than a hospital without a clinic.

The situation becomes more confusing when Hospital C has a patient seen by Physician D in the provider based clinic, but the surgery is performed by a physician

that is not part of the provider based clinic.

In this case, the bill for Physician B is just the E&M code, paid at the reduced amount to show site of service hospital. Physician C bills the surgery, and is paid the fee also reduced by practice expense RVUs. The hospital bills the facility E&M code as provider based service, but bills the surgery as regular outpatient hospital and is paid 100% of the APC.

The department's modified proposal may address these concerns. The regulation should also be amended to provide parity for hospital services that are paid below the amount allowed in private physician offices.

RESPONSE: The department believes that the modified proposal has addressed some of these concerns. It should be noted though that there still is not payment equity between a provider based facility and a nonprovider based facility. The provider based facility is still receiving higher reimbursement than if this service were performed in a nonprovider based setting. Using the examples provided by the commenter (and an actual claim identical to the example submitted by a provider based entity) the department can demonstrate that the provider based entity is receiving a higher reimbursement for the same service than a nonprovider based service or a combination of provider based and nonprovider based. This example is for an impacted ear wax removal:

Case 1: Nonprovider based

<u>Physician services</u>	
99214 Office/outpatient visit est. patient in physician office	\$ 66.11
69210 Impacted ear wax removal in outpatient hospital	<u>27.86</u>
Total to physician	\$ 93.97
 <u>Outpatient Hospital services</u>	
69210 Impacted ear wax removal	\$ 29.30
RC 250 pharmacy (bundled)	0.00
RC 270 supplies (bundled)	<u>0.00</u>
Total to hospital	\$ 29.30
 Total Medicaid allowed to hospital and physician	 <u>\$123.27</u>

Case 2: Current payment for provider based services

<u>Physician services</u>	
99214 Office/outpatient visit est. patient in outpatient	\$ 48.92
69210 Impacted ear wax removal in outpatient hospital	<u>27.86</u>
Total to physician	\$ 76.78
 <u>Outpatient Hospital services</u>	
99214 Office/outpatient visit est. patient in outpatient	\$ 70.34

69210 Impacted ear wax removal	29.30
RC 250 pharmacy (bundled)	0.00
RC 270 supplies (bundled)	<u>0.00</u>
Total to hospital	\$ 99.64

Total Medicaid allowed to provider based entity \$176.42

Case 3: Proposed payment for provider based services

Physician services

99214 Office/outpatient visit est. patient in outpatient	\$ 48.92
69210 Impacted ear wax removal in outpatient hospital	<u>27.86</u>
Total to physician	\$ 76.78

Outpatient Hospital services

99214 Office/outpatient visit est. patient in outpatient	\$ 56.27
69210 Impacted ear wax removal	23.44
RC 250 pharmacy (bundled)	0.00
RC 270 supplies (bundled)	<u>0.00</u>
Total to hospital	\$ 79.71

Total Medicaid allowed to provider based entity \$156.49

The department believes that requiring Passport participation of provider based entities would help balance out this inequity between provider based reimbursement and nonprovider based reimbursement.

The Outpatient Prospective Payment System (OPPS) is not designed to be equitable to individual departments within a facility. Some departments will receive higher reimbursement and some less depending upon the services offered. Overall, all provider based entities are receiving higher reimbursement from Montana Medicaid.

COMMENT #15: At ARM 37.86.3001(16) the department includes the term professional providers in the definition of a provider based entity as in 42 CFR 413.65. The federal differs from the state by using the term personnel rather than professional provider. The department should amend its rule to be consistent with federal wording.

RESPONSE: The federal term of "personnel" does not meet the department's needs. The department is adding a definition of professional to ARM 37.86.3001(19). For purposes of provider based entity billing, a professional is a physician, podiatrist, mid-level practitioner, licensed clinical social worker, licensed professional counselor, or a licensed psychologist. The department will add this definition to ARM 37.86.3001(19).

COMMENT #16: We oppose adoption of Rule II(2) (ARM 37.86.3033). The

provider based entity status is granted to the facility. Yet this proposed regulation also imposes regulations on the physician or mid-level practitioner. At best this requirement seems misplaced. At worst, the regulation may be tantamount to tortuous interference with a hospital's provider contract arrangements.

The state interferes with a hospital's relationship with the physician by requiring the physician to enter into a separate contract with Medicaid that imposes requirements on their practice that extend beyond their relationship with the hospital. An independent right to contract with the department does not exist in the case of an employed physician. In such cases, the hospital would be the contractor.

RESPONSE: The department disagrees. The requirement that physicians treating Medicaid clients be enrolled Medicaid providers does not interfere with a hospital's right to contract with physicians who are not enrolled. Participation as a Medicaid provider is optional, but a physician who wishes to receive Medicaid reimbursement must be enrolled and abide by Medicaid rules and requirements. Similarly, a provider based entity wishing to receive Medicaid facility reimbursement, which is greater than free standing clinic reimbursement, must be enrolled and abide by Medicaid rules. The rule simply means an enrolled provider based entity may not bill Medicaid for facility reimbursement for a Medicaid client who is treated there by a physician who is not an enrolled Medicaid provider.

COMMENT #17: The department has not provided any quantitative evidence, during this rulemaking process or in the past as part of our participation, that there is a Passport or overall Medicaid access issue, either for primary or specialty care in our state and specifically, in our service area. The department, in this proposed rule, is further stipulating that primary care providers must meet a Passport caseload of 100 per provider, if they are part of a provider based entity. Department staff has verbally stated that this caseload threshold is current rule and/or practice. We have reviewed the Passport to Health Provider Handbook and our recent Agreement for Participation as a Primary Care Provider in the Montana Medicaid Passport to Health and Team Care programs and do not find this threshold of 100 per provider. Instead, we note the options of signing up as a Passport provider as a solo provider or group provider with a case load range of 1 to 1000.

We are very willing to provide, manage, and coordinate care for Medicaid clients. We demonstrated that in the past through our participation in the Medicaid managed care plan.

Going forward, given our size and group practice structure, we would, as well, be willing to work with the department to design a care coordination program for a defined population of Medicaid Passport clients.

We are also concerned that the department may have negative bias toward provider based entities given the additional reimbursement structure. From Medicare inception, the government has recognized that hospital operated sites of care have different cost structures than freestanding facilities. CMS has identified a number of

beneficial aspects of the hospital based policy. In addition, CMS believes the policy promotes enhanced beneficiary access to a wider range of health care services by allowing entities that are sufficiently integrated with the hospital to be treated as part of the hospital for reimbursement purposes. CMS regulations set forth detailed requirements that must be met for an entity to be considered hospital based. Satisfying the hospital based criteria imposes financial burdens. In addition to the CMS policy governing provider based status, there are market forces that motivate an increasing number of physicians in our rural state to choose to become employees of a larger health care organization, and in Montana, that is the local hospital. The number of provider based clinics will grow given this reality. Certainly, patients benefit from reducing the fragmentation of health care delivery.

Given these provider based entities are all part of not-for-profit Montana hospitals and the department has not demonstrated measurable access problems for Passport clients, we would suggest the broader language of "accepting new Medicaid clients at the same rate non-Medicaid clients are accepted" as the contingency for both primary and specialty care providers. In addition to our policy concerns about linking provider based status to Passport access, we must communicate the hardship of this reimbursement reduction. We estimate that financial impact of these cuts to be \$311,625/year. Though we have worked over the past several months with the department to adjust the provider based reimbursement methodology, nonetheless, this proposed rule adoption means further erosion of Medicaid's willingness to cover the costs of care.

RESPONSE: The department provided some misinformation regarding the current Passport rule. The current Passport rule has a maximum limit of 1000 (CMS has a maximum limit of 1500 per provider). It does not have a minimum limit. Currently, there is no minimum caseload requirement for participation in the Passport to Health program. We apologize for the confusion.

In a recent survey of Medicaid Passport to Health caseload in Montana's seven major cities done by our Passport to Health enrollment broker it was determined that the physicians and mid-levels in the area served by this provider based entity were providing unlimited access to new Medicaid patients and were in fact carrying more than double the proposed caseload of 100. The department thanks the facilities in this area for their willingness to go above and beyond in providing care and access to Medicaid recipients. Unfortunately the department has identified provider based entities in which access by Medicaid recipients is a problem.

The department does not have a negative bias toward provider based entities and recognizes the beneficial aspects of this type of organization for Medicaid recipients. In fact, Montana Medicaid is currently the only state Medicaid that recognizes and allows for provider based billing. Because we are willing to offer additional reimbursement for this type of entity and because we also recognize the fact that the number of provider based entities will grow, the department must take steps to contain reimbursement within its existing budget. If the department does not reduce, at least in part, the higher reimbursement to these entities it may be forced to make

cuts in other areas.

The department agrees with the suggested alternative language and will strike the current wording in Rule II(2)(d) (ARM 37.86.3033) and instead insert "must accept new Medicaid clients at the same rate non-Medicaid clients are accepted". The department's intent is that Medicaid clients have the same access to services as non-Medicaid clients. This proposed change in language accomplishes this goal.

The department welcomes the opportunity to discuss care coordination for Medicaid Passport clients.

COMMENT #18: We agree with the comments made during the November 3, 2006 conference call with providers, that taking money from the hospital fund to reimburse birthing centers is not a good thing. As mentioned in the call, birthing centers are essentially specialty hospitals that cater to the less acute patient. When complications arise, the patient is brought to one of our hospitals. The overall impact of lumping the birthing centers in with hospitals is decreased reimbursement for hospitals. We recommend the department find other sources of funding for birthing centers.

RESPONSE: Medicaid pays for births in a hospital as they occur. There is no hospital fund for births that equates to a set amount of money divided by a number of births in a year. Under current payment methodology, if a woman delivers in hospital A rather than hospital B, hospital A will be reimbursed. While hospital B may suffer a loss of volume or potential funding for deliveries, it would not suffer an actual loss of reimbursement because the birth did not occur at hospital B and they provided no service they could charge for. In other words, they provided no service, and subsequently they were not paid. With the advent of payment for birthing centers, a similar situation occurs. The birthing center provides a delivery service and is paid. While a hospital may lose a potential delivery, they did not perform a service and thus did not experience an actual decrease in funding.

Over the past year, several Montana Medicaid recipients have elected to deliver in a birthing center. Because this was not a Medicaid covered service, the recipient had to cover the cost of the birth herself. By adding coverage for deliveries in birthing centers, the department is not taking money from the hospitals but is deflecting out of pocket reimbursement on behalf of Medicaid recipients. Coverage of a facility fee to birthing centers may reduce potential reimbursement to hospitals but it does not reduce actual reimbursement. Reimbursement to birthing centers will be tracked separately from the hospital budget.

Birthing centers are a new provider type to the department. Therefore, we have limited cost and charge information available. Because the birthing centers do not provide services for difficult births and the array of services are very limited, the department did not wish to reimburse a birthing center at a higher rate than normal newborn deliveries in a hospital setting. The department determined that use of the OPPS payment methodology was the best payment system to use until further cost

and charge information can be gathered and analyzed. The payment rate will be the same for birthing centers as it is for outpatient hospitals but will be less than the payment for inpatient hospital births.

Since they are not hospitals, birthing center deliveries will not be included in the annual October rebase of diagnosis related groups (DRGs). If hospitals do end up handling more difficult cases because normal deliveries are done in a birthing center setting, that will be reflected in the casemix calculation when the department rebases its budget.

COMMENT #19: We oppose the inclusion of birthing centers into the hospital rules. Birthing centers do not provide the array of services available at a hospital nor do they incur the costs associated with hospitals. Utilizing the OPPS payment methodology will result in birthing centers being paid a rate which is proportionally higher than hospitals. We would ask that the department consider including birthing centers into the rules for Ambulatory Surgical Centers (ASC) and set payment rates based on this model. By their very nature, they are more similar to ASCs than hospitals and it would seem to make sense to have a payment rate based upon a consistent grouping. This would result in more equitable and even payment distribution to the providers.

RESPONSE: Birthing centers are a new provider type to the department. Therefore, we have no cost information available. Because the birthing centers do not provide services for difficult births and their array of services are very limited, the department did not wish to reimburse a birthing center at a higher rate than normal newborn deliveries in a hospital setting. The ASC payment methodology is not designed for normal newborn deliveries, the OPPS methodology is. The payment rate will be the same for birthing centers as it is for outpatient hospitals but will be less than the payment for inpatient hospital births. The department will gather cost information and will continue to analyze these services.

COMMENT #20: In proposed ARM 37.86.3001(3) the department defines a birthing center as a licensed outpatient center for primary care that is used as an alternative to a homebirth or a hospital birth. We oppose the adoption of this regulation. According to Montana Hospital Association (MHA) COMPdata database for outpatient services only three infants were delivered on an outpatient basis at Montana hospitals. Two of the three births were delivered in emergency rooms.

The department is reducing hospital payments because utilization growth, higher than expected outlier payments, and babies with substantial medical problems are causing hospital payments to grow beyond budgeted amounts. Yet the department proposes to potentially worsen this trend by creating an entirely new Medicaid provider type at the same time it cuts hospital payments.

We also object to the department's plan to use funds budgeted for hospitals to pay for new physician services. The department should either use funds budgeted for physician services for this new service, or delay implementation of the proposal until

this plan is approved and funded by the Montana legislature. This proposal has the appearance of cutting hospital spending to make room for a program expansion.

Physicians who choose to deliver patients in their office should not receive a facility payment in addition to their professional fee. A physician that provides global obstetric services and delivers a baby in the outpatient hospital setting receives no facility payment, nor does the hospital receive any other payment for outpatient care. That is, there is no APC payment for an outpatient delivery provided with a global obstetric service.

RESPONSE: Over the past year, several Montana Medicaid recipients have elected to deliver in a birthing center. Because this was not a Medicaid covered service, the recipient had to cover the cost of the birth herself. By adding coverage for deliveries in birthing centers the department is not taking money from the hospitals (hospitals were not paid for these births in the first place) but is deflecting out of pocket reimbursement on behalf of the recipient.

Because the birthing centers do not provide services for difficult births and the array of services are very limited, the department does not wish to reimburse a birthing center at a higher rate than normal newborn deliveries in a hospital setting. The department determined that use of the OPPS payment methodology was the best payment system to use until further cost and charge information can be gathered and analyzed. There is not an APC for payment of a global service but there is an APC for the delivery. The department has reimbursed both physician and outpatient hospital departments for normal newborn births in the past under the APC payment methodology (most of these were out-of-state).

The payment rate will be the same for birthing centers as it is for outpatient hospitals but will be less than the payment for inpatient hospital births.

Coverage of a facility fee to birthing centers will not reduce reimbursement to hospitals. Reimbursement to birthing centers will be tracked separately from the hospital budget.

COMMENT #21: We recommend that the department require a birthing center to meet national accreditation standards as a condition of participation in the Medicaid program. The current license category cited by the department has no substantive facility, program, or treatment requirements. It is reasonable for the department to require more of a birthing center than merely holding a state operating license.

Since every birthing center is obligated to pre-select only those cases that are predicted to be uncomplicated, the facility should not be paid at the average payment amount allowed for a hospital that provides services to both complicated and uncomplicated services. The department also should recognize that cases that begin care at a birthing center, but that become complicated, will be referred to a hospital emergency room or inpatient unit for additional care. It is fair to predict that hospitals are not anxious to inherit the liability, both financial and professional, for

outpatient deliveries that become complicated cases.

The department should require that a bona fide transfer agreement exists between a hospital and a birthing center as a minimum standard for Medicaid provider status. Admitting privilege at a hospital is not a transfer agreement. A transfer agreement should address communication needs, transportation protocols, and whether the case will be handed off to the hospital emergency department (ED) staff or that the birthing center physician intends to provide continuing professional care at the hospital. A hospital should be able to address indemnification for liability for accepting a birthing center's complex cases. For the department to do less is to place the safety of the mother and the baby unnecessarily at risk.

Finally, hospitals are likely to see the case mix intensity for delivery services increase, their outlier case experience worsen, and their average costs increase due to this policy. This policy is incongruent with payment reductions imposed on hospitals for these very problems. The department should be prepared to boost payments for inpatient hospital and out-of-state hospital care.

RESPONSE: DPHHS Health Resources Division (HRD) will recommend to DPHHS Quality Assurance Division (QAD) (who oversees licensing requirements) that they review the rules to determine if they should require compliance with national accreditation standards and should require transfer agreements.

Since they are not hospitals, birthing center deliveries will not be included in the annual October rebase of DRGs. If hospitals do end up handling more difficult cases because normal deliveries are done in a birthing center setting, that will be reflected in the casemix calculation in the rebase. In addition, the department is looking at a DRG alternative payment methodology for 2008 that it anticipates will generate a major reduction in complexity and a major improvement in incentives for neonatal care in Montana. This payment methodology will take into account severity and complexity in its reimbursement structure.

Birthing centers are a new provider type to the department; therefore, we have no cost information available. The department will gather cost information and will continue to analyze these services to determine if this is the best reimbursement option.

COMMENT #22: The department expects that the addition of a new category of specialty provider (birthing centers) will provide savings to the state. As stated in the rationale, the difference between a global obstetric fee and a facility fee is less than the same service delivered as a hospital inpatient. This analysis is inadequate to support the notion that there will be cost savings.

The APC payment method is proposed for the facility payment portion provided to birthing center. The APC for a global obstetric code is zero dollars. The only way for a birthing center to qualify for a facility payment is to provide obstetric care in a fashion that is not billed as a global procedure. The department states that the

facility payment for a birthing center will be \$3242. If the APC is billed with a global code the fee is zero. The department should further explain how it calculated the payment amount. Further, a birthing center is also, by definition, a provider based entity. It appears that the department should also reduce the expected payment by 20% of the outpatient APC amount.

RESPONSE: The two birthing facilities in Montana have not received CMS designations as provider based entities, which is a Montana Medicaid requirement for provider based services.

We have recalibrated the estimated savings based on new fee schedules since this proposal was first put forth. Estimates for birthing center reimbursement are based on the following:

Vaginal delivery (Vag Del)	\$ 1728
Additional tests billed in office	<u>200</u>
Professional reimbursement	\$ 1928
APC for Vag Del w/o complications	\$ 986
Diagnostics, lab, newborn assessment	<u>328</u>
Facility reimbursement	\$1314

Total estimated birthing center reimbursement was \$3242 – this should also include an APC for delivery of the afterbirth which was not included in the original estimate. This amount is \$698 which would bring the total to \$3940. There is not a separate payment for the newborn as there is in an inpatient setting.

Facility reimbursement for an inpatient birth in Montana is approximately \$4394. This is a normal newborn DRG (391) of \$723 and a vaginal delivery without complications delivery DRG (373) of \$1506. Adding in physician reimbursement of \$1928 plus a possible epidural reimbursement of \$750 could bring the total inpatient reimbursement to \$5144. Compared to an estimated reimbursement of \$3940 in a birthing center there could be savings for outpatient births in a birthing center to the department.

COMMENT #23: DPHHS proposed a new rule pertaining to Medicaid which defines birth centers. In the proposal birth centers were defined as "a facility to provide, under the direction of a licensed physician, either diagnosis, treatment, or both to ambulatory patients". Although certified nurse midwives do use physician consultation and collaboration in their practices, advanced practice registered nurses are licensed independent providers in the state of Montana. Free standing birth centers traditionally are owned and operated by certified nurse midwives. A licensed physician is not required to direct such a practice or birth center. We request that the definition delete the phrase under the direction of a licensed physician as this is not part of the definition of a birth center as designated by American Public Health Association Guidelines for Licensing and Regulating Birth Centers.

RESPONSE: The phrase "under the direction of a licensed physician" is not included in the proposed amendment to ARM 37.86.3001(3) which defines a birthing center. The proposed rule refers to 50-5-101, MCA, which contains this phrase. The department will amend the definition in ARM 37.86.3001(3) to the following:

(3) "Birthing center" means a facility that provides comprehensive obstetrical care for women in which births are planned to occur away from the mother's usual residence following normal, uncomplicated, low risk pregnancy and is either:

(a) a licensed outpatient center for primary care with medical resources as defined at 50-5-101, MCA; or

(b) a private office of a physician or certified nurse mid-wife that is accredited by a national organization as an alternative to a homebirth or a hospital birth.

Change to the Montana Code Annotated will require legislative action. We will refer these comments to the DPHHS Quality Assurance Division's licensing department and suggest that they work with the birthing centers and the Montana Nurses Association in this matter.

COMMENT #24: I am commenting on ARM 37.86.3001 Outpatient Hospital and Birthing Centers. The significant portion of the rule reads as follows:

37.86.3001(3) Birthing center means a licensed out patient center for primary care with medical resources as defined at 50-5-101, MCA that is used as an alternative to home birth or hospital birth.

The consequences of this new definition is to revoke the independent licensure of the certified nurse midwife (CNM) which is clearly outlined in statute and administrative rule. The certified nurse midwife is an independently licensed health care provider who functions within a clearly defined, nationally recognized scope of practice with no statutory requirement for physician supervision in Montana law.

My assumption is that using 50-5-101, MCA as a modifier for birthing centers was an oversight in rule writing, because in essence it applies an inappropriate, non sequitur to the independent, professional, clinical activities of the certified nurse midwife. The modifier reads as follows:

55-5-101(41) "Outpatient center for primary care" means a facility that provides under the direction of a licensed physician, either diagnostic or treatment, or both, to ambulatory patients and that is not an outpatient center for surgical services.

Ultimately, this rule denies the license of a certified midwife to function independently by applying requirements based on building site. This is not appropriate, imposing a layer of restrictions not present in the Nurse Practice Act and subsequent administrative rules.

If as, one solution that was proposed, the reference to 55-5-101, MCA is simply removed the problem would not be solved. By virtue of keeping in the term "out

patient center for primary care" the problem remains because section (41) of the statute still defines the "out patient center for primary care" as a facility that provides (care) under the direction of a licensed physician. All this does actually is obscure the reference a bit and make a researcher look a little harder in statute to find a definition.

The following language was adopted by North Carolina Medicaid in 1994 and may be used at least as a guide for us in meeting our state needs:

Birth Center is "a freestanding health care facility which is not a part of a hospital, or in a hospital, and provides comprehensive obstetrical care to women in which births are planned to occur away from the mother's usual residence following normal, uncomplicated, low risk pregnancy".

I would suggest the following language for ARM 37.86.3001(3):

"Birth center" - means a licensed facility that is not in a hospital or part of a hospital, that provides comprehensive obstetrical care and post delivery care of the newborn, and is used as an alternative to a home birth or hospital birth following an uncomplicated, low risk pregnancy.

RESPONSE: The department has chosen to amend ARM 37.86.3001(3) to read:

(3) "Birthing center" means a facility that provides comprehensive obstetrical care for women in which births are planned to occur away from the mother's usual residence following normal, uncomplicated, low risk pregnancy and is either:

(a) a licensed outpatient center for primary care with medical resources as defined at 50-5-101, MCA; or

(b) a private office of a physician or certified nurse mid-wife that is accredited by a national organization as an alternative to a homebirth or a hospital birth.

We do not wish to insert language which could potentially eliminate coverage of a birthing center that is a distinct part of a hospital.

COMMENT #25: We support the changes proposed for reimbursement of out-of-state inpatient hospital reimbursement and applaud the department for its efforts to contain expenses in this high cost area.

RESPONSE: The department thanks you for your comments and support.

COMMENT #26: We are supportive of the amendment of ARM 37.86.2901 - Inpatient Hospital Services Definitions and the addition of a preferred out-of-state hospital category that includes a requisite contract with the state for the provision of specialized services. We were directly impacted by inpatient and outlier reimbursement reductions due to recent budget variances in the Medicaid inpatient hospital expense category, due in part, to out-of-state neonatal charges and believe these changes are fiscally prudent and equitable.

RESPONSE: The department thanks you for your comments and support.

COMMENT #27: We support the language changes in the emergency department reimbursement rule. We thank the department for listening to our concerns during the past several years regarding the inefficient practice of determining whether an emergency department patient was suffering from an emergency medical condition. While we still have some concerns related to the decrease payment levels for Current Procedural Terminology (CPT) codes 99281 and 99282, we believe that this is a step in the right direction for eliminating a significant administrative burden.

RESPONSE: The department thanks you for your comments and support.

COMMENT #28: At ARM 37.86.3009 the department proposes to eliminate the emergency medical condition list and to pay a single APC rate for low intensity use of hospital emergency rooms (ER). We support this policy change. This proposal is consistent with hospitals' long held view that the problem of overuse of the ED is not corrected by underpaying the very providers who deliver services to Medicaid clients. We continue to pledge assistance to the department to reduce unneeded ER use. We have suggested a variety of educational and other operational strategies to accomplish this task. We understand that the change will boost some hospital and physician payments. The change will also reduce the administrative burden on ER physicians and the hospital staff and improve the relationship between the provider community and state regulators.

RESPONSE: The department thanks you for your comments and support.

COMMENT #29: We support the revisions proposed in ARM 37.86.3009 – Outpatient Hospital Services, Payment Methodology, and Emergency Visit Services. We appreciate the responsiveness of the department to the short comings of the Emergency Diagnosis and Procedure Code List methodology and applaud its elimination.

RESPONSE: The department thanks you for your comments and support.

COMMENT #30: We support the department's proposal to amend the emergency room policy at ARM 37.86.3009. The department proposes to eliminate the payment limits related to the department's list of emergency diagnosis codes.

The policy change will boost the physician payment for some emergency department services. The policy will also reduce the administrative burden on our hospital and medical staff. We support the modified APC payment amounts.

We will continue to work with department staff to reduce unneeded emergency room care.

RESPONSE: The department thanks you for your comments and support.

COMMENT #31: Earlier this fall, despite our opposition during the rulemaking process, we experienced a \$726,900/year reduction in our inpatient hospital reimbursement and have recently protested the proposed Department of Revenue rule relating to the hospital utilization fee for inpatient hospital bed days. Should that process keep the fee at current levels, we will experience a \$1 million erosion in reimbursement.

The cumulative impact of these Medicaid changes will force our organization to evaluate its ability to continue to offer unlimited access to Medicaid clients in our inpatient, outpatient, physician clinics and long term care settings.

RESPONSE: In both the July and October rule changes, the department determined that without a change to DRG weights and outliers, that we could overpay some services and experience a budget overrun. The department recognizes the fact that these changes may affect some facilities more than others because of the nature of the services they provide. The department is willing to work with facilities to do an analysis of the services being offered to Medicaid recipients upon request.

The utilization fee is not part of this rule and we cannot comment because it is outside the scope of this proposed rule change.

8. These rule amendments and adoptions are to be effective January 1, 2007.

/s/ John Koch
Rule Reviewer

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

Certified to the Secretary of State December 11, 2006.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption, of New	)	NOTICE OF ADOPTION AND
Rules I (42.18.128) and II (42.18.129)	)	AMENDMENT
and amendment of ARM 42.18.107,)	
42.18.110, 42.18.112, 42.18.113,)	
42.18.116, 42.18.124, 42.18.125,)	
42.18.127, 42.18.205, 42.18.206,)	
42.18.207, 42.18.208, and 42.18.210)	
relating to the general provisions and)	
certification requirements for appraising)	
property)	

TO: All Concerned Persons

1. On October 26, 2006, the department published MAR Notice No. 42-2-764 regarding the proposed adoption and amendment of the above-stated rules at page 2520 of the 2006 Montana Administrative Register, issue no. 20.

2. A public hearing was held on November 15, 2006, to consider the proposed adoption and amendment. No one appeared at the hearing to testify and no written comments were received.

3. The department adopts New Rule I (42.18.128) and New Rule II (42.18.129), and amends ARM 42.18.107, 42.18.110, 42.18.112, 42.18.113, 42.18.116, 42.18.124, 42.18.125, 42.18.127, 42.18.205, 42.18.206, 42.18.207, 42.18.208, and 42.18.210, as proposed.

4. An electronic copy of this Adoption Notice is available through the department's site on the World Wide Web at www.mt.gov/revenue, under "for your reference"; "DOR administrative rules"; and "upcoming events and proposed rule changes." The department strives to make the electronic copy of this Adoption Notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

/s/ Dan R. Bucks
DAN R. BUCKS
Director of Revenue

Certified to Secretary of State December 11, 2006

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule) NOTICE OF ADOPTION AND
I (42.19.1205) and amendment of ARM) AMENDMENT
42.19.401, 42.19.402, 42.19.503,)
42.19.506, 42.19.1103, 42.19.1104,)
42.19.1213, 42.19.1222, and 42.19.1240)
relating to low income property, disabled)
veterans tax exemptions, energy related)
tax incentives, and new industrial)
property)

TO: All Concerned Persons

1. On October 26, 2006, the department published MAR Notice No. 42-2-767 regarding the proposed adoption and amendment of the above-stated rules at page 2555 of the 2006 Montana Administrative Register, issue no. 20.

2. A public hearing was held on November 15, 2006, to consider the proposed adoption and amendment. No one appeared at the hearing to testify and no written comments were received.

3. The department adopts New Rule I (42.19.1205), and amends ARM 42.19.401, 42.19.402, 42.19.503, 42.19.506, 42.19.1103, 42.19.1104, 42.19.1213, 42.19.1222, and 42.19.1240 as proposed.

4. An electronic copy of this Adoption Notice is available through the department's site on the World Wide Web at www.mt.gov/revenue, under "for your reference"; "DOR administrative rules"; and "upcoming events and proposed rule changes." The department strives to make the electronic copy of this Adoption Notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

/s/ Dan R. Bucks
DAN R. BUCKS
Director of Revenue

Certified to Secretary of State December 11, 2006

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the proposed adoption of	)	NOTICE OF ADOPTION AND
New Rule I (42.20.606), and amendment of	)	AMENDMENT
ARM 42.20.101, 42.20.102, 42.20.106,)	
42.20.107, 42.20.204, 42.20.301,)	
42.20.302, 42.20.303, 42.20.304,)	
42.20.305, 42.20.307, 42.20.501,)	
42.20.503, 42.20.505, 42.20.515,)	
42.20.517, 42.20.601, 42.20.605,)	
42.20.615, 42.20.620, 42.20.625,)	
42.20.640, 42.20.645, 42.20.650,)	
42.20.655, 42.20.660, 42.20.665,)	
42.20.670, 42.20.675, 42.20.680, and)	
42.20.701 relating to valuation of real)	
property, classification of nonproductive)	
patented mining claims, agricultural land,)	
and forest land)	

TO: All Concerned Persons

1. On October 26, 2006, the department published MAR Notice No. 42-2-766 regarding the proposed adoption and amendment of the above-stated rules at page 2533 of the 2006 Montana Administrative Register, issue no. 20.

2. A public hearing was held on November 15, 2006, to consider the proposed adoption and amendment. Oral and written testimony received at and subsequent to the hearing is summarized as follows along with the response of the department:

COMMENT NO. 1: The Montana Wood Products Association, Montana Taxpayers Association, Montana Farm Bureau Federation, Montana Association of Land Trusts submitted comments at and subsequent to the hearing regarding New Rule I and how that rule related to forest lands. They were concerned that the department was creating a new classification which would be skirting the legislative process. This rule contains the phrase "withdrawal of timber utilization" and the opponents stated that it did not appear that this phrase was defined either by statute or administrative rule.

The opponents questioned whether properties that did not meet the agricultural criteria or forest land criteria would be considered class four properties and would result in the reclassification of some agricultural land at a higher tax classification if "covenants or other restrictions" are in place that "effectively prohibits agriculture use." The vast majority of conservation easements held by members of the Montana Association of Land Trusts allow continued agricultural production or some type of sustainable timber harvest, but a small handful of their easements do prohibit these uses in their entirety. In addition, there are some conservation

easements held in Montana by federal agencies such as the U.S. Fish and Wildlife Service, and possibly some held by state agencies such as the Montana Department of Fish, Wildlife, and Parks, that specifically prohibit agricultural and timber use of the property. These easements are carefully crafted to protect specific habitats of wildlife species, some of which receive federal protection. It is vital that the department be aware that not only are timber and agricultural production prohibited on these unique lands, but all commercial, industrial, and additional residential development is prohibited on these land parcels.

RESPONSE NO. 1: In response to the concerns raised by the attendees at the hearing and the written comments provided, the department convened a meeting with those parties to discuss their concerns and provide some further clarification. The department agrees with the comments and has amended New Rule I to reflect the concerns. With regard to the amended language contained in New Rule I, the department believes this language complies with the statutory requirement of 15-6-134, MCA, and that by default if land does not fit into either agriculture or forest land classification it is class four.

COMMENT NO. 2: The Montana Taxpayers Association suggested amending ARM 42.20.601 to add the reference to a C corporation in (13).

Further, they suggested that the gross income reference in this rule should include a multi-year time frame.

RESPONSE NO. 2: The department is amending ARM 42.20.601 to strike the reference to S corporation and adding the term “family” corporation. The department believes this term better fits the instance where a farming corporation is managed by a family agricultural production.

With respect to the question of multi-year verses current year, the statute is clear that it the gross income review applies only to the current year, not multiple years. All the parties agreed that the statute was clear and the rule did not need to be amended to address this issue.

COMMENT NO. 3: The Montana Taxpayers Association stated that the rule should reflect the statutory language contained in 15-7-202, MCA. The language in section 3 does not appear necessary. The language in section 3 better reflects the law than the proposed language in section 1.

RESPONSE NO. 3: The department is amending ARM 42.20.640 to better clarify land that is 160 acres or larger. The department will make the determination of whether the land can be classified as agricultural or forest land before it is classified as class four property.

3. Based on the comments received the department further amends the following rules, stricken matter interlined, new matter underlined:

NEW RULE I (42.20.606) EXCEPTIONS TO AGRICULTURAL LAND ASSESSMENT (1) remains as proposed.

(2) Land described in (1)(a) may not be assessed by the department at a value lower than the agricultural land assessed value previously determined for the land by the department.

(a) For ownerships of contiguous land that are equal to or greater than 160 acres in size, the land which has covenants or other restrictions that effectively prohibit agricultural use as described in (1)(a), shall be assessed as forest land, provided the parcel meets the provisions of ARM 42.20.156, 42.20.705, and 42.20.710 to be assessed as forest land, ~~and provided the land is not withdrawn from timber utilization by statute, ordinance, covenant, court order, administrative order, or other operation of law.~~

(i) The qualifying acres of forest land shall be assessed at the value of the productive grade of forest land that most closely approximates the former assessed value of the property, but in no case will the assessed value be lower than the former assessed value. If there are remaining acres not qualifying for forest land assessment, the remaining acres shall be assessed and taxed as class 4 land.

~~(ii) If the land is also withdrawn from timber utilization by any of the operations described in (2)(a), the land shall be assessed and taxed as class 4 land.~~
If the land does not qualify as forest land, the land shall be assessed and taxed as land not specifically included in another class in accordance with 15-6-134(1)(a), MCA.

(b) For ownerships of contiguous land that are at least 20 acres but less than 160 acres in size, the land which has covenants or other restrictions that effectively prohibit agricultural use as described in (1)(a), shall be assessed as forest land, provided the parcel meets the provisions of ARM 42.20.705, 42.20.710, and 42.20.156 to be assessed as forest land, ~~and provided the land is not withdrawn from timber utilization by statute, ordinance, covenant, court order, administrative order, or other operation of law.~~

(i) The qualifying acres of forest land shall be assessed at the value of the productive grade of forest land that most closely approximates the former assessed value of the property, but in no case will the assessed value be lower than the former assessed value. If there are remaining acres not qualifying for forest land assessment, the remaining acres shall be assessed and taxed as class 4 land.

~~(ii) If the land is also withdrawn from timber utilization by any of the operations described in (2)(a), the land shall be assessed and taxed as class 4 land.~~
If the land does not qualify as forest land, the land shall be assessed and taxed as land not specifically included in another class in accordance with 15-6-134(1)(a), MCA.

(c) For ownerships of contiguous land that are less than 20 acres in size, the land which has covenants or other restrictions that effectively prohibit agricultural use as described in (1)(a), shall be assessed as forest land, provided the parcel meets the provisions of ARM 42.20.156, 42.20.705, and 42.20.710 to be assessed as forest land, ~~and provided the land is not withdrawn from timber utilization by statute, ordinance, covenant, court order, administrative order, or other operation of law.~~

(i) The qualifying acres of forest land shall be assessed at the value of the productive grade of forest land that most closely approximates the former assessed value of the property, but in no case will the assessed value be lower than the

former assessed value. If there are remaining acres not qualifying for forest land assessment, the remaining acres shall be assessed and taxed as class 4 land.

(ii) ~~If the land is also withdrawn from timber utilization by any of the operations described in (2)(a), the land shall be assessed and taxed as class 4 land.~~ If the land does not qualify as forest land, the land shall be assessed and taxed as land not specifically included in another class in accordance with 15-6-134(1)(a), MCA.

AUTH: 15-1-201, MCA

IMP: 15-6-133, 15-6-134, 15-7-201, 15-7-202, 15-44-101, 15-44-102, 15-44-103, MCA

42.20.601 DEFINITIONS The following definitions apply to this subchapter:

(1) through (12) remain as proposed.

(13) "Income from agricultural production" means the gross amount of income received from the sale of food, feed, fiber commodities, livestock, poultry, bees, biological control insects, fruits, vegetables, and also includes sod, ornamental, nursery, and horticultural crops that are raised, grown, or produced for commercial purposes, income from farm rental, the sale of draft, breeding, dairy, or sporting livestock, the share of partnership or ~~S~~ family corporation gross income received from a farming or ranching business entity, or the taxpayer's share of distributable income from an estate or trust involved in an agricultural business. When the income from agricultural production is used to qualify land for agricultural classification, it must be reportable income for income tax purposes.

(a) Wages received as a farm employee or wages received from a farm corporation are not gross income from farming.

(14) through (23) remain as proposed.

AUTH: 15-7-111, MCA

IMP: 15-1-101, 15-6-133, 15-7-201, 15-7-202, MCA

42.20.640 VALUATION OF LAND OWNERSHIPS 160 ACRES OR LARGER IN SIZE (1) remains as proposed.

(2) Under this rule, an ownership or the portion of an ownership meeting the criteria for forest land classification set forth in ARM 42.20.156, 42.20.705, and 42.20.710 shall be classified and valued as forest land.

(3) remains as proposed.

(4) For contiguous parcels of land that are 160 acres or larger in size, and under one ownership as defined in ARM 42.20.601, any acreage exceeding that which meets the criteria for forest land set forth in ARM 42.20.156, 42.20.705, and 42.20.710, ~~which is withdrawn from timber utilization by statute, ordinance, covenants, court order, administrative order, or other operation of law or has stated restrictions that effectively prohibit~~ or has stated restrictions that effectively prohibit agricultural use, or is used for residential, commercial, or industrial purposes, shall be classified pursuant to the provisions of assessed and taxed as land not specifically included in another class in accordance with 15-6-134(1)(a), MCA.

(5) remains as proposed.

AUTH: 15-1-201, MCA

IMP: 15-6-133, 15-6-134, 15-7-201, 15-7-202, 15-44-101, 15-44-102, 15-44-103, MCA

4. Therefore, the department adopts New Rule I (42.20.606), and amends ARM 42.20.601, and 42.20.640 with the amendments listed above and amends ARM 42.20.101, 42.20.102, 42.20.106, 42.20.107, 42.20.204, 42.20.301, 42.20.302, 42.20.303, 42.20.304, 42.20.305, 42.20.307, 42.20.501, 42.20.503, 42.20.505, 42.20.515, 42.20.517, 42.20.605, 42.20.615, 42.20.620, 42.20.625, 42.20.645, 42.20.650, 42.20.655, 42.20.660, 42.20.665, 42.20.670, 42.20.675, 42.20.680, and 42.20.701 as proposed.

5. An electronic copy of this Adoption Notice is available through the department's site on the World Wide Web at www.mt.gov/revenue, under "for your reference"; "DOR administrative rules"; and "upcoming events and proposed rule changes." The department strives to make the electronic copy of this Adoption Notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

/s/ Dan R. Bucks
DAN R. BUCKS
Director of Revenue

Certified to Secretary of State December 11, 2006

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM) NOTICE OF AMENDMENT
42.21.116, 42.21.124, 42.21.132,)
42.21.154, 42.21.156, 42.21.157,)
42.21.158, 42.21.159, and 42.21.162)
relating to personal property)

TO: All Concerned Persons

1. On October 26, 2006, the department published MAR Notice No. 42-2-765 regarding the proposed amendment of the above-stated rules at page 2529 of the 2006 Montana Administrative Register, issue no. 20.

2. A public hearing was held on November 15, 2006, to consider the proposed amendment. No one appeared at the hearing to testify and no written comments were received.

3. The department amends ARM 42.21.116, 42.21.124, 42.21.132, 42.21.154, 42.21.156, 42.21.157, 42.21.158, 42.21.159, and 42.21.162 as proposed.

4. An electronic copy of this Adoption Notice is available through the department's site on the World Wide Web at www.mt.gov/revenue, under "for your reference"; "DOR administrative rules"; and "upcoming events and proposed rule changes." The department strives to make the electronic copy of this Adoption Notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

/s/ Dan R. Bucks
DAN R. BUCKS
Director of Revenue

Certified to Secretary of State December 11, 2006

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption of New) NOTICE OF ADOPTION
Rules I and II (42.31.1002) relating to)
the hospital utilization fee for inpatient)
bed days)

TO: All Concerned Persons

1. On October 26, 2006, the department published MAR Notice No. 42-2-768 regarding the proposed adoption of the above-stated rules at page 2562 of the 2006 Montana Administrative Register, issue no. 20.

2. A public hearing was held on November 17, 2006, to consider the proposed adoption. Oral and written testimony received at and subsequent to the hearing is summarized as follows along with the response of the department:

COMMENT NO. 1: The Governor's Office supported the rules as proposed. Legal counsel for the Governor, Ann Brodsky, testified that the Governor believes that the rate set by the department, which is the current rate set by the legislature, is appropriate and any increase in the fee is something that the legislature, as the taxing authority, should decide and resolve not the administrative body of government.

The legislature will be meeting within a few weeks so they could deal with this issue at that time. The fee that is established by the department under these rules will not be collected until January 2008, so there would be plenty of time for the legislature to make adjustments if they see fit.

Opponents voiced their opinion that the hospital utilization fee is not a tax.

RESPONSE NO. 1: The department appreciates the support of the Governor's Office for this rulemaking action. The department believes that the legislative guidance in 15-66-102, MCA, is insufficient to reach a determinate result as to the calculation of the fee. Section 15-66-102, MCA, does not provide determinate guidance to the department because it does not specify fixed data items, specific sources of such data, or the mathematical formula to apply when calculating the rate referenced in the statute. Further, there is no direction on the assumptions, methods, or formulas to apply in making the estimates under the statutes. Using the insufficient guidance provided in 15-66-102, MCA, a large range of rates can be reasonably produced. The department calculated and evaluated rates ranging from \$24.20 to \$44.53, all of which were supportable under the statute. The department will discuss in Response No. 2 how it concluded that in the context of an indeterminate law a fee of \$27.70 is reasonable and proper.

Both the proponent and opponents voiced mixed opinions regarding whether or not the fee was actually a fee or a tax. Because of the indeterminate guidance given in the statute for this levy regardless of its nature, the department does not feel it is necessary to reach a conclusion on this issue at this juncture.

COMMENT NO. 2: The Association of Montana Health Care Providers (MHA); St. Vincent Healthcare; Kalispell Regional Medical Center; St. John's Lutheran Hospital; Northeast Montana Health Services, Inc.; St. Peter's Hospital; Frances Mahon Deaconess Hospital; Community Medical Center; Shodair Children's Hospital; Phillips County Medical Center; Benefis Healthcare; Northern Montana Health Care; Northern Rockies Medical Center, Inc.; Billings Clinic; and North Valley Hospital; submitted comments stating that the department should amend New Rule II to reflect a fee in the amount of \$36.82. The proponents of this change cite alleged data or information provided to them by the Department of Public Health and Human Services (DPHHS) to support a fee in that amount.

RESPONSE NO. 2: Using the range of estimates and the historically-used formula, the department calculated a rate of \$27.66. This figure is so close to the prior rate of \$27.70 recommended by DPHHS that the difference in revenues raised did not justify the cost to the taxpayer. The department believes the fee listed in New Rule II is a reasonable calculation of the utilization fee pursuant to the data elements shown in 15-66-102, MCA. The only data the department relied upon when calculating the fee was an estimate of the unpaid Medicaid hospital costs, total inpatient days, the federal medical assistance percentages, an estimate of any federal limit on federal financial participation for hospital services, an estimate of federal disproportionate share funds not matched by state general funds. These estimates were provided to the department by the DPHHS along with the \$27.70 fee recommendation. Based on this information the department proposed the fee listed in this rule. The department is aware of the alternative calculation of \$36.82 and evaluated it as one of the range of estimates referred to in Response No. 1. DPHHS did not testify at the hearing, submit written comments, or otherwise provide the department with contrary information or calculations that would reflect DPHHS' support of a different fee amount.

COMMENT NO. 3: Opponents suggest that the department remove the reference to the time period January 1, 2007 through June 30, 2007. By not doing so, the department would have to amend the rule again in early June to cover the remainder of the year which would unnecessarily result in added work. Further, if legislation extending the life of this program is not passed, removing the reference to June 30, 2007 assists with the administrative process because the rule becomes null and void.

RESPONSE NO. 3: The department believes the dates shown in the rule are necessary to clarify that under the current statute, 15-66-102, MCA, the rules would only apply for the period January 1, 2007 through June 30, 2007.

COMMENT NO. 4: MHA suggested that the department insert DPHHS estimates of the data elements in New Rule I or strike this rule because the rule just restates the statutory language.

RESPONSE NO. 4: The department does not believe that it is appropriate to

include the estimates of the data elements in this rule because it would require an annual amendment assuming the statute does not sunset. Therefore, the department will not adopt New Rule I.

COMMENT NO. 5: Opponents stated there was a potential for negative economic impacts to both the local hospitals and the communities they serve if the fee amount were not increased.

RESPONSE NO. 5: The department recognizes that there is potential for a negative economic impact. However, the department, when determining the fee, must base the fee on the specific data elements contained in the statute. Nothing in the statute, express or implied, indicates the department may consider the economic impact that the fee may or may not have once determined.

3. Based on comments, the department is not adopting New Rule I. Therefore, the department adopts New Rule II (42.31.1002) as proposed.

4. An electronic copy of this Adoption Notice is available through the department's site on the World Wide Web at www.mt.gov/revenue, under "for your reference"; "DOR administrative rules"; and "upcoming events and proposed rule changes." The department strives to make the electronic copy of this Adoption Notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

/s/ Dan R. Bucks
DAN R. BUCKS
Director of Revenue

Certified to Secretary of State December 11, 2006

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the amendment)
of ARM 1.2.419 regarding the)
scheduled dates for the 2007 Montana)
Administrative Register)

NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On November 9, 2006, the Secretary of State published MAR Notice No. 44-2-137 regarding the public hearing on the proposed amendment of the above-stated rule at page 2820 of the 2006 Montana Administrative Register, Issue No. 21.

2. No comments or testimony were received.

3. The rule is amended exactly as proposed and appears in its entirety below:

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

2007 Schedule

Filing	Publication
January 2	January 11
January 16	January 25
January 29	February 8
February 12	February 22
February 26	March 8
March 12	March 22
April 2	April 12
April 16	April 26
April 30	May 10
May 14	May 24
May 29	June 7
June 11	June 21
June 25	July 5
July 16	July 26
July 30	August 9
August 13	August 23
August 27	September 6
September 10	September 20
September 24	October 4

October 15
October 29
November 13
November 26
December 10

October 25
November 8
November 21
December 6
December 20

(2) All material to be published must be submitted by noon on the scheduled filing date. All material submitted after the scheduled filing deadline will not be published until the next scheduled publication date.

/s/ Mark A. Simonich for
BRAD JOHNSON
Secretary of State

/s/ Janice Doggett
JANICE DOGGETT
Rule Reviewer

Dated this 11th day of December 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
Subject | 1. Consult ARM topical index.
Update the rule by checking the accumulative table and the table of contents in the last Montana Administrative Register issued. |
| Statute | 2. Go to cross reference table at end of each Number and title which lists MCA section numbers and Department corresponding ARM rule numbers. |

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through June 30, 2006. This table includes those rules adopted during the period July 1 through September 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 include the contents of this issue of the Montana Administrative Register (MAR or Register).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through June 30, 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.

To aid the user, the Accumulative Table includes rulemaking actions of such entities as boards and commissions listed separately under their appropriate title number.

GENERAL PROVISIONS, Title 1

1.2.419 Scheduled Dates for the 2007 Montana Administrative Register,
p. 2820

ADMINISTRATION, Department of, Title 2

I Retention of Credit Union Records, p. 1759
I-VIII Montana Land Information Act, p. 950, 1864
2.21.3702 and other rules - Recruitment and Selection Policy, p. 1482, 2901
2.21.6505 and other rules - Discipline Handling, p. 1923, 2565
2.55.320 and other rule - Classifications of Employments - Individual Loss
 Sensitive Dividend Plans, p. 2440
2.59.111 Retention of Bank Records, p. 1762
2.59.1409 Duration of Loans - Interest - Extensions, p. 1099, 1866
2.59.1501 and other rules - Definitions - Application Procedure Required to
 Engage in Deposit Lending - Reports - Schedule of Charges -
 Employees' Character and Fitness - Electronic Deductions - Income
 Verification, p. 375, 614, 1373
2.59.1705 and other rule - Licensing Examination and Continuing Education
 Provider Requirements - Records to be Maintained, p. 1498, 2104

(Office of the State Public Defender)

I-VI Office of the State Public Defender, p. 2068, 2572

AGRICULTURE, Department of, Title 4

- I-IV Montana Pulse Crop Research and Market Development Program, p. 1977, 2403
- 4.11.1201 and other rule - Specific Agricultural Ground Water Management Plan, p. 1765, 2109
- 4.12.3009 and other rule - Seed Laboratory Fees, p. 1929, 2129
- 4.13.1001A State Grain Laboratory Fees, p. 1193, 1731

STATE AUDITOR, Title 6

- 6.6.5203 Small Business Health Insurance Purchasing Pool - Premium Assistance and Premium Incentive Payments - Tax Credits, p. 1502, 1954
- 6.6.8301 Updating References to the NCCI Basic Manual for New Classifications Affecting the Aviation Industry, p. 1334

COMMERCE, Department of, Title 8

(Montana Coal Board)

- 8.101.101 and other rules - Community Development Division - Administration of Coal Board Grants, p. 816, 1378

(Board of Housing)

- 8.111.409 Cash Advances Made to Borrowers or Third Parties, p. 1102, 1732

EDUCATION, Title 10

(Superintendent of Public Instruction)

- 10.7.106 and other rules - General Fund: Quality Educator Payments - At Risk Student Payments - Indian Education for All Payments - American Indian Achievement Gap Payments - School Finance, p. 2728

(Board of Public Education)

- I Assignment of Persons Providing Instruction to Braille Students, p. 2869
- 10.54.5010 and other rules - Science Content Standards - Performance Descriptors, p. 2175, 2910
- 10.58.102 and other rules - Educator Preparation Programs, p. 2198
- 10.65.101 Pupil Instruction-related Days, p. 1769, 2404

(Montana State Library)

- 10.102.1151 and other rules - Public Library Standards, p. 2491, 1571
- 10.102.4001 Reimbursement to Libraries for Interlibrary Loans, p. 1197, 2405

FISH, WILDLIFE, AND PARKS, Department of, Title 12

(Fish, Wildlife, and Parks Commission)

- 12.6.2205 and other rules - Exotic Species, p. 1771, 1935, 2823
- 12.8.211 and other rules - Commercial Use of Lands under the Control of the Department, p. 1779
- 12.9.802 and other rules - Game Damage Hunts - Management Seasons - Game Damage Response and Assistance, p. 1105, 1201, 1867

ENVIRONMENTAL QUALITY, Department of, Title 17

- 17.50.213 Motor Vehicle Recycling and Disposal - Reimbursement Payments for Abandoned Vehicle Removal, p. 2444, 2961
- 17.53.105 Hazardous Waste - Incorporation by Reference of Current Federal Regulations into the Hazardous Waste Program, p. 2288
- 17.74.343 and other rules - Asbestos Control - Asbestos Control Program, p. 125, 1574, 1876
- 17.74.350 and other rules - Asbestos Control - Incorporation by Reference of Current Federal Regulations into the Asbestos Control Program - Definitions - Asbestos Project Control Measures, and Clearing Asbestos Projects, p. 2291, 2962
- 17.74.502 and other rules - Methamphetamine Cleanup Program - Incorporation by Reference of Current Federal Regulations into the Methamphetamine Cleanup Rules and Clearance Sampling, p. 2285, 2963
- 17.85.101 and other rules - Alternative Energy Revolving Loan Program, p. 1678

(Board of Environmental Review)

- 17.8.101 and other rules - Incorporation by Reference of Current Federal Regulations and Other Materials into Air Quality Rules, p. 823, 1956
- 17.8.501 and other rules - Air Quality - Definitions - Air Quality Operation Fees - Open Burning Fees, p. 1504, 2410
- 17.8.740 and other rules - Air Quality - Definitions - Incorporation by Reference - Mercury Emission Standards - Mercury Emission Credit Allocations, p. 1112, 2575
- 17.30.617 and other rule - Water Quality - Outstanding Resource Water Designation for the Gallatin River, p. 2294
- 17.30.630 Water Quality - Temporary Water Quality Standards, p. 1981
- 17.30.670 and other rules - Water Quality - Nondegradation Requirements for Electrical Conductivity (EC) and Sodium Adsorption Ratio (SAR) - Definitions for Technology-based Effluent Limitations - Minimum Technology-based Controls - Treatment Requirements for the Coal Bed Methane Industry, p. 1844, 2288, 1247, 1733

(Board of Environmental Review and the Department of Environmental Quality)

- 17.24.132 and other rules - Air Quality - Asbestos - Hazardous Waste - Junk Vehicles - Major Facility Siting - Metal Mine Reclamation - Opencut

Mining - Public Water Supply - Septic Pumpers - Solid Waste - Strip and Underground Mine Reclamation - Subdivisions - Underground Storage Tanks - Water Quality - Revising Enforcement Procedures Under the Montana Strip and Underground Mine Reclamation Act, Metal Mine Reclamation Laws, and Opencut Mining Act - Providing Uniform Factors for Determining Penalties, p. 2523, 1139, 1379, 1874

(Petroleum Tank Release Compensation Board)

17.58.326 and other rule - Applicable Rules Governing the Operation and Management of Petroleum Storage Tanks and Review of Claims, p. 1202, 1734

TRANSPORTATION, Department of, Title 18

18.6.202 and other rules - Transportation Commission - Outdoor Advertising, p. 276, 1878

CORRECTIONS, Department of, Title 20

I-XIX Regional Correctional Facilities, p. 2872

JUSTICE, Department of, Title 23

23.12.103 and other rules - Responsibility for Costs - Criminal History Records Program, p. 2477, 2959

23.16.101 and other rules - Accounting System Vendor License Fee - General Specifications of Approved Automated Accounting and Reporting Systems - Modification of Approved Automated Accounting and Reporting Systems - System May Not be Utilized for Player Tracking - Testing of Automated Accounting and Reporting Systems - Application to Utilize an Approved System - Continuation of Use of System When Vendor License Lapses - Definitions for Vendors and System Licensing of System Vendors - Information to be Provided to Department - Testing Fees, p. 1206, 1735

23.16.1802 and other rules - Frequency of Reporting by Approved Accounting Systems - Definitions - Letters of Withdrawal - Record Keeping Requirements, p. 2297, 2916

23.16.1802 and other rules - Identification Decal for Video Gambling Machines - Define System Availability - Definitions - Online Permitting for Video Gambling Machines - Issuance of Updated Gambling Operator Licenses After Permitting - Renewal of Gambling Operator Licenses - Quarterly Reporting Requirements - Accounting System Vendor License Fee - Requirement for Parties to Multi-game Agreements to Connect to an Approved System, p. 1936, 2131

23.16.1901 Video Gambling Machine Specifications, p. 2890

- 23.17.101 and other rules - MLEA Attendance - MLEA Performance Criteria - Rules, Regulations, Policies, and Procedures - Waiver of Rules, p. 1690, 2302, 2917

LABOR AND INDUSTRY, Department of, Title 24

Boards under the Business Standards Division are listed in alphabetical order following the department rules.

- I Board of Personnel Appeals - Summary Judgment Practice and Procedure, p. 2311
- I-V Country of Origin Placarding for Beef, Pork, Poultry, and Lamb, p. 2469
- I-XIV and other rules - Department and All Boards - Fees - Licensing - Renewals, p. 383, 1584
- 24.11.452A and other rules - Unemployment Insurance, p. 1699, 2411
- 24.17.127 Prevailing Wage Rates for Public Work Projects - Building Construction Services, p. 1217, 2832
- 24.21.411 and other rules - Apprenticeship and Training Program, p. 2073, 2658
- 24.29.1401 and other rules - Allowable Medical Service Billing Rates for Workers' Compensation Claims, p. 2759
- 24.29.2831 Penalties Assessed Against Uninsured Employers, p. 1703, 2040
- 24.30.102 Occupational Safety Matters in Public Sector Employment, p. 1220, 1740
- 24.30.1302 and other rule - Occupational Health and Safety in Mines, p. 1706, 2041
- 24.301.131 and other rules - Building Codes, p. 2319
- 24.351.215 License Fee Schedule for Weighing and Measuring Devices, p. 1356, 2661

(Board of Alternative Health Care)

- I & II Fee Abatement - License Renewal for Activated Military Reservists, p. 706, 1881

(Board of Architects)

- 24.114.301 and other rules - Definitions - General Provisions - Licensing - Renewals - Unprofessional Conduct - Screening Panel - Complaint Procedure, p. 620, 1381

(Board of Barbers and Cosmetologists)

- 24.121.301 and other rules - Definitions - Fees - Variances - Applications for Licensure - Out-of-State Applicants - School Requirements - School Operating Standards - Student Withdrawal, Transfer, or Graduating - Teacher-Training Curriculum - Continuing Education - Instructors/Inactive Instructors - Unprofessional Conduct - Fee Abatement - Continuing Education-Licensees/Inactive Licensees - Field Trips, p. 629, 1383

(Board of Chiropractors)

24.126.301 and other rules - Definitions - Fee Schedule - Licensing and Scope of Practice - Licensing and Board Specific Rules - Impairment Evaluators - Renewals-Continuing Education Requirements - Unprofessional Conduct - Fee Abatement - Participation in Disaster and Emergency Care-Liability of Chiropractor, p. 845, 1609

(Crane and Hoisting Operating Engineers Program)

I Incorporation by Reference of ANSI B30.5, p. 1509, 2042

(Board of Dentistry)

24.138.301 and other rules - General Provisions - Licensing - Renewals and Continuing Education - Unprofessional Conduct - Screening Panel - Anesthesia - Professional Assistance Program - Reactivation of a Lapsed License - Reactivation of an Expired License - Definition of Nonroutine Application - Fee Abatement - Reinstatement of License for Nonpayment of Renewal Fee - Denturist License Reinstatement - Complaint Procedure, p. 1795

(State Electrical Board)

24.141.405 and other rules - Fee Schedule - Continuing Education - Licensee Responsibilities - Fee Abatement, p. 17, 1278, 1612

(Board of Medical Examiners)

I-IX Professional Assistance Program, p. 1015, 1957

24.156.1601 and other rules - Physician Assistant Licensure, p. 483, 1958

(Board of Nursing)

8.32.301 and other rules - Nursing, p. 956, 2035

(Board of Occupational Therapy Practice)

24.165.404 and other rules - Application for Licensure - Examinations - Continuing Education, p. 710, 1614

(Board of Optometry)

24.168.301 and other rules - Definitions - General Provisions - Diagnostic Permissible Drugs - Therapeutic Pharmaceutical Agents - Continuing Education - Screening Panel - Fee Abatement - Examinations - Approved Courses and Examinations - New Licensees - Applicants for Licensure - Therapeutic Pharmaceutical Agents-Complaint Procedure, p. 2450

(Board of Outfitters)

24.171.401 and other rules - Fees - Inactive License - Transfer of River-use Days - Unprofessional Conduct and Misconduct - Guide Logs, p. 2769

(Board of Pharmacy)

- 24.174.301 and other rules - Definitions - General Provisions - Licensing - Internship Regulations - Pharmacy Technicians - Certified Pharmacies - Mail Service Pharmacies - Institutional Pharmacies - Wholesale Drug Distributors Licensing - Dangerous Drugs - Renewals and Continuing Education - Screening Panel - Inactive License - Telepharmacy Operations - Remote Telepharmacy Dispensing Machine Sites - Central Filling by Hub Pharmacies - Ambulatory Surgical Facilities - Fee Abatement, p. 23, 1615
- 24.174.401 and other rule - Fees - Dangerous Drug Fee Schedule, p. 1814, 2134

(Board of Plumbers)

- 24.180.401 and other rules - General Provisions - Licensing and Scope of Practice - Reciprocity Licensure - Temporary Exemptions - Reciprocity, p. 2892

(Board of Private Security Patrol Officers and Investigators)

- 8.50.423 and other rules - Private Security Patrol Officers and Investigators - Fee Schedule - Firearms Training Course Curriculum and Standards, p. 605, 1926
- 24.182.401 and other rules - Fee Schedule - Licensure Requirements - Type of Firearm - Requirements for Firearms Instructor Licensure - Armed Requalification Required Annually - Company Licensure and Branch Offices - Rules for Branch Office, p. 1710, 2918

(Board of Professional Engineers and Professional Land Surveyors)

- 24.183.404 and other rules - Fee Schedule - License Seal - Classification of Experience for Engineering Applicants - Continuing Education - Safety, Health, and Welfare of the Public - Classification of Experience - Branch Offices - Fee Abatement, p. 303, 1630
- 24.183.2101 and other rule - Expiration of License - Renewal - Expired Certificate - Renewal Grace Period, p. 713, 1633

(Board of Psychologists)

- 24.189.301 and other rules - Definitions - Fee Schedule - Use of Title - Required Supervised Experience, p. 2461

(Board of Radiologic Technologists)

- 24.204.208 and other rules - Applications - Limited Permit Applications - Types - Permits - Practice Limitations - Permit Examinations - Renewal - Proof of Good Standing, p. 1819, 2659
- 24.204.401 and other rules - Fee Schedule - Limited Permit Holder Fees - Continuing Education - Unprofessional Conduct, p. 2314

(Board of Real Estate Appraisers)

- 24.207.505 and other rules - Qualifying Education Requirements for Licensed Real Estate Appraisers - Qualifying Education Requirements for

Residential Certification - Qualifying Education Requirements for
General Certification - Trainee Requirements, p. 716, 1634

(Board of Realty Regulation)

24.210.602 Examination, p. 1824

(Board of Respiratory Care Practitioners)

24.213.402 and other rule - Application for Licensure - Examination, p. 1716, 2660

(Board of Speech-Language Pathologists and Audiologists)

24.222.301 and other rules - Definitions - Fees - Licensing and Scope of Practice -
Speech Pathology and Audiology Aides - Continuing Education -
Unprofessional Conduct - Fee Abatement - Licensure of Speech-
Language Pathologists and Audiologists, p. 1337, 2413

LIVESTOCK, Department of, Title 32

32.2.403 Diagnostic Laboratory Fees, p. 1359, 1882

32.3.104 and other rules - Disease Control, p. 2775

NATURAL RESOURCES AND CONSERVATION, Department of, Title 36

36.11.304 and other rules - Equipment Operation in the SMZ - Retention of Trees
and Clearcutting in the SMZ - Site-specific Alternative Practices -
Definitions - Penalties for Violation of the Streamside Management
Zone Law, p. 499, 1883

36.12.101 Municipal Use of Water, p. 2316, 199, 1387

(Board of Oil and Gas Conservation)

36.22.1242 Privilege and License Tax Rates on Oil and Gas, p. 1827, 2110

PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

I Determining Unenforceable Case Status in Child Support Cases,
p. 2898

I-XIV State Trauma Care System, p. 723, 1896

I-XXVIII Home and Community-based Services for Adults with Severe
Disabling Mental Illness, p. 1996, 2665

37.5.103 and other rules - Fair Hearing Procedures and Temporary Assistance
for Needy Families (TANF), p. 2784

37.5.125 and other rules - Older Blind Program, p. 1987

37.12.401 Laboratory Testing Fees, p. 1227, 2043

37.30.405 Vocational Rehabilitation Program Payment for Services, p. 1223,
1892

37.37.101 and other rules - Implementation of a Children's Mental Health Direct
Care Worker Wage Increase, p. 863, 1635

- 37.37.316 and other rules - Youth Foster Homes - Further Amendment of Rule V, p. 2379, 524, 1395
- 37.40.307 and other rules - Medicaid Reimbursement of Nursing Facilities, p. 1024, 1638
- 37.62.101 and other rules - Child Support Guidelines, p. 2476
- 37.78.102 and other rules - Temporary Assistance for Needy Families (TANF), p. 1720, 2415
- 37.80.101 and other rules - Child Care Assistance Program, p. 1555, 2964
- 37.82.101 and other rule - Medicaid Eligibility, p. 1830, 2418
- 37.82.101 Medicaid Assistance, p. 1550, 2417
- 37.85.212 Resource Based Relative Value Scale (RBRVS), p. 872, 1422
- 37.85.406 and other rules - Medicaid Reimbursement of Hospitals, Provider Based Entities, and Birthing Centers, p. 2793
- 37.86.1001 and other rules - Medicaid Dental Services - Durable Medical Equipment - Eyeglass Services - Ambulance Services - Transportation, p. 1126, 1894
- 37.86.2803 and other rules - Medicaid Reimbursement for Inpatient and Outpatient Hospital Services, p. 2024, 2849
- 37.86.2901 and other rules - Medicaid Reimbursement for Inpatient and Outpatient Hospital Services, p. 1030, 1640
- 37.95.102 and other rules - Licensure of Day Care Facilities, p. 2572, 201, 1424, 2136
- 37.104.101 and other rules - Emergency Medical Services, p. 1368, 2420
- 37.108.507 Components of Quality Assessment Activities, p. 520, 1642
- 37.112.101 and other rules - Tattooing and Body Piercing, p. 2339
- 37.114.101 and other rules - Control of Communicable Diseases, p. 1512, 2112

PUBLIC SERVICE REGULATION, Department of, Title 38

- 38.5.2001 and other rules - Energy Standards for Public Utilities, p. 878, 1461
- 38.5.2202 and other rules - Pipeline Safety - National Electrical Safety Code, p. 2372, 2966
- 38.5.3301 and other rules - Telecommunications Service Standards, p. 1844, 2967

REVENUE, Department of, Title 42

- I & II Hospital Utilization Fee for Inpatient Bed Days, p. 2562
- I-VI Movie and Television Industries and Related Media - Tax Credit, p. 1564, 1960
- 42.18.107 and other rules - General Provisions and Certification Requirements for Appraising Property, p. 2520
- 42.19.401 and other rules - Low Income Property - Disabled Veterans Tax Exemptions - Energy Related Tax Incentives - New Industrial Property, p. 2555

- 42.20.100 and other rules - Valuation of Real Property - Classification of Nonproductive Patented Mining Claims, Agricultural Land, and Forest Land, p. 2533
- 42.20.106 and other rule - Manufactured and Mobile Homes, p. 1238, 1961
- 42.21.113 and other rules - Personal, Industrial, and Centrally Assessed Property Taxes, p. 2375, 2979
- 42.21.116 and other rules - Personal Property, p. 2529
- 42.21.158 Property Reporting Requirements, p. 1235, 1962
- 42.31.102 and other rules - Tobacco Products and Cigarettes, p. 1943

SECRETARY OF STATE, Title 44

- 1.2.419 Scheduled Dates for the 2007 Montana Administrative Register, p. 2820
 - 44.2.203 Priority Handling of Documents, p. 1569, 2138
 - 44.3.101 and other rules - Elections, p. 2077, 2671
 - 44.3.2203 Absentee and Mail Ballot Voting, p. 1242, 1741
- (Commissioner of Political Practices)
- 44.12.204 Payment Threshold--Inflation Adjustment for Lobbyists, p. 2400, 2982

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 November 2006 appear. Vacancies scheduled to appear from January 1, 2007, through March 31, 2007, 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 December 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 NOVEMBER 2006

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Board of Barbers and Cosmetologists (Labor and Industry)			
Ms. Karan Charles Miles City Qualifications (if required): barber	Governor	reappointed	11/14/2006 10/1/2011
Ms. Juanita Mace Billings Qualifications (if required): cosmetologist	Governor	Dupuis	11/14/2006 10/1/2011
Board of Hail Insurance (Agriculture)			
Ms. Trudy Laas Skari Chester Qualifications (if required): public member	Governor	Barbie	11/15/2006 4/18/2009
Board of Hearing Aid Dispensers (Labor and Industry)			
Mr. Brian Bolenbaugh Missoula Qualifications (if required): hearing aid dispenser (no masters)	Governor	Hoffmann	11/20/2006 7/1/2009
Ms. Jill Davis Great Falls Qualifications (if required): public representative	Governor	Tamietti	11/20/2006 7/1/2009
Mr. Steve Wilson Helena Qualifications (if required): hearing aid dispenser (no masters)	Governor	reappointed	11/20/2006 7/1/2009

BOARD AND COUNCIL APPOINTEES FROM NOVEMBER 2006

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Family Education Savings Oversight Committee (Commissioner of Higher Education)			
Mr. Todd Buchanan	Governor	Sterhan	11/20/2006
Billings			7/1/2009
Qualifications (if required): investment manager			
Mr. Jon Satre	Governor	D'Angelo	11/20/2006
Helena			7/1/2009
Qualifications (if required): public representative			
Montana Council on Developmental Disabilities (Commerce)			
Ms. Sarah Casey	Governor	McCarthy	11/3/2006
Helena			1/1/2008
Qualifications (if required): agency representative			
Mr. Roger Holt	Governor	Moore	11/3/2006
Billings			1/1/2008
Qualifications (if required): advocacy program representative			
Rep. Carol Lambert	Governor	not listed	11/3/2006
Broadus			1/1/2008
Qualifications (if required): legislator			
Director Joan Miles	Governor	Dotson	11/3/2006
Helena			1/1/2008
Qualifications (if required): agency representative			

BOARD AND COUNCIL APPOINTEES FROM NOVEMBER 2006

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Montana Council on Developmental Disabilities (Commerce) cont.			
Mr. Jeff Sturm	Governor	reappointed	11/3/2006
Helena			1/1/2008
Qualifications (if required): agency representative			
Ms. Diana Tavery	Governor	Franks-Ongoy	11/3/2006
Helena			1/1/2008
Qualifications (if required): advocacy program representative			
Dr. R. Timm Vogelsberg	Governor	reappointed	11/3/2006
Missoula			1/1/2008
Qualifications (if required): advocacy program representative			
Sen. Carol Williams	Governor	reappointed	11/3/2006
Missoula			1/1/2008
Qualifications (if required): legislator			
Montana Potato Advisory Committee (Agriculture)			
Mr. Bill Buyan	Director	reappointed	11/1/2006
Sheridan			5/20/2009
Qualifications (if required): none specified			
Mr. Art Mangels	Director	reappointed	11/1/2006
Dillon			5/20/2009
Qualifications (if required): none specified			

BOARD AND COUNCIL APPOINTEES FROM NOVEMBER 2006

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Risk Management Advisory Council (Administration)			
Ms. Jacquie Duhamel	Director	not listed	11/1/2006
Missoula			11/1/2008
Qualifications (if required): private self-insured organizations			
Mr. Allen Hulse	Director	not listed	11/1/2006
Helena			11/1/2008
Qualifications (if required): public self-insured organizations			
Mr. Greg Jackson	Director	not listed	11/1/2006
Helena			11/1/2008
Qualifications (if required): public self-insured organizations			
Ms. Sheryl Olson	Director	not listed	11/1/2006
Helena			11/1/2008
Qualifications (if required): Director of the Department of Administration designee			
Mr. Bill Price	Director	not listed	11/1/2006
Bozeman			11/1/2008
Qualifications (if required): insurance agent			
Mr. Jeff Shada	Director	not listed	11/1/2006
Bozeman			11/1/2008
Qualifications (if required): public self-insured organizations			
Ms. Tana Wilcox	Director	not listed	11/1/2006
Butte			11/1/2008
Qualifications (if required): private self-insured organizations			

VACANCIES ON BOARDS AND COUNCILS -- JANUARY 1, 2007 through MARCH 31, 2007

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Board of Aeronautics (Transportation) Mr. John Rabenberg, Fort Peck Qualifications (if required): public member	Governor	1/1/2007
Mr. Craig Denney, Billings Qualifications (if required): commercial airlines representative	Governor	1/1/2007
Mr. Charles J. Manning, Kalispell Qualifications (if required): actively engaged in aviation education	Governor	1/1/2007
Mr. Lonnie Leslie, Miles City Qualifications (if required): fixed base operator	Governor	1/1/2007
Board of Crime Control (Justice) Mr. Marko Lucich, Butte Qualifications (if required): chief probation officer	Governor	1/1/2007
Mr. Dwight MacKay, Billings Qualifications (if required): public member	Governor	1/1/2007
Rev. Steven Rice, Miles City Qualifications (if required): representative of the Youth Justice Council	Governor	1/1/2007
Mr. Richard L. Kirn, Poplar Qualifications (if required): representative of local government	Governor	1/1/2007
Mr. Alex Capdeville, Havre Qualifications (if required): public member	Governor	1/1/2007

VACANCIES ON BOARDS AND COUNCILS -- JANUARY 1, 2007 through MARCH 31, 2007

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Board of Dentistry (Labor and Industry) Mr. Clifford R. Christenot, Libby Qualifications (if required): denturist	Governor	3/29/2007
Dr. Sheldon Ivers, Great Falls Qualifications (if required): dentist	Governor	3/29/2007
Ms. Carol Price, Clancy Qualifications (if required): dental hygienist	Governor	3/29/2007
Board of Environmental Review (Environmental Quality) Ms. Susan Kirby Brooke, Helena Qualifications (if required): public member	Governor	1/1/2007
Ms. Kim Lacey, Glasgow Qualifications (if required): public member	Governor	1/1/2007
Mr. Joseph Russell, Kalispell Qualifications (if required): county health officer	Governor	1/1/2007
Ms. Heidi Kaiser, Park City Qualifications (if required): public member	Governor	1/1/2007
Board of Housing (Commerce) Mr. Bob Thomas, Stevensville Qualifications (if required): public member	Governor	1/1/2007

VACANCIES ON BOARDS AND COUNCILS -- JANUARY 1, 2007 through MARCH 31, 2007

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Board of Housing (Commerce) cont. Ms. Susan Moyer, Kalispell Qualifications (if required): public member	Governor	1/1/2007
Ms. Judy Glendenning, Helena Qualifications (if required): public member	Governor	1/1/2007
Board of Investments (Commerce) Dr. Maureen J. Fleming, Missoula Qualifications (if required): labor representative	Governor	1/1/2007
Mr. Calvin Wilson, Busby Qualifications (if required): attorney and an agriculture representative	Governor	1/1/2007
Ms. Karen B. Fagg, Billings Qualifications (if required): business person	Governor	1/1/2007
Mr. Terrill R. Moore, Billings Qualifications (if required): financial representative	Governor	1/1/2007
Board of Labor Appeals (Labor and Industry) Mr. Jerome T. Loendorf, Helena Qualifications (if required): attorney	Governor	1/1/2007
Mr. Jack Calhoun, Helena Qualifications (if required): public representative	Governor	1/1/2007

VACANCIES ON BOARDS AND COUNCILS -- JANUARY 1, 2007 through MARCH 31, 2007

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Board of Livestock (Livestock) Mr. John C. Paugh, Bozeman Qualifications (if required): sheep producer	Governor	3/1/2007
Mr. Lee Cornwell, Glasgow Qualifications (if required): cattle producer	Governor	3/1/2007
Board of Milk Control (Livestock) Mr. Michael F. Kleese, Stevensville Qualifications (if required): attorney and a Democrat	Governor	1/1/2007
Dr. Robert Greer, Bozeman Qualifications (if required): public member and an Independent	Governor	1/1/2007
Board of Oil and Gas Conservation (Natural Resources and Conservation) Mr. Denzil Young, Baker Qualifications (if required): landowner with no mineral rights	Governor	1/1/2007
Mr. Jack King, Billings Qualifications (if required): representative of the oil and gas industry	Governor	1/1/2007
Ms. Elaine Mitchell, Cut Bank Qualifications (if required): public member	Governor	1/1/2007
Board of Pardons and Parole (Corrections) Sen. Don Hargrove, Belgrade Qualifications (if required): auxiliary member	Governor	1/1/2007

VACANCIES ON BOARDS AND COUNCILS -- JANUARY 1, 2007 through MARCH 31, 2007

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Board of Personnel Appeals (Labor and Industry)		
Mr. Steve Johnson, Missoula	Governor	1/1/2007
Qualifications (if required): representative of management with collective bargaining experience		
Mr. Joe Dwyer, Billings	Governor	1/1/2007
Qualifications (if required): representative of labor		
Mr. Patrick J. Dudley, Butte	Governor	1/1/2007
Qualifications (if required): representative of substitute management with collective bargaining experience		
Board of Public Assistance (Public Health and Human Services)		
Ms. Carole A. Graham, Missoula	Governor	1/1/2007
Qualifications (if required): public member		
Board of Public Education (Education)		
Ms. Patty Myers, Great Falls	Governor	1/1/2007
Qualifications (if required): Democrat from District 3		
Board of Regents of Higher Education (Education)		
Mr. Mark Semmens, Great Falls	Governor	2/1/2007
Qualifications (if required): Independent from District 3		
Board of Social Work Examiners and Professional Counselors (Labor and Industry)		
Dr. Leta Livoti, Thompson Falls	Governor	1/1/2007
Qualifications (if required): licensed professional counselor		
Ms. Antoinette Fraser Rosell, Billings	Governor	1/1/2007
Qualifications (if required): licensed professional counselor		

VACANCIES ON BOARDS AND COUNCILS -- JANUARY 1, 2007 through MARCH 31, 2007

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Children's Trust Fund (Governor) Ms. Margaret (Peg) Shea, Missoula Qualifications (if required): public representative	Governor	1/1/2007
Ms. Tara Jensen, Helena Qualifications (if required): representative of the Office of Public Instruction	Governor	1/1/2007
Coal Board (Commerce) Ms. Janice B. Riebhoff, Belgrade Qualifications (if required): representative of education and District 2	Governor	1/1/2007
Mr. Jim Smitham, Butte Qualifications (if required): representative of business and District 2	Governor	1/1/2007
Mr. Thomas Kalakay, Billings Qualifications (if required): resident of District 2	Governor	1/1/2007
Commission for Human Rights (Labor and Industry) Mr. Jack Copps, Seeley Lake Qualifications (if required): public member	Governor	1/1/2007
Mr. Ryan C. Rusche, Wolf Point Qualifications (if required): attorney	Governor	1/1/2007
Developmental Disabilities Planning and Advisory Council (Public Health and Human Services) Ms. Ramona Weber, Billings Qualifications (if required): primary consumer	Governor	1/1/2007

VACANCIES ON BOARDS AND COUNCILS -- JANUARY 1, 2007 through MARCH 31, 2007

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Developmental Disabilities Planning and Advisory Council (Public Health and Human Services) cont.		
Ms. Suzie Twedt, Great Falls	Governor	1/1/2007
Qualifications (if required): parent of a developmentally disabled adult and a secondary consumer		
Mr. Jason Billehus, Missoula	Governor	1/1/2007
Qualifications (if required): primary consumer		
Mr. Darwin Nelson, Helena	Governor	1/1/2007
Qualifications (if required): primary consumer		
Ms. Karen Lundby, Miles City	Governor	1/1/2007
Qualifications (if required): parent of developmentally disabled adult and a secondary consumer		
Ms. Paula Lester, Butte	Governor	1/1/2007
Qualifications (if required): primary consumer		
Fish, Wildlife, and Parks Commission (Fish, Wildlife, and Parks)		
Sen. John Brenden, Scobey	Governor	1/1/2007
Qualifications (if required): representative of District 4		
Mr. Tim Mulligan, Whitehall	Governor	1/1/2007
Qualifications (if required): representative of District 2		
Governor's Disabilities Advisory Council (Governor's Office)		
Mr. Belden Billy, Box Elder	Governor	3/30/2007
Qualifications (if required): representative of the disabled community		

VACANCIES ON BOARDS AND COUNCILS -- JANUARY 1, 2007 through MARCH 31, 2007

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Governor's Disabilities Advisory Council (Governor's Office) cont.		
Ms. Connie Bremner, Browning Qualifications (if required): representative of senior programs	Governor	3/30/2007
Ms. Julia Hammerquist, Kalispell Qualifications (if required): representative of the disabled community	Governor	3/30/2007
Mr. Dustin J. Hankinson, Missoula Qualifications (if required): representative of the disabled community	Governor	3/30/2007
Ms. Julie Bryher Herak, Basin Qualifications (if required): caregiver/family member	Governor	3/30/2007
Mr. Mike Mayer, Missoula Qualifications (if required): representative of the disabled community and disabled services providers	Governor	3/30/2007
Ms. Susie McIntyre, Great Falls Qualifications (if required): representative of the disabled community and disabled services providers	Governor	3/30/2007
Mr. William Neisess, Helena Qualifications (if required): representative of the disabled community	Governor	3/30/2007
Mr. Brian Roat, Red Lodge Qualifications (if required): representative of disabled services providers	Governor	3/30/2007
Ms. Patti Scruggs, Whitefish Qualifications (if required): representative of special education	Governor	3/30/2007

VACANCIES ON BOARDS AND COUNCILS -- JANUARY 1, 2007 through MARCH 31, 2007

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Governor's Disabilities Advisory Council (Governor's Office) cont. Ms. Marie Pierce, Sidney Qualifications (if required): disabilities community	Governor	3/30/2007
Hard-Rock Mining Impact Board (Commerce) Mr. Donald B. Kinsey, Big Timber Qualifications (if required): public member residing in District 4, an impact area	Governor	1/1/2007
Ms. Sandra Muster, Thompson Falls Qualifications (if required): school district trustee residing in District 1, an impact area	Governor	1/1/2007
Historic and Cultural Advisory Council (Governor's Office) Lt. Governor John Bohlinger, Helena Qualifications (if required): public member	Governor	1/15/2007
Commissioner Chris King, Winnett Qualifications (if required): public member	Governor	1/15/2007
Sen. Lynda Bourque Moss, Billings Qualifications (if required): public member	Governor	1/15/2007
Mr. Randy Hafer, Billings Qualifications (if required): public member	Governor	1/15/2007
Mr. Bob McCarthy, Butte Qualifications (if required): public member	Governor	1/15/2007

VACANCIES ON BOARDS AND COUNCILS -- JANUARY 1, 2007 through MARCH 31, 2007

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Historic and Cultural Advisory Council (Governor's Office) cont. Ms. Wendy Raney, Wolf Creek Qualifications (if required): public member	Governor	1/15/2007
Ms. Marilyn Ross, Twin Bridges Qualifications (if required): public member	Governor	1/15/2007
Judicial Nomination Commission (Justice) Sen. Jack Galt, Martinsdale Qualifications (if required): public member	Governor	1/1/2007
Montana Arts Council (Education) Mr. John B. Dudis, Kalispell Qualifications (if required): public member	Governor	2/1/2007
Ms. Mary Crippen, Billings Qualifications (if required): public member	Governor	2/1/2007
Mr. Neal Lewing, Polson Qualifications (if required): public member	Governor	2/1/2007
Ms. Delores Heltne, Havre Qualifications (if required): public member	Governor	2/1/2007
Ms. Cyndy Andrus, Bozeman Qualifications (if required): public member	Governor	2/1/2007

VACANCIES ON BOARDS AND COUNCILS -- JANUARY 1, 2007 through MARCH 31, 2007

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Montana Council on Developmental Disabilities (Commerce) Ms. Connie Wethern, Glasgow Qualifications (if required): secondary consumer representative	Governor	1/1/2007
Ms. Janet Carlson, Malta Qualifications (if required): primary consumer representative	Governor	1/1/2007
Montana Facility Finance Authority (Commerce) Mr. John B. Dudis, Kalispell Qualifications (if required): attorney	Governor	1/1/2007
Rep. Joe Quilici, Butte Qualifications (if required): public member	Governor	1/1/2007
Mr. John Bartos, Corvallis Qualifications (if required): public member	Governor	1/1/2007
Montana Pulse Crop Advisory Committee (Agriculture) Ms. Leta Campbell, Harlem Qualifications (if required): Marketing	Director	2/14/2007
Small Business Health Insurance Pool Board (Auditor) Mr. Christian Mackay, Billings Qualifications (if required): consumer representing the public interest	Governor	1/1/2007
Ms. Gail Brieze-Zimmer, Helena Qualifications (if required): management-level individual with knowledge of Medicaid services	Governor	1/1/2007

VACANCIES ON BOARDS AND COUNCILS -- JANUARY 1, 2007 through MARCH 31, 2007

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
State Lottery Commission (Administration) Mr. Robert Crippen, Butte Qualifications (if required): certified public accountant	Governor	1/1/2007
State Tax Appeal Board (Administration) Mr. Joe Roberts, Helena Qualifications (if required): public member	Governor	1/1/2007
Transportation Commission (Transportation) Ms. Nancy Espy, Broadus Qualifications (if required): representative of District 4 and a Republican	Governor	1/1/2007
Mr. S. Kevin Howlett, Arlee Qualifications (if required): representative of District 1 and an Independent	Governor	1/1/2007