

# MONTANA ADMINISTRATIVE REGISTER

## ISSUE NO. 22

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 The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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

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BEFORE THE STATE COMPENSATION INSURANCE FUND  
OF THE STATE OF MONTANA

In the matter of the amendment of ARM ) NOTICE OF PROPOSED  
2.55.320 pertaining to classifications of ) AMENDMENT  
employments ) NO PUBLIC HEARING  
) CONTEMPLATED

TO: All Concerned Persons

1. On January 28, 2011, the Montana State Fund proposes to amend the above-stated rule.

2. The Montana State Fund will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Montana State Fund no later than 5:00 p.m. on December 30, 2010, to advise us of the nature of the accommodation that you need. Please contact Nancy Butler, Montana State Fund, P.O. Box 4759, 855 Front Street, Helena, Montana 59604-4759; telephone (406) 495-5138; fax (406) 495-5023; or e-mail nbutler@mt.gov.

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

2.55.320 METHOD FOR ASSIGNMENT OF CLASSIFICATIONS OF EMPLOYMENTS (1) and (2) remain the same.

(3) The State Fund staff shall assign its insureds to classifications contained in the classifications section of the State Compensation Insurance Fund Policy Services Underwriting Manual effective July 1, ~~2009~~ 2010, and assign new or changed classifications as approved by the board. That section of the manual is incorporated by reference. Copies of the classification section of the manual may be obtained from the Insurance Operations Support Department of the State Fund, ~~5 South Last Chance Gulch~~ 855 Front Street, P.O. Box 4759, Helena, Montana 59604-4759.

AUTH: 39-71-2315, 39-71-2316, MCA

IMP: 39-71-2311, 39-71-2316, MCA

REASON: This amendment to ARM 2.55.320 is reasonably necessary at this time to reflect the updates to the State Fund's Underwriting Manual (manual) effective July 1, 2010.

Under 39-71-2316(1)(e), MCA, after rules have been adopted, the State Fund is not subject to the rulemaking provisions of the Montana Administrative Procedure Act when changing classifications and premium rates.

The manual is used by State Fund staff in their usual duties of assigning classifications to insured employers of the State Fund. These classifications each have a premium rate that is adopted by the State Fund board in accordance with the board's ratemaking authority. This amendment is made each year to adopt the current version of the manual which includes new rates, values, and classification code updates effective July 1, 2010. The classification code updates may be those adopted by the Classification Review Committee established in Title 33, chapter 16, MCA, or by the State Fund board of directors.

The amendment also reflects a change in address for the State Fund. This change is necessary because the State Fund moved to a new office building located at 855 Front Street.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to Nancy Butler, Montana State Fund, P.O. Box 4759, 855 Front Street, Helena, Montana 59604-4759; telephone (406) 495-5138; fax (406) 495-5023; or e-mail [nbutler@mt.gov](mailto:nbutler@mt.gov). Any comments must be received no later than 5:00 p.m., December 30, 2010.

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 a written request for a hearing and submit this request along with any written comments to Nancy Butler at the above address no later than 5:00 p.m., December 30, 2010.

6. If the agency receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 2,700 persons based on 27,000 policyholders.

7. The Montana State Fund 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, e-mail, and mailing address of the person and specifies that the person wishes to receive notices regarding the Montana State Fund. If you prefer to receive notices by e-mail, please indicate this in your request. Such written request may be mailed or delivered to Nancy Butler, Montana State Fund, P.O. Box 4759, 855 Front Street, Helena, Montana 59604-4759; faxed to the office at (406) 495-5023; e-mail [nbutler@mt.gov](mailto:nbutler@mt.gov); or may be made by completing a request form at any rules hearing held by the Montana State Fund.

8. An electronic copy of this Notice of Proposed Amendment is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The

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

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

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

/s/ Joe Dwyer  
Joe Dwyer  
Chairman of the Board

/s/ Michael P. Manion  
Michael P. Manion, Chief Legal Counsel  
and Rule Reviewer

Certified to the Secretary of State November 15, 2010.

BEFORE THE DEPARTMENT OF COMMERCE  
OF THE STATE OF MONTANA

In the matter of the adoption of New ) NOTICE OF PUBLIC HEARING ON  
Rule I pertaining to the administration ) PROPOSED ADOPTION  
of the 2011-2012 Federal Community )  
Development Block Grant (CDBG) )  
Program )

TO: All Concerned Persons

1. On December 16, 2010, at 1:30 p.m., the Department of Commerce will hold a public hearing in Room 228 of the Park Avenue Building, at 301 South Park Avenue, Helena, Montana, to consider the proposed adoption of the above-stated rule.

2. The Department of Commerce will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Commerce no later than 5:00 p.m. on December 9, 2010, to advise us of the nature of the accommodation that you need. Please contact Gus Byrom, Department of Commerce, Community Development Division, 301 South Park Avenue, P.O. Box 200523, Helena, Montana 59620-0523; telephone (406) 841-2777; fax (406) 841-2771; TDD (406) 841-2702; or e-mail gbyrom@mt.gov.

3. The rule as proposed to be adopted provides as follows:

NEW RULE I INCORPORATION BY REFERENCE OF RULES FOR THE ADMINISTRATION OF THE 2011-2012 CDBG PROGRAM (1) The Department of Commerce adopts and incorporates by reference the Montana Community Development Block Grant Program FFY 2011 Application Guidelines for Housing and Public Facilities Planning Grants; the FFY 2011 Application Guidelines for the Community Development Block Grant Economic Development Program; the Montana Community Development Block Grant Economic Development Program FFY 2011 Application Guidelines for Planning Projects; the Montana Community Development Block Grant Program and Neighborhood Stabilization Program (NSP) FFY 2011 Grant Administration Manual published as rules for the administration of the CDBG and NSP programs; and the Montana Community Development Block Grant Program FFY 2012 Application Guidelines for Public Facilities Projects and the FFY 2012 Application Guidelines for Housing and Neighborhood Renewal Projects.

- (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, economic development, and neighborhood stabilization projects;
  - (l) project audits;
  - (m) public relations;
  - (n) project monitoring; and
  - (o) planning assistance.
- (3) Copies of the Application Guidelines and Grant Administration Manual adopted by reference in (1) can be viewed on the department's web site at <http://comdev.mt.gov/default.mcp> or <http://businessresources.mt.gov/cdbg/default.mcp>, or may be obtained from the Department of Commerce, Community Development Division, 301 South Park Avenue, P.O. Box 200523, Helena, Montana 59620-0523.

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 FFY 2011 and FFY 2012 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, planning, housing and neighborhood renewal, public facility, and neighborhood stabilization 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 Department of Commerce, Community Development Division, 301 South Park Avenue, P.O. Box 200523, Helena, Montana, 59620-0523, telephone (406) 841-2777; fax (406) 841-2771; e-mail [gbryom@mt.gov](mailto:gbryom@mt.gov); or to the Business Resources Division, 301 South Park Avenue, P.O. Box 200505, Helena, Montana 59620-0505, telephone (406) 841-2744; fax (406) 841-2731; e-mail [nguccione@mt.gov](mailto:nguccione@mt.gov), and must be received no later than 5:00 p.m., December 27, 2010.



5. Gus Byrom, Department of Commerce, has been designated to preside over and conduct this 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 that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. 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, fax (406) 841-2701, e-mail lgregg@mt.gov, or may be made by completing a request form at any rules hearing held by the department.

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

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

/s/ KELLY A. CASILLAS  
KELLY A. CASILLAS  
Rule Reviewer

/s/ DORE SCHWINDEN  
DORE SCHWINDEN  
Director  
Department of Commerce

Certified to the Secretary of State November 15, 2010.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY  
STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PUBLIC HEARING ON
ARM 24.17.103, 24.17.107,	)	PROPOSED AMENDMENT
24.17.121, and 24.17.127 related to	)	
prevailing wage rates for public works	)	
projects - building construction	)	
services, heavy construction services,	)	
highway construction services, and	)	
nonconstruction services	)	

TO: All Concerned Persons

1. On December 17, 2010, at 10:00 a.m., the Department of Labor and Industry (department) will hold a public hearing to be held in the second floor conference room (conference rooms A and B), 1805 Prospect Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., on December 13, 2010, to advise us of the nature of the accommodation that you need. Please contact the Labor Standards Bureau, Employment Relations Division, Department of Labor and Industry, Attn: Mike Smith, P.O. Box 6518, Helena, MT 59604-6518; telephone (406) 444-1741; fax (406) 444-7071; TDD (406) 444-0532; or e-mail MikeSmith@mt.gov.

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

24.17.103 DEFINITIONS As used in this subchapter, the following definitions apply, unless the context of the rule clearly indicates otherwise:

(1) through (17) remain the same.

(18) "Prevailing wage" or "standard prevailing rate of wages" means the standard prevailing rate of wages, as provided by 18-2-401, MCA, and as adopted by the department for work on public works ~~contracts~~ contract jobs. The standard prevailing rate of wages determined according to these rules is not a prescribed wage rate, but is rather a minimum, at or above which an individual performing labor on a public works project must be compensated.

(19) and (20) remain the same.

AUTH: 18-2-409, 18-2-431, 39-3-202, MCA

IMP: 18-2-402, 18-2-403, 18-2-422, 39-3-201 through 39-3-216, MCA

REASON: There is reasonable necessity to amend ARM 24.17.103 while other prevailing wage rules are being amended, in order to make the wording of the definitions internally consistent.

24.17.107 PREVAILING WAGE DISTRICTS ESTABLISHED (1) Pursuant to 18-2-411, MCA, the commissioner has established ten districts for the purpose of setting the standard prevailing rate of wages for construction services (other than heavy construction or highway construction) and nonconstruction services. Heavy construction and highway construction rates are set ~~on a state-wide basis, as provided by 18-2-411~~ pursuant to 18-2-414, MCA.

(2) remains the same.

REASON: There is reasonable necessity to amend ARM 24.17.107 to note that heavy construction and highway construction rates are now established pursuant to 18-2-414, MCA, rather than the prior statutory citation, and to amend the IMP citation accordingly.

AUTH: 18-2-431, MCA

IMP: 18-2-411, 18-2-414, MCA

24.17.121 ESTABLISHING THE STANDARD PREVAILING RATE OF WAGES AND FRINGE BENEFITS (1) The commissioner shall establish the standard prevailing rate of wages and fringe benefits for the various occupations in each district. Except as used in ~~(2)(3)~~ and ~~(3)(4)~~, the term "prevailing rate of wages" includes both wages and fringe benefits.

(2) The standard prevailing rate of wages is based upon the following data sources:

(a) with respect to building construction services, an annual survey of licensed electrical contractors, licensed plumbers, and registered construction contractors engaged in work performed to commercial building codes, as provided for by 18-2-413, MCA, who are licensed or registered on June 15 of the year in which the survey is being conducted;

(b) with respect to heavy construction services, as provided for by 18-2-414, MCA, the applicable federal Davis-Bacon Act rates in effect for Montana on September 1 of that year;

(c) with respect to highway construction services, as provided for by 18-2-414, MCA, the applicable federal Davis-Bacon Act rates in effect for Montana on September 1 of that year; and

(d) with respect to nonconstruction services, an annual survey of employers pursuant to 18-2-415, MCA, as known to the department as of June 15 of the year in which the survey is being conducted.

~~(2)(3)~~ Based on survey data collected by the department for each district, the commissioner will compile wage rate information for a given occupation that reflects wage rates actually paid to workers engaged in public works or commercial projects. ~~The department will survey those construction contractors who appear on a list of contractors registered pursuant to Title 39, chapter 9, MCA, as of October 22 of that year, with respect to those workers performing work according to commercial~~

~~building codes.~~ Wage rates for each occupation will be set using the following procedure:

(a) If a minimum of five or more workers is reported for the occupation within the district, and 50 percent or more of those workers receive the same wage, that rate is the district prevailing wage rate, provided that the rate does not exceed the highest applicable collectively bargained rate for that occupation in that district. As provided by 18-2-402, MCA, the prevailing wage rate cannot exceed the highest applicable collectively bargained wage rate.

(b) If five or more workers are reported for the occupation within the district, but 50 percent of those workers are not paid the same rate, the weighted average wage rate, weighted by the number of workers, is the district prevailing wage rate, provided that the rate does not exceed the highest applicable collectively bargained rate for that occupation in that district. As provided by 18-2-402, MCA, the prevailing wage rate cannot exceed the highest applicable collectively bargained wage rate.

(c) If less than five workers are reported for the occupation within the district, the district prevailing wage rate is the highest applicable collectively bargained rate for that occupation in that district.

(d) If a collective bargaining agreement does not exist for the occupation in that district, a weighted average wage rate for the district weighted by number of workers will be computed using data submitted from that district and all contiguous districts. Districts and their contiguous districts are as follows:

(i) District 1 (Flathead, Lincoln, Sanders, and Lake counties): districts 2, 3, 4, and 5.

(ii) through (f) remain the same.

~~(3)(4)~~ Based on survey data collected by the Department of Labor and Industry, for each district, the commissioner will compile fringe benefit information for a given occupation by district that reflects fringe benefits actually paid to workers engaged in public works or commercial projects. ~~The department will survey those construction contractors who appear on a list of contractors registered pursuant to Title 39, chapter 9, MCA, as of October 22 of that year, with respect to those workers performing work according to commercial building codes.~~ A single fringe benefit rate for each occupation will be set for bona fide benefits paid or contributed to approved plans, funds or programs for health insurance, life insurance, pension or retirement, vacations, holidays and sick leave, using the following procedure:

(a) If a minimum of five or more workers is reported for the occupation within the district, and 50 percent or more of those workers receive the same dollar value of fringe benefits, that rate is the district prevailing fringe benefit rate, provided that the rate does not exceed the highest applicable collectively bargained rate for that occupation in that district. As provided by 18-2-402, MCA, the prevailing fringe benefit rate cannot exceed the highest applicable collectively bargained rate.

(b) If five or more workers are reported for the occupation within the district, but 50 percent of those workers are not paid the same fringe benefit rate, the weighted average fringe benefit rate, weighted by the number of workers, is the district prevailing fringe benefit rate, provided that the rate does not exceed the highest applicable collectively bargained rate for that occupation in that district. As provided by 18-2-402, MCA, the prevailing fringe benefit rate cannot exceed the highest applicable collectively bargained rate.

(c) If less than five workers are reported for the occupation within the district, the district prevailing fringe benefit rate is the highest applicable collectively bargained fringe benefit rate for that occupation in that district.

(d) If a collective bargaining agreement does not exist for the occupation in that district, but a minimum of five workers are reported in the combined contiguous districts, a weighted average fringe benefit rate for the district, weighted by the number of workers, will be computed using data submitted from that district and all contiguous districts. Districts and their contiguous districts are the same as provided by ~~(2)~~(3)(d) of this rule.

(e) and (f) remain the same.

~~(4)~~(5) The commissioner may request clarification, additional information, or independent verification of information submitted pursuant to this rule.

~~(5) The commissioner will annually incorporate the federal Davis-Bacon Act wage rates established for Montana as the state heavy and highway construction rates. Building construction services prevailing wage rates will be updated annually, and nonconstruction services will be updated in odd-numbered years.~~

(6) through (9) remain the same.

AUTH: 18-2-409, 18-2-431, 39-3-202, MCA

IMP: 18-2-401, 18-2-402, 18-2-403, 18-2-411, 18-2-413, 18-2-414, 18-2-415, MCA

REASON: There is reasonable necessity to amend ARM 24.17.121 to update the rule to show that there are three statutory bases upon which prevailing wage rates are established, and to specify the time at which the employers to be surveyed are identified. In order to conduct the surveys, process the survey data, conduct a public hearing on proposed rates, and take final action on rates before the start of each year's construction season, the department believes that it is reasonably necessary to use June 15 as the cut-off date for identifying the employers that will be surveyed. Because heavy construction services and highway construction service rates are not currently being surveyed for, the later September 1 date is adequate to prepare the state rate publication in time for the annual ratemaking process.

There is reasonable necessity to amend the rule to clarify that pursuant to 2009 amendments to 18-2-402, MCA, the prevailing wage rate cannot be set higher than the highest applicable collectively bargained rate. In addition, there is reasonable necessity to amend the contiguous district weighting provisions of the rule to clarify that the data from the original district, plus the contiguous districts, is included. The department notes that the contiguous district provision clarification does not change the department's methodology, but merely makes explicit the inclusion of the original district data.

There also is reasonable necessity, while the rule is otherwise being amended, to make a minor technical amendment to ARM 24.17.121(3)(d)(i) and make the wording of that subsection consistent with the other subsections. Finally, there is reasonable necessity to update the list of statutes being implemented by the rule, following 2009 legislative changes.

24.17.127 ADOPTION OF STANDARD PREVAILING RATE OF WAGES

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

(e) The current building construction services rates are contained in the ~~2010~~ 2011 version of "~~The State of Montana Prevailing Wage Rates for Building Construction Services~~" publication.

(f) The current nonconstruction services rates are contained in the ~~2010~~ 2011 version of "~~The State of Montana Prevailing Wage Rates for Nonconstruction Services~~" publication.

(g) The current heavy construction services rates are contained in the ~~2010~~ 2011 version of "~~The State of Montana Prevailing Wage Rates for Heavy Construction Services~~" publication.

(h) The current highway construction services rates are contained in the ~~2010~~ 2011 version of "~~The State of Montana Prevailing Wage Rates for Highway Construction Services~~" publication.

(2) and (3) remain the same.

AUTH: 2-4-307, 18-2-409, 18-2-431, MCA

IMP: 18-2-401, 18-2-402, 18-2-403, 18-2-406, 18-2-411, 18-2-412, 18-2-413, 18-2-414, 18-2-415, 18-2-422, 18-2-431, MCA

REASON: There is reasonable necessity to amend ARM 24.17.127 to update the various prevailing wage rates. Annual updates are required by 18-2-413 and 18-2-415, MCA, for building construction services and nonconstruction services, respectively. It is convenient to update the rates for heavy construction services and highway construction services at the same time, as many of the employers affected by the building construction service rates are also affected by the heavy and highway rates. Payment of prevailing wage rates is required in most public works contracts by 18-2-422, MCA. The department is proposing the rates at this time following completion of its wage surveys, in order to have as current a set of rates as is feasible. The proposed wage rates will apply to public works projects let for bid on or after the effective date of the rate changes.

The department emphasizes that the proposed rates for building construction services and nonconstruction services are based upon survey responses and applicable collective bargaining agreements. The methodology for surveys and rate computations is described in ARM 24.17.121. The department relies upon the information provided by employers and labor organizations during the survey process to set the proposed rates. The final rates are based upon the preliminary rates, as modified by including any relevant information provided during the public comment period.

4. A copy of the proposed 2011 publications, identified as "preliminary building construction rates", "preliminary heavy construction rates", "preliminary highway construction rates", and "preliminary nonconstruction rates", are available and can be accessed on-line via the internet at: [www.mtwagehourbopa.com](http://www.mtwagehourbopa.com).

5. A printed version of the proposed 2011 publications is also available by contacting Mike Smith, at the address, e-mail, or telephone numbers listed in paragraph 2 of this notice.

6. Concerned persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Labor Standards Bureau, Employment Relations Division, Department of Labor and Industry, Attn: Mike Smith, P.O. Box 6518, Helena, MT 59604-6518; fax (406) 444-7071; TDD (406) 444-0532; or e-mailed to MikeSmith@mt.gov, and must be received no later than 5:00 p.m., December 27, 2010.

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

8. 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 that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program or areas of law the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the Department of Labor and Industry, attention: Mark Cadwallader, 1327 Lockey Avenue, P.O. Box 1728, Helena, Montana 59624-1728, faxed to the department at (406) 444-1394, e-mailed to [mcadwallader@mt.gov](mailto:mcadwallader@mt.gov), or may be made by completing a request form at any rules hearing held by the agency.

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

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

/s/ MARK CADWALLADER  
Mark Cadwallader  
Alternate Rule Reviewer

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

Certified to the Secretary of State November 15, 2010

BEFORE THE BOARD OF LAND COMMISSIONERS AND  
THE DEPARTMENT OF NATURAL RESOURCES  
AND CONSERVATION OF THE STATE OF MONTANA

In the matter of the amendment of ARM )  
36.11.402 and adoption of New Rules I )  
and II regarding forest management )  
rules for implementing conservation )  
easements and habitat conservation )  
plans )

NOTICE OF PUBLIC HEARING  
ON PROPOSED AMENDMENT  
AND ADOPTION

To: All Concerned Persons

1. On December 16, 2010 at 2:00 p.m., the Department of Natural Resources and Conservation will hold a public hearing in the Clark Fork Conference Room, 2705 Spurgin Road, Missoula, Montana, to consider the proposed amendment and adoption of the above-stated rules.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the agency no later than 5:00 p.m. on December 6, 2010, to advise the department of the nature of the accommodation that you need. Please contact Mike O'Herron, Department of Natural Resources and Conservation, 2705 Spurgin Road, Missoula, MT; telephone (406) 542-4302; fax (406) 542-4242; e-mail moherron@mt.gov.

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

36.11.402 GENERAL APPLICABILITY (1) The state forest land management rules, ~~ARM 36.11.403 through 36.11.450~~, in this subchapter shall apply to forest management activities on all forested state trust lands administered by the department.

~~(2) The department shall not require that ARM 36.11.403 through 36.11.450 be implemented on projects that, prior to the adoption of the rules, have gone through the MEPA public scoping process, except the department shall review those timber sales where old growth was proposed for harvesting that were developed using the state forest land management plan biodiversity guidance of 1998 to ensure compliance with ARM 36.11.404 through 36.11.429.~~

AUTH: 77-1-202, 77-1-209, 77-5-201, 77-5-204, MCA  
IMP: 77-5-116, 77-5-204, 77-5-206, 77-5-207, MCA

REASONABLE NECESSITY: The amendment to ARM 36.11.402 is necessary to remove obsolete language. The language was originally inserted into the rule to identify those already ongoing projects that would have been affected by the rulemaking when the forest management rules were originally adopted in 2003.



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

NEW RULE I LANDS SUBJECT TO A HABITAT CONSERVATION PLAN

(1) For trust land parcels subject to a habitat conservation plan contractually entered by the department and the United States Fish and Wildlife Service (USFWS) pursuant to Section 10 of the Endangered Species Act (ESA), the department must implement the conservation strategies identified in the habitat conservation plan.

(2) If there are conflicts between the conservation strategies in the habitat conservation plan and the administrative rules for forest management in this subchapter, the department must follow the conservation strategies in the habitat conservation plan or incidental take permit.

AUTH: 77-1-202, 77-1-209, 77-5-201, 77-5-204, MCA

IMP: 77-1-202, 77-1-203, 77-1-301, 77-5-103, 77-5-116, 77-5-204, 77-5-206, 77-5-207, MCA

NEW RULE II CONSERVATION EASEMENTS (1) For trust land parcels that have an appurtenant conservation easement that addresses conservation strategies or stipulations for forest management, the department must follow the conservation strategies or stipulations of the conservation easement.

(2) If there are conflicts between the conservation strategies or stipulations of the conservation easement and the administrative rules for forest management in this subchapter, the department must follow the conservation strategies or stipulations of the conservation easement.

AUTH: 77-5-201, 77-5-204, MCA

IMP: 77-1-202, 77-1-203, 77-1-301, 77-5-103, 77-5-116, 77-5-204, 77-5-206, 77-5-207, MCA

REASONABLE NECESSITY: New Rules I and II are necessary to acknowledge that in addition to the forest management rules (ARM 36.11.401 through 36.11.450), the department is legally bound to implement conservation strategies or stipulations that are variations on the rules and that supplement the rules. Those include, but are not limited to, conservation easements appurtenant to the title or an Endangered Species Act (ESA) Section 10 habitat conservation plan to which the department is contractually bound. The department is managing state trust lands in a regulatory environment within which varying conservation strategies or stipulations apply.

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 Mike O'Herron, Department of Natural Resources and Conservation, 2705 Spurgin Road, Missoula, MT 59801; telephone (406) 542-4302; fax (406) 542-4242; e-mail moherron@mt.gov, and must be received no later than 5:00 p.m. on January 6, 2011.

6. Mike O'Herron, Department of Natural Resources, has been designated to preside over and conduct the public hearing.

7. An electronic copy of this Notice of Public Hearing on Proposed Amendment and Adoption is available through the department's web site at <http://www.dnrc.mt.gov>. The department strives to make the electronic copy of this Notice of Public Hearing on Proposed Amendment and Adoption 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.

8. 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 that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding conservation districts and resource development, forestry, oil and gas conservation, trust land management, water resources, or a combination thereof. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be sent or delivered to the contact person in 5 above or may be made by completing a request form at any rules hearing held by the department.

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

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

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

/s/ Mark Phares  
MARK PHARES  
Rule Reviewer

Certified to the Secretary of State on November 15, 2010.

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

In the matter of the adoption of New )  
Rules I through IX, the amendment of )  
ARM 37.106.1130 and 37.106.1845, )  
and the repeal of ARM 37.106.1001 )  
pertaining to licensing requirements )  
for outpatient facilities for primary )  
care )

NOTICE OF PUBLIC HEARING ON  
PROPOSED ADOPTION,  
AMENDMENT, AND REPEAL

TO: All Concerned Persons

1. On December 16, 2010 at 10:30 a.m., the Department of Public Health and Human Services will hold a public hearing in the Wilderness Room of 2401 Colonial Drive, at Helena, Montana, to consider the proposed adoption, amendment, and repeal of the above-stated rules.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Public Health and Human Services no later than 5:00 p.m. on December 7, 2010, to advise us of the nature of the accommodation that you need. Please contact Gwen Knight, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-9503; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

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

NEW RULE I PURPOSE (1) The purpose of these rules is to establish the licensing requirements for the licensure of outpatient centers for primary care.

AUTH: 50-5-103, 53-6-106, MCA  
IMP: 50-5-103, 50-5-106, 50-5-114, 50-5-116, 50-5-201, 50-5-204, 50-5-207,  
MCA

NEW RULE II SCOPE (1) For purposes of this subchapter, outpatient centers for primary care include the facilities described at 50-5-101(41), MCA, outpatient birth centers and radiological imaging facilities.

AUTH: 50-5-103, 53-6-106, MCA  
IMP: 50-5-103, 50-5-106, 50-5-114, 50-5-116, 50-5-201, 50-5-204, 50-5-207,  
MCA

NEW RULE III DEFINITIONS (1) "Commission for the Accreditation of Birth Centers" means the organization nationally recognized by that name and that surveys outpatient birth center facilities upon their request and grants accreditation status to the outpatient birth center that it finds meets its standards and requirements.

(2) "Low risk patient" means a pregnant woman with a normal, uncomplicated prenatal course as determined by adequate prenatal care and prospects for a normal, uncomplicated birth as defined by reasonable and generally accepted criteria of maternal and fetal health.

(3) "Medical director" means a physician licensed under Title 37, MCA, who oversees the services provided in an outpatient center for primary care. The medical director may also serve in the outpatient center for primary care as a licensed health care professional.

(4) "Outpatient birth center" means a facility that provides comprehensive prenatal, delivery, and newborn care to ambulatory, low risk patients under the direction of a health care provider who is licensed under Title 37, MCA, and is operating within the scope of practice allowed by the health care provider's license. Outpatient birthing services are provided on an outpatient basis for a period of generally less than 24 consecutive hours, unless requiring transfer to another level of care if medically indicated.

(5) "Outpatient center for primary care" means a facility that provides, under the direction of a licensed physician, either diagnosis or treatment, or both, to ambulatory patients and that is not an outpatient center for surgical services.

AUTH: 50-5-103, 53-6-106, MCA

IMP: 50-5-103, 50-5-106, 50-5-114, 50-5-116, 50-5-201, 50-5-204, 50-5-207, MCA

NEW RULE IV MINIMUM STANDARDS FOR OUTPATIENT CENTERS FOR PRIMARY CARE (1) An outpatient center for primary care must meet the requirements of ARM Title 37, chapter 106, subchapter 3 relating to minimum standards for all health care facilities.

(2) An outpatient center for primary care shall have a written policy and procedure manual as described in [New Rule V] available to and followed by all personnel.

(3) Each outpatient center for primary care shall employ, or contract with, a medical director who shall:

(a) coordinate with and advise the staff of the center on clinical matters;

(b) provide direction, consultation, and training regarding the center operations as needed;

(c) act as a liaison for the center with community physicians, hospital staff, and other professionals and agencies; and

(d) ensure the quality of treatment and related services through participation in the center's quality assurance process as outlined in the center's policies and procedures.

(4) Nursing services must be provided by or under the supervision of a licensed registered nurse.

(5) Standing orders utilized for emergency or post-operative care shall be recorded in each patient's medical record and dated and signed by the patient's licensed health care professional.

(6) An outpatient center for primary care shall maintain a medical record for each patient that includes the following information:

- (a) identification data;
- (b) chief complaint;
- (c) present illness;
- (d) medical history;
- (e) physical examination;
- (f) laboratory and imaging reports;
- (g) treatment administered;
- (h) tissue report;
- (i) progress reports; and
- (j) discharge summary.

AUTH: 50-5-103, 53-6-106, MCA

IMP: 50-5-103, 50-5-106, 50-5-114, 50-5-116, 50-5-201, 50-5-204, 50-5-207, MCA

NEW RULE V WRITTEN POLICIES AND PROCEDURES (1) Each outpatient center for primary care shall maintain a policy and procedure manual. The policy and procedure manual shall be reviewed and updated as necessary, but at least annually. The manual shall contain policies and procedures for:

- (a) notifying staff of all changes in policies and procedures;
- (b) addressing patient rights, including a procedure for informing patients of their rights;
- (c) informing patients of the policy and procedures for patient complaints and grievances;
- (d) addressing and reviewing ethical issues faced by staff and reporting allegations of ethics violations to the applicable professional licensing authority;
- (e) emergency procedures of the birth center;
- (f) establishing fiscal policies governing the management of organization; and
- (g) developing and implementing policy(s) for security.

(2) The policy and procedures manual must include a current organizational chart delineating the lines of authority, responsibility, and accountability for the administration and provision of all facility patient services.

AUTH: 50-5-103, 53-6-106, MCA

IMP: 50-5-103, 50-5-106, MCA

NEW RULE VI MINIMUM STANDARDS FOR OUTPATIENT CENTERS FOR PRIMARY CARE: BIRTH CENTERS (1) If an outpatient center for primary care operates a birth center, the birth center shall:

- (a) comply with the requirements of [New Rule IV];

(b) show written evidence of current accreditation by the Commission for the Accreditation of Birth Centers including recommendations for future compliance or meet the standards as outlined in [New Rule VII]; and

(c) establish a coordinated transfer of care through a mutually established agreement to the nearest hospital as required by the patient's acuity or the outpatient birth center 24 hour length of stay limitation.

(d) A transfer of care agreement must show that a physician who has admitting privileges at the hospital has agreed to admit and treat patients of the birthing center should the need arise. In transferring patients, the birth center shall:

(i) before transfer, coordinate and provide notice to the hospital, including the reason for the transfer; and

(ii) during transfer, provide the medical records related to the patient's current condition.

AUTH: 50-5-103, 53-6-106, MCA

IMP: 50-5-103, 50-5-106, MCA

NEW RULE VII OPERATION STANDARDS FOR OUTPATIENT CENTERS FOR PRIMARY CARE: BIRTH CENTERS (1) A birth center organization:

(a) maintains a governing body that meets regularly; and

(b) actively seeks and takes appropriate action on feedback from its consumers.

(2) A birth center administration shall:

(a) operate under a clearly defined mission, philosophy, and goals;

(b) follow generally accepted accounting principles and take measures to make sure it is fiscally responsible, including a plan to cover shortfalls; and

(c) ensure continuity of leadership and quality of care.

(3) Facility requirements for a birth center include:

(a) compliance with regulations established in the local jurisdiction, including applicable local and state codes for construction, fire prevention, public safety and access, annual inspections by the fire department, building inspector, and other officials concerned with public safety as determined by the local jurisdiction; and

(b) an emergency plan in the event of fire and natural disasters and documents practice of the plan on an annual basis.

(4) Equipment requirements for a birth center include:

(a) a readily available emergency cart or tray for the mother and newborn that is equipped to carry out the written emergency procedures of the birth center and securely placed with a written log of routine maintenance; and

(b) regular inspections of all medical equipment and documents accordingly.

(5) A birth center shall maintain sufficient supplies, including basic medical supplies for both mothers and babies, on hand, for the number of childbearing families served at the birth center.

(6) Quality of service requirements for a birth center include:

(a) respect for health care rights of all clients, including privacy;

(b) standard HIPAA practices; and

(c) providers who practice midwifery and support the normal birth process including:

- (i) careful screening for potential complications;
  - (ii) honoring the mother's needs and desires throughout labor;
  - (iii) assisting the mother in managing pain; and
  - (iv) paying close attention to the mother and baby's status in labor.
- (d) limits its services to normal labor, therefore it does not utilize interventions

such as:

- (i) vacuum extraction;
- (ii) medications to speed up labor;
- (iii) continuous electronic monitoring; and
- (iv) epidural nerve block.

(7) The birth center has a specific plan for transferring to a hospital if complications arise before, during labor, or after birth and interventions are required.

(8) Staffing and personnel requirements for a birth center include:

(a) professional staff and consulting specialists licensed to practice their profession and having the knowledge and skills required to provide the services offered by the birth center;

(b) at least two staff members attending every birth who are trained and certified in CPR and newborn resuscitation;

(c) staff members who are trained according to the policies and procedures of the birth center;

(d) the birth center must keep a schedule for clinical staff on call, to make sure all shifts are covered, day and night, seven days a week; and

(e) the birth center must conduct regular emergency drills to make sure staff members are prepared to manage unexpected situations with laboring mothers and newborns.

(9) Health record requirements for a birth center include:

(a) forms appropriate for use in a birth center, and clinicians document patient care accordingly;

(b) use of the chart supports a full prenatal exam to ensure that all clients are low risk;

(c) educates clients on self-care in pregnancy, including:

(i) nutritional counseling;

(ii) informed decision-making about pain relief in labor; and

(iii) newborn care.

(10) The birth center maintains a plan for coordinating the transfer of the patient chart to another facility if the mother or newborn needs to be transferred and clearly communicates this plan to the mother.

(11) Quality assessment and improvement activity requirements for a birth center include:

(a) a well defined quality improvement program;

(b) reviews of its practices and clinical outcomes on a regular basis to ensure that it follows its own policies;

(c) procedures to actively seek client feedback, and then evaluate complaints and suggestions and work to improve client satisfaction on a regular basis; and

(d) staff must be evaluated on a regular basis to ensure competency and alignment with birth center policies.

AUTH: 50-5-103, 53-6-106, MCA

IMP: 50-5-103, 50-5-201, MCA

NEW RULE VIII MINIMUM STANDARDS FOR OUTPATIENT FACILITIES:

IMAGING SERVICES (1) If an outpatient center for primary care provides diagnostic imaging services, the center must meet the following standards:

(a) a qualified full-time, part-time, or consulting radiologist must be utilized to interpret radiographic tests that are determined by the medical staff to require a radiologist's specialized knowledge;

(b) only personnel designated as qualified by the medical staff, and meeting requirements of state law, may use the radiographic equipment and administer procedures;

(c) each report that contains interpretations must be signed by the radiologist or other practitioner who provided the radiological services; and

(d) the facility must maintain diagnostic imaging film and electrodiagnostic tracings:

(i) for at least five years; and

(ii) interpretations must be retained for the same periods required for the medical records provided by ARM 37.106.402.

AUTH: 50-5-103, 53-6-106, MCA

IMP: 50-5-103, 50-5-106, 50-5-201, MCA

NEW RULE IX FACILITY INSPECTIONS (1) Outpatient centers for primary care are subject to inspection requirements provided in 50-5-116 and 50-5-204, MCA.

AUTH: 50-5-103, 53-6-106, MCA

IMP: 50-5-103, 50-5-106, MCA

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

37.106.1130 MEDICAL ASSISTANCE FACILITIES: OUTPATIENT

SERVICES (1) If a medical assistance facility provides outpatient services, each outpatient must be examined by a practitioner and the services must meet the standards contained in ~~ARM 37.106.1004~~ [New Rule IV].

(2) The department hereby adopts and incorporates by reference ARM ~~37.106.1004~~ [New Rule IV], which contains the licensure standards for facilities having outpatient services. A copy of ~~ARM 37.106.1004~~ [New Rule IV] may be obtained from the Department of Public Health and Human Services, Quality Assurance Division, 2401 Colonial Drive, P.O. Box 202953, Helena, MT 59620-2953.

AUTH: 50-5-103, MCA

IMP: 50-5-101, 50-5-103, 50-5-204, MCA



37.106.1845 SPECIALTY MENTAL HEALTH FACILITY: OUTPATIENT SERVICES (1) If the specialty mental health facility provides outpatient services, each outpatient must be examined by a psychiatrist licensed in Montana and the services must meet the standards contained in ~~ARM 37.106.1001~~ [New Rule IV].

(2) The department hereby incorporates by reference ~~ARM 37.106.1001~~ [New Rule IV], which contains minimum licensure standards for outpatient facilities. Copies of ~~ARM 37.106.1001~~ [New Rule IV] may be obtained from the Department of Public Health and Human Services, Quality Assurance Division, 2401 Colonial Drive, P.O. Box 202953, Helena, MT 59620-2953.

AUTH: 50-5-103, MCA

IMP: 50-5-103, 50-5-201, MCA

5. The department proposes to repeal the following rule:

37.106.1001 MINIMUM STANDARDS FOR AN OUTPATIENT FACILITY, is found on page 37-26155 of the Administrative Rules of Montana.

AUTH: 50-5-103, 50-5-404, MCA

IMP: 50-5-103, 50-5-204, 50-5-404, MCA

6. Statement of Reasonable Necessity:

The Department of Public Health and Human Services (the department) is proposing the adoption of New Rules I through IX pertaining to the licensure of outpatient centers for primary care, to include birth centers and imaging facilities. In establishing these rules the department has outlined a set of general or "core requirements", which are applicable to any outpatient license. Following the core requirements, the department proposes regulatory language unique to the specific outpatient endorsement for birth centers and imaging services.

The rule for outpatient center for primary care has been in effect since June 13, 1980. This rule was general and easily open to broad interpretation. The department proposes to strengthen the rule language and add endorsements to this license for birth centers and imaging services.

Currently birth centers can operate under the independent scope of practice of the health care professional and these professionals are seeking facility licensure under the existing outpatient center for primary care authority. Birth centers have sought a facility license for purposes of Medicaid reimbursement. Birth centers provide an alternative choice in our state for birthing mothers and the rules will establish minimum requirements that the department deems as being necessary, not just for the licensure of these facilities, but for the overall health and safety of both the birthing mother and her baby.

Imaging services exist as free-standing services, and like birth centers, operate under an independent scope of practice. The providers of imaging services also

seek facility licensure for purposes of Medicaid reimbursement and the proposed rules establish the minimum requirements deemed necessary by the department not only for facility licensure of imaging services but for the overall care provided to persons utilizing imaging services.

#### New Rule I and New Rule II

These rules are being proposed under the authority of Title 50, part 5, subparts 1 and 2, MCA to establish the licensing requirements for outpatient centers for primary care to include specifications for facilities operating as birth centers and for those providing radiological imaging services.

#### New Rule III

This rule is being proposed to identify the various terms used throughout the rule.

#### New Rule IV

The department proposes to repeal ARM 37.106.1001 and include the existing minimum standards for outpatient facilities in New Rule IV. In doing so, the minimum standards for outpatient facilities will be required for all outpatient centers for primary care. Cross references in ARM 37.106.1130 and 37.106.1845 would be updated accordingly.

#### New Rule V

Health care facilities would be required to develop, implement, and maintain a policy and procedure manual for the overall operation of their facility. In the past, these documents were not required in the rules pertaining to outpatient centers for primary care. However, outpatient centers for primary care are included in the definition of a "health care facility" under 50-5-101(23), MCA and must have established policies and procedures for their operation.

#### New Rule VI and New Rule VII

The rules being proposed in New Rule VI and New Rule VII have been written in order to protect the health of the birthing mother and her baby. The department proposes that if an outpatient center for primary care operates a birthing center, the center must show evidence of accreditation by the Commission for the Accreditation of Birth Centers (CABC) or alternatively meet the set of standards outlined in New Rule VII. This proposed rule provides a basic tool for measuring the overall health and safety of both the mother and the baby. The requirement for accreditation is proposed because as a national "designation of approval" accredited programs generally meet or exceed the minimum requirements proposed through a licensing process. In other areas of health care facility licensure, the department has acknowledged accreditation as a basis for licensure. The department acknowledges that not all facilities can afford nor have the desire to become accredited. New Rule

VII establishes an equivalent set of health and safety requirements allowing a birth center to operate in a manner consistent with acceptable standards of practice.

Outpatient centers are limited to provide care for periods of less than 24 hours. If a mother or a baby need care beyond the 24 hour care limitation or need care beyond what the facility can provide, the department requires in proposed New Rule VI(1)(c) and (d) that the center have formal arrangements for the immediate transfer of the mother and/or baby to a hospital. The rule requires the facility to indicate the process and the records to be sent with the patient for a coordinated transfer of care.

### New Rule VIII

This proposed rule provides minimum standards of operation for radiological imaging services.

### ARM 37.106.1130 and 37.106.1845

The department is proposing to update language in ARM 37.106.1130 and 37.106.1845 to reflect the proposed New Rule IV.

### ARM 37.106.1001

The department is proposing to repeal ARM 37.106.1001 and move the language to New Rule IV.

7. 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: Gwen Knight, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail [dphhslegal@mt.gov](mailto:dphhslegal@mt.gov), and must be received no later than 5:00 p.m., December 27, 2010.

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

9. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 7 above or may be made by completing a request form at any rules hearing held by the department.

10. An electronic copy of this proposal notice is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of State strives to make the electronic copy of the notice conform to the official version

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

11. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

/s/ John Koch  
Rule Reviewer

/s/ Anna Whiting Sorrell  
Anna Whiting Sorrell, Director  
Public Health and Human Services

Certified to the Secretary of State November 15, 2010

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

In the matter of the amendment of ) NOTICE OF PUBLIC HEARING ON  
ARM 37.70.115, 37.70.305, ) PROPOSED AMENDMENT  
37.70.311, 37.70.401, 37.70.402, )  
37.70.406, 37.70.407, 37.70.408, )  
37.70.601, 37.70.602, 37.70.607, and )  
37.70.901 pertaining to Low Income )  
Energy Assistance Program (LIEAP) )

TO: All Concerned Persons

1. On December 17, 2010, at 1:30 p.m., the Department of Public Health and Human Services will hold a public hearing in the auditorium of the Department of Public Health and Human Services Building, 111 North Sanders, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Public Health and Human Services no later than 5:00 p.m. on December 8, 2010, to advise us of the nature of the accommodation that you need. Please contact Gwen Knight, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-9503; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

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

37.70.115 OVERPAYMENTS AND UNDERPAYMENTS (1) and (1)(a) remain the same.

(2) ~~Current~~ Except as provided in (3), current and future program year payments of low income energy assistance will be reduced the full amount of prior overpayments, unless the administrative cost would exceed the amount of overpayment.

(a) ~~However~~ Additionally, cases in which the recipient willfully made false statements or withheld information causing overpayment are to be referred to the audit and compliance bureau for determination of fraud as provided in ARM 37.70.110.

(3) When it is discovered that the local contractor caused an overpayment of low income energy assistance or weatherization services, at the sole discretion of the department, the local contractor may be required to repay the entire overpayment to the department, rather than the overpayment being withheld from the recipient's future payments.

AUTH: 53-2-201, MCA  
IMP: 53-2-201, MCA

37.70.305 APPLICATION (1) Except as provided in (4), A a new application for low income energy assistance must be made for each new heating season and when a household changes residence during the heating season. An application is initiated by filing a signed written application on the form prescribed by the department at the office of the local contractor in the area where the applicant lives. If necessary, the contractor will provide assistance in completing the application form.

(2) remains the same.

(3) An application for low income energy assistance generally must be filed during the heating season for which assistance is being sought, that is, between October 1 and April 30, except as provided in (4). If April 30 falls on a weekend or legal holiday, the contractor must accept applications on the next business day after the weekend or legal holiday. However, at the option of the department, applicants who use certain types of heating fuel which are sold at lower prices during the summer months or applicants for emergency services may be permitted to file their applications prior to October 1 of the heating season for which they are seeking assistance. In the case of applicants who use other types of fuel and who are not seeking emergency services, the local contractor may in its discretion accept applications prior to October 1, but the date of application will be deemed to be October 1.

(4) Residents of publicly subsidized housing who receive a minimum benefit as provided in ARM 37.70.601(2) because their energy costs are included as a portion of their rent and their rent is a fixed portion of their income are required to file an application only once every five years if they continue to live in the same subsidized housing unit. When such a resident is found to be eligible for LIEAP, the household will be approved to receive a minimum benefit for a five-year period as provided in ARM 37.70.601(2) without filing a new application in the four subsequent heating seasons. A new application may be filed in the following situations, however:

(a) A resident of publicly subsidized housing who moves into nonsubsidized housing during the five-year eligibility period may reapply for a prorated benefit for the current heating season based on the resident's new circumstances as provided in ARM 37.70.602. The resident will then be required to file a new application for each subsequent heating season as long as the resident lives in nonsubsidized housing, as provided in (1).

(b) A resident of publicly subsidized housing who moves to another publicly subsidized housing unit during the five-year eligibility period may file a new application for a minimum benefit for another five-year period which will run from the date of the new application, if the household's energy costs are included as a portion of its rent and its rent is a fixed portion of its income.

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

AUTH: 53-2-201, MCA

IMP: 53-2-201, MCA

37.70.311 PROCEDURES FOLLOWED IN PROCESSING APPLICATIONS

(1) The procedure for determining eligibility for low income energy assistance is:

(a) An application is filed by the applicant together with verification for determining financial eligibility and benefit award. After an application is filed, the local contractor may request any additional information or documentation needed to determine eligibility and/or benefit amount. If an applicant fails to provide information or documentation necessary for a determination of eligibility within 45 days of the date of initial application the application shall be denied, but the household may reapply for assistance.

(i) remains the same.

(A) social security number (SSN), U.S. citizenship, or lawful entry into the United States with the intent of establishing permanent residence for each member of the household over the age of three weeks;

(B) photo identification for each member aged 18 years or older. For members under age 18, a birth certificate will be accepted;

(A) through (C) remain the same but are renumbered (C) through (E).

(D) (F) the household's obligation to pay for the cost of heating its residence except for residents of publicly subsidized housing who are receiving only a minimum benefit, and type of primary heating fuel; and

(E) (G) receipts to support paid eligible energy costs when a household seeks direct reimbursement for paid eligible energy costs as provided in ARM 37.70.607(2). Failure to provide receipts to the local contractor within 45 days of the heating season's end or by June 25 in the case of an extended heating season will result in forfeiture of any remaining benefits for that heating season.

(ii) remains the same.

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

(c) remains the same.

(2) A household's eligibility and benefit amount will be determined based on the household's circumstances at the time the application is filed, including, but not limited to, the type of the household's dwelling, the number of bedrooms in the dwelling, the dwelling's primary heating fuel, the heating district in which the dwelling is located, who is verification of the identities and citizenship or lawful residence of those residing in the household, and the household's resources. Eligibility in regard to income, however, is based on the household's income in the 12 months immediately preceding the month of application, as provided in ARM 37.70.401(4) and 37.70.406(4). If the household is ineligible using income in the 12 months preceding the month of application, eligibility will be determined by ascertaining the household's gross income in the three months immediately preceding the month of

application and multiplying that figure by four to arrive at the household's annual income based on the three-month period.

(3) remains the same.

AUTH: 53-2-201, MCA

IMP: 53-2-201, MCA

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

(a) For households with self-employment income, annual gross income means annual gross receipts for the 12 months preceding the month of application or the three months annualized, based on whichever method was used in determining eligibility minus self-employment deductions for the 12 months preceding the month of application or the three months annualized, based on whichever method was used in determining eligibility. For households with self-employment income, annual gross income means annual gross receipts minus self-employment deductions.

(2) "Annual gross receipts" applies to households with income from self-employment and means all income before any deductions, including any nonexcluded income not from self-employment, which was received by members of the household in the 12 months immediately preceding the month of application or the three months annualized, based on whichever method was used in determining eligibility.

(3) and (4) remain the same.

(5) "Eligible energy costs" means costs of the various types of energy supplied by the household's fuel vendors. Energy delivered by the household's fuel vendors prior to October 1 is ineligible for payment in the current heating season, except ~~that~~ in the sole discretion of the department, charges incurred from July 1 through September 30 for certain types of deliverable fuels (e.g., wood, coal, fuel oil, and propane) to heat a residence are eligible for payment in the current heating season. Provided, however, that eligible energy costs may include energy delivered prior to October 1 for applications filed after September 30, when the type of fuel and the vendor's normal billing procedures make the above definition impracticable. Eligible energy costs include tank rental but not deposits or fuel tank set ups.

(6) "Federal fiscal year (FFY)" means the period from October 1 of one calendar year through September 30 of the next calendar year. For example, federal fiscal year 2011 means the period from October 1, 2010 through September 30, 2011.

~~(6)~~ (7) "Heating season" means the period from October 1 to April 30 of the following year. For example, the ~~1999~~ 2009 through ~~2000~~ 2010 heating season is the period from October 1, ~~1999~~ 2009, through April 30, ~~2000~~ 2010. The department



may, however, in its sole discretion, extend the heating season beyond April 30. If the heating season is extended beyond April 30, LIEAP benefits may be applied against energy costs incurred in the additional months of the heating season, but no applications for benefits may be filed after April 30 except as provided in ARM 37.70.305. Should the department extend the end of the heating season beyond April 30, requests for reimbursement must be received by the agency no later than June 25 of the same year.

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

~~(11)~~ "LC" means local contractor.

(12) "Local contractor" means a community-based organization with which the department has contracted to provide outreach and to receive and process applications for LIEAP and the Weatherization Program.

(12) remains the same but is renumbered (13).

(14) "Minimum benefit" means the fixed amount paid to eligible households who reside in publicly subsidized housing as provided in ARM 37.70.601. The minimum benefit is not computed using the benefit matrices and income/climatic adjustment multipliers in ARM 37.70.601 but is a single payment of \$50 for a five-year period.

~~(13)~~ (15) "Mobile home" means a singlewide or doublewide trailer or mobile home only.

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

(a) For households with self-employment income, monthly gross income means monthly gross receipts minus self-employment deductions.

(17) "Monthly gross receipts" applies to households with income from self-employment and means all income before any deductions, including any nonexcluded income not from self-employment, received by members of the household in a calendar month.

(14) through (20) remain the same but are renumbered (18) through (24).

~~(24)~~ (25) "State fiscal year" means the period from July 1 of one calendar year through June 30 of the next calendar year. For example, state fiscal year 2004 2011 means the period from July 1, 2003 2010 through June 30, 2004 2011.

(22) through (24) remain the same but are renumbered (26) through (28).

AUTH: 53-2-201, MCA

IMP: 53-2-201, MCA

#### 37.70.402 GENERAL ELIGIBILITY REQUIREMENTS, ELIGIBILITY REQUIREMENTS FOR CERTAIN TYPES OF INDIVIDUALS, AND HOUSEHOLDS

(1) With the exception of residents of publicly subsidized housing described in (7), only households that are obligated to pay for fuel to heat their homes are eligible for low income energy assistance benefits.

(2) Except as provided elsewhere in this rule, households which consist solely of members who are eligible for and receiving supplemental security income, TANF-funded cash assistance, or county or tribal general assistance are automatically financially eligible for low income energy assistance benefit awards.

(2) through (5) remain the same but are renumbered (3) through (6).

~~(6)~~ (7) Residents of publicly subsidized housing whose ~~heating energy~~ costs are included as a portion of their rent and whose rent is a fixed portion of their income are ~~not may be~~ eligible for low income energy assistance benefits provided for in ARM 37.70.601 but are eligible for to receive a minimum benefit and weatherization assistance as provided for in ARM Title 37, chapter 71. Residents of publicly subsidized housing who receive a minimum benefit and subsequently move into nonsubsidized housing during the five-year eligibility period may apply for a prorated benefit for the current heating season as provided in ARM 37.70.602. Residents of publicly subsidized housing who receive a minimum benefit and subsequently move into another subsidized housing unit during the five-year eligibility period may reapply for a minimum benefit for another five-year period from the date of reapplication within the current heating season.

(8) Current and future benefits will be denied any individuals and households who refuse to submit social security numbers or proof of U.S. citizenship or lawful entry into the United States with the intent of establishing permanent residence, or whose social security numbers, proof of residency, or citizenship cannot be verified.

~~(7)~~ (9) Current and future benefits may be denied any applicant or recipient who, having been prioritized for weatherization services as a high excess energy user, according to the criteria set forth in ARM 37.71.401 and 37.71.601, refuses, ~~from~~ for reasons within his control, energy conservation services for the weatherization assistance program (WAP). The applicant or recipient may become eligible for benefits again by accepting the WAP energy conservation services.

AUTH: 53-2-201, MCA

IMP: 53-2-201, MCA

37.70.406 INCOME STANDARDS (1) Households with one through six members with annual gross income at or below ~~150%~~ 200% of the ~~2007~~ 2009 U.S. Department of Health and Human Services poverty guidelines are eligible for low income energy assistance on the basis of income. Households with ~~an annual gross income above seven or more members~~ are eligible for low income energy assistance on the basis of income only if the household's annual gross income is at or below 150% 75% of the ~~2007 poverty guidelines~~ estimated state median income for federal fiscal year (FFY) 2011 for a household of that size. Households with annual gross income above the applicable income standard are ineligible for low income energy assistance, unless the household is automatically financially eligible for LIEAP benefits as provided in ARM 37.70.402 because all members of the household are receiving SSI, TANF-funded cash assistance, or county or tribal general assistance.

(2) If a household that is otherwise eligible for low income energy assistance has annual gross income in excess of the applicable income standard, the department will determine the household's total gross monthly income for the three

months immediately preceding the month in which the application for assistance was filed. If the product of four multiplied by the total gross monthly income for the three months immediately preceding the month of application is at or below the applicable income standard, the household is eligible for a three-month annualized income benefit as provided in ARM 37.70.601.

~~(2)~~ (3) The table of income standards for households of various sizes for the 2007 ~~2011~~ heating season may be accessed at the department's web site at [www.dphhs.mt.gov](http://www.dphhs.mt.gov), or a copy may be obtained from the Department of Public Health and Human Services, Human and Community Services Division, Intergovernmental Human Services Bureau, P.O. Box 202956, Helena, MT 59620.

(4) Households at or below 75% of the estimated state median income amount for FFY 2011 for the household's size are eligible for LIEAP client education and outreach activities.

AUTH: 53-2-201, MCA

IMP: 53-2-201, MCA

37.70.407 CALCULATING INCOME EXCLUDED INCOME (1) Excluded from income are the following types of unearned income and deductions:

(a) through (d) remain the same.

(e) the value of the ~~food stamp coupon~~ supplemental nutrition assistance program allotment;

(f) through (w) remain the same.

(x) nonrecurring lump sum payments, such as, but not limited to, federal and state income tax refunds, one time insurance payments or worker's compensation payments and retroactive SSI or SSDI payments, but only to the extent that the payment does that do not constitute income or benefits for any of the 12 months immediately preceding the month of application. The funds received from a nonrecurring lump sum payment are considered as a resource until the funds are spent, however; and

(y) through (iii) remain the same.

(z) payments under Public Law 101-426, Radiation Exposure Compensation Act, are excluded as income and as a resource to the household.

AUTH: 53-2-201, MCA

IMP: 53-2-201, MCA

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

(4) In state fiscal year ~~2008~~ 2011, a household will be eligible if its total countable nonbusiness resources do not exceed ~~\$9,378~~ \$9,930 for a single person, ~~\$14,071~~ \$14,899 for two persons, and an amount equal to ~~\$14,071~~ \$14,899 plus ~~\$938~~ \$993 for each additional household member, up to a maximum of ~~\$18,759~~ \$19,863 per household. In addition, the household may have business assets whose equity value does not exceed ~~\$12,500~~ \$25,000.

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

AUTH: 53-2-201, MCA

IMP: 53-2-201, MCA

37.70.601 BENEFIT AWARD (1) ~~The~~ Except as provided in (2), the benefit matrices in (1)(c) and (1)(d) are used to establish the benefit payable to an eligible household for a full heating season. The benefit varies by household income level, type of primary heating fuel, the type of dwelling (single family unit, multi-family unit, mobile home), the number of bedrooms in the dwelling, and the heating districts in which the household is located, to account for climatic differences across the state.

(a) and (b) remain the same.

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

TABLE OF BENEFIT LEVELS

(i) SINGLE FAMILY

# BEDROOMS	NATURAL					
	GAS	ELECTRIC	PROPANE	FUEL OIL	WOOD	COAL
ONE	\$ 477	\$ 616	\$ 900	\$1,023	\$ 527	\$ 281
TWO	694	896	1,308	1,486	765	409
THREE	947	1,221	1,782	2,026	1,042	557
FOUR	1,302	1,680	2,452	2,787	1,434	766

# BEDROOMS	NATURAL					
	GAS	ELECTRIC	PROPANE	FUEL OIL	WOOD	COAL
ONE	\$ 557	\$ 762	\$1,239	\$1,008	\$ 738	\$ 499
TWO	810	1,108	1,802	1,466	1,073	725
THREE	1,103	1,510	2,455	1,997	1,463	988
FOUR	1,518	2,077	3,377	2,747	2,012	1,360

(ii) MULTI-FAMILY

# BEDROOMS	NATURAL					
	GAS	ELECTRIC	PROPANE	FUEL OIL	WOOD	COAL
ONE	\$ 404	\$ 522	\$ 761	\$1,087	\$ 445	\$ 238
TWO	609	785	1,146	1,637	669	357
THREE	894	1,152	1,682	2,402	982	525
FOUR	1,044	1,346	1,965	2,806	1,147	614

# BEDROOMS	NATURAL					
	GAS	ELECTRIC	PROPANE	FUEL OIL	WOOD	COAL
ONE	\$ 471	\$ 645	\$1,048	\$1,072	\$ 624	\$ 421
TWO	709	971	1,578	1,614	939	635

<u>THREE</u>	<u>1,041</u>	<u>1,424</u>	<u>2,316</u>	<u>2,368</u>	<u>1,378</u>	<u>931</u>
<u>FOUR</u>	<u>1,216</u>	<u>1,664</u>	<u>2,706</u>	<u>2,766</u>	<u>1,610</u>	<u>1,088</u>

(iii) MOBILE HOME

# BEDROOMS	NATURAL					
	GAS	ELECTRIC	PROPANE	FUEL OIL	WOOD	COAL
ONE	\$ 403	\$ 519	\$ 759	\$ 903	\$ 444	\$ 237
TWO	589	760	1,108	1,321	649	346
THREE	781	1,007	1,470	1,751	860	459
FOUR	871	1,124	1,641	1,954	959	513

# BEDROOMS	NATURAL					
	GAS	ELECTRIC	PROPANE	FUEL OIL	WOOD	COAL
ONE	\$ 469	\$ 642	\$1,044	\$ 891	\$ 622	\$ 421
TWO	686	939	1,527	1,302	910	615
THREE	910	1,245	2,024	1,726	1,206	815
FOUR	1,015	1,389	2,259	1,926	1,346	909

(d) The following table is based upon the household's income as a percentage of the federal poverty guideline and adjusted for climatic differences in the ten human resource development council service areas in the state of Montana:

TABLE OF INCOME/CLIMATIC ADJUSTMENT MULTIPLIERS

PERCENT OF POVERTY	AEM	IV	V	VI	VII	VIII	IX	X	XI	XII
0 - 11	1.00	1.08	0.98	0.99	0.93	1.02	1.08	0.90	0.92	1.09
> 11 - 23	0.95	1.02	0.94	0.94	0.89	0.97	1.03	0.86	0.87	1.04
> 23 - 35	0.90	0.97	0.89	0.89	0.84	0.92	0.98	0.81	0.82	0.98
> 35 - 47	0.85	0.92	0.84	0.84	0.79	0.87	0.92	0.77	0.78	0.93
> 47 - 59	0.80	0.86	0.79	0.79	0.75	0.82	0.87	0.72	0.73	0.87
> 59 - 71	0.75	0.81	0.74	0.74	0.70	0.77	0.81	0.68	0.69	0.82
> 71 - 83	0.70	0.75	0.69	0.69	0.65	0.71	0.76	0.63	0.64	0.76
> 83 - 95	0.65	0.70	0.64	0.64	0.61	0.66	0.70	0.59	0.60	0.71
> 95 - 107	0.60	0.65	0.59	0.59	0.56	0.61	0.65	0.54	0.55	0.65
>107 - 119	0.55	0.59	0.54	0.54	0.51	0.56	0.60	0.50	0.50	0.60
>119 - 131	0.50	0.54	0.49	0.49	0.47	0.51	0.54	0.45	0.46	0.55
>131 - 143	0.45	0.48	0.44	0.44	0.42	0.46	0.49	0.41	0.41	0.49
>143 - 450* <u>200</u>	0.40	0.43	0.39	0.39	0.37	0.41	0.43	0.36	0.37	0.44

\*This category also applies to those whose income exceeds 150% of the poverty guideline and meets the criteria of ARM 37.70.406(1)(a).

(2) Eligible households who are residents of publicly subsidized housing whose energy costs are included as a portion of their rent and whose rent is a fixed portion of their income will receive one payment of \$50 for the entire five-year period from the date of application and are not eligible for low income energy assistance benefits provided for in (1).

AUTH: 53-2-201, MCA

IMP: 53-2-201, MCA

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

(3) ~~When a~~ Except as provided in (5), when an eligible household changes residence during the heating season, the household must file a new application. The household's benefit award will then be recomputed based on its new circumstances, and the new benefit will be equal to the benefit award the household would have received had its original application been for the new circumstances prorated from the date of the change of residence. Any unused portion of the original benefit award reverts to the department. When a an eligible household changes type of primary heating fuel during the heating season, the household is not required to file a new application but must have its benefit award recomputed based on the new type of fuel. The new benefit will be prorated from the date of the change of type of fuel. Any unused portion of the original benefit reverts to the department.

(4) Benefit award will be prorated for applicants new to the state or not previously responsible for heating costs from the date of residency or responsibility for the remainder of the heating season. Benefits will also be prorated for households or individuals who live in an area served by an Indian tribal LIEAP if the household or individual moves from the service area during the heating season and applies for benefits through the state of Montana's LIEAP. Such households or individuals are eligible for a prorated benefit for the remainder of the heating season from the date the household or individual moved from the service area served by the tribal LIEAP.

(5) If a resident of publicly subsidized housing who has received a minimum benefit as provided in ARM 37.70.601 changes residence during the five-year eligibility period, the following rules apply:

(a) If the resident moves into nonsubsidized housing, the resident may reapply for a prorated benefit for the current heating season based on the resident's new circumstances. The benefit will be computed by multiplying the applicable amount in the table of base benefit levels found in ARM 37.70.601 times the applicable matrix amount in the table of income/climatic adjustment multipliers in ARM 37.70.601 and then taking a pro rata portion of that result determined by dividing the number of days from the date of reapplication through the last day of the heating season by the total number of days in the heating season. The resident will then be required to file a new application for each subsequent heating season as long as the resident lives in nonsubsidized housing.

(b) If the resident moves to another publicly subsidized housing unit during the five-year eligibility period, the resident may file a new application for a minimum

benefit for another five-year period which will run from the date of the new application.

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

AUTH: 53-2-201, MCA

IMP: 53-2-201,MCA

37.70.607 AMOUNT AND METHOD OF PAYMENT (1) through (1)(d) remain the same.

(2) Eligible households that pay energy costs for heating their homes that are not billed directly by the fuel vendor because the fuel account is not in the name of a member of the household shall be reimbursed for eligible energy costs paid by the household, provided that the amount paid to the household for the heating season shall not exceed the benefit amount provided by ARM 37.70.601. Reimbursement shall be made by check payable to the household. The household must provide receipts to document paid eligible energy costs claimed. The household must provide receipts to support the paid eligible energy costs to the local contractor within 45 days of the end of the heating season or by June 25 if the department has extended the heating season beyond April 30 for which benefits are sought.

(3) For eligible households that have their energy costs included in their rental payments:

(a) The household shall be paid a benefit computed on a monthly basis. For each month of the current heating season for which the household provides a paid rent receipt, the household shall be reimbursed a pro rata portion (determined by dividing one by the number of months in the heating season) of the benefit amount provided in ARM 37.70.601; provided, however, that the benefit paid to the household for any month shall not exceed 50% of the rent paid for that month as evidenced by the rent receipt. Failure to provide rent receipts to the local contractor within 45 days of the end of the heating season or by June 25 if the department has extended the heating season beyond April 30 shall result in the forfeiture of any benefits to which the household would otherwise be entitled.

(b) remains the same.

(4) Benefits for eligible households using wood to heat their dwelling shall be paid as follows:

(a) remains the same.

(b) at the option of the local contractor agency, by payment directly to the household for future purchases of wood, provided, however, that households which receive a direct payment shall not be entitled to any additional benefits for the current heating season which the household might otherwise be entitled to receive due to a move to a different dwelling or other change in circumstances, except an emergency as defined in ARM 37.70.901; or

(c) when the household provides receipts to verify that the household has purchased wood between July 1 and the end of the heating season of the current state fiscal year, by a payment directly to the household reimbursing the household for wood already purchased. Households which are reimbursed by a direct payment do not lose their right to additional benefits for the current heating season as provided in (4)(b). Failure to provide receipts verifying wood purchases to the local

contractor within 45 days of the end of the heating season or by June 25 if the department has extended the heating season beyond April 30 of the calendar year in which the heating season for which benefits are sought ended shall result in the forfeiture of any benefits to which the household would otherwise be entitled.

(5) Reimbursement may, at the discretion of the department only, be made to or on behalf of residents of publicly subsidized housing whose energy costs are included as a portion of their rent and whose rent is a fixed portion of their income.

AUTH: 53-2-201, MCA

IMP: 53-2-201, MCA

37.70.901 EMERGENCY ASSISTANCE (1) through (7) remain the same.

(8) Emergency assistance funds may be used to replace a non-environmental protection agency (EPA)-approved wood stove, if the non-EPA-approved wood stove is the eligible household's primary source of heat and the household is eligible to receive a benefit award for wood during the heating season.

AUTH: 53-2-201, MCA

IMP: 53-2-201, MCA

4. The Department of Public Health and Human Services (the department) is proposing the amendment of ARM 37.70.115, 37.70.305, 37.70.311, 37.70.401, 37.70.402, 37.70.406, 37.70.407, 37.70.408, 37.70.601, 37.70.602, 37.70.607, and 37.70.901 pertaining to Low Income Energy Assistance Program (LIEAP). LIEAP is a federally funded program to help low income households pay their home heating costs. The department proposes to make changes to its administrative rules governing LIEAP as follows:

#### ARM 37.70.115

ARM 37.70.115(1) provides for recovery of an overpayment of LIEAP benefits from future LIEAP payments due to the household that was overpaid. ARM 37.70.115(2) provides that if a recipient caused an overpayment by willfully making false statements a referral will be made to the audit and compliance bureau. The word "additionally" is being added to ARM 37.70.115(2) to clarify that the referral to audit and compliance is in addition to, rather than in lieu of, recovery of the overpayment from future LIEAP payments to the recipient. The addition of the word "additionally" does not represent a change in policy, as the department never intended fraud referrals to preclude recovery of an overpayment from future LIEAP payments. ARM 37.70.115(2) is being amended to state that a fraud referral will be made if a household causes an overpayment by willfully withholding information as well as by willfully making false statements. This is being added because the department considers the omission of pertinent information that could affect eligibility to be as serious as misstatement of material information.

ARM 37.70.115(3) is being added to authorize the department to recover overpayments caused by the local contractor from the contractor rather than from



the LIEAP recipient. The department contracts with community-based organizations throughout the state to conduct outreach and to receive and process applications for the low income energy assistance and weatherization programs. The department believes that if an overpayment is the result of an error or even an intentional act by the contractor's employee it may be fairer to recover the overpayment from the contractor rather than from a recipient who was not at fault. It is therefore necessary to add this provision to give the department discretion to recover from the contractor in appropriate cases. For example, if a contractor fails to properly train or supervise its employees who determine LIEAP eligibility and as a result its employees make numerous errors that cause overpayments, the department might choose to recover from the contractor rather than from the recipient.

#### ARM 37.70.305

ARM 37.70.305 provides that households must file a new application for LIEAP benefits for each new heating season. The reason for requiring a new application each year is because factors affecting a household's eligibility and benefit amount, for example, income, type of primary heating fuel or number of household members, often change from year to year. However, as explained below, the department is now amending ARM 37.70.601 to provide a special benefit for households that are residents of publicly subsidized housing whose energy costs are included as a portion of their rent and whose rent is a fixed portion of their income. The benefit for such residents of subsidized housing will be a single payment in the fixed amount of \$50 for a five-year period, known as a "minimum benefit". There is no need for these households to file a new application in each of the four successive years because they are entitled to only one payment of \$50 paid in the first year of the five-year period regardless of any changes in household income, size, or other factors that usually affect benefit amount. It is therefore necessary to amend ARM 37.70.305 to provide that residents of subsidized housing who are receiving the minimum benefit are required to file a new application only once every five years as long as they continue to live in such subsidized housing.

However, there are some circumstances in which it may be advantageous for residents of publicly subsidized housing who are receiving the minimum benefit to file a new application during the five-year period. If the resident moves to another publicly subsidized housing unit during the five years the resident may reapply for a minimum benefit for another five-year period that will run from the date of the new application. As explained below in regard to the amendment of ARM 37.70.601, receipt of the minimum LIEAP benefit will allow the household to receive more Supplemental Nutrition Assistance Program (SNAP) benefits, so extending the receipt of the minimum benefit for another five years will increase the household's SNAP benefits for another five-year period. Also, if the resident moves into nonsubsidized housing the resident may reapply for benefits based on the resident's new circumstances that will be larger than the minimum benefit. The amendment of ARM 37.70.305 to specify that a resident of publicly subsidized housing receiving a minimum benefit may file a new application more often than every five years if the resident moves is therefore necessary to give households getting the minimum

benefit the option of reapplying during the five-year eligibility period when it is to their advantage.

ARM 37.70.311

ARM 37.70.311 specifies the procedures to be followed in processing an application for LIEAP benefits and lists eligibility requirements that must be verified before benefits may be granted, such as income and type of primary heating fuel. The department is now adding several additional matters that must be verified, namely, the social security number of each household member and the fact that each household member is either a U.S. citizen or has lawfully entered the United States with the intent to establish permanent residence. Additionally, photo identification will be required for each household member aged 18 or older. These changes in verification requirements are being made pursuant to Executive Order 13520, Reducing Improper Payments and Eliminating Waste in Federal Programs, issued on November 23, 2009. As a result of Executive Order 13520, the U.S. Department of Health and Human Services (HHS), which provides funding for LIEAP, required state agencies administering LIEAP to establish a Program Integrity Assessment and Plan to verify the identity of all individuals receiving LIEAP benefits. HHS did not mandate but strongly suggested that social security numbers be required, whereas in the past HHS had discouraged state LIEAP agencies from requiring proof of social security numbers in order to receive benefits. The department decided that the best way to ensure that benefits are paid only to eligible individuals is to require each household member to provide a social security number and proof of U.S. citizenship or lawful entry into the United States with the intent to establish permanent residence as well as photo identification for all members aged 18 or older. The department therefore is amending ARM 37.70.311 to require social security numbers and proof of U.S. citizenship or lawful entry into the United States and photo identification in order to receive LIEAP benefits.

The department is further amending ARM 37.70.311(1)(a)(i)(F), which states that an applicant must verify the type of heating fuel used by the household, to specify that they must verify the households' obligation to pay for heating fuel. This change is made for clarification, not due to a change in policy, as only households who pay their own heating and cooling costs have historically been eligible for LIEAP benefits. Additionally, it is necessary to provide that households living in publicly subsidized housing who receive the minimum benefit because their energy costs are included in their rent do not have to verify that they are obligated to pay for heating fuel or what type of fuel is used to heat their residence. This is necessary because of the amendment of the LIEAP rules to allow these residents of public housing to receive benefits even though they do not have their own heating costs.

ARM 37.70.311(1)(a)(i)(G) provides that applicants seeking direct reimbursement for paid energy costs, as opposed to payment of LIEAP benefits being made to the applicant's fuel vendor, must provide receipts to show what they have expended for energy costs within 45 days after the end of the heating season. The heating season usually ends on April 30, so an applicant would be required to provide

receipts by June 14. However, the department has discretion to extend the end of the heating season beyond April 30. Under the rule as currently written the applicant would have 45 days after the extended end of the heating season to submit receipts, which would mean that in some case the applicant would be reimbursed after June 30. For example, if the end of the heating season was extended to May 31, an applicant would have until July 15 to provide receipts. The department wants to record all LIEAP expenditures for the heating season by June 30, the end of the state fiscal year, however. It is therefore necessary to amend this section of the rule to provide a deadline of June 25 to provide receipts instead of 45 days after the end of the heating season when the end of the heating season has been extended.

Finally, ARM 37.70.311(2) specifies that eligibility in regard to a household's income is based on the household's income in the 12 months immediately preceding the month of application. However, the department is changing its policy to allow a household that is ineligible because its income for the 12-month period exceeds the income limit to qualify under an alternative method of calculating income. Under this alternative method, when a household fails the income test based on its income in the 12 months preceding the month of application, the department will determine the household's income during the three months immediately preceding the month of application and then calculate the household's annual income by multiplying the income for three months by four. If the household's annual income computed by means of the alternative method is below the income limit, the household will have passed the income test for LIEAP eligibility. The purpose of this change is to allow households that experienced a recent reduction in income, for example, due to circumstances such as a job layoff or family problems that have interfered with a wage earner's ability to work, to qualify for LIEAP benefits even though the household's income prior to the event that resulted in reduced income was too high to qualify for assistance. By using the most recent three months of income the department will get a more accurate picture of the household's current financial situation rather than by using the household's income from the previous 12 months. The department has chosen to use income from the three months prior to the month of application rather than using income for a shorter period such as one month prior to the month of application because the department believes that looking at a three month period of time generally would give a truer picture of the household's financial circumstances than a single month.

#### ARM 37.70.401

ARM 37.70.401 defines terms used in the LIEAP rules. Its amendment is necessary to add definitions for several terms used for the first time due to the amendment of other LIEAP rules. One definition is also being deleted, namely, the definition of "LC", which means "local contractor". Apparently "local contractor" was abbreviated as "LC" in the rules at one time, but that abbreviation no longer appears in the rules so it is no longer necessary to define "LC".

In ARM 37.70.401(1), the term "annual gross income" is currently defined to mean the household's gross income for the 12 months immediately preceding the month of

application. Now, due to the amendment of ARM 37.70.311 to provide an alternative method for computing annual income as explained above, it is necessary to amend the definition to provide that annual income can in some circumstances be based on only the three months immediately preceding the month of application which is annualized by multiplying it by four. Additionally, it is necessary to add definitions of "monthly gross income" and "monthly gross receipts" because of the amendment of ARM 37.70.311 to provide an alternative method for computing annual income that uses income for the three months immediately prior to application instead of the year prior to application. There is no change in the types of income that are being counted to determine LIEAP eligibility. The new definitions for "monthly gross income" and "monthly gross receipts" include the same types of income that were previously included in the definition of "annual gross income".

In ARM 37.70.311(5) the definition of "eligible energy costs" provides that only energy delivered by the household's fuel vendor on or after October 1 is eligible for payment in the current heating season, with the exception of energy charges incurred from July 1 through September 30. Several changes are being made to this definition for the purpose of clarification and do not represent a change in policy. It is being amended to specify that payment for charges incurred from July 1 through September 30 are eligible for payment only in the department's sole discretion and only for such types of fuel as the department may specify which may include other types of fuel in addition to propane. A provision is being added to state that charges for tank rental are eligible for payment but deposits and charges for tank set up are not reimbursable. The department does not pay for deposits or tank set up because it has to draw the line somewhere in regard to paying for costs that are related to the cost of heating the home. None of these changes are intended to change policy but are added to make the department's policy clearer.

A definition of "federal fiscal year" is being added because that term will now be used in ARM 37.70.406 concerning income standards. As amended, ARM 37.70.406(1) will provide that households consisting of seven or more members are eligible for LIEAP benefits if the household's gross annual income is at or below 75% of the estimated state median income for federal fiscal year 2009. In ARM 37.70.406(7) the definition of "heating season" provides that the heating season runs from October 1 of one calendar year through April 30 of the next year but also provides that the department may extend the heating season beyond April 30. A statement is being added to specify that requests for reimbursement must be received by June 25 when the heating season is extended beyond April 30 because the department wants to record all LIEAP expenditures for the heating season by the end of the state fiscal year, which is June 30. Finally, a definition of "minimum benefit" is being added due to the amendment of ARM 37.70.601 to provide a special benefit for households that are residents of publicly subsidized housing whose energy costs are included as a portion of their rent and whose rent is a fixed portion of their income. The benefit for such residents of subsidized housing will be a single payment in the fixed amount of \$50 for a five-year period, known as a "minimum benefit".

Finally, the definition of "mobile home" is being amended to specify that a doublewide as well as a singlewide trailer is a mobile home for LIEAP purposes. The department never intended to exclude doublewide trailers from the definition of "mobile home".

#### ARM 37.70.402

ARM 37.70.402 contains eligibility requirements for receiving LIEAP benefits. It lists types of households that are eligible or are not eligible but does not state that only households that pay for fuel to heat their homes are eligible for LIEAP. This has been the long standing policy of LIEAP and is implied throughout the rules but is not explicitly stated. The department is now amending ARM 37.70.601 to provide that in one circumstance a household that does not directly pay for fuel to heat its home may receive a limited LIEAP benefit, namely, a household that resides in publicly subsidized housing whose energy costs are included as a portion of its rent and whose rent is a fixed portion of its income. The reason for this new policy regarding residents of publicly subsidized housing is explained in regard to the amendment of ARM 37.70.601, below. For purposes of clarity only the department is taking this opportunity to state specifically the general rule that only households obligated to pay for heating fuel are eligible while it is amending its rules to provide an exception to that rule. A new ARM 37.70.402(1) is therefore being added to state that, except as provided in ARM 37.70.402(7), only households that are obligated to pay for fuel to heat their homes are eligible for LIEAP. A new ARM 37.70.402(7) is being added specifying that a household that resides in publicly subsidized housing whose energy costs are included as a portion of its rent and whose rent is a fixed portion of its income may be eligible to receive a minimum benefit of \$50 for a five-year period. New ARM 37.70.402(7) replaces the current ARM 37.70.402(6) which provides that a household residing in publicly subsidized housing whose energy costs are included as a portion of its rent and whose rent is a fixed portion of its income is not eligible for LIEAP benefits.

ARM 37.70.402(1), renumbered as ARM 37.70.402(2) with the insertion of new ARM 37.70.402(1) as described above, provides that households which consist solely of members receiving supplemental security income (SSI), TANF-funded cash assistance, or county or tribal general assistance are automatically financially eligible for LIEAP benefits. The reason for this policy is that SSI, TANF, and general assistance are all needs-based programs like LIEAP. Thus, if a person's income and resources (assets) are low enough to qualify the person for SSI, TANF, or general assistance, the person's income and resources will also be below the LIEAP income and resource limits, so there is no need to make a separate determination of the person's financial eligibility for LIEAP. However, the department recently became aware of a person who received SSI and TANF benefits he was not entitled to receive by providing false information about his income to the agencies that determine eligibility for SSI and TANF benefits. In accordance with the department's policy of granting automatic eligibility (also known as categorical eligibility) to households in which all of the members are receiving SSI, TANF, or general assistance, this person received LIEAP benefits because he was getting SSI and

TANF benefits even though he was receiving SSI and TANF fraudulently by misrepresenting his income. The department cannot recover the LIEAP benefits this individual received by virtue of his fraudulent receipt of SSI and TANF benefits because ARM 37.70.402 currently requires only that all members of the household be receiving SSI or TANF benefits or general assistance in order to be financially eligible for LIEAP, rather than requiring that the person be eligible for SSI, TANF, or general assistance.

The department now proposes to amend this provision to specify that all members of the household must be eligible for and receiving benefits through one of the enumerated programs in order to be automatically financially eligible for LIEAP. Thus, it will be possible to deny LIEAP benefits to an applicant who is getting SSI, TANF, or general assistance if it is discovered that the person is not eligible for those programs and is receiving those benefits erroneously. Additionally, if a person who is getting SSI, TANF, or general assistance erroneously also gets LIEAP benefits based on automatic financial eligibility and the department later discovers that the person was not in fact eligible for SSI, TANF, or general assistance, there will be an overpayment of LIEAP benefits which the department may recover pursuant to ARM 37.70.115. Under the rule as currently written, there is no overpayment of LIEAP benefits when a person fraudulently receives SSI or TANF because automatic financial eligibility is based on mere receipt of those benefits, not eligibility for them.

Additionally, a provision is being added to ARM 37.70.402 to specify that benefits will be denied to any individual or household who refuses to submit social security numbers or proof of U.S. citizenship or lawful entry into the United States or whose social security numbers or U.S. citizenship or lawful entry into the United States cannot be verified. This provision is necessary because of the amendment of ARM 37.70.311 to require applicants to provide social security numbers or proof of U.S. citizenship or lawful entry into the United States.

#### ARM 37.70.406

Because LIEAP is a needs-based assistance program, only households with income and assets below specified limits are eligible to receive LIEAP benefits. ARM 37.70.406 contains the maximum income standards used to determine eligibility for LIEAP. These income standards are computed as a specified percentage of the federal poverty guidelines issued annually by HHS. The standards currently in ARM 37.70.406 are based on the HHS poverty guidelines for 2007. ARM 37.70.406(1) currently provides that households with annual gross income at or below 150% of the 2007 poverty guidelines qualify for LIEAP on the factor of income.

HHS updates the poverty guidelines each year to take into account changes in the cost of living. The department periodically amends ARM 37.70.406 to provide that a more recent version of the poverty guidelines will be used to set the income standards because the updated guidelines usually are higher than the guidelines for the previous year. The income standards increase when a more recent and higher

version of the guidelines is used to compute the income standards causing the income standards to increase also. Conversely, the income standards would not increase to reflect inflationary increases in the cost of living if the department continued year after year to use the guidelines from a past year. The result would be that some households might be ineligible for benefits due to inflationary increases in the household's income that did not reflect an increase in actual buying power. Thus, ARM 37.70.406 is now being amended to provide that the 2010 rather than the 2007 poverty guidelines will be used to determine eligibility for the 2010-2011 heating season because the 2010 guidelines are higher than the 2007 guidelines.

Federal LIEAP regulations allow the states to base income standards on a percentage of the poverty guidelines that does not exceed 150% or a percentage of the state median income that does not exceed 75%, whichever is greater. ARM 37.70.406(1) currently sets the maximum income standards for households of all sizes at 150% of the poverty guidelines; that is, a household with annual gross income at or below 150% of the poverty guideline qualifies for LIEAP on the factor of income. The department is now amending ARM 37.70.406(1) to increase the income standards for households with one through six members from 150% of the poverty guidelines to 200% of the guidelines because setting the income standards at a higher percentage of the poverty guidelines will allow higher income households to qualify. The department believes this is appropriate because households with income between 150% and 200% of the poverty guidelines may have difficulty paying the cost of heating their homes due to increased energy costs. For households of this size, 200% of the poverty guidelines is a lesser amount than 75% of the state median income, so the income standards will not exceed the upper limit set by federal law.

The department chose to use 200% of the poverty guidelines instead of 75% of the state median income for households of this size because federal regulations governing the Low Income Weatherization Assistance Program (LIWAP) limit eligibility to households whose income is at or below 200% of poverty. Currently the department's LIWAP rules provide that a household that is eligible for LIEAP is also eligible for LIWAP, but if the department set its LIEAP income standards at a level that was higher than 200% of the poverty guidelines it could not automatically grant LIWAP eligibility to all LIEAP households because the income of some LIEAP households would exceed the 200% of poverty limit for LIWAP. The department would therefore have to establish a separate process for determining eligibility for LIWAP, which is not desirable because it would create additional work and expense.

For households with seven or more members, however, the department cannot set the LIEAP income standards at 200% of the poverty guidelines because for these households 200% of poverty exceeds 75% of the state median income and hence the income standards would exceed the maximum amount allowed by federal LIEAP regulations. Thus, for households with seven or more members the department proposes to set the maximum income standards at 75% of the estimated state median income for federal fiscal year 2011, the maximum amount permitted by federal law.

A provision is being added to ARM 37.70.406 to provide for an alternate method of computing annual income based on the three months immediately preceding the month of application. As previously explained in regard to the amendment of ARM 37.70.311, the department is changing its policy to allow a household that is ineligible because its income in the 12 months immediately preceding the month of application period exceeds the maximum income standard to qualify under an alternative method of calculating income that uses the household's income during the three months immediately preceding the month of application and then calculates the household's annual income by multiplying the income during the three month period by four.

If the household's annual income computed by means of the alternative method is below the income limit, the household will be income eligible for LIEAP benefits. The purpose of this change is to allow households that experienced a recent reduction in income to qualify for LIEAP benefits even though the household's income prior to the event that resulted in reduced income was too high to qualify for assistance.

ARM 37.70.406(2), now renumbered as ARM 37.70.406(3), provided that the income standards for the 2007 heating season can be accessed at the department's web site. It is being updated to provide that the income standards for the 2010-2011 heating season can be accessed online. A new ARM 37.70.406(4) is also being added to ARM 37.70.406 to provide that households of all sizes are eligible to participate in LIEAP client education and outreach activities. This is being added because it is desirable for all LIEAP households to participate in education and outreach activities, which have the aim of improving habits that can reduce energy consumption, for example, turning off unneeded lights or lowering thermostats.

#### ARM 37.70.407

ARM 37.70.407 specifies certain types of income that are excluded, i.e., not counted, in determining eligibility for LIEAP. ARM 37.70.407(1)(e) currently provides that the value of food stamp coupons is excluded. The Food Stamp program was renamed the Supplemental Nutrition Assistance Program (SNAP) several years ago, so ARM 37.70.407(1)(e) is now being amended to provide an exclusion for Supplemental Nutrition Assistance Program allotments rather than food stamp coupons in order to use the correct terminology to refer to this benefit. ARM 37.70.407(1)(x) currently provides an exclusion for nonrecurring lump sum payments that do not constitute income or benefits for any of the 12 months immediately preceding the month of application. In the past the department has been involved in several fair hearings in which LIEAP applicants have disagreed with the department about what constitutes a nonrecurring lump sum payment that is excluded under this provision. Although it is not possible to list every kind of nonrecurring lump sum payment that might be excluded, the department determined it would be useful to add examples of payments that constitute nonrecurring lump sum payments, such as tax refunds, one time insurance payments or retroactive social security payments.



As stated in the rule, however, a nonrecurring lump sum payment is excluded only if it does not constitute income or benefits for any of the 12 months immediately preceding the month of application.

For example, consider an applicant who applies for LIEAP in November 2010 and received a retroactive social security disability payment in October 2010. Assume the payment was intended to cover the period from March 2009 through September 2010. The portion of the payment that constitutes retroactive benefits for the 12 month period immediately preceding the month of his application is not excluded under ARM 37.70.407(1)(x). The 12-month period in this case runs from November 2009 through October 2010 because the applicant applied in November 2010, so the portion of the payment that represents retroactive benefits for November 2009 through September 2010 is not excluded. The portion of the payment that represents benefits for March 2009 through October 2009 is excluded, however, because it represents income prior to the 12-month period in which income is counted. To emphasize this requirement for excludability, the phrase "that do not constitute income or benefits for any of the 12 months immediately preceding the month of application" is being changed to "but only to the extent that the payment does not represent income or benefits for any of the 12 months immediately preceding the month of application". These changes are intended to clarify the current policy and possibly avoid future dispute over what types of payments are excluded. Additionally, a new ARM 37.70.402(1)(z), is being added to provide that payments under Public Law 101-426, the Radiation Exposure Compensation Act, are excluded as both income and a resource. They are excluded because a provision in the Radiation Exposure Compensation Act mandates that payments under the Act are not to be counted in determining eligibility for federally funded public assistance programs.

#### ARM 37.70.408

In determining eligibility for LIEAP, the department considers not only income but also assets (known as "resources") the household has that can be used to pay heating costs. ARM 37.70.408 specifies the rules relating to resources. ARM 37.70.408(4) currently specifies the maximum amount of nonbusiness resources that households of varying sizes can have and still qualify for LIEAP in state fiscal year 2008. ARM 37.70.408(5) provides that the dollar limits on nonbusiness resources will be revised annually to adjust for inflation, so it is necessary to amend ARM 37.70.408(4) to increase the dollar amounts for fiscal year 2011. ARM 37.70.408(5) specifies that the revised nonbusiness resource limits shall be computed by multiplying the current dollar limits by the percentage increase in the national consumer price index (CPI) for the previous calendar year or by 3%, whichever is less. The increase in the CPI for calendar year 2008 was 2.8%, so the dollar amounts in ARM 37.70.408(4) would increase by 2.8% from state fiscal year (FY) 2008 to FY 2009. The increase in the CPI for calendar year 2009 was 3.8%, so the dollar amounts in ARM 37.70.408(4) would increase by another 3.0% from FY 2009 to FY 2010. In calendar year 2010 there was no increase in the CPI; rather there was a decrease in the CPI of 0.4%. Thus, there is no increase in the dollar amounts

in ARM 37.70.408(4) from FY 2010 to FY year 2011. Therefore, in accordance with the formula provided in ARM 37.70.408(5), ARM 37.70.408(4) must be amended to increase the maximum amounts of nonbusiness resources a total of 5.8% from FY 2008 to FY 2011.

#### ARM 37.70.601

ARM 37.70.601 governs the computation of benefits for eligible households. ARM 37.70.601(1)(a) provides that an eligible household's benefit is computed by multiplying the applicable amount in the table of benefits in ARM 37.70.601(1)(c) by the applicable multiplier from the table of income/climatic adjustment multipliers in ARM 37.70.601(1)(d). The benefit amounts in ARM 37.70.601(1)(c) vary based on the type of heating fuel the household uses and the type and size of the household's dwelling. The benefit amounts also take into consideration available funding and the number of households expected to receive benefits in a given heating season. The benefit amounts in the tables are being revised based on estimates of the amount of funds available to pay LIEAP benefits for the 2010-2011 heating season as well as fuel cost projections and an estimate of the number of households that will apply and be found eligible for LIEAP for the 2010-2011 heating season. The revised benefit amounts in ARM 37.70.601(1)(c) for 2010-2011 are based on the department's estimate that 30,853 households will qualify for LIEAP benefits for the current heating season and based on the department's estimates of the federal LIEAP funds it will receive.

ARM 37.70.601(1)(d) contains a table of income/climatic adjustment multipliers which are based on a household's income as a percentage of the federal poverty guidelines and also on what part of the state the household lives in. The state is divided into ten regions with different multipliers to take into account the climatic differences from one part of the state to another, which have an impact on residential heating costs. The table in ARM 37.70.601(1)(d) currently contains 13 income levels ranging from income at 0 to 11% of the federal poverty guidelines to incomes of 143 to 150% of the federal poverty guidelines. The highest level must now be amended to cover incomes up to 200% of the guidelines rather than 150% because the department is raising the upper income limit for households with one through six members to 200% of the guidelines from 150%, as explained in regard to the amendment of ARM 37.70.406, above. The rule currently provides that the multipliers in this highest income level also are used for households whose income exceeds 150% of the poverty guidelines. This provision is unnecessary and is being deleted because the department does not expect there will be any eligible households whose income exceeds 200% of the federal poverty guidelines.

Additionally, a new provision, ARM 37.70.601(2), is being added to provide that residents of publicly subsidized housing whose energy costs are included as a portion of their rent and whose rent is a fixed portion of their income may receive a special "minimum benefit". ARM 37.70.601(2) provides that the benefit paid to such residents of subsidized housing will be a single payment in the fixed amount of \$50 for a five-year period rather than a benefit computed using the benefit table and

income/climatic adjustment multipliers provided in ARM 37.70.601(1). Currently such residents of publicly subsidized housing are not eligible for LIEAP because they are not obligated to pay the cost of heating their homes, and the amount they pay for energy costs is based on a formula that is not related to the actual cost of heating the residence. The department is now allowing such households to receive a LIEAP benefit because receipt of LIEAP benefits even in such a small amount qualifies the household to receive the standard utility allowance when the household's benefits for the Supplemental Nutrition Assistance Program (SNAP) are computed. This increases the amount of the household's SNAP allotment. The department considers this to be desirable because households eligible to reside in publicly subsidized housing have very low incomes and are in need of an enhanced SNAP allotment.

### ARM 37.70.602

ARM 37.70.602 contains miscellaneous provisions for LIEAP. ARM 37.70.602(3) currently provides that a household receiving LIEAP benefits that changes residence during the heating season must file a new application. The household's benefit will then be recomputed based on its new circumstances. ARM 37.70.602(3) is now being amended to state that there is an exception to the rule that a household that moves must file a new application. The exception is stated in ARM 37.70.602(5), which is being added to provide that residents of public housing receiving the minimum benefit who move have the option of filing a new application. If such a resident moves into nonsubsidized housing, it may apply for a benefit based on its new circumstances. This benefit will be higher than the minimum benefit because it will be based on the benefit tables in ARM 37.70.601 rather than being the fixed benefit of \$50 for five years. The new benefit will be prorated based on the number of days of the heating season the household lives in the new residence. If a household moves from one publicly subsidized housing unit to another during the five-year eligibility period, the household may file a new application for a minimum benefit which will begin the running of another five-year period. This will be advantageous to the household because it will allow the household to continue to qualify for the standard utility allowance for SNAP purposes.

ARM 37.70.602(5) is being added because it makes sense to treat households getting a minimum benefit differently from households in nonsubsidized housing. Because the minimum benefit is a fixed amount that is not based on the type of heating fuel used, type and size of dwelling, and other factors that may change when a household moves to a new home, such households should not be required to file a new application and have their benefits be recomputed based on their new circumstances. On the other hand, such households should be allowed to reapply in order to get a larger benefit if the household moves to nonsubsidized housing or to qualify for the standard utility allowance in their new home. The department therefore is allowing these households the option of filing a new application but is not requiring them to do so.

The department is proposing the amendment of ARM 37.70.602(4), which currently provides for the proration of benefits when an applicant who has not resided in the state of Montana for the entire heating season or has not been obligated to pay home heating costs for the entire heating season is found eligible for LIEAP. The benefit amount is prorated based on the date the person became a Montana resident or became obligated to pay home heating costs. ARM 37.70.602(4) is now being amended to provide for the proration of benefits when households or individuals who live in an area served by an Indian tribal LIEAP program moves from the service area during the heating season and applies for benefits through the state of Montana's LIEAP program. Such households or individuals will be eligible for a prorated benefit for the remainder of the heating season from the date the household or individual moved from the service area served by the tribal program.

The purpose of this amendment is to clarify that the benefit from the state of Montana's program will be prorated from the date the household or individual moved from the service area served by the tribal program. This is equitable because a household or individual is not eligible for state LIEAP benefits while residing in an area served by a tribal LIEAP, as provided in ARM 37.70.402(5). Thus, like an applicant who is not eligible for LIEAP benefits for the entire heating season because the applicant has not resided in the state of Montana or has not been obligated to pay home heating costs for the entire heating season, an applicant who previously was eligible for tribal LIEAP benefits should receive state LIEAP benefits only from the date the person ceased to be eligible for tribal LIEAP benefits. It is necessary to specify that proration of benefits will occur in such circumstances because the rule currently is silent on this point.

#### ARM 37.70.607

ARM 37.70.607 specifies how LIEAP benefits are paid. Although LIEAP benefits are typically paid directly to the household's heating fuel vendor rather than directly to the household, ARM 37.70.607 allows payment to be made directly to the household in some situations. ARM 37.70.602(2) provides that households that are not billed directly by the fuel vendor because the fuel account is not in the name of a household member may be directly reimbursed upon submission of receipts to document eligible energy costs the household has paid. ARM 37.70.602(2) currently provides that receipts for paid eligible energy cost must be submitted to the local contractor within 45 days of the end of the heating season. This section is now being amended to add that receipts for paid eligible energy cost must be submitted by June 25 if the department has extended the heating season beyond April 30 because the department wants to record all LIEAP expenditures for the heating season by June 30, the end of the state fiscal year. ARM 37.70.602(3) also provides that households whose energy costs are included in their rental payments may receive a specially computed benefit that is paid directly to the household upon submission of rent receipts to the local contractor. ARM 37.70.602(3)(a) currently provides that for such households rent receipts must be submitted to the local contractor within 45 days of the end of the heating season. This section is now being amended to add that rent receipts must be submitted by June 25 if the

department has extended the heating season beyond April 30 because the department wants to record all LIEAP expenditures for the heating season by June 30, the end of the state fiscal year. ARM 37.70.602(4)(c) provides that households that heat their homes with wood may be directly reimbursed for wood they have purchased upon submission of receipts for the wood. ARM 37.70.602(4)(c) currently provides that the receipts must be submitted to the local contractor within 45 days of the end of the heating season. This section is now being amended to add that wood receipts must be submitted by June 25 if the department has extended the heating season beyond April 30 because the department wants to record all LIEAP expenditures for the heating season by June 30, the end of the state fiscal year. Additionally, ARM 37.70.602(5) is being added to provide that the department has discretion to pay residents of publicly subsidized housing eligible for the minimum benefit directly. This section is being added now because previously such residents were ineligible for LIEAP benefits and thus there was no reason to specify how they would be paid or to allow the department to pay them directly.

#### ARM 37.70.901

ARM 37.70.901 contains the policies governing the provision of emergency assistance, that is, assistance to address circumstances that present a serious immediate threat to the health and safety of the household, such as the existence of hazardous or potentially hazardous conditions in the household's water or space heating system. ARM 37.70.901(8) is being added to provide that emergency assistance funds may be used to replace a non-Environmental Protection Agency (EPA)-approved wood stove if the non-EPA-approved stove is the household's primary source of heat and the household is eligible to receive a LIEAP benefit for wood during the heating season. The use of non-EPA-approved wood stoves for heat creates a potential hazard to the household's health and safety, and thus emergency funds arguably could be used to replace such stoves based on the language currently in the rule without adding a provision specifically authorizing funds to be used for this purpose. However, the addition of this provision eliminates the need for the household to prove its non-EPA-approved stove presents a serious immediate threat to the household's health and safety and will allow such stoves to be replaced as a preventive measure rather than after the household's health and safety is in imminent peril.

#### Fiscal Impact

LIEAP is 100% federally funded. Congress has not yet appropriated funds for LIEAP for the 2010 and 2011 heating season, but based on the information available at this time the department estimates that Montana will receive LIEAP funds of approximately \$15 million to \$17 million for the current heating season. This compares to LIEAP funding of \$12,289,462 for the 2007-2008 heating season, which was the last time the LIEAP rules were amended. Benefit levels for households using all types of heating fuel and for all dwelling types will be slightly higher than in the 2007-2008 heating season. It is estimated that 30,853 households will qualify for

LIEAP benefits this year, which would be an increase of approximately 10% over last year.

5. The department intends to apply ARM 37.70.601 retroactively to August 1, 2010. A retroactive application of the proposed rule does not result in a negative impact to any affected party.

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: Gwen Knight, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail [dphhslegal@mt.gov](mailto:dphhslegal@mt.gov), and must be received no later than 5:00 p.m., December 27, 2010.

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

8. 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 that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 6 above or may be made by completing a request form at any rules hearing held by the department.

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

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

/s/ Barbara Hoffmann  
Rule Reviewer

Anna Whiting Sorrell  
Anna Whiting Sorrell, Director  
Public Health and Human Services

Certified to the Secretary of State November 15, 2010.

BEFORE THE COMMISSIONER OF POLITICAL PRACTICES  
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PROPOSED
ARM 44.12.204 pertaining to the	)	AMENDMENT
payment threshold--inflation	)	
adjustment for lobbyists	)	NO PUBLIC HEARING
	)	CONTEMPLATED

TO: All Concerned Persons

1. On December 28, 2010 the Commissioner of Political Practices proposes to amend the above-stated rule.

2. The Commissioner of Political Practices will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Commissioner of Political Practices no later than 5:00 p.m. on December 13, 2010, to advise us of the nature of the accommodation that you need. Please contact Dennis Unsworth, Commissioner of Political Practices, P.O. Box 202401, 1205 Eighth Avenue, Helena, Montana, 59620-2401; telephone (406) 444-2942; fax (406) 444-1643; or e-mail dunsworth@mt.gov.

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

44.12.204 PAYMENT THRESHOLD--INFLATION ADJUSTMENT

(1) Pursuant to the operation specified in 5-7-112, MCA, the adjusted payment threshold for calendar years ~~2009-2011~~ and ~~2010~~ 2012 is ~~\$2,400~~ 2450.

AUTH: 5-7-111, MCA  
IMP: 5-7-112, MCA

Reasonable Necessity: Section 5-7-112, MCA, requires the Commissioner of Political Practices, following the general election, to adjust the payment threshold amount for reporting of lobbying related expenses based on application of an inflation factor specified in that statute. There is reasonable necessity for the amendment of the rule because 5-7-112, MCA, requires the Commissioner of Political Practices to publish the revised threshold as a rule.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to Dennis Unsworth, Commissioner of Political Practices, P.O. Box 202401, 1205 Eighth Avenue, Helena, Montana, 59620-2401; telephone (406) 444-2942; fax (406) 444-1643; or e-mail dunsworth@mt.gov, and must be received no later than 5:00 p.m., December 27, 2010.

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 to Dennis Unsworth at the above address no later than 5:00 p.m., December 27, 2010.

6. If the agency receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons 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 directly affected has been determined to be 50 persons based on the 500 lobbyists who registered to lobby in 2009-2010.

7. The commissioner 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, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 4 above or may be made by completing a request form at any rules hearing held by the department.

8. An electronic copy of this Proposal Notice is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of State strives to make the electronic copy of 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 Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

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

/s/ Jim Scheier  
Jim Scheier  
Rule Reviewer  
Assistant Attorney General

/s/ Dennis Unsworth  
Dennis Unsworth  
Commissioner

Certified to the Secretary of State November 15, 2010.



BEFORE THE DEPARTMENT OF COMMERCE  
OF THE STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF AMENDMENT  
ARM 8.94.3726 pertaining to the )  
administration of the 2010-2011 )  
Federal Community Development )  
Block Grant (CDBG) Program )

TO: All Concerned Persons

1. On August 26, 2010, the Department of Commerce published MAR Notice No. 8-94-84 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 1834 of the 2010 Montana Administrative Register, Issue Number 16.

2. The department has amended the above-stated rule as proposed.

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

COMMENT #1: Additional funds should be allocated to the Housing category within the CDBG program as opposed to the Public Facility category, in order to respond to housing needs.

RESPONSE #1: The percentage of funds allocated between the Housing and Public Facility categories are based upon the respective demand during the previous two years, and then the number of applications are averaged to determine the actual percentage allocation.

/s/ KELLY A. CASILLAS  
KELLY A. CASILLAS  
Rule Reviewer

/s/ DORE SCHWINDEN  
DORE SCHWINDEN  
Director  
Department of Commerce

Certified to the Secretary of State November 15, 2010.

BEFORE THE BOARD OF MEDICAL EXAMINERS  
DEPARTMENT OF LABOR AND INDUSTRY  
STATE OF MONTANA

In the matter of the adoption of New ) NOTICE OF ADOPTION  
Rule I qualification criteria for )  
evaluation and treatment providers )

TO: All Concerned Persons

1. On June 24, 2010, the Board of Medical Examiners (board) published MAR notice no. 24-156-74 regarding the public hearing on the proposed adoption of the above-stated rule, at page 1467 of the 2010 Montana Administrative Register, issue no. 12.

2. On July 20, 2010, a public hearing was held on the proposed adoption of the above-stated rule in Helena. Several comments were received by the July 28, 2010 deadline.

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

COMMENT 1: One commenter offered overall support for the new rule.

RESPONSE 1: The board appreciates all comments made during the rulemaking process.

COMMENT 2: One commenter asserted that the bill sponsor had not been contacted. The commenter generally supported treatment programs, but opposed New Rule I because it is only a partial adoption of the Federation of State Physician Health Programs (FSPHP) guidelines, and the commenter desires a verbatim adoption. The commenter also stated that Mike Ramirez of the Montana Professional Assistance Program (MPAP) was aware of the guidelines, as he was a member of the committee that drafted them.

RESPONSE 2: The board notes that the date and time of the public hearing on New Rule I appeared in paragraph one of the rulemaking notice. Further, paragraph seven of the notice confirms that the primary bill sponsor was contacted by regular mail on May 6, 2009. Board staff also left a message on the sponsor's cell phone number. Further, the bill sponsor was aware of the notice and the comment period, as the sponsor submitted a timely comment.

The board notes that the FSPHP guidelines include not only the guidelines for treatment programs in Appendix II of the guidelines, but also sections on general guidelines, substance use disorders, management of other psychiatric disorders, and evaluations. Section 1(A) of the general guidelines states, "The following guidelines are applicable to state physician health programs serving physicians, and are applicable specifically to physicians. Many programs monitor other health

professionals with health conditions, which may compromise their ability to practice with reasonable skill and safety. All or part of these guidelines may be used for these populations, if determined appropriate." Partial use of the guidelines is clearly contemplated and encouraged. The board considered the guidelines and the expertise of the FSPHP when drafting New Rule I.

COMMENT 3: The primary sponsor of SB 401, the bill implemented through New Rule I, stated that the rule requires so much subjectivity and interpretation, it is questionable whether any Montana treatment provider or evaluator could ever treat or evaluate an impaired Montana physician. The sponsor also opined that the new rule is inconsistent with legislative intent and urged the board to rework the rule to be consistent with what the Legislature envisioned.

RESPONSE 3: In creating New Rule I, the board relied on the Federation of State Physician Health Programs (FSPHP) guidelines that were compiled over the course of several years, with input from physician health programs throughout the United States. The guidelines that the board relied upon were presented to all voting members of the FSPHP for review and were approved by 79 percent of the voting members. Appendix II, Treatment Programs, was approved by 66 percent of FSPHP voting members. As the cautionary statement of the guidelines states, "(t)hese guidelines reflect the consensus of existing physician health programs." Over 42 states' programs belong to the FSPHP. Thus, New Rule I reflects standards that are used throughout the United States, in more than 42 programs. In December 2009, the New England Journal of Medicine Career Center highlighted the FSPHP as the resource for state physician health programs.

Senate Bill 401 was codified at 37-3-203(2), MCA, and provides that a licensee "must be allowed to enroll in a qualified program within this state and may not require a licensee to enroll in a qualified program outside the state unless the board finds that there is no qualified program in this state." New Rule I implements this provision and sets out qualification requirements and treatment modalities that meet national criteria. The board notes that any state program meeting the broad, general criteria in New Rule I will be a qualified program. The board was cognizant of the bill's legislative intent when it relied on these nationally approved standards as the benchmark for Montana programs. In addition, MPAP audit statistics support the use of these guidelines for treatment and evaluation.

It is the board's responsibility to ensure that the public is protected against the unsafe practice of medicine. The board concluded that following the high standards of the FSPHP is essential to ensure the public's safety. FSPHP standards are objective, fair, and reasonable, and the board looks forward to having more programs in Montana that meet these standards. The board believes that the criteria in New Rule I furthers the legislative intent behind SB 401 while promoting the safe practice of medicine in Montana.

COMMENT 4: One commenter criticized several terms used in New Rule I, stating that the rule is contradictory to other laws and overlooks the patient's needs altogether. The commenter asked why the new rule did not follow the requirements that govern other state-approved addiction treatment programs, and suggested the

Commission on Accreditation of Rehabilitation Facilities (CARF) or the Joint Commission on Accreditation of Healthcare Organizations (Joint Commission) standards for addiction treatment.

RESPONSE 4: The board relied on guidelines that are approved by a majority of state boards for treatment programs for physicians and health care providers. For the purposes of a physician health program, CARF would be relevant only for accrediting behavioral and opioid addiction programs. Joint Commission accreditation for organizations or behavioral health care programs does not focus on the impaired health care provider, but has a broad umbrella over outdoor programs, youth programs, animal therapy, eating disorder programs, and addiction programs within a larger health care institutional setting, etc. Neither entity is the nationally recognized organization for physician health programs. The board appropriately relied on FSPHP's nationally recognized and adopted guidelines in crafting the qualification criteria.

COMMENT 5: One commenter claimed that section (3)(d) limits qualification to facilities that specialize in treating physicians and whose patient are exclusively physicians. The commenter recommended the board adopt the standards of CARF and the Joint Commission, and complained about the lack of definitions for words of common understanding. The commenter questioned the requirement for a "strong family program," asked what distinguishes a strong program from a weak one, and claimed that there is no definitive recommendation for staff-to-patient ratios for addiction treatment.

RESPONSE 5: Nothing in New Rule I states that only physicians can participate in a qualified program and multidisciplinary programs are acceptable under the rule. However, programs that treat medical professionals have different qualities than programs that treat others, because physicians particularly have defensive coping mechanisms to circumvent treatment and evaluation. Multidisciplinary programs that do not treat medical professionals have favorable outcomes in approximately 20 to 25 percent of cases, while programs that treat medical professionals and adhere to the FSPHP's guidelines have 80 to 90 percent favorable outcomes.

Accreditation by CARF and the Joint Commission does not address itself to the patient population or concerns that physician health programs address. Contrary to the commenter's statement about definitive recommendations for staff-to-patient ratios, FSPHP Appendix II (1)(f) merely recommends that a staff-to-patient ratio be conducive to each patient, as does New Rule I (3)(f).

The requirement in (3)(h) to include "a strong family program" reflects a common understanding that family involvement, support, and understanding of an impaired health care provider is integral to recovery. Further, (4)(c) offers clarification of the term as used in the treatment programs.

COMMENT 6: One commenter viewed Senate Bill 401 as an opportunity for the board to recognize qualified evaluation and treatment facilities in Montana and asserted that New Rule I circumvented the need to include Montana-based evaluation and treatment facilities. The commenter noted the financial burden

placed on individuals in crisis and the concerns of facilities in Montana that have not historically been viewed as qualified.

RESPONSE 6: The board notes that any state program meeting the criteria in New Rule I would be considered a qualified program. Section 37-3-203(2), MCA (the code section being implemented by New Rule I), states that a licensee "must be allowed to enroll in a qualified program within this state and may not require a licensee to enroll in a qualified program outside the state unless the board finds that there is no qualified program in this state." New Rule I sets out qualification requirements and treatment modalities that meet national criteria. Any program in Montana that meets these broad, general criteria will be deemed qualified. The board was cognizant of the bill's legislative intent when it relied on nationally approved standards as the benchmark for programs in Montana.

The board appreciates the financial stress that evaluation and treatment causes licensees, and relied on the FSPHP's broad qualifying criteria to facilitate Montana-based programs becoming qualified. For physicians with financial hardships, MPAP can and has offered scholarships on a case-by-case basis. While the board recognizes that treatment and evaluation is expensive, it is far costlier to lose a physician to addiction, suicide, or the end of a career caused by harm to a patient.

4. The board has adopted NEW RULE I (24.156.429) exactly as proposed.

BOARD OF MEDICAL EXAMINERS  
DWIGHT THOMPSON, PA-C,  
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 November 15, 2010

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
Rules I through VI pertaining to )
Medicaid for Workers with Disabilities )

TO: All Concerned Persons

1. On May 27, 2010, the Department of Public Health and Human Services published MAR Notice No. 37-512 pertaining to the public hearing on the proposed adoption of the above-stated rules at page 1271 of the 2010 Montana Administrative Register, Issue Number 10.

2. The department has adopted New Rules I (37.82.1002), II (37.82.1003), IV (37.82.1005), and V (37.82.1006) as proposed.

3. 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.

NEW RULE III (37.82.1004) MEDICAID FOR WORKERS WITH DISABILITIES: GENERAL ELIGIBILITY CRITERIA (1) An individual is eligible for benefits through the Medicaid for Workers with Disabilities program if the individual: (a) remains as proposed. (b) has a disability as defined in 42 USC 1382c, except that the individual has or has had earnings above the level for substantial gainful activity criteria that the individual must be unable to engage in substantial gainful activity does not apply; (c) through (e) remain as proposed.

AUTH: 53-6-113, MCA
IMP: 53-6-131, 53-6-195, MCA

NEW RULE VI (37.82.1007) MEDICAID FOR WORKERS WITH DISABILITIES: COST SHARE FEES (1) and (2) remain as proposed. (3) The amount of an individual's cost share fee will be determined using the following table:

Table with 3 columns: Gross Income as a percentage of federal poverty level (FPL), Monthly gross income dollar amount, Monthly payment. Rows include income brackets from up to 100% to over 200% to 250% with corresponding monthly payment amounts.

AUTH: 53-6-113, 53-6-195, MCA  
IMP: 53-6-131, 53-6-195, MCA

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

COMMENT #1: A number of individuals and organizations commented that a person applying for Medicaid for Workers with Disabilities (MWD) should be treated as a household of one even if married. They disagree with the policy of counting the income of the spouse of the person with a disability on a number of grounds: They contend that it is unfair to place the responsibility of meeting the needs of the disabled person on the spouse; that "the marriage penalty" may cause married persons with disabilities to seek a divorce in order to be able to work and still qualify for Medicaid; that the policy is discriminatory; and that it will limit the ability of persons with disabilities to work and become self-sufficient.

RESPONSE #1: Montana law, under 40-2-102, MCA, specifies that spouses are required to support each other insofar as each spouse is able. The eligibility determination budget does consider the means of the spouse and by function of that budget, does consider whether a spouse can afford to contribute to the support of a disabled spouse. Inclusion of a spouse in determining Medicaid eligibility when spouses reside together is consistent among the 60+ Medicaid programs currently offered. The department has not observed people divorcing in order for one spouse to be able to receive Medicaid benefits while working; it would seem that if this has not been an issue in attempts to qualify for far more restrictive Medicaid programs that it would be unlikely to occur with this much more liberal new program offering. It would seem that if this phenomenon were to have occurred, it would have occurred before the MWD program came into being and disabled people found more, rather than less, program restrictions and higher, rather than lower costs associated with working while continuing to receive Medicaid benefits.

The department does not believe the policy of counting spousal income subjects individuals with disabilities to illegal discrimination, as the policy is based on the legal obligation of spouses to support each other to the extent of each spouse's ability, as required by the Montana statute cited above. Additionally, the department is not singling out individuals with disabilities for disparate treatment as the same policy applies to all other Medicaid coverage groups and is applied in determining eligibility for many other public assistance programs, such as supplemental security income (SSI), the Supplemental Nutrition Assistance Program (SNAP), and Temporary Assistance for Needy Families (TANF). Finally, the department does not expect the policy will unreasonably limit the ability of persons with disabilities to work and become self-sufficient since the limit for net family income of 250% of the federal poverty level is fairly high for a needs-based program.

COMMENT #2: The department states that it rejected the approach of counting only the income of the person seeking Medicaid even if the applicant is married because this approach is not consistent with the policy applied to all other Medicaid coverage groups. The department states that there is no reason to make an exception to the usual for this coverage group which is already being given the benefit of significantly higher income and resource limits than other groups. Individuals in the MWD coverage group should be treated differently because they are different from persons in other coverage groups in that persons seeking MWD are working and are paying a cost share amount. These differences are sufficient reasons to make an exception to the usual policy of counting spousal income.

RESPONSE #2: The MWD group is, in fact, a subset of the larger disabled group identified as a covered group under Medicaid. Individuals in this group are people with disabilities. The MWD group is also a subset of the general Medicaid population, many of whom are working. Individuals with earned income receive extensive additional deductions from the earnings prior to testing their income against the Medicaid income standards. Further, the offering of any Medicaid program must be within the ability of the state of Montana to afford the program. The more liberal the program, the more expensive the program. In this time of budget restrictions in all facets of government, it is not viable or sustainable to offer a program with few or no limitations.

COMMENT #3: Using gross income without any deductions or disregards to determine an individual's cost share amount while at the same time using net family income to determine eligibility could be problematic and is inequitable. For example, an individual who is a household of one who has gross income of \$2,500 per month is eligible for the program (assuming the person is also eligible in regard to resources) the person's net family income is  $(\$2,500 - 85) / 2 = \$1,207.50$  per month. However, using the person's gross income of \$2,500/month to determine the person's cost share amount puts the person off the chart, even though the person is eligible, because the maximum income shown on the chart is \$2,256. The cost share methodology should be changed so that the cost share fee is based on the individual's net family income or the layout of the cost share fee table should be changed so that the gross amounts do not fall within levels of FPL that only the net family income is required to fall into.

RESPONSE #3: Conversely, using family income to determine cost share fee would then create inequity if the person's spouse were the higher wage earner. If a couple comprised of a disabled individual (the "qualifying spouse") and either a disabled spouse who is not working or a spouse who is not disabled were to be considered (the "not qualifying" spouse), including the couple's income could result in a higher cost share fee for the qualifying spouse than if only his or her individual income were to be used. Further, another state proposed a methodology nearly identical to what commentator suggests, and such methodology was rejected by the Centers for Medicare and Medicaid Services (CMS) because this methodology could result in an inappropriately high cost share fee. Cost share fees are limited to no more than 7.5% of the individual's own income. The department has discovered that the



proposed cost share fees for the program in Montana could also result in a cost of more than 7.5% of an individual's own income. Thus, some of the cost share amounts in New Rule VI (37.82.1007) have been reduced to ensure that the amount does not exceed 7.5% of the individual's income. The cost share amount for individuals with income over 100% of the federal poverty level (FPL) up to 150% of the FPL has been reduced from \$75 to \$67, the amount for individuals with income over 150% up to 200% of the FPL has been reduced from \$125 to \$100, and the amount for individuals with income over 200% up to 250% of the FPL has been reduced from \$175 to \$135. The cost share amount for individuals with income below 100% of the FPL remains at \$35 because this does not exceed 7.5% of the individual's income for any members of the income range. The minimum income for an individual in this income range is \$694.01 (individuals with income less than that would be categorically needy using another program), and 7.5% of \$694 is \$51.95, so the amount of \$35 originally set for this income range is well below the 7.5% cap. Regarding changing the "layout" of the cost share fee table, since federal regulations limit cost share fee basis to that of the individual worker with disabilities, family income may not be included, and, to eliminate the broad income ranges for a "sliding fee scale" methodology would shift program costs from benefits for recipients to administration and increase the complexities for both the recipient and the department.

COMMENT #4: The department states it rejected the option of having higher resource limits or no resource limits at all because this would benefit a person while the person was working and eligible under this coverage group but would disqualify the person from receiving Medicaid under a different coverage group if the person lost eligibility under this group. This rationale is without merit. The resource limits should not be based on whether the person will be eligible for Medicaid under another coverage group when the person no longer is eligible for MWD. It should not be based on the premise that people with disabilities are just going to stop working.

RESPONSE #4: The statement quoted by the commenter was meant primarily as an observation, although the notice mistakenly stated this was a reason for the policy decision regarding resource limits. The department is not suggesting that people with disabilities are "just going to stop working". The department is merely considering the reality that people, all people, experience stops and starts in their work activities. This can include loss of employment due to changes in the economy or job market, moving to a different area, temporary or permanent inability to work due to one's own health or that of a family member, retirement, and many other reasons. One cannot assume that just because a person has a job today or this year, the same person will continue to work for the remainder of his or her life. And a sudden work stoppage resulting in a person losing eligibility for MWD, but under which the person had accumulated significant resources in excess of other programs, could result in loss of all Medicaid benefits. The other Medicaid programs will not presently be revised to exclude resources accumulated while receiving MWD benefits. Such a policy could be exceedingly complex to trace when individual dollars in a bank account, for example, were accumulated. Further, the department

has previously stated that the option of higher resource limits or no resource limits was rejected by the department as it would create an unfair disparity between workers with disabilities and other individuals with disabilities (as well as those in the similar aged and blind groups). The department believes it would be clearly unfair to discriminate in such a significant way in favor of an individual with disabilities who is working versus an individual with disabilities who is either unable to work or has been unable to secure or maintain employment. Medicaid is a needs-based program and therefore logically would consider resources and establish a reasonable limit on resources as a way of defining "need".

COMMENT #5: These resource limits are unreasonable and don't allow participants to accumulate money for their retirement.

RESPONSE #5: Participants can, in fact, accumulate money for retirement. MWD allows for exclusion of resources accumulated in retirement funds while an individual is participating in MWD. When a working individual retires and potentially applies for other Medicaid programs at that time, some retirement savings could be considered countable resources or income for determination of Medicaid upon retirement. What the commenter seems to be suggesting is amendments to all the other 60+ Medicaid programs offered in Montana. MWD is a new program, and was not intended to provide for administratively cumbersome and confusing amendments to the other Medicaid programs. Tracking individual "dollars" accumulated for a specific purpose as people enter and leave the program would be excessively difficult and unsustainable.

COMMENT #6: The department states it rejected the option of having higher resource limits or no resource limits at all because this would create an unfair disparity between disabled workers and other aged, blind, or disabled individuals who are not working and who are subject to the SSI resource limits. It is not unfair. If it is unfair, then it is also unfair to allow people without disabilities to acquire unlimited resources simply because they have the option of getting health insurance instead of being dependent on Medicaid when people with disabilities don't have the option of getting health insurance that meets their needs because there is none.

RESPONSE #6: The department agrees that people with disabilities generally don't have the option of getting health insurance that meets their needs. That is why participants in MWD are allowed to qualify for Medicaid using higher income and resource limits than those applied in other Medicaid coverage groups. However, aged, blind, or disabled individuals who are not working also are unable to get health insurance that meets their needs. The department stands by its statement that it would be unfair to require individuals who are aged, blind, or disabled and may be unable to work to meet the very strict SSI resource limit while eliminating the resource limit altogether for workers with disabilities.

COMMENT #7: People should be allowed to accumulate wealth. It is good for individuals and good for the economy. Having resource limits for MWD does not promote this.

RESPONSE #7: The offering of any Medicaid program must be within the ability of the state of Montana to afford the program. The more liberal the program, the more expensive the program. In this time of budget restrictions in all facets of government, it is not viable or sustainable to offer a program with few or no limitations. Further, Medicaid is a needs-based program and therefore logically would consider resources and establish a reasonable limit on resources as a way of defining "need".

COMMENT #8: One individual suggested that participation in MWD should not be restricted by resource limits because MWD is an insurance program.

RESPONSE #8: The department disagrees because MWD is not an insurance program. It is merely a new coverage group in Medicaid, which is a needs-based public assistance program. Since Medicaid is needs-based, it is appropriate to have resource as well as income limits. The cost share fees paid by participants in MWD are not insurance premiums. Insurance premiums are based on actuarial calculations to predict the likely cost of providing coverage for a specific risk, whereas the amount of the cost share fees is unrelated to the estimated cost of paying the participants' medical expenses. The cost share fees are based solely on the participant's ability to pay as measured by the participant's income level and are not intended to bring in sufficient revenue to pay for the participants' medical expenses.

COMMENT #9: The department states that one reason for choosing to exclude retirement and pension funds and plans from consideration as resources is to maintain consistency of eligibility requirements between Medicaid coverage groups, but retirement and pension funds and plans are actually counted in determining eligibility for other coverage groups.

RESPONSE #9: The department agrees and thanks this person for calling the error to its attention. It is true that retirement accounts are counted in determining eligibility for Medicaid under all coverage groups other than MWD. Such accounts are not being excluded to maintain consistency with other coverage groups. They are being excluded because it is desirable to allow participants in MWD to save money to meet their needs in retirement.

COMMENT #10: The decision not to count retirement funds as a resource in determining eligibility for MWD is an excellent one. However, it makes no sense to allow a person with disabilities to accumulate resources for retirement while in the MWD program without protecting these funds if the person stops working and has to transfer to another Medicaid coverage group. The person will just have to liquidate the funds he or she has accumulated in order to qualify for Medicaid under another coverage group. This gives participants in MWD no incentive to save for their retirement and is not good for individuals with disabilities. The department should protect retirement funds accumulated while participating in MWD from being

counted when a person leaves the program and applies for other Medicaid coverage.

RESPONSE #10: When any working individual retires and potentially applies for other Medicaid programs at that time, retirement savings could be considered countable resources or income for determination of Medicaid upon retirement. There are currently several options available for an individual with disabilities to save toward retirement without affecting Medicaid resource eligibility, including some employer-sponsored retirement plans, as well as the use of Special Needs Trusts and Self-Sufficiency Trusts of Montana, which are available to individuals with disabilities under the age of 65. The department believes the currently available options are adequate without creating additional allowances specific to one unique program. What the commentator is suggesting is amendments to all the other 60+ Medicaid programs offered by the department. MWD is a new program, and was not intended to provide for administratively cumbersome and confusing amendments to the other Medicaid programs. Tracking individual "dollars" accumulated for a specific purpose as people enter and leave the program would be excessively difficult and unsustainable.

COMMENT #11: Several individuals and organizations commented that participants should be allowed to retain Medicaid coverage under MWD when they are temporarily unemployed.

RESPONSE #11: Montana originally proposed a "grace period" for participants in MWD who are temporarily unemployed. Unfortunately, CMS rejected Montana's plan to provide such grace periods, apparently because CMS concluded they were inconsistent with the Ticket to Work and Work Incentives Improvement Act (TWWIIA) and Balance Budget Act of 1997 (BBA), the federal statutes that provide authority for MWD. TWWIIA and BBA allow states to provide Medicaid coverage to people with disabilities who are working using more liberal income and resource limits, but benefits cannot be provided under this special coverage group to a person who is not working, even temporarily.

COMMENT #12: One individual suggested that cancelling a person's Medicaid coverage under MWD when the person is unable to work because of an illness related to the person's disability may violate the Americans with Disabilities Act (ADA).

RESPONSE #12: The department does not believe it violates the ADA to terminate participation in MWD when a person with a disability is unable to work due to an illness related to his or her disability. MWD is a program specifically for persons with disabilities who are working, so being employed is a bona fide eligibility criterion. It is not discriminatory or violative of the ADA to terminate participation in MWD when a person no longer meets the eligibility criteria.

COMMENT #13: One individual asked whether a self-employed person will lose eligibility during a period of time when the person is not making a profit at the person's self-employment business.

RESPONSE #13: Self-employment is not defined by the amount of net income produced; it is defined by the continued work activities involved in the "profit motive". Thus, if a person is actively participating in self-employment activities as defined in the rule, the individual is acknowledged to be working regardless of whether their endeavor is presently generating a net income; many self-employment endeavors do not immediately generate positive net income.

COMMENT #14: New Rule III (37.82.1004) states that in order to be eligible for the MWD program a person must have a disability as defined in 42 U.S.C. 1382c, except that the individual has or has had earnings above the level for substantial gainful activity. Does this mean that an individual must have earnings over the substantial gainful activity (SGA) level to qualify for MWD? If so, an individual would have to work a minimum of 32 hours per week at minimum wage to qualify. This will exclude many people with disabilities and will discourage and prevent many from entering the workforce. Many people with disabilities due to unique health-related circumstances may not be able to work at that level. Even people who can only work part time would still be contributing to the tax base and doing their best to decrease their dependency on government assistance programs. They should not be shut out of the MWD program.

RESPONSE #14: It was never the department's intention to limit participation in the MWD program to individuals who are or have been employed at the SGA level. Title 42 U.S.C. 1382c(3)(A) provides that "an individual shall be considered to be disabled for purposes of this title if he is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months". The department simply meant to say that to be considered disabled for purposes of the MWD program an individual must satisfy all of the criteria of 42 U.S.C. 1382c (3)(A) apply except the criterion that the person must be unable to engage in any substantial gainful activity. In other words, a person is disabled for purposes of the MWD program if the person has any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months and the physical or mental impairment is sufficiently severe that it results in functional limits to gainful employment, but a person who meets those criteria is considered disabled without regard to whether or not the person has earnings above the dollar amount defined as constituting substantial gainful employment in regulations published by the Commissioner of Social Security. The department has revised New Rule III(1)(b) (37.82.1004) to clarify this point.

COMMENT #15: MWD is not merely an expansion of the Supplemental Security Income program and therefore eligibility for MWD should not be tied to the SSI eligibility rules.

RESPONSE #15: Title 42 CFR, part 435.601 requires that "...in determining financial eligibility of individuals a categorically or medically needy, the agency must apply the financial methodologies and requirements of the cash assistance program that is most closely categorically related to the individual's status". Further, this section defines the most closely related cash assistance program for the aged, blind, and disabled categories to be that of the SSI or State supplement programs. As such, the state has no options regarding the financial methodologies used.

COMMENT #16: The fiscal impact statement estimates that 43 individuals will participate in MWD in the first three months of the program. Where did this estimate come from? Is participation limited to 43 individuals?

RESPONSE #16: Participation is not limited to a fixed number of participants. Anyone who applies and meets the eligibility requirements may participate. By the end of the third month of its operation, MWD already had 146 participants. The estimate of 43 participants in the first three months was calculated by Allen Jensen, director of the Work Incentives Project at George Washington University. He reviewed data from 39 states that implemented Medicaid buy-in programs for workers with disabilities from 1999 through 2007. He examined the data on numbers of participants in their programs and extrapolated that to the population of Montana, taking into consideration the number of adults aged 18 through 64 getting social security disability insurance (SSDI) and SSI on the basis of disability and the percentage of SSI beneficiaries in Montana with earned income, which was 17.8% in 2006. Montana's percentage of SSI beneficiaries with earned income is the 8th highest among the 50 states, so perhaps it is not surprising that the number of participants in Montana's program in the first three months was more than three times the department's estimate.

COMMENT #17: Are patients at Montana State Hospital who work eligible for MWD?

RESPONSE #17: No, patients at Montana State Hospital (MSH) who work are not eligible for MWD. Pursuant to federal Medicaid regulations at 42 CFR 435.1008 that prohibit Medicaid coverage for certain institutionalized individuals, patients at MSH who are between the ages of 21 and 65 are ineligible for Medicaid. Additionally, MWD is specifically for individuals who are not living in medical institutions.

COMMENT #18: New Rule III(1)(b) (37.82.1004) provides that to be eligible for MWD a person must have a disability as defined in 42 U.S.C. 1382c. The rule should list the criteria contained in 42 U.S.C. 1382c so that a reader will not have to refer to the statute to determine if the reader qualifies for MWD on the basis of disability.

RESPONSE #18: The social security disability criteria in 42 U.S.C. 1382c take up many pages. The rule would be extremely long and complex if these criteria were included in the rule. Additionally, it is unnecessary to include the criteria in the rule

because most applicants for MWD have already been determined to be disabled according to the SSA criteria.

5. The department intends to apply these new rules retroactively to July 1, 2010. A retroactive application of the proposed new rules does not result in a negative impact to any affected party.

/s/ Barbara Hoffmann  
Rule Reviewer

/s/ Hank Hudson for  
Anna Whiting Sorrell, Director  
Public Health and Human Services

Certified to the Secretary of State November 15, 2010.

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

In the matter of the amendment of )  
ARM 37.80.101 and 37.80.201 ) CORRECTED NOTICE OF  
pertaining to child care assistance ) AMENDMENT

TO: All Concerned Persons

1. On September 23, 2010, the Department of Public Health and Human Services published MAR Notice No. 37-520 pertaining to the proposed amendment of the above-stated rules at page 2171 of the 2010 Montana Administrative Register, Issue Number 18. On November 12, 2010, the department published the notice of amendment at page 2661 of the 2010 Montana Administrative Register, Issue Number 21.

2. The corrected notice is being filed to correct an error in the underlining of the statutory citation in the authority of ARM 37.80.101 and ARM 37.80.201. In the statutory citation of authority in each rule, section 52-2-704, MCA should not have been underlined and 53-4-212, MCA should have been underlined.

37.80.101 PURPOSE AND GENERAL LIMITATIONS (1) through (13) remain as proposed.

AUTH: 52-2-704, 53-4-212, MCA

IMP: 52-2-702, 52-2-704, 52-2-713, 52-2-731, 53-2-201, 53-4-211, 53-4-601, 53-4-611, 53-4-612, MCA

37.80.201 NONFINANCIAL REQUIREMENTS FOR ELIGIBILITY AND PRIORITY FOR ASSISTANCE (1) through (11) remain as proposed.

AUTH: 40-4-234, 52-2-704, 53-4-212, MCA

IMP: 52-2-704, 52-2-713, 52-2-721, 52-2-722, 52-2-723, 52-2-731, 53-2-201, 53-4-211, 53-4-601, 53-4-611, MCA

/s/ Francis X. Clinch  
Rule Reviewer

/s/ Anna Whiting Sorrell  
Anna Whiting Sorrell, Director  
Public Health & Human Services

Certified to the Secretary of State November 15, 2010.



BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF AMENDMENT  
ARM 42.2.325 relating to )  
Confidentiality of Tax Records )

TO: All Concerned Persons

1. On June 10, 2010, the department published MAR Notice No. 42-2-832 regarding the proposed amendment of the above-stated rule at page 1398 of the 2010 Montana Administrative Register, issue no. 11.

2. A public hearing was held on July 8, 2010, to consider the proposed amendment. Oral and written testimony received at the hearing is summarized as follows along with the response of the department:

COMMENT NO. 1: Jane Egan, with the Montana Society of Certified Public Accountants (MSCPA), presented testimony asking the department to develop a way for tax practitioners to obtain withholding and estimated payment information via internet or telephone to assist them with timely preparation of tax returns.

Ms. Egan further recommended looking at internet options such as the RIS "Where's My Refund" site or the site created by the Internal Revenue Service (IRS) in March of 2010 for verifying receipt of the \$250 stimulus rebate to retirees. She indicated that the society believes an internet option would reduce the number of telephone calls made to the department to verify withholding information. The department could ask for the tax preparer's identification number (TPIN) which all paid tax preparers will be required to have as of January 1, 2011, and the taxpayer's date of birth or social security number as qualifiers to get the information being sought.

John Steinhoff, CPA, Junkermier, Clark, Campanella and Stevens, P.C., stated that he supported the suggestion made by Jane Egan because it would make the tax preparer's work much easier if they could get the withholding and estimated payment information more directly.

RESPONSE NO. 1: The department appreciates Ms. Egan and Mr. Steinhoff's suggestions and comments regarding the ability for practitioners to obtain withholding and estimated payment information without the need to complete a Power of Attorney. The department recognizes the mutual benefits of the suggestions made by the Montana Society of Certified Public Accountants and supported by Mr. Steinhoff to the tax filing process for taxpayers, tax practitioners and the department.

The department explored the options suggested by the MSCPA in an attempt to accommodate the request, but ultimately found that the Taxpayer Bill of Rights prohibits this access without the acquired consent of the taxpayer. This consent is granted through the Power of Attorney issued by the taxpayer.

The department is responsible for achieving both convenient and efficient

administration of the tax laws and protecting the confidentiality of taxpayer information under the Taxpayer Bill of Rights, specific confidentiality statutes, and the privacy clause of the Montana Constitution. The department will continue to explore additional methods of meeting the privacy interests of taxpayers while making the tax process easier and more convenient.

COMMENT NO. 2: Walt Kero, CPA, Junkermier, Clark, Campanella and Stevens, P.C., provided written comments regarding the proposed rule amendments. Mr. Kero stated the use of a Federal Form 2848 should also be permitted. The form number variation from the federal form number should not be a basis to refuse an otherwise properly executed "Power of Attorney."

RESPONSE NO. 2: The department appreciates Mr. Kero's suggestion concerning the Federal Form 2848. The department does accept the Federal Form 2848, as long as it states "Montana" and references the correct tax type and year(s) at issue. In response to Mr. Kero's comment the department has further amended the rule to provide guidance on how the form can be used and accepted by the department in place of the department's Power of Attorney.

COMMENT NO. 3: Ms. Mary Whittinghill, Montana Taxpayers Association, provided written comments regarding ARM 42.2.325(5), which references an internal department procedure for the Property Assessment Division. Ms. Whittinghill questioned whether it was appropriate to include this internal procedure in an administrative rule.

She asked if the department has a process to determine whether to adopt a rule or issue a procedure. She further questioned whether it would be possible to adopt a procedure by rule when it directly affects taxpayers and uses internal procedures for internal practices for employees.

RESPONSE NO. 3: The department appreciates Ms. Whittinghill's comments concerning the adoption of an internal procedure into an administrative rule. An agency may adopt, by reference, an internal procedure, policy, manual, or other document that is used as a reference to assist the public or the agency in administering an administrative rule. This requirement is allowed by 2-4-307, MCA.

The department's process of determining whether to adopt a rule or develop a procedure is determined by the application of the administrative rule to an implementing statute and to, whether or not the process being developed has direct impact to the public or is more related to an internal process or guidance.

Department procedures give guidance to the staff on how to do various tasks associated with the work performed in the department. Administrative rules give guidance to both the taxpayers and the department staff and must support a statute.

Based on Ms. Whittinghill's comments, the department has amended ARM 42.2.325 to remove the internal reference of procedure 2-4-003. The department will propose an administrative rule in the near future to cover the provisions taxpayers and their agents use when seeking confidential property tax information.

COMMENT NO. 4: Ms. Patty Lovaas provided written comments that this

rule is another administrative deterrence for property owners to obtain information used to value their property. There is already a confidentiality agreement which is signed by property owners and representatives. This information is readily available at the local offices. To now require all property owners to make a request in writing and mail these requests to the department's Legal Services Office in Helena, appears, under the color of law, to limit openness and transparency. These requests can be intentionally delayed, misplaced, or ignored.

She further stated this is a poor administrative rule, the intent of which is to withhold personal information, in violation of the Montana Constitution, Article II, section 9. The Legislature should not permit this administrative rule to be adopted.

RESPONSE NO. 4: The department's full intent of the rule is to advise the taxpayers of the process that the department will follow when providing confidential taxpayer information to the taxpayer or their duly authorized representative.

Ms. Lovaas is correct; there is a process in place for property owners to obtain information used to value their own property. This rule advises everyone of that process by referencing the internal procedure that is followed in the local offices for those requests. In response to Ms. Lovaas' comments, the department has amended the rule to clarify what type of tax matters must be referred to the Legal Services Office.

There is no intent to withhold personal information from taxpayers. The rule is intended to explain how taxpayer information will be protected from unauthorized requests and provided when an authorized request is received.

3. As a result of the comments received, the department amends ARM 42.2.325 with the following changes:

42.2.325 ACCESS TO INFORMATION (1) remains the same.

(2) All requests for confidential tax returns or tax return information submitted by someone other than the taxpayer or an authorized agent of the taxpayer must be made to the department in writing directed to:

Department of Revenue  
Legal Services Disclosure Office  
P.O. Box 7701  
Helena, MT 59604-7701.

(3) A taxpayer may authorize a representative to obtain the taxpayer's confidential tax information by completing and submitting the department's Power of Attorney form, form POA. The downloadable form is located on the department's web site at <http://revenue.mt.gov> under "forms and resources" "downloadable forms". The department will accept a fully executed Federal Form 2848 when section 3 of the Federal form entitled "tax matters" contains the type of tax, the form number with a reference to "Montana," and the tax years at issue.

(4) Except as provided in (5), when the department receives a written request for confidential tax return information from someone who is not statutorily authorized to receive it, the department's Disclosure Office will respond in writing refusing the

request.

(5) The department complies with the State Tax Appeals Board's order to provide relevant confidential realty transfer certificate information to requesting taxpayers who are appealing the department's valuation of their property for comparable sales that the department used in valuing the taxpayer's property. ~~Confidential realty transfer certificate information is available in accordance with the department procedure entitled, "Taxpayer/Agent Review of Confidential Information," 2-4-003, dated August 12, 2003, last revised May 19, 2009.~~

(6) When the department is served with an administrative summons, judicial summons, or subpoena demanding confidential tax return information on behalf of someone who is not statutorily authorized to receive it, the department will oppose the request by filing a motion to quash with the judicial body that issued it or under whose authority it was issued, and will appeal any adverse ruling that implicates the department's view of proper tax administration. The department will ~~not disobey~~ obey an order to provide the information according to a final judicial order.

AUTH: 15-1-201, 15-7-306, 15-30-2620, 15-31-501, 16-1-303, 16-10-104, 16-11-103, MCA

IMP: Montana constitution, Art. II, sections 8, 9, and 10, Title 2, chapter 3, part 1, 2-6-102, 2-6-109, 2-6-110, 2-6-202, 15-1-106, 15-7-310, 15-30-2618, 15-31-511, 15-38-109, 15-68-815, MCA

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](http://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 November 15, 2010

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF AMENDMENT  
ARM 42.15.802 relating to family )  
education savings program )

TO: All Concerned Persons

1. On September 23, 2010, the department published MAR Notice No. 42-2-847 regarding the proposed amendment of the above-stated rule at page 2181 of the 2010 Montana Administrative Register, issue no. 18.

2. A public hearing was held on October 14, 2010, to consider the proposed amendment. No one appeared at the hearing and no written comments were received.

3. Based on discussions with the new administrator for the Family Education Savings Program, the department further amends ARM 42.15.802 with the following changes, stricken matter interlined, new matter underlined:

42.15.802 CONTRIBUTIONS TO FAMILY EDUCATION SAVINGS PROGRAM ACCOUNTS (1) The program administrator determines who can be an account owner and from whom it will accept contributions to an account. More information regarding the administration of the program can be found at [montana.collegesavings.com/montana](http://montana.collegesavings.com/montana). Account ownership and the acceptance of contributions are not necessarily related to the ability to reduce Montana taxable income. A person is not necessarily entitled to reduce their Montana adjusted gross income because they made a contribution or are an account owner. Entitlement to the tax benefit depends on meeting specific statutory requirements set forth in Title 15, chapter 62, MCA, and these rules.

(2) An individual is allowed to reduce their Montana adjusted gross income by the lesser of the total contributions they actually make to one or more Montana family education savings accounts during the tax year, or \$3,000.

(a) Except as provided in (i), ~~and (ii), and (iii),~~ a deduction is allowed only for contributions an individual makes to an account owned by the individual (or jointly with their spouse).

(i) Section 15-62-207, MCA, provides that a qualifying contribution can also be made to an account owned by the individual's child or stepchild if that child or stepchild is a Montana resident. The department interprets that provision to allow only:

(A) a parent or stepparent to claim a deduction for an amount they contribute to an account owned by their minor child or stepchild as provided in subsection (ii); and ~~This interpretation is based on the program administrator's refusal to accept other contributions to accounts not owned by the contributor, and the department may amend this rule and interpret the provision more broadly in the future if the program administrator permits other contributions to accounts not owned by the~~

contributor.

(B) a parent or stepparent to claim a deduction for an amount they contribute to an account owned by their adult child or stepchild as provided in (iii).

(ii) If a parent or stepparent supplies the funds they use to establish an account under the Montana Uniform Transfers to Minors Act for which their minor child or stepchild is both the owner and designated beneficiary, and if the child or stepchild is a Montana resident, the parent or stepparent may elect to reduce their own Montana adjusted gross income by the amount they provided even if for other purposes the transaction would be treated as if they made a gift of cash to the child or stepchild who in turn contributed the money to a family education savings account they own entitling the child or stepchild to reduce the child or stepchild's Montana adjusted gross income.

(iii) If a parent or stepparent contributes funds to an account owned by their adult child or stepchild and if that adult child or stepchild is a Montana resident when the contribution is made, the contributor may claim a deduction for their contribution. It does not matter whether the designated beneficiary of the account is:

(A) the contributor's adult child or step-child;

(B) a grandchild or other relative of the contributor;

(C) related to the account owner; or

(D) a resident or nonresident.

(b) The reduction in Montana adjusted gross income for a contribution can be claimed only for the tax year the contribution is made.

(c) An account owner is not required to be a resident and a nonresident may reduce their Montana adjusted gross income, if any, for their contributions to an account they own. Except as provided in ~~(4)~~(2)(a), however, contributions to an account, whether by a resident or nonresident, if made to an account they do not own, cannot reduce their own Montana adjusted gross income.

(3) through (5) remain as proposed.

AUTH: 15-30-2620, MCA

IMP: 15-30-2110, 15-62-201, 15-62-207, MCA

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](http://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 November 15, 2010

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

In the matter of the adoption of New	)	NOTICE OF ADOPTION,
Rules I (42.14.113) and II (42.14.205);	)	AMENDMENT, AMENDMENT AND
amendment of ARM 42.14.101,	)	TRANSFER, AND REPEAL
42.14.106; amendment and transfer of	)	
42.14.102 (42.14.302), 42.14.103	)	
(42.14.303), 42.14.104 (42.14.304),	)	
42.14.105 (42.14.202), 42.14.107	)	
(42.14.203), 42.14.108 (42.14.204),	)	
42.14.109 (42.14.206), and 42.14.110	)	
(42.14.207); and repeal of 42.14.111	)	
relating to lodging facility use taxes and	)	
sales taxes	)	

TO: All Concerned Persons

1. On September 23, 2010, the department published MAR Notice No. 42-2-848 regarding the proposed adoption, amendment, amendment and transfer, and repeal of the above-stated rules at page 2184 of the 2010 Montana Administrative Register, issue no. 18.

2. A public hearing was held on October 26, 2010, to consider the proposed adoption, amendment, amendment and transfer, and repeal. Oral and written comments received at the hearing and subsequent to, are summarized as follows along with the department responses:

COMMENT NO. 1: Thirty consecutive days - Mr. Mike Mergenthaler, Helena Chamber Conventions and Visitors Bureau, would like to know how the thirty consecutive days applies with different contracts, such as Montana Rail Link (MRL), where they guarantee a number of rooms per night for a month for use by their crew, but it might not be the same individual in the room each night, and seeks clarification on how this works in months with holidays such as Thanksgiving and Christmas, when the rooms are occupied for most of the month, but the occupant level drops off for those couple of days.

RESPONSE NO. 1: The department wants to thank Mr. Mergenthaler for his participation in this rules process. A response to his question was provided during the hearing and is recapped as follows: If an entity or an individual pays for a room for 30 consecutive days, the entity or individual that rented the room is exempt from paying the lodging facility sales and use tax. If the room is not paid for by an entity or an individual for 30 consecutive days, regardless of a contract between the parties, the room is not exempt for either tax. In addition, Montana statutes do not provide for any latitude in regard to the consecutive 30 days exemption for the holidays.



COMMENT NO. 2: Dormitory exemption - Mr. Stuart Doggett, Executive Director, Montana Lodging and Hospitality Association, provided additional written comments related to ARM 42.14.103, and the language about the user of a dormitory not being required to pay the lodging facility sales and use tax. Mr. Doggett questioned whether the proposed rule change is only seeking to clarify that if a dormitory operator charges less than 60 percent of the allowable state rate, then they don't have to collect accommodation taxes; not that they are exempt from collecting the taxes required of other lodging facilities. The association wants dormitories to follow the same guidelines as lodging facilities.

RESPONSE NO. 2: The department appreciates Mr. Doggett's comments and assistance during this rulemaking process. The language in ARM 42.14.103 provides for situations where an occupant or user is not required to pay the lodging facility sales and use tax. These situations, all of which involve an educational purpose, are preexisting language and have not been changed in this rule proposal. The department has no intention of changing past practice regarding this issue. A dormitory is not included in the list of facilities defined in 15-65-101, MCA, or accommodations defined in 15-68-101, MCA, as exempt when their average daily accommodations charge is less than 6 percent of the actual cost of lodging as authorized under 2-18-501, MCA. The only facilities that do qualify for the ADAC exempt include hotels, motels, hostels, public lodginghouses, or bed and breakfast facilities.

This issue is further stated in ARM 42.14.302.

COMMENT NO. 3: Expansion of tax base - Ms. Mary Whittinghill, Executive Director, Montana Taxpayers Association; Mr. Arthur Sackler, Director, Interactive Travel Services Association; and Mr. Stuart Doggett, Executive Director, Montana Lodging and Hospitality Association, all expressed concern that the department is improperly expanding the tax base, including internet intermediaries, for the lodging facility/lodging facility sales and use tax. Ms. Whittinghill specifically commented that the proposed rules appear to run counter to legislative policy and should not be adopted.

RESPONSE NO. 3: The department wishes to thank Ms. Whittinghill, Mr. Sackler, and Mr. Doggett for their time and attention regarding this rulemaking process. The rules do not expand the tax base and/or target internet intermediaries or change their tax responsibilities. The rules explain current practice and alert those entities who have a responsibility to collect and remit the lodging facility/lodging facility sales and use tax to the department.

COMMENT NO. 4: Responsibility of travel agencies - Mr. Jon Bennion, Government Relations Director, Helena Chamber of Commerce, asked whether the proposed rules would require travel agents to collect and remit the lodging facility/lodging facility sales and use tax to the department.

RESPONSE NO. 4: The new rules would not require any new filings or additional administrative burdens for the travel agencies. The rules do not change

the department's established practices with regard to the travel agencies as commonly understood.

COMMENT NO. 5: Adoption of the rules - Ms. Whittinghill comments that the proposed rules, as drafted, are confusing, contain improper blending of the two taxes, and are beyond the scope of the department's authority to implement, and requests that the department include the following in the response to the comments: Ms. Whittinghill further asked, if adopted, what would be the effective date of the rules? Would they be retroactive? Would they apply to in-state travel-related businesses, such as travel agents and others? Are they intended to require businesses that are not owners or operators of hotel facilities to collect both the lodging tax and the sales tax?

Mr. Sackler also urged "thoughtful reconsideration of the draft rules, and either revision to conform to the limits of the law, or withdrawal of the draft rules."

RESPONSE NO. 5: The effective date of the rules is the date after publication by the Secretary of State per the Montana Administrative Procedure Act (MAPA). The department believes there is no need for a separate or different effective date from the MAPA date because these rules describe how the department has administered these two taxes since the implementation of Title 15, Chapter 68, MCA. In implementing the Sales Tax in 2003, the department combined both Chapters 65 and 68 of Title 15, MCA, into one tax return that provided the owner/operator or seller to manage the collection of the tax from the user as one tax, thus simplifying their reporting requirements.

The department interprets retroactive rules as the changing of a certain practice to periods that have already passed. The rules are not retroactive as the rules describe current and past practice and according to MAPA rules can only apply prospectively without specific statutory authority granting retroactive applicability.

In response to the question of whether the rules would apply to travel agents or businesses that are not owners or operators of hotel facilities, please refer to our response to Comment No. 4.

In response to the adoption of the rules, the department believes there is no reason to delay the implementation of the rules as the rules clearly state the entities' responsibilities for collecting and remitting lodging facility sales and use taxes.

3. As a result of the comments received the department amends and transfers ARM 42.14.203, and 42.14.204 with the following changes:

42.14.107 (42.14.203) COLLECTING, REPORTING, AND PAYING THE TAX (1) A seller of a lodging unit located in Montana must collect the lodging facility sales and use tax, rounded to the nearest dollar, from the user and file a return with the department as required in ~~ARM 42.14.107~~ this rule, except for a seller exempt under ARM ~~42.14.103~~ 42.14.303 and for sales exempt under ARM ~~42.14.104~~ 42.14.304.

(2) through (6) remain as proposed.

AUTH: 15-65-102, 15-68-502, 15-68-801, MCA

IMP: 15-1-208, 15-65-112, 15-65-115, 15-68-502, 15-68-513, MCA

42.14.108 (42.14.204) PENALTIES AND INTEREST (1) remains as proposed.

AUTH: 15-65-102, 15-68-801, MCA

IMP: 15-1-206, 15-65-115, 15-68-514, MCA

4. Therefore, the department adopts New Rule I (42.14.113), and New Rule II (42.14.205), amends ARM 42.14.101, 42.14.106, amends and transfers ARM 42.14.102 (42.14.302), 42.14.103 (42.14.303), 42.14.104 (42.14.304), 42.14.105 (42.14.202), 42.14.107 (42.14.203), 42.14.108 (42.14.204), 42.14.109 (42.14.206), and 42.14.110 (42.14.207), and repeals ARM 42.14.111 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](http://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 November 15, 2010

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

In the matter of the adoption of New ) NOTICE OF ADOPTION  
Rules I (42.14.1001), II (42.14.1002), )  
III (42.14.1003), IV (42.14.1101), V )  
(42.14.1102), VI (42.14.1103), VII )  
(42.14.1104), VIII (42.14.1105), XI )  
(42.14.1106), X (42.14.1201), and XI )  
(42.14.1202) relating to rental vehicle )  
sales and use tax )

TO: All Concerned Persons

1. On September 23, 2010, the department published MAR Notice No. 42-2-849 regarding the proposed adoption of the above-stated rules at page 2200 of the 2010 Montana Administrative Register, issue no. 18.

2. A public hearing was held on October 26, 2010, to consider the proposed adoption. No one appeared at the hearing to testify.

3. No comments were received at or subsequent to the hearing but the department adopts New Rules I (42.14.1001), II (42.14.1002), III (42.14.1003), V (42.14.1102), VII (42.14.1104), VIII (42.14.1105), IX (42.14.1106), X (42.14.1201), and XI (42.14.1202) with the following changes:

NEW RULE I (42.14.1001) DEFINITIONS The following definitions apply to this subchapter:

(1) "Sales price" as defined in ~~15-68-102~~ 15-68-101, MCA, includes base rental charges received in money or otherwise, including all receipts, cash, credit, and property or services of any kind or nature.

(2) and (3) remain as proposed.

AUTH: 15-68-801, MCA

IMP: 15-68-101, MCA

NEW RULE II (42.14.1002) REGISTRATION AND PERMIT (1) remains as proposed.

(2) A seller who has multiple locations in Montana may file one application, listing each location, separately ~~each location~~.

(3) through (7) remain as proposed.

AUTH: 15-68-801, MCA

IMP: 15-68-401, 15-68-402, MCA

NEW RULE III (42.14.1003) SEASONAL REGISTRATION AND PERMIT

(1) and (2) remain as proposed.

(3) If the seller operates at any time within each of the four, three-month quarters of January through March; April through June; July through September; and October through December, they cannot apply for a seasonal seller's permit.

AUTH: 15-68-401, 15-68-801, MCA  
IMP: 15-68-401, MCA

NEW RULE V (42.14.1102) QUARTERLY RETURNS AND PAYMENTS

(1) through (4) remain as proposed.

(5) A seller who is required to file Form RVT or RVT-C may electronically file and pay electronically their quarterly return through the department's web site at <https://tap.dor.mt.gov>. When filing electronically the return and payment is considered filed on the confirmation date provided upon submitting the return.

AUTH: 15-68-502, 15-68-801, MCA  
IMP: ~~15-1-208~~, 15-68-502, 15-68-513, MCA

NEW RULE VII (42.14.1104) FAILURE TO FURNISH REQUESTED INFORMATION

(1) and (2) remain as proposed.

AUTH: 15-68-801, MCA  
IMP: 5-68-502, 15-68-520, MCA

NEW RULE VIII (42.14.1105) RECORDS REQUIRED - AUDIT (1) and (2) remain as proposed.

(3) The seller must notify the user of the ~~four~~ 4 percent rental vehicle sales and use tax.

(4) and (5) remain as proposed.

AUTH: 15-68-801, MCA  
IMP: 15-68-502, 15-68-513, MCA

NEW RULE IX (42.14.1106) PENALTIES AND INTEREST (1) remains as proposed.

AUTH: 15-68-801, MCA  
IMP: 15-1-206, 15-68-514, MCA

NEW RULE X (42.14.1201) RENTAL VEHICLES SALES SUBJECT TO THE TAX (1) A user is required to pay the rental vehicle sales and use tax on the sales price for a rental vehicle used in Montana. This includes, but is not limited to:

(a) automobiles, including vans, sport utility vehicles, or trucks have a capacity of one ton or less;

(b) ~~motorcycles~~ motorcycles;

(c) motor-driven cycles, which include motorcycles or scooters with a motor that produces five horsepower or less;

- (d) quadricycles, including a four-wheeled motor vehicle designed for on-road or off-road use, that has a motor that produces 50 horsepower or less;
- (e) motorboats, including a canoe, kayak, personal watercraft, rubber raft or pontoon, propelled by any motor or engine of any description;
- (f) sailboats, including any vessel that uses a sail and wind as its primary source of propulsion;
- (g) off-highway vehicles, including motorcycles, quadricycles, dune buggies, amphibious vehicles, deriving power from any source other than muscle or wind;
- (h) a truck, trailer, or semi-trailer that has a gross vehicle weight of less than 22,000 pounds, used to transport personal property, such as a flat bed trailer used to transport machinery.

AUTH: 15-68-801, MCA

IMP: 15-68-101, 15-68-102, 15-68-501, MCA

NEW RULE XI (42.14.1202) EXEMPT RENTAL VEHICLE CHARGES (1) A user is not required to pay the rental vehicle sales and use tax on the rental of farm vehicles, machinery, equipment, travel trailers, motor homes, airplanes, snowmobiles, golf carts, ~~and~~ or sail boards.

(2) remains as proposed.

(3) The federal government is not required to pay the rental vehicle sales and use tax if the rental charge is billed directly to the federal government and paid directly by the federal government. A charge that is individually billed and paid by the user who later is reimbursed by the federal government is not exempt from the rental vehicle sales and use tax.

(4) through (6) remain as proposed.

AUTH: 15-68-801, MCA

IMP: 15-68-101, 15-68-102, MCA

4. Therefore the department adopts New Rules I (42.14.1001), II (42.14.1002), III (42.14.1003), V (42.14.1102), VII (42.14.1104), VIII (42.14.1105), IX (42.14.1106), X (42.14.1201), and XI (42.14.1202) as shown above and adopts New Rules IV (42.14.1101), and VI (42.14.1103) 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](http://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 November 15, 2010

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

In the matter of the adoption of New ) NOTICE OF ADOPTION  
Rules I (42.2.1001), II (42.2.1002), )  
and III (42.2.1003) relating to the )  
functions and operation of the office of )  
taxpayer assistance )

TO: All Concerned Persons

1. On October 14, 2010, the department published MAR Notice No. 42-2-852 regarding the proposed adoption of the above-stated rules at page 2309 of the 2010 Montana Administrative Register, issue no. 19.

2. A public hearing was held on November 3, 2010, to consider the proposed adoption. No one appeared at the hearing to testify and no written comments were received.

3. The department has adopted the above-stated rules 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](http://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 November 15, 2010



## **NOTICE OF FUNCTION OF ADMINISTRATIVE RULE REVIEW COMMITTEE**

### **Interim Committees and the Environmental Quality Council**

Administrative rule review is a function of interim committees and the Environmental Quality Council (EQC). These interim committees and the EQC have administrative rule review, program evaluation, and monitoring functions for the following executive branch agencies and the entities attached to agencies for administrative purposes.

#### **Economic Affairs Interim Committee:**

- Department of Agriculture;
- Department of Commerce;
- Department of Labor and Industry;
- Department of Livestock;
- Office of the State Auditor and Insurance Commissioner; and
- Office of Economic Development.

#### **Education and Local Government Interim Committee:**

- State Board of Education;
- Board of Public Education;
- Board of Regents of Higher Education; and
- Office of Public Instruction.

#### **Children, Families, Health, and Human Services Interim Committee:**

- Department of Public Health and Human Services.

#### **Law and Justice Interim Committee:**

- Department of Corrections; and
- Department of Justice.

#### **Energy and Telecommunications Interim Committee:**

- Department of Public Service Regulation.

**Revenue and Transportation Interim Committee:**

- Department of Revenue; and
- Department of Transportation.

**State Administration and Veterans' Affairs Interim Committee:**

- Department of Administration;
- Department of Military Affairs; and
- Office of the Secretary of State.

**Environmental Quality Council:**

- Department of Environmental Quality;
- Department of Fish, Wildlife, and Parks; and
- Department of Natural Resources and Conservation.

These interim committees and the EQC have the authority to make recommendations to an agency regarding the adoption, amendment, or repeal of a rule or to request that the agency prepare a statement of the estimated economic impact of a proposal. They also may poll the members of the Legislature to determine if a proposed rule is consistent with the intent of the Legislature or, during a legislative session, introduce a bill repealing a rule, or directing an agency to adopt or amend a rule, or a Joint Resolution recommending that an agency adopt, amend, or repeal a rule.

The interim committees and the EQC welcome comments and invite members of the public to appear before them or to send written statements in order to bring to their attention any difficulties with the existing or proposed rules. The mailing address is P.O. Box 201706, Helena, MT 59620-1706.

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

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

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

### Use of the Administrative Rules of Montana (ARM):

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

## ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through June 30, 2010. This table includes those rules adopted during the period July 1, 2010, through September 30, 2010, 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, 2010, 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 2010 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.

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## BOARD APPOINTEES AND VACANCIES

Section 2-15-108, MCA, passed by the 1991 Legislature, directed that all appointing authorities of all appointive boards, commissions, committees, and councils of state government take positive action to attain gender balance and proportional representation of minority residents to the greatest extent possible.

One directive of 2-15-108, MCA, is that the Secretary of State publish monthly in the ***Montana Administrative Register*** a list of appointees and upcoming or current vacancies on those boards and councils.

In this issue, appointments effective in October 2010 appear. Vacancies scheduled to appear from December 1, 2010, through February 28, 2011, 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 November 1, 2010.

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 OCTOBER 2010

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Board of Hearing Aid Dispensers</b> (Labor and Industry)			
Ms. Rebecca Wisnoskie Helena	Governor	Michel	10/19/2010 7/1/2012
Qualifications (if required): hearing aid dispenser (no masters)			
<b>Board of Medical Examiners</b> (Labor and Industry)			
Dr. Anna Earl Chester	Governor	reappointed	10/19/2010 9/1/2014
Qualifications (if required): doctor of medicine			
Dr. Bruce Hayward McAllister	Governor	Fink	10/19/2010 9/1/2014
Qualifications (if required): osteopath			
Dr. Nathan Thomas Missoula	Governor	LaPan	10/19/2010 9/1/2014
Qualifications (if required): podiatrist			
<b>Historical Preservation Review Board</b> (Historical Society)			
Ms. Rosalyn LaPier Missoula	Governor	reappointed	10/19/2010 10/19/2014
Qualifications (if required): historical researcher			
Mr. Jeff Shelden Lewistown	Governor	Hanna	10/19/2010 10/1/2014
Qualifications (if required): historic architect			



**VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 2010 THROUGH FEBRUARY 28, 2011**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Alternative Livestock Advisory Council</b> (Fish, Wildlife and Parks)		
Ms. Linda Nielsen, Nashua Qualifications (if required): Board of Livestock representative	Governor	1/1/2011
Mr. Ron Moody, Lewistown Qualifications (if required): Fish, Wildlife and Parks Commission representative	Governor	1/1/2011
<b>Board of Aeronautics</b> (Transportation)		
Mr. Fred Lark, Lewistown Qualifications (if required): public representative	Governor	1/1/2011
Mr. A. Christopher Edwards, Billings Qualifications (if required): fixed base operator	Governor	1/1/2011
Mr. Robert Buckles, Bozeman Qualifications (if required): commercial airlines representative	Governor	1/1/2011
<b>Board of Chiropractors</b> (Labor and Industry)		
Dr. Scott Hansing, Helena Qualifications (if required): a practicing chiropractor	Governor	1/1/2011
<b>Board of Crime Control</b> (Justice)		
Ms. Lois Menzies, Helena Qualifications (if required): representative of the judiciary	Governor	1/1/2011
Rep. Angela Russell, Lodge Grass Qualifications (if required): tribal court representative	Governor	1/1/2011

**VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 2010 THROUGH FEBRUARY 28, 2011**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Board of Crime Control</b> (Justice) cont. Ms. Randi Hood, Helena Qualifications (if required): criminal justice agency representative	Governor	1/1/2011
Director Mike Ferriter, Helena Qualifications (if required): state law enforcement representative	Governor	1/1/2011
Mr. Richard Kirn, Poplar Qualifications (if required): tribal government representative	Governor	1/1/2011
Mr. Godfrey Saunders, Bozeman Qualifications (if required): educator	Governor	1/1/2011
Ms. Sherry Matteucci, Billings Qualifications (if required): public representative	Governor	1/1/2011
Ms. Brenda C. Desmond, Missoula Qualifications (if required): representative of the judiciary	Governor	1/1/2011
Ms. Tracie Small, Crow Agency Qualifications (if required): tribal court representative	Governor	1/1/2011
<b>Board of Environmental Review</b> (Environmental Quality) Mr. Joseph Russell, Kalispell Qualifications (if required): county health officer	Governor	1/1/2011
Ms. Heidi Kaiser, Park City Qualifications (if required): public member	Governor	1/1/2011

**VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 2010 THROUGH FEBRUARY 28, 2011**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<p><b>Board of Environmental Review</b> (Environmental Quality) cont.            Mr. Larry Mires, Glasgow            Qualifications (if required): public member</p>	Governor	1/1/2011
<p><b>Board of Horseracing</b> (Livestock)            Ms. Susan Egbert, Helena            Qualifications (if required): resident of district 4</p>	Governor	1/20/2011
<p><b>Board of Housing</b> (Commerce)            Rep. Sheila Rice, Great Falls            Qualifications (if required): public representative</p>	Governor	1/1/2011
<p>Rep. Jeanette S. McKee, Hamilton            Qualifications (if required): public representative</p>	Governor	1/1/2011
<p>Ms. Susan Moyer, Kalispell            Qualifications (if required): public representative</p>	Governor	1/1/2011
<p>Mr. Bob Gauthier, Ronan            Qualifications (if required): public representative</p>	Governor	1/1/2011
<p><b>Board of Investments</b> (Commerce)            Mr. Karl Englund, Missoula            Qualifications (if required): attorney</p>	Governor	1/1/2011

**VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 2010 THROUGH FEBRUARY 28, 2011**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<p><b>Board of Investments</b> (Commerce) cont.            Dr. Maureen J. Fleming, Missoula            Qualifications (if required): representative of labor</p>	Governor	1/1/2011
<p>Mr. Terrill R. Moore, Billings            Qualifications (if required): financial representative</p>	Governor	1/1/2011
<p>Mr. Jon Satre, Helena            Qualifications (if required): business person</p>	Governor	1/1/2011
<p><b>Board of Labor Appeals</b> (Labor and Industry)            Mr. Jack Calhoun, Helena            Qualifications (if required): public representative</p>	Governor	1/1/2011
<p><b>Board of Occupational Therapy Practice</b> (Labor and Industry)            Ms. Cindy Stergar, Butte            Qualifications (if required): public representative</p>	Governor	12/31/2010
<p>Mr. Tim Tracy, Kalispell            Qualifications (if required): Occupational Therapist</p>	Governor	12/31/2010
<p><b>Board of Oil and Gas Conservation</b> (Governor)            Mr. Jack King, Billings            Qualifications (if required): representative of industry</p>	Governor	1/1/2011
<p>Mr. Ronald Efta, Wibaux            Qualifications (if required): public member</p>	Governor	1/1/2011

**VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 2010 THROUGH FEBRUARY 28, 2011**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Board of Oil and Gas Conservation</b> (Governor) cont. Mr. Bret Smelser, Sidney Qualifications (if required): landowner without minerals	Governor	1/1/2011
<b>Board of Pardons and Parole</b> (Corrections) Mr. John Rex, Miles City Qualifications (if required): having education or experience in criminology	Governor	1/1/2011
Mr. Michael E. McKee, Helena Qualifications (if required): having education or experience in criminology	Governor	1/1/2011
<b>Board of Personnel Appeals</b> (Labor and Industry) Mr. Steve Johnson, Missoula Qualifications (if required): management representative with collective bargaining experience	Governor	1/1/2011
Mr. Patrick Dudley, Butte Qualifications (if required): management representative with collective bargaining experience (substitute)	Governor	1/1/2011
Mr. Michael Thiel, Kalispell Qualifications (if required): office of a labor union or an association recognized by the board	Governor	1/1/2011
<b>Board of Public Assistance</b> (Governor) Ms. Helen Barta Schmitt, Sidney Qualifications (if required): public representative	Governor	1/1/2011
<b>Board of Regents</b> (Higher Education) Ms. Janine Pease, Billings Qualifications (if required): resident of District 2	Governor	2/1/2011

**VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 2010 THROUGH FEBRUARY 28, 2011**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Board of Respiratory Care Practitioners</b> (Labor and Industry)		
Mr. Thomas Fallang, Butte Qualifications (if required): respiratory care practitioner	Governor	1/1/2011
Dr. Carl Hallenborg, Helena Qualifications (if required): doctor of medicine	Governor	1/1/2011
<b>Board of Social Work Examiners and Professional Counselors</b> (Labor and Industry)		
Ms. Ann Gilkey, Helena Qualifications (if required): attorney	Governor	1/1/2011
Mr. Peter Degel, Helena Qualifications (if required): licensed counselor	Governor	1/1/2011
Ms. Jill Thorngren, Bozeman Qualifications (if required): licensed counselor	Governor	1/1/2011
<b>Board of Speech-Language Pathologists and Audiologists</b> (Labor and Industry)		
Ms. Sharon Dinstel, Colstrip Qualifications (if required): speech-language pathologist	Governor	12/31/2010
Mr. James L. Sias, Ronan Qualifications (if required): consumer representative	Governor	12/31/2010
Ms. Cheri Fjare, Big Timber Qualifications (if required): speech-language pathologist	Governor	12/31/2010

**VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 2010 THROUGH FEBRUARY 28, 2011**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Capital Investment Board</b> (Commerce)		
Mr. Gary Buchanan, Billings Qualifications (if required): having expertise and competence in investment and/or tax credit administration management	Governor	1/1/2011
Mr. Robert W. Minto Jr., Missoula Qualifications (if required): having expertise and competence in investment and/or tax credit administration management	Governor	1/1/2011
<b>Coal Board</b> (Commerce)		
Rep. Ralph L. Lenhart, Glendive Qualifications (if required): having expertise in education	Governor	1/1/2011
Mr. Thomas Kalakay, Billings Qualifications (if required): expertise in education and a resident of District 2	Governor	1/1/2011
Ms. Juliet Hasler Foley, Missoula Qualifications (if required): expertise in education and a resident of District 1	Governor	1/1/2011
Ms. Marcia Brown, Butte Qualifications (if required): representative from business and a resident of District 1	Governor	1/1/2011
<b>Facility Finance Authority</b> (Administration)		
Rep. Joe Quilici, Butte Qualifications (if required): public member	Governor	1/1/2011
Ms. Kim Greco, Helena Qualifications (if required): public member	Governor	1/1/2011

**VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 2010 THROUGH FEBRUARY 28, 2011**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<p><b>Facility Finance Authority</b> (Administration) cont.            Mr. Matthew B. Thiel, Missoula            Qualifications (if required): attorney</p>	Governor	1/1/2011
<p><b>Fish, Wildlife and Parks Commission</b> (Fish, Wildlife and Parks)            Mr. Dan Vermillion, Livingston            Qualifications (if required): resident of District 2</p>	Governor	1/1/2011
<p>Mr. Willie Doll, Malta            Qualifications (if required): resident of District 4</p>	Governor	1/1/2011
<p><b>Hard Rock Mining Impact Board</b> (Commerce)            Commissioner Marianne Roose, Eureka            Qualifications (if required): public representative and a resident of district 1/impact area</p>	Governor	1/1/2011
<p>Mr. Shain Wolstein, Butte            Qualifications (if required): elected school district trustee and a resident of district 1/impact area</p>	Governor	1/1/2011
<p><b>Human Rights Commission</b> (Labor and Industry)            Mr. Stephen Fentel, Billings            Qualifications (if required): public representative</p>	Governor	1/1/2011
<p>Mr. Ryan C. Rusche, Wolf Point            Qualifications (if required): public representative</p>	Governor	1/1/2011
<p><b>Judicial Nomination Commission</b> (Justice)            Ms. Shirley Ball, Nashua            Qualifications (if required): public representative</p>	Governor	1/1/2011



**VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 2010 THROUGH FEBRUARY 28, 2011**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<p><b>Livestock Loss Reduction and Mitigation Board</b> (Livestock)                      Ms. Elaine Allestad, Big Timber                      Qualifications (if required): livestock industry representative</p>	Governor	1/1/2011
<p>Mr. Larry Trexler, Hamilton                      Qualifications (if required): breeding association member</p>	Governor	1/1/2011
<p>Mr. Hilliard McDonald, Judith Gap                      Qualifications (if required): livestock marketing representative</p>	Governor	1/1/2011
<p><b>Lottery Commission</b> (Administration)                      Mr. Robert Crippen, Butte                      Qualifications (if required): accountant</p>	Governor	1/1/2011
<p><b>Milk Control Board</b> (Livestock)                      Dr. R. Clyde Greer, Bozeman                      Qualifications (if required): public representative</p>	Governor	1/1/2011
<p>Mr. Michael F. Kleese, Stevensville                      Qualifications (if required): attorney</p>	Governor	1/1/2011
<p>Mr. Jerrold A. Weissman, Great Falls                      Qualifications (if required): public representative and a Republican</p>	Governor	1/1/2011
<p><b>Montana Alfalfa Seed Committee</b> (Agriculture)                      Mr. Tom Matchett, Billings                      Qualifications (if required): alfalfa seed grower</p>	Governor	12/21/2010

**VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 2010 THROUGH FEBRUARY 28, 2011**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<p><b>Montana Alfalfa Seed Committee</b> (Agriculture) cont.            Mr. Tom Neibur, Malta            Qualifications (if required): alfalfa seed grower with alfalfa leaf-cutting bees</p>	Governor	12/21/2010
<p><b>Montana Council on Developmental Disabilities</b> (Commerce)            Mr. Jason Billehus, Missoula            Qualifications (if required): primary consumer representative</p>	Governor	1/1/2011
<p>Mr. Darwin Nelson, Helena            Qualifications (if required): primary consumer representative</p>	Governor	1/1/2011
<p>Ms. Connie Wethern, Glasgow            Qualifications (if required): secondary consumer representative</p>	Governor	1/1/2011
<p>Ms. Janet Carlson, Malta            Qualifications (if required): primary consumer representative</p>	Governor	1/1/2011
<p>Ms. Kellie Karasko, Manhattan            Qualifications (if required): secondary consumer representative</p>	Governor	1/1/2011
<p><b>Montana Grass Conservation Commission</b> (Natural Resources and Conservation)            Mr. Dan Teigen, Teigen            Qualifications (if required): grazing district preference holder</p>	Governor	1/1/2011
<p>Mr. Steve Barnard, Hinsdale            Qualifications (if required): grazing district director</p>	Governor	1/1/2011

**VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 2010 THROUGH FEBRUARY 28, 2011**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<p><b>Public Safety Officer Standards and Training Council</b> (Justice)                      Ms. Winnie Ore, Helena                      Qualifications (if required): public member</p>	Governor	1/1/2011
<p>Sergeant Frances Combs-Weeks, Poplar                      Qualifications (if required): certified tribal law enforcement representative</p>	Governor	1/1/2011
<p>Commissioner Mike Anderson, Havre                      Qualifications (if required): Board of Crime Control representative</p>	Governor	1/1/2011
<p>Officer Levi Talkington, Lewistown                      Qualifications (if required): local law enforcement officer</p>	Governor	1/1/2011
<p>Chief James Marble, Stevensville                      Qualifications (if required): chief of police</p>	Governor	1/1/2011
<p>Ms. Georgette Hogan, Hardin                      Qualifications (if required): county attorney</p>	Governor	1/1/2011
<p><b>Rail Service Competition Council</b> (Transportation)                      Mayor Larry J. Bonderud, Shelby                      Qualifications (if required): knowledgeable of the trucking industry</p>	Governor	1/1/2011
<p>Ms. Carla Allen, Denton                      Qualifications (if required): knowledgeable of class II railroads</p>	Governor	1/1/2011

**VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 2010 THROUGH FEBRUARY 28, 2011**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Rail Service Competition Council</b> (Transportation) cont. Mr. Russell Hobbs, Columbia Falls Qualifications (if required): knowledgeable of transportation for the wood products industry	Governor	1/1/2011
<b>Resource Conservation Advisory Council</b> (Natural Resources and Conservation) Ms. Marieanne Hanser, Billings Qualifications (if required): South Central Montana	Director	12/31/2010
Mr. Robert Fossum, Richland Qualifications (if required): Eastern Montana	Director	12/31/2010
Mr. Buzz Mattelin, Culbertson Qualifications (if required): Conservation Districts	Director	12/31/2010
Mr. Dave Schwarz, Terry Qualifications (if required): Conservation Districts	Director	12/31/2010
Ms. Lauraine Johnson, Plains Qualifications (if required): Western Montana	Director	12/31/2010
Mr. O. Ramsey Offerdal, Conrad Qualifications (if required): North Central Montana	Director	12/31/2010
Mr. Pete Dallaserra, Butte Qualifications (if required): general public	Director	12/31/2010

**VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 2010 THROUGH FEBRUARY 28, 2011**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Small Business Health Insurance Pool Board</b> (Auditor) Mr. Bob Marsenich, Polson Qualifications (if required): consumer representing small business	Governor	1/1/2011
<b>State Employee Charitable Giving Campaign Advisory Council</b> (Administration) Ms. Joy McGrath, Helena Qualifications (if required): Federal Representative	Director	2/14/2011
Mr. Matthew Dale, Helena Qualifications (if required): Employee Representative	Director	2/14/2011
Ms. Mary Wright, Helena Qualifications (if required): Employee Representative	Director	2/14/2011
Ms. Marcia Armstrong, Helena Qualifications (if required): Employee Representative	Director	2/14/2011
Ms. Kathy Miller, Helena Qualifications (if required): Federal Representative	Director	2/14/2011
Mr. Gary Owen, Great Falls Qualifications (if required): Federal Representative	Director	2/14/2011
Mr. Jack Lynch, Helena Qualifications (if required): Employee Representative	Director	2/14/2011
Mr. Rob Mayer, Helena Qualifications (if required): Employee Representative	Director	2/14/2011

**VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 2010 THROUGH FEBRUARY 28, 2011**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>State Employee Charitable Giving Campaign Advisory Council</b> (Administration) cont. Ms. Marie Matthews, Helena Qualifications (if required): Employee Representative	Director	2/14/2011
Mr. Dave Paton, Helena Qualifications (if required): Employee Representative	Director	2/14/2011
Ms. Shannon Lewis, Helena Qualifications (if required): Employee Representative	Director	2/14/2011
Mr. Joe Hamilton, Helena Qualifications (if required): Employee Representative	Director	2/14/2011
<b>State Tax Appeals Board</b> (Administration) Ms. Samantha Sanchez, Helena Qualifications (if required): public representative	Governor	1/1/2011
<b>Statewide Independent Living Council</b> (Public Health and Human Services) Mr. Bob Maffit, Helena Qualifications (if required): Independent Living Center representative	Governor	12/1/2010
Ms. Nickie Fee, Great Falls Qualifications (if required): public representative	Governor	12/1/2010
Ms. Evelyn Oats, Box Elder Qualifications (if required): Section 121 representative	Governor	12/1/2010

**VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 2010 THROUGH FEBRUARY 28, 2011**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Statewide Independent Living Council</b> (Public Health and Human Services) cont Ms. Melodie Bowen, Great Falls Qualifications (if required): public representative	Governor	12/1/2010
Ms. Lisa Moorehead, Bigfork Qualifications (if required): public representative	Governor	12/1/2010
Mr. Dave Swanson, Billings Qualifications (if required): Independent Living Center representative	Governor	12/1/2010
Mr. Chris Cragwick, Missoula Qualifications (if required): public representative/disabilities community/youth member	Governor	12/1/2010
Ms. Donell Neiss, Missoula Qualifications (if required): public representative/disabilities community	Governor	12/1/2010
Mr. Tim Harris, Helena Qualifications (if required): agency representative	Governor	12/1/2010
<b>Transportation Commission</b> (Transportation) Ms. Nancy Espy, Broadus Qualifications (if required): resident of District 4 and an Independent	Governor	1/1/2011
Mr. S. Kevin Howlett, Arlee Qualifications (if required): resident of District 1 and has specific knowledge of Indian culture	Governor	1/1/2011

**VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 2010 THROUGH FEBRUARY 28, 2011**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Traumatic Brain Injury Advisory Council</b> (Public Health and Human Services) Ms. Ruby Clark, Poplar Qualifications (if required): family of survivor	Governor	1/1/2011
Ms. Tana Ostrowski, Missoula Qualifications (if required): advocate for brain injured	Governor	1/1/2011