

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 11

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 The Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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

Page Number

TABLE OF CONTENTS

NOTICE SECTION

AGRICULTURE, Department of, Title 4

4-14-181 Notice of Public Hearing on Proposed Amendment - Cherry Assessment. 1074-1075

JUSTICE, Department of, Title 23

23-13-196 (Public Safety Officer Standards and Training Council) Notice of Proposed Adoption - Establishment of Public Safety Officers Standards and Training (POST) Council. No Public Hearing Contemplated. 1076-1091

23-15-197 Notice of Proposed Amendment - Definitions. No Public Hearing Contemplated. 1092-1093

LABOR AND INDUSTRY, Department of, Title 24

24-118-1 (Department and Board of Athletic Trainers) Notice of Public Hearing on Proposed Amendment and Adoption - Renewal Dates and Requirements - Fees. 1094-1096

LABOR AND INDUSTRY, Continued

24-126-29 (Board of Chiropractors) Notice of Public Hearing on Proposed Amendment and Adoption - Record of Minutes and Hearings - Applications - Exam Requirements - Temporary Permit - Endorsement - Inactive Status and Conversion to Active Status - Interns and Preceptors - Impairment Evaluators - Renewals and Continuing Education - Unprofessional Conduct - Continuing Education. 1097-1110

24-168-38 (Board of Optometry) Notice of Public Hearing on Proposed Amendment - Fees - Licensure - General Practice Requirements - Unprofessional Conduct. 1111-1115

24-171-26 (Board of Outfitters) Notice of Public Hearing on Proposed Amendment - Fees - Emergency Guide License - Unprofessional Conduct. 1116-1119

LIVESTOCK, Department of, Title 32

32-8-191 Notice of Proposed Amendment - Food Safety and Inspection Service (Meat, Poultry). No Public Hearing Contemplated. 1120-1122

32-8-192 (Board of Horse Racing) Notice of Proposed Amendment - Horse Racing. No Public Hearing Contemplated. 1123-1124

PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

37-444 Notice of Public Hearing on Proposed Amendment - Low Income Weatherization Assistance Program (LIWAP). 1125-1129

SECRETARY OF STATE, Office of, Title 44

44-2-147 (Commissioner of Political Practices) Amended Notice of Public Hearing on Proposed Amendment and Adoption - Constituent Services Accounts. 1130-1134

RULE SECTION

STATE AUDITOR, Department of, Title 6

AMD Updating References to the NCCI Basic Manual for New Classifications for Various Industries. 1135-1136

COMMERCE, Department of, Title 8

AMD (Board of Housing) Homeownership Program. 1137-1141

CORRECTIONS, Department of, Title 20

AMD	Eastmont Chemical Dependency Treatment Program.	1142-1144
AMD	Conditions on Probation or Parole.	1145-1149

JUSTICE, Department of, Title 23

AMD	(Gambling Control Division) Refund of Permit Fee.	1150
-----	---	------

LABOR AND INDUSTRY, Department of, Title 24

AMD	(Board of Pharmacy) Definitions - Fee Schedule - Ambulatory Surgical Facilities - Continuing Education.	1151-1152
-----	---	-----------

NATURAL RESOURCES AND CONSERVATION, Department of, Title 36

AMD REP	(Board of Land Commissioners and the Department) Land Banking Program.	1153
------------	--	------

PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

NEW AMD REP	Temporary Assistance for Needy Families (TANF).	1154
AMD	Resource Based Relative Value Scale (RBRVS).	1155
AMD	Hearing Aid Services - Dental - Home Infusion Therapy - Durable Medical Equipment - Ambulance Services.	1156
AMD	Medicaid Requirements and Reimbursement for Outpatient Drugs.	1157-1159
REP	Direct Care Wage Add-On for Certain Mental Health Care Providers.	1160

SPECIAL NOTICE AND TABLE SECTION

	Function of Administrative Rule Review Committee.	1161-1162
	How to Use ARM and MAR.	1163
	Accumulative Table.	1164-1172

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the proposed)
amendment of ARM 4.6.302 relating to)
cherry assessment)

NOTICE OF PUBLIC HEARING ON
PROPOSED AMENDMENT

TO: All Concerned Persons

1. On July 10, 2008, at 3:00 p.m. the Montana Department of Agriculture will hold a public hearing in Room 225 of the Scott Hart Building, 303 N. Roberts at Helena, Montana, to consider the proposed amendment of the above-stated rule.

2. The Department of Agriculture will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Agriculture no later than 5:00 p.m. on June 26, 2008, to advise us of the nature of the accommodation that you need. Please contact Cort Jensen at the Montana Department of Agriculture, 303 North Roberts, P.O. Box 200201, Helena, MT 59620-0201; Phone: (406) 444-3144; Fax: (406) 444-5409; or e-mail: agr@mt.gov.

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

4.6.302 ANNUAL CHERRY COMMODITY ASSESSMENT-COLLECTION

(1) remains the same.

(2) The assessment shall be one-half cent per pound on all cherries grown and marketed commercially in Montana by those growers producing and marketing more than 200 pounds annually.

(3) remains the same.

AUTH: 80-11-504, MCA
IMP: 80-11-515, 80-11-516, MCA

REASON: Based on the amount of revenue currently in the Montana Cherry Research and Market Development Program account and coupled with requests from the cherry industry, the Montana Cherry Advisory Committee voted to reduce the cherry assessment from one cent to one-half cent per pound. It is estimated that this will impact 75-100 cherry producers in Montana and will raise approximately \$20,000 per year for research and market development.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Cort Jensen at the Montana Department of Agriculture, 303 North Roberts, P.O. Box 200201, Helena, MT 59620-

0201; Fax: (406) 444-5409; or e-mail: agr@mt.gov. Any comments must be received no later than 5:00 p.m. on July 10, 2008.

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

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

7. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was notified on May 15, 2008 by regular mail. For previous rule projects involving the same bill, the primary sponsor was given appropriate notice.

DEPARTMENT OF AGRICULTURE

/s/ Ron de Yong
Ron de Yong, Director

/s/ Cort Jensen
Cort Jensen, Rule Reviewer

Certified to the Secretary of State, June 2, 2008.

BEFORE THE DEPARTMENT OF JUSTICE
PUBLIC SAFETY OFFICER STANDARDS AND TRAINING COUNCIL
OF THE STATE OF MONTANA

In the matter of the proposed adoption) NOTICE OF PROPOSED ADOPTION
of NEW RULES I through XXV,)
pertaining to the establishment of Public) NO PUBLIC HEARING
Safety Officers Standards and Training) CONTEMPLATED
(POST) Council)

TO: All Concerned Persons

1. On April 24, 2008, the Department of Justice published MAR Notice No. 23-13-194 regarding notice of public hearing on the proposed adoption of the above-stated rules at page 732, 2008 Montana Administrative Register, issue number 8. It has been established that the rules must be promulgated by POST, since it is administratively attached to the Department of Justice.

2. On August 1, 2008, the Public Safety Officer Standards and Training Council (POST) proposes to adopt the above-stated rules.

3. POST 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 no later than 5:00 p.m. on July 21, 2008, to advise us of the nature of the accommodation that you need. Please contact Ali Bovingdon, Department of Justice, 215 North Sanders, P.O. Box 201401, Helena, MT 59620-1401; telephone (406) 444-2026; Montana Relay Service 711; fax (406) 444-3549; or e-mail abovingdon@mt.gov.

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

NEW RULE I ORGANIZATION (1) The Montana Public Safety Officer Standards and Training Council (council), as created by 2-15-2029, MCA, is a quasi-judicial council allocated to the Department of Justice for administrative purposes only.

(2) The council membership is defined in 44-4-402, MCA.

(3) As used in [NEW RULES I through XXV], the definitions set forth in 44-4-401, MCA, apply.

AUTH: 2-15-2029, MCA

IMP: 2-15-2029, MCA

NEW RULE II MINIMUM STANDARDS FOR THE APPOINTMENT AND CONTINUED EMPLOYMENT OF PUBLIC SAFETY OFFICERS (1) Public safety officers must meet the applicable employment, education, and certification standards as prescribed by the Montana Code Annotated.

(2) In addition to standards set forth in the Montana Code Annotated, as defined in 44-4-401, MCA, all public safety officers shall:

- (a) be a citizen of the United States or may be a registered alien if unsworn;
- (b) be at least 18 years of age;
- (c) be fingerprinted and a search made of the local, state, and national fingerprint files to disclose any criminal record;
- (d) not have been convicted of a crime for which they could have been imprisoned in a federal or state penitentiary;
- (e) be a high school graduate or have passed the general education development test and have been issued an equivalency certificate by the Superintendent of Public Instruction, or by an appropriate issuing agency of another state or of the federal government;
- (f) successfully complete an oral interview and pass a thorough background check conducted by the appointing authority or its designated representative; and
- (g) possess a valid driver's license if driving a vehicle will be part of the officer's duties.

AUTH: 2-15-2029, MCA
IMP: 2-15-2029, MCA

NEW RULE III REQUIREMENTS FOR PUBLIC SAFETY OFFICERS HIRED BEFORE THE EFFECTIVE DATE OF THIS REGULATION

(1) A peace officer already serving under a permanent appointment prior to the effective date of this regulation shall not be required to meet any of the requirements for certification as a condition of tenure or continued employment, nor shall failure to fulfill such requirements make them ineligible for any promotional examination or consideration for promotion for which they would otherwise be eligible.

AUTH: 2-15-2029, MCA
IMP: 2-15-2029, MCA

NEW RULE IV CODE OF ETHICS (1) Regulations governing certification of public safety officers requires that a code of ethics shall be administered as an oath.

- (2) The procedure for administration of the code of ethics is as follows:
 - (a) each applicant for certification will attest to this code of ethics and the oath shall be administered by the head of the public safety agency for which they serve, or by the Montana Law Enforcement Academy (academy) administrator or designee;
 - (b) the applicant and the administrator administering the oath will sign two copies of the public safety code of ethics; and
 - (c) one copy will be retained by the applicant and the other copy will be retained in the applicant's academy student file, which will be available for inspection by the council staff at any reasonable time.
- (3) The oath of the public safety officers' code of ethics is:
"My fundamental responsibility as a public safety officer is to serve the community, safeguard lives and property, protect the innocent, keep the peace, and ensure the constitutional rights of all are not abridged.

"I shall perform all duties impartially, without favor or ill will and without regard to status, sex, race, religion, creed, political belief or aspiration. I will treat all citizens equally and with courtesy, consideration, and dignity. I will never allow personal feelings, animosities, or friendships to influence my official conduct.

"I will enforce or apply all laws and regulations appropriately, courteously, and responsibly.

"I will never employ unnecessary force or violence, and will use only such force in the discharge of my duties as is objectively reasonable in all circumstances. I will refrain from applying unnecessary infliction of pain or suffering and will never engage in cruel, degrading, or inhuman treatment of any person.

"Whatever I see, hear, or learn, which is of a confidential nature, I will keep in confidence unless the performance of duty or legal provision requires otherwise.

"I will not engage in nor will I condone any acts of corruption, bribery, or criminal activity; and shall disclose to the appropriate authorities all such acts. I will refuse to accept any gifts, favors, gratuities, or promises that could be interpreted as favor or cause me to refrain from performing my official duties.

"I will strive to work in unison with all legally authorized agencies and their representatives in the pursuit of justice.

"I will be responsible for my professional development and will take reasonable opportunities to improve my level of knowledge and competence.

"I will at all times ensure that my character and conduct is admirable and will not bring discredit to my community, my agency, or my chosen profession."

AUTH: 2-15-2029, MCA

IMP: 2-15-2029, MCA

NEW RULE V PURPOSE OF CERTIFICATES (1) Certificates are awarded by the council for the purpose of raising the level of professionalism of public safety officers and to foster cooperation among the council, agencies, groups, organizations, jurisdictions, and individuals.

(2) Basic, intermediate, advanced, supervisory, command, administrative, and other certificates are established for the purpose of promoting professionalism, education, and experience necessary to perform the duties of a public safety officer.

(3) Certificates remain the property of the council. The council shall have the power to recall, sanction, suspend, or revoke any or all certificates upon good cause as determined by the council.

AUTH: 2-15-2029, MCA

IMP: 2-15-2029, MCA

NEW RULE VI GENERAL REQUIREMENTS FOR CERTIFICATION (1) To be eligible for the award of a certificate, each officer must be a full-time or part-time public safety officer employed by a federal, state, tribal, county, municipality, city, or town, as defined by 44-4-401, MCA, at the time the application for certification is received by the council.

(2) Public safety officers shall complete the required basic training as set by

the council.

(3) Public safety officers shall attest that they subscribe to the code of ethics as prescribed in [NEW RULE IV].

(4) Prior to issuance of any certificate, the public safety officer shall have completed the designated combinations of education, training, and experience as computed by the point credit hour system established annually by the council.

(5) Training hour guidelines are as follows:

(a) no training hours for the basic courses or legal equivalency courses may be applied to any other certificate; and

(b) acceptability of training hours claimed for training received from noncriminal justice sponsored agencies shall be determined by the council, and requires notice of application for credit.

(6) Applicable experience in any public safety agency will be considered by the council when determining the minimum standards for certification.

AUTH: 2-15-2029, MCA

IMP: 2-15-2029, MCA

NEW RULE VII REQUIREMENTS FOR THE BASIC CERTIFICATE (1) In addition to [NEW RULES V and VI], the following are required for the award of the basic certificate:

(a) Public safety officers hired after the effective date of this regulation shall have completed:

(i) the probationary period prescribed by law, but in any case have a minimum of one year experience with the agency;

(ii) the basic course or the equivalency as defined by the council; and

(iii) application for the basic certificate.

(b) Public safety officers hired before the effective date of this regulation shall have:

(i) completed the probationary period prescribed by the employing agency, and shall have served a minimum of one year with the present employing agency;

(ii) completed the basic course at the academy, or an equivalency as defined by the council; or

(iii) satisfied the requirements for the basic certificate by their experience, and satisfactorily performed their duties as attested to by the head of the agency for which they are employed.

(c) Public safety officers with out-of-state experience and training formerly employed by a designated federal, state, tribal, county, municipality, city, or town who do not have basic certification and are employed by a Montana law enforcement and/or public safety agency:

(i) shall have completed the probationary period prescribed by law, but in any case have a minimum of one year experience with the present employing agency;

(ii) whose training and service time is determined by the council as equivalent to the basic course must successfully complete an equivalency program, approved by the council and administered by the academy. The council will require those who fail an equivalency program to successfully complete the basic course at the academy;

(iii) whose training and service time is determined by the council as not equivalent to the basic course must, within one year of initial appointment, successfully complete the basic course; and

(iv) shall have been employed as a public safety officer for a minimum of one year within the last five years prior to employment in Montana.

(d) All of the training and equivalency requirements for the basic certificate must be accomplished within one year of the initial appointment.

(e) Council may grant a one time extension to the one year time requirement for public safety officers upon the written application of the public safety officer and the appointing authority of the officer. The application must explain the circumstances which make the extension necessary. The council may not grant an extension to exceed 180 days. Factors that the council may consider in granting or denying the extension include but are not limited to:

(i) illness of the public safety officer or a member of the public safety officer's immediate family;

(ii) absence of reasonable access to the basic course, or the legal training course; and/or

(iii) an unreasonable shortage of personnel within the department.

(f) A public safety officer who has been issued a basic certificate by the council and whose last date of employment as a public safety officer was less than 36 months prior to the date of the person's present appointment as a public safety officer is not required to fulfill the basic educational requirements as set forth in these rules.

(g) If the last date of employment as a public safety officer is more than 36 months but less than 60 months prior to the date of present employment as a public safety officer, the public safety officer may satisfy the basic requirement by successfully passing a basic equivalency course administered by the academy. If the public safety officer fails the basic equivalency course, the basic course shall be completed within the time frames set forth in the rules. If no basic equivalency course exists for the public safety officer's specific discipline, then the applicable basic course must be completed within 36 months of the last date of employment.

AUTH: 2-15-2029, MCA

IMP: 2-15-2029, MCA

NEW RULE VIII REQUIREMENTS FOR THE PUBLIC SAFETY OFFICER INTERMEDIATE CERTIFICATE (1) In addition to [NEW RULES V and VI], the applicant for an award of the public safety officer intermediate certificate:

(a) must have served at least one year with the present employing agency and is satisfactorily performing the duties as attested to by the head of the employing law enforcement and/or public safety agency;

(b) shall possess the discipline specific basic certificate; and

(c) shall have four years experience and 200 job related POST training hours.

AUTH: 2-15-2029, MCA

IMP: 2-15-2029, MCA

NEW RULE IX REQUIREMENTS FOR PUBLIC SAFETY OFFICER
ADVANCED CERTIFICATE (1) In addition to [NEW RULES V and VI], the applicant for an award of the advanced certificate:

- (a) shall possess the discipline specific intermediate certificate; and
- (b) shall have eight years experience and 400 job related POST training hours.

AUTH: 2-15-2029, MCA
IMP: 2-15-2029, MCA

NEW RULE X REQUIREMENTS FOR PUBLIC SAFETY OFFICER
SUPERVISORY CERTIFICATE (1) In addition to [NEW RULES V and VI], the applicant for an award of the supervisory certificate:

- (a) shall possess the discipline specific intermediate certificate;
- (b) shall have successfully completed a 40 hour POST approved management course; and
- (c) shall have served satisfactorily as a first level supervisor currently and for one year prior to the date of application, as attested to by the head of the employing agency.

(2) A first level supervisor is a position above the operational level for which commensurate pay is authorized, is occupied by an officer who, in the upward chain of command, principally is responsible for the direct supervision of employees of an agency or is subject to assignment of such responsibilities, and most commonly is the rank of sergeant.

AUTH: 2-15-2029, MCA
IMP: 2-15-2029, MCA

NEW RULE XI REQUIREMENTS FOR PUBLIC SAFETY OFFICER
COMMAND CERTIFICATE (1) In addition to [NEW RULES V and VI], the applicant for an award of the command certificate:

- (a) shall possess the discipline specific supervisory certificate;
- (b) shall have completed a professional development course or courses cumulating a minimum of 200 hours or more of POST approved management or leadership topic matter; and
- (c) shall have served satisfactorily at the command or mid-management level currently and for one year prior to the date of appointment, as attested to by the head of the employing agency.

AUTH: 2-15-2029, MCA
IMP: 2-15-2029, MCA

NEW RULE XII REQUIREMENTS FOR PUBLIC SAFETY OFFICER
ADMINISTRATIVE CERTIFICATE (1) In addition to [NEW RULES V and VI], the applicant for an award of the administrative certificate:

- (a) shall possess the discipline specific advanced and command certificate;

and

(b) shall have served satisfactorily at the administrative or management level of the employing agency currently and for a period of one year prior to the date of application.

(2) The administrative or management level is a senior level administrative position for which commensurate pay is authorized; occupied by an individual who, in the upward chain of command, is either responsible for administering the agency or has broad administrative authority, or is subject to assignment of such responsibilities; and most commonly is a chief, assistant chief, sheriff, undersheriff, warden, or deputy warden of the agency.

AUTH: 2-15-2029, MCA

IMP: 2-15-2029, MCA

NEW RULE XIII QUALIFICATIONS FOR APPROVAL OF PUBLIC SAFETY OFFICER TRAINING COURSES (1) For the purposes of [NEW RULES XIV, XVI, and XIX], the following definitions apply:

(a) "field training" is instruction, training, or skill practice rendered to an officer by another officer or officers on a tutorial basis during a tour of duty while performing the normal activities of that officer's employment;

(b) "in-service training" is training provided within a law enforcement and/or public safety agency that is utilized to review and develop skills and knowledge, and is primarily unique to specific agency needs;

(c) "POST approved training" is training reviewed and approved by the council and includes, but may not be limited to basic, regional, and professional courses; and

(d) "roll call training" is instruction or training of short duration, less than two hours, within any law enforcement and/or any public safety agency, conducted when officers change shifts.

(2) The council is responsible for the approval of all public safety officer training programs:

(a) It shall be the responsibility of the sponsoring agency to follow the required reporting procedures and monitor the standards for training, trainee attendance, and performance as set by the council; and

(b) Attendance records, where applicable tests and test scores for all POST approved training courses shall be retained by the council.

(3) The course requirements for POST approved training include:

(a) meeting the requirements contained in (2), the requirements for trainee attendance and performance, and the instructor requirements;

(b) being based upon generally recognized best practice;

(c) comporting with Montana laws and court decisions; and

(d) being at least two hours or more in length.

(4) Approval requirements for training courses presented or sponsored by public safety agencies are:

(a) any public safety agency requesting approval of the training course must meet the accreditation requirements as mandated by POST prior to the commencement of a training course; and

(b) each course must be advertised and open to all public safety agencies.

AUTH: 2-15-2029, MCA
IMP: 2-15-2029, MCA

NEW RULE XIV REQUIREMENTS FOR TRAINEE ATTENDANCE AND PERFORMANCE IN POST APPROVED COURSES (1) Trainees enrolled in any POST approved course shall be admitted only in accordance with rules of eligibility and admission as either contained herein or contained in the course announcement.

(2) Each trainee shall be required to attend all sessions of any training course in which they are enrolled, except for absences approved by the course coordinator. No trainee shall receive credits if absences exceed 10% of the total hours for the course.

(3) Any trainee who fails to comply with these rules pertaining to attendance, performance, and behavior shall be denied credits.

(4) Failure to comply with the rules contained herein or other guidelines may result in either denial of course approval or a revocation of course approval.

AUTH: 2-15-2029, MCA
IMP: 2-15-2029, MCA

NEW RULE XV THE BASIC COURSES (1) The amount of training for which credit will be granted in any basic public safety officer's course shall be prescribed by the council.

(2) Students in any basic public safety officers' course shall be required to complete instruction in the prescribed subject areas as directed by the council.

(3) The council shall annually review and approve the curriculum for all basic public safety officers' courses by examining and approving performance objectives and lesson plans which have been established for each designated training block within the prescribed subject areas.

(4) The council may approve changes from the course content established at the last annual review upon written application from the administrator of the academy providing evidence that such change is compatible with the public interest.

AUTH: 2-15-2029, MCA
IMP: 2-15-2029, MCA

NEW RULE XVI INSTRUCTOR CERTIFICATION REQUIREMENTS

(1) Persons providing POST approved training courses and employed by public safety agencies must be certified by the council.

(2) A "primary instructor" is one who delivers a specific lesson plan pertaining to a discipline. To qualify as a primary instructor, the person shall apply to the council, on a form approved by the council, and shall meet the following requirements:

- (a) three years of public safety experience;
- (b) education or training in the specific field, subject matter, or academic discipline to be taught;

(c) must have successfully completed a 40 hour minimum instructor development course or equivalent approved by the council;

(d) must have an endorsement from the applicant's agency head to deliver a specific lesson plan pertaining to a discipline; and

(e) must submit the specific lesson plan which includes performance objectives, instructional strategies, and complete course content.

(3) Master instructors must possess the competencies to adequately develop and deliver a broad range of curricula pertaining to a specific discipline. To qualify as a master instructor, the person shall apply to the council, on a form approved by the council, and shall meet the following requirements:

(a) must possess a primary instructor certificate;

(b) must successfully complete a minimum 40 hour curriculum design and development course or equivalent approved by the council;

(c) must have an endorsement from a professional instructor and POST director, or designee attesting to the applicant's competencies; and

(d) must have endorsement from applicant's agency head.

(4) Professional instructors are certified to deliver and instruct a broad range of topic matters to which independent accreditation is not required as a condition of delivery as prescribed by the council. To qualify as a professional instructor, the person shall apply to the council on a form approved by the council, and shall meet the following requirements:

(a) must be employed by a public safety agency as a full-time training and development specialist or equivalent; and

(b) must have endorsement from the POST director or designee and agency administrator.

(5) The council will certify approved instructors to instruct in those specific subjects for which the council has found them qualified. Each certified instructor shall be listed in an official register of the council, and each subject that each instructor is certified to teach shall be noted in said register.

(6) Initial primary and master instructor certificates shall be issued for a period of 24 months. At the end of the initial time period, certificates may be renewed for an additional 24 months, providing the instructor has remained current in the applicable discipline. This may be accomplished through continuing education and by actively instructing the course(s).

(7) After four years of continuous certification, master instructors may be recertified for a four year period.

(8) The council may deny applications for instructor certification for failure to satisfy the required qualifications. The council may recall, suspend, or revoke primary and master certificates at any time for good cause to ensure the quality of the training programs. In addition, any primary and master instructor who has not instructed during a certification period shall be required to reapply for original certification.

(9) Applications for instructor certification and renewal shall be reviewed by the council. Action on the application shall be made at the council's first regularly scheduled meeting following the review of the application.

(10) Whenever the council denies an application, renewal of certification, or recalls, suspends, or revokes an existing certification, the council will notify the

applicant or holder within 15 days from the date of the council's action. Persons so notified will have 30 days from the date of receipt of notification to file with the council a written appeal of the denial or recall, suspension, or revocation. An informal hearing of the appeal will be held at the next regularly scheduled meeting of the council. During the period of the appeal, the certificate shall be suspended, and all findings and decisions will be pursuant to [NEW RULE XXV].

AUTH: 2-15-2029, MCA
IMP: 2-15-2029, MCA

NEW RULE XVII REQUIREMENTS FOR DESIGNATED INCIDENT COMMAND CERTIFICATION (1) Designated incident command certification is established for the purpose of promoting standardized incident management and streamlined interagency mutual aid during multi-day or multi-jurisdictional emergencies through the use of a state or federally recognized Incident Command System (ICS). An officer assigned to an ICS command or general staff position is usually a senior officer, trained within a specific area of expertise, who is routinely assigned within a jurisdiction to coordinate or take charge of specific aspects of emergency response or extraordinary circumstances.

(2) The council shall issue incident command certificates designated by:
(a) emergency response specialty; and
(b) area of expertise denoted as any of the ICS command staff positions or any of the general staff positions of planning, logistics, or finance.

(3) In addition to [NEW RULES V and VI], applicants for an award of a designated incident command certificate:
(a) shall possess an intermediate certificate;
(b) shall have completed an approved ICS course;
(c) shall have completed the required hours of additional training and testing for the command or general staff position for which certification is being sought;
(d) shall be trained within a specialized area of emergency response;
(e) shall have successfully served in a command or general staff capacity as attested to on an application by the applicant's agency administrator; and
(f) shall be eligible to respond as overhead support for mutual aid requests outside of the applicant's jurisdiction, as attested to on an application by the applicant's agency administrator.

AUTH: 2-15-2029, MCA
IMP: 2-15-2029, MCA

NEW RULE XVIII CORONER EDUCATION AND CONTINUED EDUCATION AND EXTENSION OF TIME LIMIT FOR CONTINUED CERTIFICATION

(1) Coroner education shall be conducted by the council as prescribed in 7-4-2905, MCA.

(2) New coroners shall complete the 40 hour basic coroner course at the academy or other equivalent course approved by POST:

(a) the basic coroner course must be completed in accordance with 7-4-2905, MCA.

(3) Coroners must complete 16 hours of advanced training at least once every two years.

(a) The council may extend the two year time limit requirement for the continuation of coroner's certification, set forth in 7-4-2905, MCA, upon the written application of the coroner or the appointing authority of the deputy. The application must explain the circumstances which necessitate the extension;

(b) Factors considered in granting or denying an extension include, but are not limited to:

(i) illness of the coroner/deputy coroner or an immediate family member;

(ii) absence of reasonable access to the coroner's advanced course; or

(iii) an unreasonable shortage of personnel;

(c) The council may not grant an extension to exceed 180 days; and

(d) The council will not grant extensions after the expiration of the two year time limit.

AUTH: 2-15-2029, MCA

IMP: 2-15-2029, MCA

NEW RULE XIX DEFINITIONS As used in [NEW RULES XX through XXV], the following definitions apply:

(1) "Certification" means any basic or advanced standards and training certification granted by the council after completion of the specific requirements as set forth in these rules.

(2) "Complainant" means:

(a) any person or entity making a complaint against a public safety officer to the council; or

(b) the POST executive director acting upon any credible knowledge, information, or belief.

(3) "Council" means the public safety officer standards and training council as created by 2-15-2029, MCA.

(4) "Director" means the executive director of the public safety officer standards and training council, as established by these rules.

(5) "Formal proceedings" means proceedings for suspension or revocation that the director determines cannot be settled at the preliminary stage of review, investigation, and/or informal proceeding stage, and must proceed pursuant to notice and hearing.

(6) "Governmental unit" means any governmental entity which is statutorily empowered with administration, supervision, or oversight over a public safety agency or officer.

(7) "Informal proceedings" means proceedings that do not require notice and hearing, and may include but not be limited to sanctions, stipulations, and/or memorandums of understanding.

(8) "Presiding officer" means the chair of the council or their designated representative, who shall regulate the course of hearings held by the council.

(9) "Public safety officer" means an officer, as defined in 44-4-401, MCA.

(10) "Respondent" means the public safety officer against whom a complaint has been made or their legal representative.

(11) "Revocation" means the permanent cancellation by the council of a public safety officer's certification.

(12) "Sanction" means a consequence or punishment for a violation of [NEW RULE XX], or the accepted norms of being a public safety officer.

(13) "Suspension" means the annulment, for a period of time set by the council, of a public safety officer's certification.

(14) "Uncertifiable officer" means a public safety officer who:

(a) is employed as a public safety officer, but does not possess the basic certificate, as described in [NEW RULE VII];

(b) has been the object of a complaint filed pursuant to [NEW RULE XXI];

(c) has been afforded the process which is due under law; and

(d) has been found to be subject to suspension or revocation pursuant to [NEW RULE XX].

AUTH: 2-15-2029, MCA

IMP: 2-15-2029, MCA

NEW RULE XX GROUNDS FOR SANCTION, SUSPENSION, OR REVOCATION OF POST CERTIFICATION (1) The council shall consider and rule on any complaint made against any public safety officer that may result in the sanction, revocation, or suspension of that officer's certification.

(2) The grounds for sanction, suspension, or revocation of the certification of public safety officers are as follows:

(a) willful falsification of material information in conjunction with official duties;

(b) a physical or mental condition that substantially limits the person's ability to perform the essential duties of a public safety officer, or poses a direct threat to the health and safety of the public or fellow officers, and that cannot be eliminated by reasonable accommodation;

(c) addiction to or the unlawful use of controlled substances or other drugs;

(d) unauthorized use of or being under the influence of alcoholic beverages while on duty, or the use of alcoholic beverages in a manner which tends to discredit the profession;

(e) the commission of a felony, an offense which would be a felony if committed in this state, or an offense involving dishonesty, unlawful sexual conduct, or physical violence;

(f) neglect of duty or willful violation of orders or policies, procedures, rules, or regulations;

(g) willful violation of the code of ethics set forth in these rules;

(h) other conduct or a pattern of conduct which tends to significantly undermine public confidence in the profession;

(i) failure to meet the minimum standards for employment set forth in these rules;

(j) failure to meet the minimum training requirements provided in these rules;

or
(k) acts that are reasonably identified or regarded as so improper or inappropriate that by their nature and in their context are harmful to the agency's or officer's reputations.

(3) Conviction of any felony, an offense which would be a felony if committed in this state, or of an offense for which the person could have been imprisoned in a federal or state penitentiary will be cause for an automatic referral to the council for revocation of an officer's certification.

AUTH: 2-15-2029, MCA

IMP: 2-15-2029, MCA

NEW RULE XXI PRELIMINARY PROCEDURE IN PROCEEDINGS FOR SUSPENSION OR REVOCATION OF CERTIFICATION

(1) Any complaint made against a public safety officer that alleges grounds for sanction, suspension, or revocation that is not made by the director or the governmental unit employing the officer shall be made initially to the appropriate governmental unit by the complainant.

(2) The appropriate governmental unit shall issue a written ruling on the initial complaint. A copy of the initial complaint and the governmental unit's written ruling shall be forwarded to the director.

(3) If a complainant wishes to pursue their complaint with the council, the complaint must be in writing and provide at least the following information:

(a) name, address, and telephone number of the complainant (the director may keep this information confidential for good cause shown);

(b) name and place of employment of the person complained against; and

(c) a full and complete description of the incident.

(4) Complaints made by or filed with the director shall be investigated by the director and/or their designee.

(5) Following review and investigation of a complaint, the director may take any appropriate action, including but not limited to the following:

(a) file a formal complaint with the council on their own behalf;

(b) send a written letter of inquiry to the subject of the complaint, explaining the allegation of violation and requesting an explanation or statement of intent to cure the violation;

(c) issue an appropriate sanction, enter into a stipulation or memorandum of understanding with the officer or his counsel, or otherwise informally resolve the complaint;

(d) accept the voluntary surrender of a certificate issued by the council; or

(e) for good cause, recommend closure of the investigation of a complaint.

(6) In all cases that are not forwarded to the council for formal proceedings, the director shall, when the case is closed, file a written report setting forth the circumstances and resolution of the case.

AUTH: 2-15-2029, MCA

IMP: 2-15-2029, MCA

NEW RULE XXII COMMENCEMENT OF FORMAL PROCEEDINGS FOR SUSPENSION OR REVOCATION OF CERTIFICATION

(1) Formal proceedings may be commenced only after the filing of a complaint as described in these rules, the director's determination that formal proceedings are necessary, the designation

of a presiding officer, and the issuance of a written order to show cause, and notice of opportunity for hearing.

(2) Formal proceedings for suspension or revocation are subject to the Montana Administrative Procedure Act, and must be conducted pursuant to that act.

(3) In formal proceedings, the respondent must file an answer, or be in default. The answer shall contain at least a statement of grounds of opposition to each allegation of the complaint which the respondent opposes.

(4) Service shall be made in a manner consistent with Montana law.

(5) If a review of the conduct of a person holding a certificate subject to revocation or suspension under these rules is pending before any court, council, tribunal, or agency, the director may, in their discretion, stay any proceedings for revocation and suspension pending before the council.

(6) In the event the respondent fails to answer, appear, or otherwise defend a complaint against them of which the respondent had notice, the presiding officer may enter an order containing findings of fact, conclusions of law, and an opinion in accordance with the Montana Administrative Procedure Act, Montana Rules of Civil Procedure, and/or any other rule of law applicable.

(7) Any party may represent themselves, or may at their own expense be represented by an attorney licensed to practice law in the state.

(8) A representative from the office of the Attorney General may present the case of the complainant.

(9) The presiding officer may utilize a legal advisor to assist in conducting the hearing. If the presiding officer's legal advisor is employed by the office of the Attorney General, their contact with the representative from the office of the Attorney General who presents the case of the petitioner shall be restricted to that permitted by law.

(10) Unless required for disposition of ex parte matters authorized by law, after issuance of notice of hearing, the presiding officer may not communicate with any party or their representative in connection with any issue of fact or law in such case, except upon notice and opportunity for all parties to participate.

AUTH: 2-15-2029, MCA

IMP: 2-15-2029, MCA

NEW RULE XXIII DECISION AND ORDER (1) In the event a certificate is suspended, the council shall state in its decision and order the length of time for which the certificate is suspended and the reasons therefore. In suspending a certificate, the council shall be guided by generally accepted professional standards. A respondent who has had certification suspended may apply for recertification once the period of suspension has passed.

(2) In the event a certificate is revoked or suspended, the respondent shall surrender the certificate(s) to the council and forfeit the position authority and powers afforded the officer in this state.

(3) In the event a certificate is revoked or suspended, employment in any public safety discipline during the time of suspension is prohibited, and permanently prohibited under a revocation order.

AUTH: 2-15-2029, MCA
IMP: 2-15-2029, MCA

NEW RULE XXIV RECORD OF PROCEEDINGS (1) The record shall consist of the items enumerated in 2-4-614, MCA, and an audio recording of oral proceedings shall be the official record of the proceedings.

AUTH: 2-15-2029, MCA
IMP: 2-15-2029, MCA

NEW RULE XXV APPEALS (1) If requested by the respondent, an appeal may be made to the Montana Board of Crime Control pursuant to [NEW RULE IV in MAR Notice No. 23-14-189]. The decision of the Montana Board of Crime Control is the final agency decision subject to judicial review.

AUTH: 2-15-2029, MCA
IMP: 2-15-2029, MCA

RATIONALE AND JUSTIFICATION: POST is proposing the new rules because the 60th Legislature enacted SB 273, which establishes a Montana POST Advisory Council to replace the POST Council currently under the Montana Board of Crime Control.

5. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Ali Bovingdon, Department of Justice, 215 North Sanders, P.O. Box 201401, Helena, MT 59620-1401; telephone (406) 444-2026; Montana Relay Service 711; fax (406) 444-3549; or e-mail abovingdon@mt.gov, and must be received no later than 5:00 p.m. on July 10, 2008.

6. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments they have to the Ali Bovingdon at the above address no later than July 10, 2008.

7. If the agency receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, 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 more than 25 persons based on the number of people in 133 law enforcement agencies.

8. An electronic copy of this Notice is available through the Department of

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

9. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request 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 (5) above, or may be made by completing a request form at any rules hearing held by the department. A copy of the interested persons request form may be printed from the Department of Justice's web site at <http://doj.mt.gov/resources/administrativerules.asp>, and mailed to the rule reviewer.

10. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was notified on December 10, 2007, by regular mail.

By: /s/ Wayne C. Ternes
WAYNE C. TERNES
Executive Director, POST

/s/ Ali Bovingdon
ALI BOVINGDON
Rule Reviewer

Certified to the Secretary of State on June 2, 2008.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the proposed	)	NOTICE OF PROPOSED
amendment of ARM 23.15.102,	)	AMENDMENT
regarding definitions)	
	)	NO PUBLIC HEARING
	)	CONTEMPLATED

TO: All Concerned Persons

1. On August 1, 2008, the Department of Justice proposes to amend the above-stated rule.

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 department no later than 5:00 p.m. on July 21, 2008, to advise us of the nature of the accommodation that you need. Please contact Stuart Segrest, Department of Justice, 215 North Sanders, P.O. Box 201401, Helena, MT 59620-1401; telephone (406) 444-2026; Montana Relay Service 711; fax (406) 444-3549; or e-mail ssegrest@mt.gov.

3. The rule as proposed to be amended is as follows:

23.15.102 GENERAL DEFINITIONS (1) through (6) remain the same.

(7) "~~Unit~~ is the crime victims unit" "Program" is the Crime Victims Compensation Program.

AUTH: 53-9-104, MCA

IMP: 53-9-103, 53-9-125, 53-9-127, 53-9-128, MCA

RATIONALE AND JUSTIFICATION: The change to this definition is intended to clarify what division of the Office of Victims Services handles crime victims' compensation claims. The proper division is the Crime Victims Compensation Program as denoted in the new definition for "program."

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Stuart Segrest, Department of Justice, 215 North Sanders, P.O. Box 201401, Helena, MT 59620-1401; telephone (406) 444-2026; Montana Relay Service 711; fax (406) 444-3549; or e-mail ssegrest@mt.gov, and must be received no later than 5:00 p.m. on July 10, 2008.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments they have to the Stuart Segrest at the above address no later than July

10, 2008.

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. The number of persons affected is more than 25 based on the number of enrollees in the Crime Victims Compensation Program.

7. An electronic copy of this Notice is available through the Department of Justice web site at <http://doj.mt.gov/resources/administrativerules.asp>. The department strives to make the electronic copy of this Notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems, and that 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 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. A copy of the interested persons request form may be printed from the Department of Justice's web site at <http://doj.mt.gov/resources/administrativerules.asp>, and mailed to the rule reviewer.

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

By: /s/ Mike McGrath
MIKE McGRATH
Attorney General
Department of Justice

/s/ Stuart Segrest
STUART SEGREST
Rule Reviewer

Certified to the Secretary of State June 2, 2008.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
AND THE BOARD OF ATHLETIC TRAINERS
STATE OF MONTANA

In the matter of the proposed amendment) NOTICE OF PUBLIC HEARING
of ARM 24.101.413 renewal dates and) ON PROPOSED AMENDMENT
requirements and adoption of NEW) AND ADOPTION
RULE I fees)

TO: All Concerned Persons

1. On July 2, 2008, at 10:00 a.m., a public hearing will be held in room 439, 301 South Park Avenue, Helena, Montana to consider the proposed amendment and adoption of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Athletic Trainers (board) no later than 5:00 p.m., on June 27, 2008, to advise us of the nature of the accommodation that you need. Please contact Marilyn Kelly-Clark, Board of Athletic Trainers, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2380; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail dlibsdatr@mt.gov.

3. The department is proposing to amend the following rule. The rule proposed to be amended provides as follows, stricken matter interlined, new matter underlined:

24.101.413 RENEWAL DATES AND REQUIREMENTS (1) through (5)(c) remain the same.

	BOARD OR PROGRAM JURISDICTION	LICENSE CATEGORY	FREQUENCY	RENEWAL DATE
(d)	Athlete Agents	Athlete Agents	Biennially	Anniversary date of certificate
(d)	<u>Athletic Trainers</u>	<u>Athletic Trainers</u>	<u>Triennially</u>	<u>August 31</u>

(e) through (7) remain the same.

AUTH: 37-1-101, 37-1-141, MCA
IMP: 37-1-101, 37-1-141, MCA

REASON: The 2007 Montana Legislature enacted Chapter 388, Laws of 2007 (House Bill 665), creating the Board of Athletic Trainers and setting forth

requirements for licensure. The bill was signed by the Governor on March 16, 2007, and became effective on October 1, 2007. The 2007 Montana Legislature enacted Chapter 11, Laws of 2007 (Senate Bill 54), repealing the Uniform Athlete Agents Act. The bill was signed by the Governor on March 16, 2007, and became effective on July 1, 2007. The department determined it is reasonable and necessary to amend this rule and provide for licensure renewal of athletic trainers while deleting athlete agent renewal information to efficiently comply with the statutory changes.

4. The proposed new rule provides as follows:

NEW RULE I FEE SCHEDULE (1) Fees for original examination and license, and original endorsement and license are based on a calendar year beginning with calendar year 2008, are effective for three years, and must be renewed by the date specified in ARM 24.101.413. The following is the fee schedule for licensed athletic trainers:

- | | |
|---|-------|
| (a) Original examination application and license fee | \$750 |
| (b) Original endorsement application and license fee | 750 |
| (2) Additional standardized fees are specified in ARM 24.101.403. | |
| (3) All fees are nonrefundable and may not be prorated. | |

AUTH: 37-1-134, 37-36-102, MCA

IMP: 37-1-134, 37-36-201, MCA

REASON: The board determined it is reasonably necessary to adopt this new rule and set licensure fees to implement the 2007 legislation. The board is statutorily required to set fees at a level commensurate with associated costs per 37-1-134, MCA. The legislation requires the board to license and regulate athletic trainers and the proposed fees will enable the board to meet this mandate. The board is setting a fee of \$750 to cover the statutory three year licensing period. It is estimated that the new fees will affect approximately 160 individuals and result in \$120,000 of board revenue for next three years, or \$40,000 in annual revenue.

5. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Athletic Trainers, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to dlibsdatr@mt.gov, and must be received no later than 5:00 p.m., July 10, 2008.

6. An electronic copy of this Notice of Public Hearing is available through the department and board's site on the World Wide Web at www.athletictrainer.mt.gov. The department strives to make the electronic copy of this Notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or

technical problems, and that technical difficulties in accessing or posting to the e-mail address do not excuse late submission of comments.

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

8. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was notified on May 1, 2008, by regular mail.

9. Marilyn Kelly-Clark, Unit Supervisor, has been designated to preside over and conduct this hearing.

BOARD OF ATHLETIC TRAINERS
CHRIS HEARD, CHAIRPERSON

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

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

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

Certified to the Secretary of State June 2, 2008

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

In the matter of the proposed amendment of) NOTICE OF PUBLIC HEARING
ARM 24.126.406 record of minutes and) ON PROPOSED AMENDMENT
hearings, 24.126.501 applications, 24.126.504) AND ADOPTION
exam requirements, 24.126.507 temporary)
permit, 24.126.510 endorsement, 24.126.701)
inactive status and conversion to active status,)
24.126.704 interns and preceptors, 24.126.901,)
24.126.904, 24.126.907, and 24.126.910)
impairment evaluators, 24.126.2101 renewals)
and continuing education, 24.126.2301)
unprofessional conduct, adoption of NEW RULE)
I and NEW RULE II continuing education)

TO: All Concerned Persons

1. On July 10, 2008, at 2:30 p.m., a public hearing will be held in room 471, 301 South Park Avenue, Helena, Montana to consider the proposed amendment and adoption of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Chiropractors (board) no later than 5:00 p.m., on July 7, 2008, to advise us of the nature of the accommodation that you need. Please contact Traci Collett, Board of Chiropractors, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2390; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail dlibschi@mt.gov.

3. GENERAL STATEMENT OF REASONABLE NECESSITY: As part of the periodic review of its administrative rules, the board is proposing revisions throughout the rules. Some of the proposed amendments are technical in nature, such as renumbering or amending punctuation within certain rules following amendment and to comply with ARM formatting requirements. Other changes replace out-of-date terminology for current language and processes, delete unnecessary or redundant sections, substitute gender neutral terms for gender specific language, and amend rules and catchphrases for accuracy, consistency, simplicity, better organization, and ease of use. Authority and implementation cites are being amended throughout to accurately reflect all statutes implemented through the rules and to provide the complete sources of the board's rulemaking authority. Accordingly, the board has determined that reasonable necessity exists to generally amend certain rules at this time. Where additional specific bases for a proposed action exist, the board will identify those reasons immediately following that rule.

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

24.126.406 RECORD OF MINUTES AND HEARINGS (1) ~~The full proceedings of the board, including the regular and special meetings, shall be typewritten and a copy supplied to each member of the board by the department.~~ An official record of the entire proceedings of a meeting, or minutes, shall be kept for all public meetings and shall be made available to each member of the board by the department.

AUTH: ~~37-12-201, 2-6-101, MCA~~

IMP: ~~37-12-201, 2-6-101, MCA~~

REASON: It is reasonably necessary to amend this rule to allow for electronic records of proceedings. Board members are now receiving their materials, which include the minutes, electronically on flash drives and the minutes are available on the Internet so it is no longer necessary to specify that they be typewritten.

24.126.501 APPLICATIONS (1) Pursuant to the requirements of 37-12-302, MCA, an application for original license, renewal, examination, temporary permit, or ~~activation~~ conversion of an inactive license must be made on a form provided by the department and completed and signed by the applicant, ~~with the signature acknowledged before a notary public.~~

(2) The application must be ~~typed or legibly handwritten in ink,~~ accompanied by the appropriate fee(s) and contain sufficient evidence that the applicant possesses the qualifications set forth in Title 37, chapter 12, MCA, and rules promulgated thereunder.

(3) ~~Failure to resubmit a complete application within one year will indicate voluntary withdrawal of the application.~~ Applications not completed within one year of submission will be closed and the applicant will have to reapply.

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

(b) a certified copy of ~~examination~~ the national board examination results sent directly from the National Board of Chiropractic Examiners (NBCE), of Parts I and II, including physiotherapy, Part III, and Part IV; ~~and physiotherapy;~~

(c) verification of licensure sent directly from any state in which the applicant is currently licensed has held or holds a license; and

(d) affidavits regarding the applicant's good moral character from two persons not related to the applicant.

AUTH: 37-1-131, 37-12-201, MCA

IMP: 37-1-131, 37-12-302, 37-12-304, MCA

REASON: The board is amending this rule to delete the requirement for applications to be notarized. To further facilitate the online submission of license applications and because the department and board determined the requirement is unnecessary, the board will no longer require signature or content notarization on any application.

The board is also removing the requirement that applications be typed or handwritten to facilitate Montana's online renewal process, which allows licensees to renew via the department's web site. In the future, the department anticipates that applications will be able to be filled out and submitted electronically as well.

The board is amending (3) to clarify the application process for licensees and staff. The board notes that the current rule language may mislead an applicant to believe that they must submit a new application if they didn't complete the first one within a year. The amendment clarifies that applicants actually have a year to submit all required documents to complete the initial application without having to submit a new application and fee. The amendment also specifies that the department will close an application submission if not completed within one year to avoid any negative impact on those applying for licensure in other states. In some states, a voluntary withdrawal has a negative inference that the applicant withdrew because there was a problem with the application but a closed application does not have such a negative inference.

The board is amending (6)(c) to require license verifications from all states where the applicant has held a license, not just where licenses are currently held. The board concluded that to ensure adequate protection of the public, it is necessary to consider an applicant's discipline on all licenses currently or previously held.

Chiropractic applicants are statutorily required in 37-12-302, MCA, to provide satisfactory evidence of good character and reputation. The board is adding (6)(d) to more clearly delineate this requirement in rule.

24.126.504 EXAMINATION REQUIREMENTS (1) The board accepts as its approved method of examination, the NBCE examination, including Parts I and II, Part III, Part IV, and physiotherapy, including physiotherapy, Part III and Part IV of the National Board of Chiropractic Examiners (NBCE) examination. In addition, the applicant must pass the state jurisprudence examination with a minimum score of 75 percent.

AUTH: 37-1-131, 37-12-201, MCA
IMP: 37-12-304, MCA

REASON: The board is amending this rule for consistency with ARM 24.126.501 and the administration of examinations. The board concluded that a minimum passing score of 75 percent ensures adequate preparation of applicants and is amending the rule to provide adequate notice to potential exam takers.

24.126.507 TEMPORARY PERMIT (1) Temporary permit applicants may be issued a permit under 37-1-305(2), MCA, while waiting to take either Part IV of the NBCE or the Special Purposes Examination for Chiropractors (SPEC). The permit shall require the permit holder to practice under the on-premises supervision of a chiropractor licensed in the state of Montana.

(2) remains the same.

(3) A temporary permit holder may not sign insurance claims, workers' compensation claims, Medicare/Medicaid claims, or birth or death certificates. Only licensed practitioners have this authority.

(4) remains the same.

(5) Any advertisement where the temporary permit holder is named or pictured must ~~designate him/her as a pre-graduate or post-graduate intern.~~ state that the individual holds a temporary permit and if applicable, must include the designation, "intern." This designation must appear with the name of the supervising licensed chiropractor.

AUTH: 37-1-131, 37-1-319, 37-12-201, MCA

IMP: 37-1-305, MCA

REASON: The board is amending this rule to delete an internal reference to a specific MCA section to comply with ARM formatting rules and reduce the incorrect references in rule that must be changed following amendment of the referenced statute. It is reasonably necessary to amend the requirements for advertisements including temporary permit holders. The board concluded that the public is better protected when an advertisement designates the license held and whether the holder is an intern rather than the pregraduate or postgraduate intern level.

24.126.510 ENDORSEMENT (1) In order to receive a license by endorsement, license applicants shall provide proof of equal credentials from the ~~current licensing state where the license applicant holds a current, active license.~~ In instances where the applicant cannot demonstrate equal credentials, the applicant may obtain a license upon successful passage of the SPEC examination administered by the NBCE.

AUTH: 37-12-201, MCA

IMP: 37-1-131, 37-1-304, MCA

REASON: The board is amending this rule to specify that the other state's license must be an active license and to respond to an endorsement applicant who held an inactive out-of-state license. The board concluded that to ensure the licensure of qualified, safe practitioners it is necessary to require endorsement applicants hold a current, active status license in another state.

24.126.701 INACTIVE STATUS AND CONVERSION TO ACTIVE STATUS

(1) A licensed chiropractor who wishes to retain a license but who will not be practicing chiropractic in Montana may obtain an inactive status license upon submission of an application. An individual licensed on inactive status may not practice chiropractic in Montana during the period in which ~~he or she~~ the licensee remains on inactive status.

(2) An individual licensed on inactive status may convert ~~his or her~~ the inactive status license to active status by submission of an appropriate application, payment of the renewal fee for the year in question, evidence that the licensee is in good standing in all jurisdictions in which the licensee holds or has held a license, and evidence of one of the following:

(a) during each year of inactive status in this state, full-time (no less than 1500 hours per year) practice of chiropractic under a license in good standing in

another state that requires completion of continuing education substantially equivalent to that required under these rules and fulfillment of those requirements; or (b) remains the same.

AUTH: 37-1-131, 37-1-319, 37-12-201, MCA
IMP: 37-1-319, 37-12-201, MCA

REASON: It is reasonably necessary to amend this rule to avoid potential confusion in current language and specify its applicability to licensees not practicing chiropractic in Montana. The board notes that an individual with an inactive Montana license could practice under an active license in another state. The board is also amending this rule to clarify the requirements to convert from inactive to active status. Since an inactive status Montana licensee could hold a license in another state that was disciplined or even terminated, the board is amending this rule to require proof of good standing in all jurisdictions where the licensee holds or has held a license. The board concluded this requirement is necessary to ensure an accurate decision to reactivate an inactive license and to protect the public.

The board is amending (2)(a) to clarify that not only must the state where the licensee practiced have the same continuing education requirements as Montana, but the licensee must have fulfilled the other state's requirements. While not a new requirement, the board is amending the rule to alleviate potential confusion.

24.126.704 INTERNS AND PRECEPTORS (1) ~~No student intern~~ Interns will only be allowed to practice under the direction and supervision of a licensed chiropractor (the "preceptor") in the state of Montana ~~unless the student has provided a letter from the chiropractic college the student is attending, listing the student's date of matriculation and expected graduation.~~

(2) ~~A student intern must complete an application form provided by the department and furnish current transcripts from the chiropractic college attended. Prior to acting as an intern, a pregraduate student or postgraduate must apply to the board and in so doing, must provide the following:~~

- (a) a completed application on a form provided by the department;
- (b) current transcripts from the chiropractic college attended;
- (c) a letter from the chiropractic college the student is attending that lists the student's date of matriculation and expected graduation date or a copy of a diploma;
- (d) proof of passage of the jurisprudence exam with a minimum score of 75 percent; and
- (e) a signed conditions statement from the sponsoring preceptor and the intern.

(3) ~~Student interns~~ Interns may not sign insurance claims, workers' compensation claims, Medicare claims, birth or death certificates, or other documents that require the signature of a licensed chiropractor.

(4) ~~The student intern~~ Interns shall follow the laws and rules of the board, the same as if ~~he or she~~ they were licensed as a chiropractor.

(5) Before acting as a preceptor, a chiropractor must meet the following requirements:

- (a) must be in good standing with the board; and

(b) must have a minimum of five years of practice in the state of Montana.

(6) A preceptor must comply with the following guidelines:

(a) provide malpractice insurance, if coverage over and above that which is provided by the chiropractic college is required;

(b) maintain a presence within the practice environment at all times when an intern is seeing patients;

(c) comply with the guidelines on involving an intern in the care of patients of the field doctor as required by the chiropractic college; and

(d) include a designation that the pregraduate or postgraduate intern is an "intern" on any type of advertisement. This designation must appear with the name of the licensed preceptor supervising the intern.

~~(5) All pre-graduate and post-graduate interns doing preceptorships in the state are required to take the jurisprudence exam and pass the exam with a minimum score of 75 percent.~~

~~(6) All preceptors must state that the pre-graduate or post-graduate intern is an "intern" on any type of advertisement. This designation must appear with the name of the licensed preceptor supervising the intern.~~

~~(7) The sponsoring preceptor and the student intern must submit a signed conditions statement, along with the application.~~

~~(8) The preceptor must be in good standing with the board.~~

~~(9) The preceptor must provide malpractice insurance, if coverage over and above that which is provided by the chiropractic college is required.~~

~~(10) The preceptor must have a minimum of five years of practice in the state of Montana.~~

~~(11) The preceptor must be present within the practice environment at all times when an intern is seeing patients.~~

~~(12) The preceptor must comply with the guidelines on involving an intern in the care of patients of the field doctor as required by the chiropractic college.~~

~~(13) All applications for intern/preceptor programs must be approved by the department prior to starting the program.~~

AUTH: 37-1-131, 37-12-201, MCA

IMP: 37-12-304, MCA

REASON: It is reasonably necessary to amend this rule to clarify the board's intent to accept either a copy of a diploma or a letter from the college because a postgraduate diploma will include the dates of matriculation and graduation.

24.126.901 APPLICATIONS FOR CERTIFICATION OF IMPAIRMENT

EVALUATORS (1) Any licensed chiropractor desiring to be certified as an impairment evaluator to rate impairments of workers' compensation claimants or insurers shall file an application with the board.

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

(b) successfully completing an educational and training program relating to chiropractic orthopedics, impairment ratings, or similar course work from a Council on Chiropractic Education (CCE) status chiropractic college or any other college or university approved by the board; or

(c) by being in practice for more than five years and successfully demonstrating to the board that ~~he~~ the applicant has completed a certified program equal to that recommended by the board.

(4) remains the same.

(5) Applicants shall take and pass an impairment evaluator examination prescribed and approved by the board with a minimum ~~passing grade~~ score of 75 percent ~~on all questions asked~~.

(6) Applications shall be accompanied by official transcripts, diplomas, or similar certificates evidencing successful completion of one of the types of education and training programs approved by the board. Successful completion is deemed written certification by the course provider.

AUTH: 37-12-201, MCA

IMP: 37-12-201, MCA

REASON: It is reasonably necessary to amend this rule for consistency in use of the term "impairment evaluator" and to address confusion and inaccuracies as to the required examination and passing score.

24.126.904 MINIMUM REQUIREMENTS FOR BOARD-APPROVED PROGRAMS TO QUALIFY FOR CERTIFICATION AS AN IMPAIRMENT EVALUATORS EVALUATOR (1) remains the same.

AUTH: 37-12-201, MCA

IMP: 37-12-201, MCA

24.126.907 APPROVAL OF TRAINING PROGRAMS FOR IMPAIRMENT EVALUATORS (1) Applications for approval of training programs for impairment evaluators shall be made by letter with supporting documents and must demonstrate to the satisfaction of the board that such programs fulfill the requirements of the board.

(2) through (5) remain the same.

AUTH: 37-12-201, MCA

IMP: 37-12-201, MCA

24.126.910 IMPAIRMENT EVALUATOR CONTINUING EDUCATION RENEWAL - DENIAL - REVOCATION (1) A minimum of four hours of specialized continuing education relevant to impairment evaluation ~~must be demonstrated~~ shall be taken every four years, or within one year of a new edition to the American Medical Association's guides to the evaluation of permanent impairment.

(a) These hours must be demonstrated in order to qualify for certification renewal. This requirement is in addition to the continuing education hours required for annual renewal of licenses to practice chiropractic in this state shall be in addition to the continuing education requirement required for a renewed chiropractic license.

(b) A random audit of impairment evaluator certificate holders shall be conducted every four years to verify compliance of the continuing education requirement.

(c) A three month extension will be provided for all licensees who fail to meet the continuing education requirements as a result of an audit. Failure to meet this extension may result in disciplinary action.

(d) Any impairment evaluator seeking a hardship waiver from their continuing education requirements shall apply to the board, in writing, as soon as possible after the hardship is identified and prior to the end of the period for completing the continuing education. Specific details of the hardship must be included. The board must make a finding that a hardship exists. The waiver may be absolute or conditional.

(2) Persistent deviation from generally accepted standards for impairment evaluation is grounds for ~~denial of renewal of certification and for~~ revocation of the impairment evaluator certificate.

(3) and (4) remain the same.

AUTH: 37-1-136, 37-12-201, MCA

IMP: 37-12-201, MCA

REASON: The board is amending this rule to achieve consistency between the continuing education (CE) provisions for impairment evaluators and chiropractor licensure in New Rule II. The board is clarifying the random audit procedure and adding provisions for the extension of CE requirements and hardship waivers to allow the board to address licensee requests in these situations.

It is reasonably necessary to amend (2) to comply with 37-1-131, MCA. The board notes that failure to meet licensure renewal requirements is unprofessional conduct that may necessitate the filing of a complaint and possible discipline.

24.126.2101 RENEWALS -CONTINUING EDUCATION REQUIREMENTS

(1) All chiropractors must renew their license with the board. The renewal date for a chiropractic license is set by ARM 24.101.413.

~~(1)~~(2) Renewal notices will be sent as specified in ARM 24.101.414.

~~(2)~~ The renewal date for a chiropractic license is set by ARM 24.101.413.

~~(3) All licensees shall sign an affidavit provided on the renewal application which states that they have, in the year preceding the application for renewal, attended at least 12 hours of board-approved continuing education. An annual random audit of active licensees will be conducted to verify compliance.~~

~~(a) In the first full year of licensure, new graduates can fulfill the continuing education requirement by attending one session of the "new doc seminar" in lieu of the 12-hour continuing education requirement. This provision does not apply to out-of-state applicants applying for licensure by endorsement or reciprocity.~~

~~(4) The board will require each licensee to demonstrate successful completion of a professional boundary and ethics continuing education course. Four hours of professional boundaries and ethics continuing education will be in addition to the 12-hour continuing education annual requirement. Each licensee will be~~

~~required to complete the course once every four years beginning September 1, 2006.~~

~~(5)(3)~~ A license that is not renewed within two years of the most recent renewal date automatically terminates. The terminated license may not be reactivated, and a new original license must be obtained by ~~passing the special purposes examination for chiropractic (SPEC) administered by the National Board of Chiropractic Examiners~~ submitting a new application and meeting all the requirements of ARM 24.126.501 and paying the appropriate fees in accordance with ARM 24.101.403. An applicant who has previously held a license that is terminated and who has not engaged in the practice of chiropractic for more than three years will be considered a nonroutine application, and will be reviewed by the board.

~~(6) The provisions of ARM 24.101.408 apply.~~

~~(7) The board shall approve on a case-by-case basis all continuing education programs that it determines in its discretion to be related to the practice of chiropractic.~~

~~(8) Clock hours of continuing education cannot be accumulated and carried over from one renewal year to the next renewal year.~~

~~(9) It shall be necessary for those attending the Montana Chiropractic Association meetings to register with the secretary of the association each day of attendance.~~

~~(4)~~ All licensees shall notify the department of any change in mailing addresses.

AUTH: ~~37-1-134~~, 37-1-319, 37-12-201, MCA

IMP: ~~37-1-134~~, 37-1-141, 37-1-306, 37-1-319, MCA

REASON: It is reasonable and necessary to remove the continuing education (CE) provisions from this rule for ease of use and to comply with ARM formatting requirements. The CE provisions are set forth in New Rules I and II.

The board is adding (1) and specifically stating that chiropractors are required to renew their licenses annually to address licensees who may not renew simply because they did not receive a renewal notice. The board is deleting the affidavit requirement for renewals to better facilitate the online renewal process.

Terminated licensees will no longer be required to take and pass the SPEC exam but must comply with original licensure requirements in ARM 24.126.501. The board determined that to ensure adequate public protection, terminated applicants with three years of nonpractice will be considered nonroutine and require the board's review. The board reviews all nonroutine applications and may determine that an applicant must take the SPEC exam.

24.126.2301 UNPROFESSIONAL CONDUCT (1) and (1)(a) remain the same.

(i) misstatements, falsehoods, misrepresentations, or distorted and fabulous statements relative to cures or treatments;

(ii) remains the same.

(iii) personal advertising claiming particular abilities, features, or accomplishments regarding the licensee or areas of specialty practice unless documentation of such abilities, features, accomplishments, or specialties are documented with the board prior to placing the advertisement;

(b) engaging in or soliciting sexual relations with a patient, sexual misconduct either verbal or physical, sexual contact, sexual exploitation, or a sex offense, as defined in 45-2-101, MCA, when such act or solicitation is related to the practice of chiropractic;

(c) through (e) remain the same.

~~(f) collecting fees or charges for services or treatment different from the fee or charge the licensee submits to a third-party payer for that service or treatment, except as hereinafter provided. This subsection is intended to prohibit offering the above listed practices to the public as well as the actual practices, except that, in instances where the intent is not to collect an excessive remuneration from the third-party payer, but rather to provide services at a reduced rate to a patient unable to afford the deductible or co-payment, the services may be performed for a lesser charge or fee. The burden of proof for establishing that this is the case shall be on the licensee; billing charges or fees to a third-party payer or collecting from a third-party payer on behalf of a patient at a different rate than the charge or fee actually billed to or collected from the patient. In the case where services are provided at a reduced rate to a patient because of the patient's inability to pay for the services at their regular or undiscounted rate, any charge or fee billed to or collected from a third party must be based upon the actual reduced rate billed to the patient;~~

(g) engaging in, or providing services or treatments which are in excess of those warranted by either the patients' condition and response or the practice technique, methodology, or modality applied and are not consistent with the seriousness of diagnosis;

(h) through (k)(iii) remain the same.

(iv) a chaperone is present at all times the patient is examined and treated intrarectally;

(l) falsifying, altering, or making incorrect essential entries or failing to make essential entries of patient records;

~~(m) violating any state, federal, provincial, or tribal statute or administrative rules rule governing or affecting the professional conduct of any licensee;~~

(n) and (o) remain the same.

(p) failing to render adequate supervision, management, training, or control of auxiliary staff or other persons, including preceptors, temporary permit holders, and/or licensees practicing under the licensee's supervision or control according to generally accepted standards of practice;

(q) and (r) remain the same.

(s) charging or collecting a clearly excessive fee. In determining if a fee is clearly excessive the board shall consider the fee or range of fees customarily charged in the state for similar services in light of modifying factors such as the time required, the complexity of the service, and the skill requisite to perform the service properly. This subdivision does not apply if there is a clear written contract for a fixed fee between the physician and the patient that has been entered into before the service was provided;

(t) engaging in the practice of chiropractic when the licensee's license is inactive, has expired, or has been suspended or revoked.

AUTH: 37-1-131, 37-1-319, 37-12-201, MCA

IMP: 37-1-131, 37-1-141, 37-1-316, 37-12-201, 37-12-301, 37-12-322,
MCA

REASON: The board determined the language in (1)(f) is unnecessarily confusing and is amending it accordingly. The board is adding (1)(s) to identify the charging or collecting of clearly excessive fees as unprofessional conduct for chiropractors. The board screening panel previously considered this type of conduct via the complaint process and determined it to be unprofessional. It is unlawful to engage in the practice of chiropractic without a current, valid license. The board is adding (1)(t) to delineate this unlicensed chiropractic practice as unprofessional conduct.

5. The proposed new rules provide as follows:

NEW RULE I APPROVED CONTINUING EDUCATION (1) Continuing education approved by the board must directly relate to the practice of chiropractic and shall be affiliated with national, regional, or state chiropractic associations, state licensing boards, academies, colleges of chiropractic, or education approved by the Federation of Chiropractic Licensure Board (FCLB) Providers of Approved Continuing Education (PACE).

(2) From the date of their original licensure in Montana until the end of the first renewal period, new licensees can fulfill the continuing education requirement by attending one session of the "new doc seminar" in lieu of the 12-hour continuing education requirement.

(3) All licensees can receive two credits for each chiropractic board meeting attended.

(4) All Internet courses must meet the same guidelines for continuing education approval.

(5) The board shall not approve a course of study if it is considered outside the "scope of practice" for a chiropractor in Montana.

(6) All continuing education not listed in this rule must be submitted for review and approval by the board on a case-by-case basis.

AUTH: 37-1-319, 37-12-201, MCA

IMP: 37-1-141, 37-1-306, 37-1-319, MCA

REASON: It is reasonably necessary to adopt this new rule to clearly delineate the requirements for board approval of continuing education (CE) courses. Setting forth the requirements will enable staff to review and approve CE in compliance with (1) and forward noncompliant CE to the board for review.

NEW RULE II CONTINUING EDUCATION REQUIREMENTS (1) Every licensee shall complete a minimum of 12 hours of board approved continuing education during each renewal period as defined in ARM 24.101.413. All active

licensees shall affirm on all subsequent renewal applications that they have attended and successfully completed a minimum of 12 hours of board approved continuing education in the year preceding the application for renewal. Of the 12 hours, no more than two hours can be in the subject area of philosophy and/or practice management. In addition, the board will require each licensee to demonstrate successful completion of a professional boundary and ethics continuing education course. Four hours of professional boundaries and ethics continuing education will be in addition to the 12-hour continuing education annual requirement. Each licensee will be required to complete the course once every four years. New licensees to the state of Montana have from the date of their original licensure in Montana until the end of their first renewal year to complete their first 12 hours of continuing education, and shall affirm on their second renewal application that they have attended and successfully completed a minimum of 12 hours of board approved continuing education during that period.

(2) Licensees transferring from inactive to active shall abide by the continuing education requirements outlined in ARM 24.126.701.

(3) An annual random audit of 10 percent of active licensees will be conducted to verify compliance of the continuing education requirements.

(4) Clock hours of continuing education cannot be accumulated and carried over from one renewal year to the next renewal year.

(5) It shall be necessary for those attending the Montana Chiropractic Association educational meetings to register with the secretary of the association each day of attendance to receive continuing education credit.

(6) A three-month extension will be provided for all licensees who fail to meet the continuing education requirements as a result of an audit. Failure to meet this extension may result in disciplinary action.

(7) Any licensee seeking a hardship waiver from their continuing education requirements shall apply to the board, in writing, as soon as possible after the hardship is identified and prior to the close of licensure for that year. Specific details of the hardship must be included. The board must make a finding that a hardship exists. The waiver may be absolute or conditional.

AUTH: 37-1-134, 37-1-319, 37-12-201, MCA

IMP: 37-1-134, 37-1-141, 37-1-306, 37-1-319, MCA

REASON: It is reasonably necessary to adopt this rule to clearly set forth the continuing education (CE) requirements in a separate rule and incorporate CE provisions previously set forth in ARM 24.126.2101.

The board is limiting the number of CE hours in philosophy and/or practice management that count toward the annual 12-hour requirement. While relevant to a general professional practice, the board concluded the majority of the CE should be directly related to the practice of chiropractic.

The board is clarifying CE requirements for new licensees to avoid confusion regarding renewal periods for new licenses. The new language will hopefully clarify that newly licensed chiropractors have until the end of the first full annual renewal period to complete and affirm their completion of the required CE hours.

The board added language to (2) to direct licensees converting from inactive to active status to ARM 24.126.701 for their continuing education requirements.

The board determined that a random audit of 10 percent of active licensees is sufficient to accurately assess CE compliance and is also feasible for staff. Although not a new process, the audit percentage was not previously delineated in rule.

The board determined it is reasonably necessary to add provisions for the extension of CE requirements and hardship waivers. The board is adding (6) to provide a three-month extension for audited licensees to meet CE requirements before facing possible discipline. The board is including (7) to allow the board to consider and grant absolute or conditional hardship waivers upon licensee request.

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 the Board of Chiropractors, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to dlibschi@mt.gov, and must be received no later than 5:00 p.m., July 18, 2008.

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

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

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

10. Anjeanette Lindle, attorney, has been designated to preside over and conduct this hearing.

BOARD OF CHIROPRACTORS
DR. THOMAS FULLERTON, PRESIDENT

/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 June 2, 2008.

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

In the matter of the proposed amendment) NOTICE OF PUBLIC HEARING
of ARM 24.168.401 fees, 24.168.402 and) ON PROPOSED AMENDMENT
24.168.408 licensure, 24.168.411 general)
practice requirements, and 24.168.2301)
unprofessional conduct)

TO: All Concerned Persons

1. On July 10, 2008, at 1:30 p.m., a public hearing will be held in room 471, 301 South Park Avenue, Helena, Montana to consider the proposed amendment of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Optometry no later than 5:00 p.m., on July 7, 2008, to advise us of the nature of the accommodation that you need. Please contact Traci Collett, Board of Optometry, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2390; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail dlibsdopt@mt.gov.

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

24.168.401 FEE SCHEDULE

(1) remains the same.

(2) Annual renewal

~~250~~ 125

(3) through (5) remain the same.

AUTH: 37-1-131, 37-1-134, 37-10-202, MCA

IMP: 37-1-134, 37-1-141, 37-1-304, 37-10-302, MCA

REASON: The board determined it is reasonably necessary to amend this rule and reduce the annual licensure renewal fee to \$125 to comply with the provisions of 37-1-134, MCA, and keep the board's fees commensurate with costs. The board last increased fees in fiscal year 2005 due to a reevaluation of the board's budget following a reorganization of the Health Care Licensing Bureau. Since that increase, the allocation of board duties among staff has changed, enabling staff salary and other board expenses to be split among three boards instead of two and resulting in an excess cash accumulation. The board is abating \$50 of the 2008 renewal fees, but this amendment is needed to ensure continual sound fiscal management. The

board estimates the decrease will affect approximately 254 renewal licensees and result in a \$31,750 reduction in annual revenue.

24.168.402 LICENSURE BY EXAMINATION (1) through (2)(d) remain the same.

(e) a copy of a self-query of the National Practitioners Data Bank and the Healthcare Integrity Data Bank;

(e) and (f) remain the same but are renumbered (f) and (g).
(3) remains the same.

AUTH: 37-1-131, 37-10-202, MCA

IMP: 37-1-131, 37-10-301, 37-10-302, MCA

REASON: The board is amending ARM 24.168.402 and 24.168.408 to require that licensure applicants submit a self-query of the National Practitioners Data Bank and the Healthcare Integrity Data Bank. Upon self-query of the National Practitioners Data Bank, the inquirer also receives information from the Healthcare Integrity Data Bank at no additional charge. This additional requirement will assist the board in obtaining all information regarding an applicant's prior discipline as reported to the data banks prior to licensure.

24.168.408 LICENSURE BY ENDORSEMENT (1) through (2)(d) remain the same.

(e) a copy of a self-query of the National Practitioners Data Bank and the Healthcare Integrity Data Bank;

(e) through (g) remain the same but are renumbered (f) through (h).
(3) through (5) remain the same.

AUTH: 37-1-131, 37-10-202, MCA

IMP: 37-1-304, MCA

24.168.411 GENERAL PRACTICE REQUIREMENTS (1) and (1)(a) remain the same.

(b) all professional signs and advertising, etc., must include the optometrist's name and the title "Optometrist", "Doctor of Optometry", or initials "O.D.";

(2) remains the same.

~~(3) Each licensed optometrist must file and have on record with the board annually, the location of each and every office wherein the practice of optometry is conducted by the licensed optometrist.~~

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

AUTH: 37-1-131, 37-10-202, MCA

IMP: 37-10-301, MCA

REASON: The board is amending this rule to no longer require that licensed optometrists report and continually update their practice locations to the board. The board concluded that this requirement is outdated, puts an unnecessary burden on

licensees and board staff, and does not substantially contribute to the protection of the public.

24.168.2301 UNPROFESSIONAL CONDUCT (1) Unprofessional conduct includes, but is not limited to, the following items or combination thereof:

(a) ~~Making~~ making a false or misleading statement regarding ~~his or her~~ the licensee's skill or the efficacy or value of the medicine, device, treatment, or remedy prescribed by ~~him or her~~ or used at ~~his or her~~ the licensee's direction in the treatment of any disease or other condition; ;

(b) ~~Negligence~~ negligence in the practice of optometry as determined by the board; ;

(c) ~~Gross~~ gross incompetence in the practice of optometry as determined by the board; ;

(d) A a pattern of practice or other behavior that demonstrates rendering of substandard care, either individually or as part of a third-party reimbursement agreement or any other agreement; ;

(e) ~~Commission~~ commission of any act of sexual abuse, misconduct, or exploitation related to the licensee's practice of optometry; ;

(f) ~~Prescribing~~ prescribing, selling, administering, distributing, or giving any drug legally classified as a controlled substance or as an addictive or dangerous drug for other than accepted diagnostic or therapeutic purposes; ;

(g) ~~Prescribing~~ prescribing, selling, administering, distributing, or giving a drug legally classified as a controlled substance or as an addictive or dangerous drug to ~~a family member or to himself or herself.~~ self or a family member;

(h) ~~Violating~~ violating any state or federal law or regulation relating to a drug legally classified as a controlled substance; ;

(i) ~~Obtaining~~ obtaining any fee by fraud, deceit, or misrepresentation; ;

(j) ~~Sanctions~~ sanctions or disciplinary actions taken by a peer review body, a hospital or other health care institution, or a professional association or society for acts or conduct similar to acts or conduct that would constitute grounds for action as defined in ~~the act.~~ Title 37, chapters 1 and 10, MCA, and administrative rules promulgated thereunder;

(k) ~~Surrender~~ surrender of a license or authorization to practice optometry in another state or jurisdiction, or surrender of membership on any staff or in any professional association or society while under disciplinary investigation by any of those authorities or bodies for acts or conduct similar to acts or conduct that would constitute grounds for action as defined in ~~this act.~~ Title 37, chapters 1 and 10, MCA, and administrative rules promulgated thereunder;

(l) ~~Any~~ any adverse judgment, award, or settlement against the licensee resulting from a professional liability claim related to acts or conduct similar to acts or conduct that would constitute grounds for action as defined in ~~this act.~~ Title 37, chapters 1 and 10, MCA, and administrative rules promulgated thereunder;

(m) ~~Failure~~ failure to furnish the board, its investigators, or representatives, information legally requested by the board; ;

(n) ~~Violation~~ violation of any provision(s) of ~~the Optometry Practice Act~~ Title 37, chapter 10, MCA, or the rules and regulations of the board or of an action, stipulation, or agreement of the board; ;

(o) ~~The~~ the designation of any person licensed under ~~this act~~ Title 37, chapter 10, MCA, other than by the terms "Optometrist", "Doctor of Optometry", or "O.D.";

(p) ~~For~~ for a licensee to knowingly submit or cause to be submitted any misleading, deceptive, or fraudulent representation on a claim form, bill, or statement;

(q) ~~For~~ for any person to sell, or offer to sell, any eyeglasses or lenses for the correction of refractive error except on prescription of a licensed optometrist or licensed physician;

(r) ~~Providing~~ providing ophthalmic lenses and materials that do not meet federally established impact resistance standards; ~~;~~ or

(s) ~~Persistently~~ persistently maintaining, in the practice of optometry, unsanitary offices, practices, or techniques.

AUTH: 37-1-319, 37-10-202, MCA

IMP: 37-1-316, 37-1-319, 37-10-301, MCA

REASON: The board is amending punctuation and grammar in this rule to comply with ARM formatting requirements and to remove gender specific references. It is reasonably necessary to change inaccurate references to "act" and "Optometry Practice Act" to the correct statutes in Title 37, chapter 10, MCA.

4. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Optometry, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to dlibsdopt@mt.gov, and must be received no later than 5:00 p.m., July 18, 2008.

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

6. The Board of Optometry maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies the person wishes to receive notices regarding all Board of Optometry administrative rulemaking proceedings or other administrative proceedings. The request must indicate whether e-mail or standard mail is preferred. Such written request may be

sent or delivered to the Board of Optometry, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2305, e-mailed to dlibsdopt@mt.gov, or made by completing a request form at any rules hearing held by the agency.

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

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

BOARD OF OPTOMETRY
ROCK SVENNUNGSSEN, O.D., PRESIDENT

/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 June 2, 2008

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

In the matter of the proposed amendment) NOTICE OF PUBLIC HEARING
of ARM 24.171.401 fees, 24.171.604) ON PROPOSED AMENDMENT
emergency guide license, and)
24.171.2301 unprofessional conduct)

TO: All Concerned Persons

1. On July 3, 2008, at 10:00 a.m., a public hearing will be held in room 439, 301 South Park Avenue, Helena, Montana to consider the proposed amendment of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Outfitters (Board) no later than 5:00 p.m., on June 27, 2008, to advise us of the nature of the accommodation that you need. Please contact Wayne Johnston, Board of Outfitters, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2370; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2309; e-mail dlibsout@mt.gov.

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

<u>24.171.401 FEES</u> (1) remains the same.		
(a) New resident outfitter application and license. This fee includes the following costs, but does not include fees related to operations plan.		\$ 1400 <u>1300</u>
(i) application processing		300 <u>350</u>
(ii) examination		400 <u>150</u>
(iii) investigation		300 <u>400</u>
(iv) resident license		300 <u>400</u>
(b) Application for amendment to resident outfitter license. This fee includes the following costs:		400 <u>450</u>
(i) application processing		300
(ii) examination		400 <u>150</u>
(c) Renewal of outfitter license		
(i) resident outfitter annual license		300 <u>375</u>
(ii) resident outfitter inactive status		150 <u>200</u>
(d) New operations plan		
(i) review and processing		125
(ii) equipment inspection		300 <u>375</u>
(e) remains the same.		

(f) Annual fee for each additional hunting camp, ~~added after January 1, 1999, and located beyond a 100-mile radius of the outfitter's base of operations and that is in a Department of Fish, Wildlife, and Parks administrative region other than the region containing the outfitter's base of operations~~ meeting the criteria in 37-47-318, MCA, must be paid at the time the camp is approved for inclusion in the outfitter's operations plan. 5000

(g) and (h) remain the same.

(i) Resident guide or resident professional guide license effective until December 31, 2008

~~(i) resident guide renewal~~ 400

~~(ii) (i) resident original guide license~~ 100

~~(iii) (ii) resident temporary guide license~~ 100

(i) Resident guide or resident professional guide license effective January 1, 2009

(i) resident guide license 150

(ii) resident emergency guide license 150

(j) through (n) remain the same but are renumbered (k) through (o).

AUTH: 37-1-131, 37-1-134, 37-47-201, 37-47-306, MCA

IMP: 37-1-134, 37-1-141, 37-47-304, 37-47-306, 37-47-307, 37-47-308, 37-47-310, 37-47-316, 37-47-317, 37-47-318, MCA

REASON: The board determined it is reasonably necessary to increase fees to comply with the provisions of 37-1-134, MCA, and keep the board's fees commensurate with program costs. The department, in providing administrative services to the board, has determined that unless the fees are increased as proposed, the board will have a shortage of operating funds by FY 2008-2009. The board estimates increasing fees as proposed will allow for a total sustainable budget of ten to 12 years before needing another fee increase. The board last increased fees in 2000, based on a similarly estimated ten-year operating budget.

The board has previously approved additional camps for inclusion in outfitters' operations plans then had difficulty collecting the fees. The amendment to (1)(f) clarifies that the fee must be paid before the outfitter is authorized to use the camp. The board is eliminating the resident guide renewal fee because the board no longer renews guide licenses, but instead requires annual submission of a new application to maintain licensure. The board is proposing different effective dates for the guide fee increases to avoid raising guide fees in the middle of hunting season and to avoid licensure delays during the season for guides who submit incorrect fees.

It is anticipated that the average fee increases will be 25 percent for outfitters, 50 percent for guides, and 50 percent for new outfitter applicants with a cumulative annual revenue increase of \$271,725.

The board estimates the following number of affected licensees and the corresponding increases in annual revenue:

Outfitter license application fee: 38 licensees with \$114,000 in revenue.

Outfitter exam fee: 14 licensees with \$700 in revenue.
Active outfitter renewal: 657 licensees with \$49,275 in revenue.
Inactive outfitter renewal: 61 licensees with \$3050 in revenue.
New operation plan application fee: 38 licensees with \$2850 in revenue.
Guide license applications: 2037 licensees with \$101,850 in revenue.

24.171.604 EMERGENCY GUIDE LICENSE (1) and (2) remain the same.
(3) A guide applicant may only be endorsed one time under this emergency guide license rule on account of not having proof of current first aid certification.

AUTH: 37-1-131, 37-47-201, MCA
IMP: 37-47-201, 37-47-301, 37-47-303, 37-47-307, MCA

REASON: The board is amending this rule to limit emergency guide endorsement so applicants may not avoid submitting proof of current first aid certification under ARM 24.171.602 by repeatedly obtaining emergency guide licenses.

24.171.2301 UNPROFESSIONAL CONDUCT AND MISCONDUCT
(1) through (1)(b) remain the same.
(c) not provide services or allow services to be conducted by a supervised guide or professional guide to clients outside the boundaries of his or her the outfitter's approved operations plan;
(d) through (2)(a) remain the same.
(b) not make agreements with clients concerning monetary consideration or services offered, or collect fees from clients, without the express consent of the supervising outfitter; and
(c) not provide services to clients who have not been specifically referred to the guide or professional guide from the endorsing outfitter; and
~~(d) when advertising guiding services, shall clearly designate the license number of the guide, and the name, address, and telephone number of the endorsing outfitter.~~
(3) through (3)(d) remain the same.
(e) not use ~~any narcotic drug, alcohol, or any other drug or substance,~~ to the extent that the use impairs the user physically or mentally, while engaged by a client;
(f) remains the same.
~~(g) not conduct a licensed function that is not authorized and listed on the licensee's license;~~
(h) through (s) remain the same but are renumbered (g) through (r).

AUTH: 37-1-131, 37-1-319, 37-47-201, MCA
IMP: 37-1-312, 37-47-341, MCA

REASON: It is reasonable and necessary to amend this rule to eliminate redundancies and substitute gender neutral for gender specific terms. The board is deleting (2)(d) as redundant and inconsistent with (2)(a) and (3)(o). Subsection (3)(e) is being amended to not unnecessarily duplicate provisions in 37-1-316, MCA. Subsection (3)(g) is being deleted because it is redundant with (3)(n). The authority

cites are being amended to accurately reflect the statutory sources of the board's rulemaking authority.

4. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Outfitters, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2309, or by e-mail to dlibsout@mt.gov, and must be received no later than 5:00 p.m., July 11, 2008.

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

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

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

8. Lorraine Schneider, attorney, has been designated to preside over and conduct this hearing.

BOARD OF OUTFITTERS
LEE KINSEY, 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 June 2, 2008

BEFORE THE DEPARTMENT OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the proposed	)	NOTICE OF PROPOSED
amendment of ARM 32.6.712,	)	AMENDMENT
pertaining to food safety and)	
inspection service (meat, poultry)	)	NO PUBLIC HEARING
	)	CONTEMPLATED

TO: All Concerned Persons

1. On July 12, 2008, the Department of Livestock proposes to amend the above-stated rule.

2. The Department of Livestock will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Livestock no later than 5:00 p.m. on July 3, 2008 to advise us of the nature of the accommodation that you need. Please contact Christian Mackay, 301 N. Roberts St., Room 308, P.O. Box 202001, Helena, MT 59620-2001; phone: (406) 444-9321; TTD number: 1-800-253-4091; fax: (406) 444-1929; e-mail: cmackay@mt.gov.

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

32.6.712 FOOD SAFETY AND INSPECTION SERVICE (MEAT, POULTRY)

(1) and (2) remain the same.

(3) The Department of Livestock incorporates by reference the following as they were amended effective October 1, 2007:

(a) 9 CFR 309;

(b) 9 CFR 310;

(c) 9 CFR 318.

(4) The Department of Livestock incorporates by reference the following as they were added effective May 1, 2008:

(a) 9 CFR 381.210 through 381.218.

(3) and (4) remain the same but are renumbered (5) and (6).

AUTH: 81-2-102, 81-9-220, MCA

IMP: 81-2-102, 81-9-217, 81-9-220, MCA

REASON: The proposed amendments to ARM 32.6.712 are necessary for the Montana State Meat and Poultry Inspection program to maintain its "equal to" status. The proposed amendments were brought to Department of Livestock's attention by the review staff with USDA FSIS. The proposed amendments in new (3) will adopt the 2007 amendments to 9 CFR 309, 9 CFR 310, 9 CFR 318, dealing with specified risk materials. The proposed amendments in new (4) will adopt the 2008

amendments to 9 CFR 381.210 through 381.218 dealing with poultry detention, seizure, and condemnation.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to Christian Mackay, 301 N. Roberts St., Room 308, P.O. Box 202001, Helena, MT 59620-2001, by faxing to (406) 444-1929, or by e-mailing to cmackay@mt.gov to be received no later than 5:00 p.m., July 10, 2008.

5. If persons who are directly affected by the proposed action wish to express their data, views, and arguments orally or in writing at a public hearing, they must make a written request for a hearing and submit this request along with any written comments they have to the same address as above. The written request for hearing must be received no later than 5:00 p.m. July 10, 2008.

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

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

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

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

DEPARTMENT OF LIVESTOCK

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

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

Certified to the Secretary of State June 2, 2008.

BEFORE THE BOARD OF HORSE RACING
DEPARTMENT OF LIVESTOCK
STATE OF MONTANA

In the matter of the proposed)
amendment of ARM 32.28.1402) NOTICE OF PROPOSED
pertaining to horse racing) AMENDMENT
)
) NO PUBLIC HEARING
) CONTEMPLATED

TO: All Concerned Persons

1. On July 12, 2008, the Board of Horse Racing proposes to amend the above-stated rule.

2. The Board of Horse Racing will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Horse Racing no later than 5:00 p.m. on July 3, 2008 to advise us of the nature of the accommodation that you need. Please contact Sherry Rust, P.O. Box 200512, Helena, MT 59620-0512; phone (406) 444-9321; TTD number: 1-800-253-4091; fax: (406) 444-4305; e-mail: srust@mt.gov.

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

32.28.1402 PERMISSIBLE MEDICATION (1) through (16) remain the same.
~~(17) Notwithstanding any other provision of this rule, no two-year old horse shall carry in its body while participating in a race any medication whatsoever specifically including phenylbutazone or furosemide. The finding of any medication in a two-year old horse participating in a race shall disqualify the owner of such horse from participating in the purse distribution and, in addition, the stewards may take any authorized action they may consider necessary to preserve the integrity of racing.~~

(18) and (19) remain the same but are renumbered (17) and (18).

AUTH: 23-4-104, 23-4-202, MCA

IMP: 23-4-104, MCA

REASON: The proposed rule change is necessary to eliminate the requirement that no two year old horse may run with medication. The board received a request from a trainer to eliminate that restriction for several reasons. The board has determined it will not restrict the use of medication in two year olds.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to Board of Horse Racing, Attn. Sherry

Rust, P.O. Box 200512, Helena, MT 59620-0512, by faxing to (406) 444-4305, or by e-mailing to srust@mt.gov to be received no later than 5:00 p.m., July 10, 2008.

5. If persons who are directly affected by the proposed amendment 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 they have to the same address as above. The request for hearing and comments must be received no later than 5:00 p.m., July 10, 2008.

6. If the board receives a request 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 100, based on the 1,000 licensees in Montana.

7. An electronic copy of this proposal notice is available through the department's web site at <http://mt.gov/liv/default.asp>.

8. The Board of Horse Racing maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the board. Persons who wish to have their name added to the list shall make a written request 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 the Board of Horse Racing. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed to Sherry Rust, Board of Horse Racing, Department of Livestock, P.O. Box 200512, Helena, MT 59620-0512, faxed to (406) 444-4305, or e-mailed to srust@mt.gov.

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

BOARD OF HORSE RACING
DEPARTMENT OF LIVESTOCK

/s/ Christian Mackay
Christian Mackay
Executive Officer
Department of Livestock

/s/ Sherry Meador
Rule Reviewer

Certified to the Secretary of State June 2, 2008.

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

In the matter of the amendment of ARM) NOTICE OF PUBLIC HEARING
37.71.401 and 37.71.601 pertaining to) ON PROPOSED AMENDMENT
low income weatherization assistance)
program (LIWAP))

TO: All Interested Persons

1. On July 2, 2008, at 10:00 a.m., the Department of Public Health and Human Services will hold a public hearing in the Sapphire Room, 2401 Colonial Drive, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process (including reasonable accommodations at the hearing site) or who need an alternative accessible format of this notice. If you need an accommodation, contact the department no later than 5:00 p.m. on June 23, 2008. Please contact Rhonda Lesofski, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena MT 59604-4210; telephone (406)444-4094; fax (406)444-1970; e-mail dphhslegal@mt.gov.

3. The rules as proposed to be amended provide as follows. New matter is underlined. Matter to be deleted is interlined.

37.71.401 LOW INCOME WEATHERIZATION ASSISTANCE PROGRAM, DEFINITIONS (1) "Act of God" means an event caused solely by forces of nature without human involvement.

~~(1)~~ (2) "Energy burden" means the percentage of a household's income which is allocated to heating energy costs for the household's dwelling. The energy burden is calculated by dividing the household's actual or estimated annual heating costs by the household's annual income.

(3) "Weatherization related imminent threat to the health or safety of a household" means any adverse condition in a dwelling that:

(a) relates to a structure, appliance, system, or equipment that directly and significantly impacts the dwelling's energy usage or energy conservation, including but not limited to the dwelling's primary water heating and/or space heating systems; and

(b) creates a serious and immediate risk to the physical health or safety of residents of the dwelling.

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

AUTH: 53-2-201, MCA

IMP: 53-2-201, 90-4-201, 90-4-202, MCA

37.71.601 ELIGIBILITY FOR WEATHERIZATION SERVICE,: PRIORITIES

(1) Dwellings which have been weatherized after September 30, 1993, with U.S. Department of Energy funds or with Low Income Energy Assistance Program (LIEAP) weatherization, or Northwestern Energy free weatherization funds after January 1, 1995 are not eligible for weatherization services. LIEAP weatherization funds and/or Northwestern Energy free weatherization funds may be used at any time to address a weatherization related imminent threat to the health or safety of an otherwise eligible household or to replace or make cost effective modifications to an otherwise eligible household's heating system to utilize a less expensive energy source. Except as provided in (1)(a), a dwelling is not eligible for weatherization services funded with U.S. Department of Energy (DOE) funds if the dwelling has been weatherized with DOE or Low Income Energy Assistance (LIEAP) funds after September 30, 1993.

(a) Regardless of the time limitations imposed in (1), DOE funds may be used at any time to weatherize a dwelling that has been damaged by fire, flood, or act of God if the damage to weatherization materials will not be paid for by insurance.

(2) Except as provided in (2)(a), a dwelling is not eligible for weatherization services funded with Northwestern Energy free weatherization (NWE) funds if the dwelling has been weatherized with NWE funds after January 1, 1995.

(a) Regardless of the time limitations imposed in (2), NWE funds may be used at any time to address a weatherization related imminent threat to the health or safety of an otherwise eligible household or to replace or make cost effective modifications to an otherwise eligible household's heating system to utilize a less expensive energy source.

(b) Regardless of the time limitations imposed in (2), NWE funds may be used at any time to weatherize a dwelling that has been damaged by fire, flood, or act of God if the damage to weatherization materials will not be paid for by insurance.

(3) Except as provided in (3)(a), a dwelling is not eligible for weatherization services funded with LIEAP funds if the dwelling has been weatherized with DOE, LIEAP, or NWE funds within the ten years immediately preceding the date of the current application for weatherization.

(a) Regardless of the time limitations imposed in (2), LIEAP funds may be used at any time to address a weatherization related imminent threat to the health or safety of an otherwise eligible household or to replace or make cost effective modifications to an otherwise eligible household's heating system to utilize a less expensive energy source.

(b) Regardless of the time limitations imposed in (3), LIEAP funds may be used at any time to weatherize a dwelling that has been damaged by fire, flood, or act of God if the damage to weatherization materials will not be paid for by insurance.

(2) through (8)(i) remain the same but are renumbered (4) through (10)(i).

AUTH: 53-2-201, 90-4-201, MCA

IMP: 53-2-201, 90-4-201, 90-4-202, MCA

4. The Low Income Weatherization Assistance Program (LIWAP) is a program administered by the Department of Public Health and Human Services (the department) that provides energy conservation measures such as the installation of insulation and the sealing of ducts to the dwellings of eligible low income families. Funding for LIWAP comes from three different sources: the U.S. Department of Energy's Weatherization Program, Northwestern Energy's Free Weatherization Program, and the U.S. Department of Health and Human Services' Low Income Energy Assistance Program (LIEAP). The primary purpose of LIEAP is to help low income households pay their home heating costs by making payments to an eligible household's fuel vendor, but state agencies that administer LIEAP are permitted to use a portion of their LIEAP allotment to provide weatherization services to households that are eligible for LIEAP. Montana currently sets aside 15% of its LIEAP allotment for weatherization services.

ARM 37.71.601(1) currently places time limits on when a dwelling that has previously received weatherization services is eligible to receive additional weatherization services. The rule provides that dwellings which have been weatherized with Department of Energy (DOE) or LIEAP funds after September 30, 1993 or Northwestern Energy free weatherization funds after January 1, 1995 are not eligible to receive additional weatherization services, although the rule provides an exception to these time limits. It provides that LIEAP weatherization funds and Northwestern Energy free weatherization funds may be used at any time to address a weatherization related imminent threat to the health or safety of the household or to replace or make cost effective modifications to the household's heating system to utilize a less expensive energy source.

The department proposes to amend ARM 37.71.601 to provide that dwellings that have been weatherized within the ten years immediately preceding the date of the current application for weatherization services may receive additional weatherization services paid for with LIEAP funds. This will allow previously weatherized dwellings to be reweatherized with LIEAP funds sooner than under the current rule. This is desirable for several reasons. Many new weatherization technologies have been developed in recent years, such as infrared thermography, dense pack insulation, new duct repair techniques, infiltration reduction, and better attic and mobile home insulations. These improved technologies can reduce in a cost effective manner the energy burdens of homes that were weatherized more than ten years ago when these technologies weren't available. Because advances are continually being made in weatherization technologies, the department believes dwellings should be eligible for reweatherization after ten years. Another reason for allowing reweatherization after only ten years is the fact that rising energy costs have made many weatherization measures cost effective that previously were not cost effective. Additionally, after ten years many weatherization measures such as weather stripping and door sweeps wear out and need to be repaired or replaced and a significant number of previously weatherized dwellings have been remodeled or damaged.

The department cannot shorten the waiting period before a dwelling can be reweatherized in all cases because of the necessity of complying with requirements of the DOE weatherization program and NWE's free weatherization program over which the department has no control. The federal regulations at 10 CFR 440.18(2)(e)(iii) governing DOE's weatherization program generally provide that DOE funds cannot be used to weatherize a dwelling that has received weatherization services paid for by a federal program (which would include dwellings weatherized with either DOE or LIEAP funds) after September 30, 1993. Thus, the provision that a dwelling that has been weatherized after September 30, 1993 with DOE or LIEAP funds is not eligible for weatherization services paid for with DOE funds must remain in the rule.

Similarly, it is the policy of Northwestern Energy that its free weatherization funds cannot be used to weatherize a dwelling that has received weatherization services after January 1, 1995. Thus, the rule will continue to prohibit the use of NWE funds to reweatherize a dwelling that received weatherization services after January 1, 2008. The shorter ten year waiting period therefore applies only to reweatherization services funded by LIEAP, not those paid for with DOE or NWE funds.

ARM 37.71.601(1) currently provides that LIEAP and NWE funds can be used at any time to address a weatherization related imminent threat to the health or safety of an otherwise eligible household or to replace or make cost effective modifications to an otherwise eligible household's heating system to utilize a less expensive energy source. This exception does not apply to reweatherization with DOE funds because 10 CFR 440.18(2) governing the DOE weatherization program does not allow the use of DOE funds for these reasons if the dwelling was weatherized after September 30, 1993. However, 10 CFR 440.18(e)(2)(ii) does make an exception to the time limit if a dwelling has been damaged by fire, flood, or act of God and insurance won't pay for the damage to weatherization materials. Since this exception is permitted by the DOE regulation and will benefit recently weatherized dwellings that have sustained damage to their weatherization materials from a fire, flood, or act of God the department proposes to add a new exception to the time limit for reweatherization with DOE funds.

Finally, the department is adding definitions of several terms used in ARM 37.71.601 to the LIWAP definitions rule, ARM 37.71.401. The term "weatherization related imminent threat to the health or safety of a household" is currently used in ARM 37.71.601, as discussed above, but is not defined. Also, it is necessary to define the term "act of God" which is used in the exception to the time limits provided for dwellings that have been damaged by a fire, flood, or act of God. It is necessary to define these terms in order to avoid disputes as to when the exceptions apply and ensure that the exceptions are interpreted uniformly by the offices that determine eligibility for weatherization services throughout Montana.

5. Interested persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Rhonda Lesofski, Office of Legal Affairs, Department of Public Health

and Human Services, P.O. Box 4210, Helena MT 59604-4210, no later than 5:00 p.m. on July 10, 2008. Comments may also be faxed to (406)444-1970 or e-mailed to dphhslegal@mt.gov. The department maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. To be included on such a list, please notify this same person or complete a request form at the hearing.

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

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

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

/s/ Barbara Hoffmann
Rule Reviewer

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

Certified to the Secretary of State June 2, 2008.

BEFORE THE COMMISSIONER OF POLITICAL PRACTICES
OF THE STATE OF MONTANA

In the matter of the proposed	)	AMENDED NOTICE OF PUBLIC
amendment of ARM 44.10.335 and	)	HEARING ON PROPOSED
44.10.336, and the proposed adoption	)	AMENDMENT AND ADOPTION
of New Rules I through IX, all related to)	
constituent services accounts)	

TO: All Concerned Persons

1. On March 13, 2008, the Commissioner of Political Practices published MAR Notice No. 44-2-143 regarding the public hearing on the proposed amendment and adoption of the above-stated rules at page 474 of the 2008 Montana Administrative Register, issue number 5.

2. This amended notice is being filed to provide more information in the reasonable necessity statement for the proposed amendments and adoptions, and to correct an error in paragraph 8 of the notice published on March 13, 2008, regarding the date upon which the sponsor of the legislation was notified.

3. The commissioner believes the reasonable necessity statement published on March 13, 2008, in support of the proposed amendments and adoptions adequately identifies the necessity and rationale for each of the proposed new rules or rule changes. However, in order to provide a more detailed statement of necessity regarding proposed new Rules I through IX, the Commissioner of Political Practices provides the following supplemental statements of reasonable necessity.

GENERAL STATEMENT OF REASONABLE NECESSITY: The 2007 Montana Legislature enacted HB 462, providing for the establishment of constituent services accounts, providing for funding and use of money in the accounts, and establishing reporting requirements for the accounts. The law requires the holder of a constituent services account to file reports disclosing the source of all money deposited into an account and enumerating any expenditures from the account. The law also amended 13-37-240, MCA, which restricts the use and disposition of surplus campaign funds. The commissioner is required to adopt rules to carry out the provisions of chapters 35 and 37 of Title 13, MCA. See 13-37-114, MCA.

The new rules proposed by the commissioner are reasonable and necessary to implement the provisions of HB 462 by establishing clear and consistent requirements for the provisions of the law, in a manner that is fully consistent with the surplus campaign funds restrictions of 13-37-240, MCA, as well as the standards of conduct set forth in Montana's Code of Ethics. Montana's Code of Ethics provides that "holding public office . . . is a public trust, created by the confidence that the electorate reposes in the integrity of public officers, legislators, and public employees" and states that elected officials and public employees "shall carry out the individual's duties for the benefit of the people of the state." 2-2-103(1), MCA.

The law provides that only surplus campaign funds may be deposited in a constituent services account, and the money in the account may only be used for constituent services. 13-37-240, MCA and 13-37-402(2)(a) and (b), MCA. "Constituent services" means travel, mailing, and other expenses incurred to represent and serve constituents "and authorized in rules adopted by the Commissioner" to implement the provisions of the law. 13-37-401(1), MCA.

To comply with the directive of the Montana Legislature as described above, the commissioner believes it is reasonable and necessary to propose rules clearly setting forth the procedure for opening and closing accounts, establishing recordkeeping and reporting requirements, and describing authorized expenditures from the accounts and prohibited activities related to the accounts. The commissioner has taken the particular approach of proposing a number of detailed rules to provide clarity and certainty for eligible elected officials who choose to establish constituent services accounts, so that they may comply fully with existing law and the intent of the Montana Legislature when it enacted HB 462.

RULE I: The commissioner believes it is reasonable and necessary to adopt a rule that sets out definitions of pertinent terms used throughout the rules implementing the provisions of HB 462, to provide consistency and ease of understanding regarding application of the rules for those eligible elected officials subject to the provisions of the new law.

In enacting HB 462 the Montana Legislature left some terms undefined, such as "constituent" and "leaves public office." The commissioner therefore determined that it is reasonable and necessary to define those terms in the proposed new rules.

In particular, a definition of the term "constituent" is necessary because the Montana Legislature assigned to the commissioner the responsibility to adopt rules to describe eligible expenses incurred to represent constituents and to provide constituent services. "Constituent services," while generally defined in HB 462, is more specifically defined in New Rule V, again in compliance with the directive of the Montana Legislature to the commissioner in 13-37-401(1), MCA.

The definition of the term "compensation" in Rule I is based on the similar definition in ARM 44.12.102, regarding regulation of lobbying.

The definition of the term "in-kind donation" is patterned after the definition of "in-kind contribution" in ARM 44.10.321(1)(d), dealing with reporting of campaign contributions. This definition is included because of HB 462's absolute prohibition against using any funds other than surplus campaign funds to pay for constituent services provided by an elected official. See supplemental statement of reasonable necessity for Rule IV.

"Pre-existing account" is defined in the new rules because it is apparent the Montana Legislature chose to make the provisions of HB 462 applicable only to newly created accounts. The Montana Legislature considered and rejected language in the bill that would have required closure of pre-existing accounts. See page 5, lines 4-7 (interlineated Section 6) of the authorized print version of HB 462. It is therefore necessary to provide guidance regarding accounts that were created and in existence prior to the effective date of the law.

RULE II: The commissioner believes it is reasonable and necessary to adopt a rule that provides guidance and clarity regarding the types of accounts to which the rules apply and do not apply. During deliberations on HB 462, the Montana Legislature considered and specifically rejected the option of applying the provisions of the law to existing accounts. See page 5, lines 4-7 (interlineated Section 6) of the authorized print version of HB 462.

Moreover, HB 462 only applies to certain elected officials -- those "elected to a statewide or legislative office or as a public service commissioner". Elected district court judges and elected local and tribal officials are not authorized to create constituent services accounts under HB 462 and are not subject to the terms of the law.

The commissioner also believes it is important to direct the attention of account holders to other provisions of Montana law, such as the Montana Code of Ethics, that may also apply to the receipt or use of funds by a candidate or elected official. The applicability of other Montana laws may be an issue for candidates and elected officials who are not eligible to create constituent accounts under HB 462, but are not prohibited from creating accounts related to their official duties by HB 462 or any other provision of Montana law.

These "ineligible" elected officials are still subject to the personal benefit and campaign use prohibitions of 13-37-240, MCA if surplus campaign funds are spent or used to fund activities related to their public offices. If these "ineligible" elected officials are also soliciting "donations" to constituent accounts or other accounts related to an "ineligible" elected official's public office, such "donations" could subject the "ineligible" official to complaints under the Ethics Act or the other laws identified in the rule.

RULE III: The commissioner believes it is reasonable and necessary to specifically identify the public offices for which a HB 462 constituent services account may be established. As noted above, HB 462 only applies to elected statewide or legislative offices and public service commissioners. It is important to provide clarity regarding the applicability of the law and the rules.

RULE IV: This rule is reasonable and necessary based on the legislative history of HB 462 and the final language enacted into law. The plain language of HB 462 shows that the provisions of the bill are prospective only. 13-37-402(3), MCA, provides that an eligible elected official "may not establish any account related to the public official's office other than a constituent services account." The Montana Legislature considered and rejected language in the bill that would have required closure of pre-existing accounts. See page 5, lines 4-7 (interlineated Section 6) of the authorized print version of HB 462. In addition, the commissioner believes it is important to clearly set forth specific prohibitions regarding funding and the use of funds from authorized constituent services accounts, in light of the provisions of HB 462 and the prohibitions and restrictions related to surplus campaign funds, as set forth in 13-37-240, MCA. For example, the prohibition against receiving in-kind donations of services in subsection (1)(b)(iii) is necessary to make it clear that eligible elected officials may only use surplus campaign funds to pay for constituent

services, and therefore may not seek assistance from lobbyists and principals in providing services to constituents.

RULE V: HB 462 provides that eligible elected officials may establish and fund a constituent services account using only surplus campaign funds, and that funds in the account may only be used for constituent services. 13-37-402(2)(a) and (b), MCA. "Constituent services" means travel, mailing, and other expenses incurred to represent and serve constituents "and authorized in rules adopted by the Commissioner" to implement the provisions of the law. 13-37-401(1), MCA. The commissioner believes Rule V is reasonable and necessary to fulfill the commissioner's responsibilities as directed by the Montana Legislature. The rule provides in specific detail what types of expenditures are authorized, based on the provisions of HB 462 and the prohibitions and restrictions on the use of surplus campaign funds provided in 13-37-240, MCA. That statute prohibits the use of surplus campaign funds for political campaigns or for personal benefit.

RULE VI: 13-37-402(1), MCA, provides that a constituent services account may be established by filing an appropriate form with the commissioner. The commissioner believes it is reasonable and necessary to adopt a rule that sets forth a procedure and specific requirements for establishing an account, including specification of the information that must be provided.

RULE VII: 13-37-402(4), MCA, requires the holder of a constituent services account to file quarterly reports with the commissioner disclosing the source of all money deposited into the account and enumerating the expenditures from the account. Based on this statutory requirement, the commissioner believes it is reasonable and necessary to adopt a rule setting forth specific requirements, including the dates on which reports are due and the content of each report. In addition, it is reasonable and necessary to provide for record-keeping requirements for holders of accounts.

RULE VIII: The commissioner believes it is reasonable and necessary to adopt a rule to provide for the receipt and disposition of interest paid on constituent services accounts. The accounts may only be funded using surplus campaign funds, and funds in the accounts may only be used to provide constituent services. The commissioner believes it is therefore reasonable and necessary to provide specific requirements for the receipt and use of interest on the accounts, since these funds are subject to the same requirements and restrictions as the funds used to create the accounts.

RULE IX: 13-37-402(5), MCA, states that the holder of a constituent services account shall close the account within 120 days of leaving public office. The commissioner believes it is reasonable and necessary to adopt a rule to establish disclosure requirements for the disposition of funds in a constituent services account, consistent with the prohibitions and restrictions on the disposition of surplus campaign funds in 13-37-240, MCA.

4. All rule changes and proposals as set forth in MAR Notice No. 44-2-143 remain as proposed.

5. The statements of reasonable necessity remain as proposed with the additions as set forth in this notice.

6. Paragraph 8 of MAR Notice No. 44-2-143 is corrected to reflect the actual date upon which the sponsor of the legislation was notified, which was February 1, 2008, via e-mail.

By: /s/ Dennis Unsworth
DENNIS UNSWORTH
Commissioner

By: /s/ Jim Scheier
JIM SCHEIER
Assistant Attorney General
Rule Reviewer

Certified to the Secretary of State June 2, 2008.

BEFORE THE STATE AUDITOR AND COMMISSIONER OF INSURANCE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 6.6.8301 concerning updating)
references to the NCCI Basic Manual)
for new classifications for various)
industries)

TO: All Concerned Persons

1. On March 27, 2008, the department published MAR Notice No. 6-175 regarding a notice of proposed amendment to the above-stated rule at page 513, 2008 Montana Administrative Register, Issue No. 6.

2. The department has amended ARM 6.6.8301 exactly as proposed.

3. No comments or testimony were received.

4. Amendment "A," updating references to the NCCI Basic Manual for Workers' Compensation and Employers Liability, 2001 edition, was published with the proposal notice as shown below, and will be adopted with this filing. It is intended to become effective July 1, 2008.

A. Establish a new state special treatment for Code 6204--WELL DRILLING--WATER DRIVERS. Pump installation is to be separately classified from water well drilling provided that (1) verifiable payroll records are maintained for each operation, and (2) drilling equipment is not used to install the pump.

Amendment "B," updating references to the NCCI Basic Manual for Workers' Compensation and Employers Liability, 2001 edition, was published with the proposal notice as shown below, and will be adopted with this filing. It is intended to become effective July 1, 2009.

B. Revise the Montana Construction Premium Credit Program.
The proposed changes will:

Revise the exiting Montana Construction Premium Credit Program (CPCP) rules to create a more uniform approach.

Eliminate the table of credits from NCCI's **Basic Manual for Workers' Compensation and Employers Liability Insurance** and replace it with credits based on a formula approach among states with similar programs.

Implement the Contracting Classification Premium Adjustment Program Workers Compensation Premium Credit Application, NC5000. This is a national application form that will be used to apply for the Montana CPCP credit.

/s/ Carol Roy
Carol Roy
Rule Reviewer

/s/ Christina L. Goe
Christina L. Goe
Chief Legal Counsel
State Auditor's Office

Certified to Secretary of State June 2, 2008.

BEFORE THE BOARD OF HOUSING
DEPARTMENT OF COMMERCE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 8.111.305 and 8.111.305A)
pertaining to the homeownership)
program)

TO: All Concerned Persons

1. On February 14, 2008, the Board of Housing published MAR Notice No. 8-111-65 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 267 of the 2008 Montana Administrative Register, Issue Number 3.

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

COMMENT #1: A comment was received that requiring audited financial statements from all lender and servicer applicants may not be informative as financial institutions regulated by a regulatory agency such as the Office of Thrift Supervision may not necessarily have audited financial statements specific to a subsidiary lender or servicer applicant. The commenter suggested that the board continue to accept reports submitted to the regulatory agency if the applicant is regulated by an agency designated in ARM 8.111.305B in lieu of audited financial statements.

RESPONSE #1: The board agrees. The proposed rules have been amended to provide that an applicant regulated by one of the designated regulatory agencies may meet this requirement by submitting the reports required of the applicable regulatory agency.

COMMENT #2: The board received a number of comments regarding the requirements for submission of a quarterly report to a regulatory agency by a regulated lender or servicer or six months financial information for a nonregulated lender or servicer. Comments were that the board should look at a longer period of time than just a quarter for regulated lenders or services and six months for those that are not regulated by a designated regulatory. One commenter stated that the board should allow for a broader assessment of the financial health of the lender or servicer and to consider the applicant against a spectrum of financial criteria.

RESPONSE #2: The board agrees. It will request a regulated applicant to submit the reports from the regulatory agency for the four quarters immediately preceding the date of application to be approved as a lender or servicer. Further, it has deleted the requirement that the reports or the financial statements submitted by a lender or servicer must show a positive return. Instead, the proposed rule has been modified to allow the board to exercise its discretion to approve a lender or servicer by looking

at the broader financial health of the applicant including the lender's or servicer's overall performance in the marketplace.

COMMENT #3: One commenter objected to the requirement that an office be designated within the state of Montana where servicing of board loans would be performed, stating that several servicers have loan servicing centers outside of the state of Montana.

RESPONSE #3: The board agrees. There were several reasons for previously requiring in-state servicing. The primary reason was to ensure that board customers were able to make loan payments in Montana, obtain information on their loans, and easily obtain resolution of servicing issues. Secondly was the expense of conducting servicing audits when the servicing is conducted out of state. Lastly was the problem of not being informed of physical location where an out of state servicer is servicing board loans. The first two issues are resolved by ARM 8.111.305A(7), and the last issue is resolved by an amendment to the proposed rule ARM 8.111.305A(2)(a) and ARM 8.111.305A(5)(b) to require a lender to keep the board notified of the physical location where board loans are being serviced.

3. The board has amended ARM 8.111.305 and ARM 8.111.305A with the following changes, stricken matter interlined, new matter underlined:

8.111.305 APPROVED LENDERS (1) A public or private entity ("applicant") maintaining an office in the state and authorized by law to make or participate in making new, residential mortgage loans may ~~request~~ apply, in writing, for designation as an approved lender for board programs.

(2) All ~~requests~~ applications must include:

(a) remains as proposed.

(b) a list of the personnel principally involved in making and servicing mortgage loans, the office address, phone number, description of qualifications, ~~the position in the applicant's organizational structure for each person~~, and a copy of each person's mortgage broker and loan originator license if applicable;

(c) remains as proposed.

(d) if the applicant is regulated by one of the regulatory agencies defined in ARM 8.111.305B, the applicant's most recent regulatory agency reports covering the four quarters immediately preceding the date of application which must indicate, based on generally accepted accounting principles (GAAP), total capital as a percentage of average assets of at least 6% or meet all applicable capital requirements of the regulatory agency and a minimum net worth of \$1,000,000; or, if the applicant is not regulated by a regulatory agency defined in ARM 8.111.305B, the applicant's most recent audited financial statements for the applicant's most recently completed fiscal year and financial statements prepared within 60 days of submission for at least a six-month period immediately preceding the date of the financial statements comprised of a balance sheet, year-to-date income statement, and a statement of change covering at least the immediately preceding six-month period. which must indicate, based on generally accepted accounting principles

(GAAP), indicate a positive return on average assets, total capital as a percentage of average assets of at least 6%, and a minimum net worth of \$1,000,000;

(e) and (f) remain as proposed.

(3) ~~The board will determine whether or not an applicant is approved under the terms and conditions of~~ in its discretion, may approve or deny an applicant based on the financial information submitted pursuant to (2)(d), the applicant's performance in the marketplace, and the requirements of Title 90, chapter 6, MCA, the applicable trust indenture, and the rules then in effect. A lender approved under this section will be notified and advised of the conditions of its approval.

(4) Each year or as may be requested by the board, an approved lender participating in the board's programs shall submit:

(a) if the lender is not regulated by one of the regulatory agencies defined in ARM 8.111.305B, its audited financial statements for its most recently completed fiscal year or, if the lender is regulated by one of the regulatory agencies defined in ARM 8.111.305B, the lender's regulatory agency reports for the previous four quarters, demonstrating that the financial standards described in (2)(d) continue to be met;

(b) through (5) remain as proposed.

(6) The relationship between the board and an approved lender is contractual in nature. The approved lender must comply with the provisions of the board's Mortgage Purchase and Servicing Guide as the same may be amended from time to time. The board may terminate a lender's approval to make board loans at any time without cause and without a termination fee. The board will terminate a lender's approval to make board loans for repeated or material failure of the lender to comply with the provisions of the board's Mortgage Purchase and Servicing Guide. Board staff may suspend a lender's approval to make board loans on a temporary basis for a lender's failure to comply with the board's Mortgage Purchase and Servicing Guide. If the lender is unable or fails to correct the noncompliance with the guide, board staff will refer the suspension to the board for appropriate action.

AUTH: 90-6-104, 90-6-106, ~~90-6-108~~, MCA

IMP: 90-6-106, 90-6-108, ~~90-6-110~~, MCA

8.111.305A APPROVED LOAN SERVICERS

(1) remains as proposed.

(2) All applications shall be in writing and include the following:

(a) designation of the office(s) in the state of Montana for loan servicing identification of the location where board loans will be serviced, which information must be kept current at all times;

(b) and (c) remain as proposed.

(d) a list of the applicant's personnel principally involved with servicing mortgage loans, the office address, phone number, and a description of qualifications, and the position in the applicant's organizational structure for each person;

(e) remains as proposed.

(f) if the applicant is regulated by one of the regulatory agencies defined in ARM 8.111.305B, the applicant must submit the applicant's regulatory agency

reports covering the four quarters immediately preceding the date of application which must indicate, based on generally accepted accounting principles (GAAP), total capital as a percentage of average assets of at least 6% or meet all applicable capital requirements of the regulatory agency and a minimum net worth of \$1,000,000; or if the applicant is not regulated by a regulatory agency defined in ARM 8.111.305B, the applicant's most recent audited financial statements for the applicant's most recently completed fiscal year and financial statements prepared within 60 days of submission for at least a six-month period immediately preceding the date of the financial statements comprised of a balance sheet, year-to-date income statement, and a statement of change covering at least the immediately preceding six-month period which must indicate, based on generally accepted accounting principles (GAAP), a positive return on average assets, total capital as a percentage of average assets of at least 6%, and a minimum net worth of \$1,000,000; and

(g) and (3) remain as proposed.

~~(4) The application will be reviewed by the board's staff, and the institution will be notified in writing of the status of the application. The board, in its discretion, may approve or deny an applicant based on the financial information submitted pursuant to (2)(e), the applicant's performance in the marketplace, and the requirements of~~ will determine whether or not an applicant is approved under the terms and conditions of Title 90, chapter 6, MCA, the applicable trust indenture, and the rules then in effect. A servicer approved under this section will be notified and advised of the conditions of its approval.

(5) Each year or as may be requested by the board, an approved servicer shall submit:

(a) if the servicer is not regulated by one of the regulatory agencies defined in ARM 8.111.305B, its audited financial statements for its most recently completed fiscal year, or, if the servicer is regulated by one of the regulatory agencies defined in ARM 8.111.305B, the servicer's regulatory agency reports for the previous four quarters, demonstrating that the financial standards described in 2(f)(d) continue to be met;

(b) through (d) remain as proposed.

(e) evidence demonstrating that the servicer has internal controls providing for security of board funds and confidentiality of information related to board mortgagors, which evidence can be the servicer's most recent Statement of Auditing Standard 70 Report, or equivalent regulatory agency report, or an equivalent report from an outside auditor.

(6) and (7) remain as proposed.

(8) The relationship between the board and an approved servicer is contractual in nature. The approved servicer must comply with the provisions of the board's Mortgage Purchase and Servicing Guide as the same may be amended from time to time. The board may terminate a servicer's approval to ~~make service~~ board loans at any time without cause and without a termination fee. The board will terminate a servicer's approval to make service board loans for repeated or material failure of the servicer to comply with the provisions of the board's Mortgage Purchase and Servicing Guide.

AUTH: 90-6-104, 90-6-106, MCA
IMP: 90-6-106, 90-6-108, MCA

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

/s/ ANTHONY J. PREITE
ANTHONY J. PREITE
Director
Department of Commerce

Certified to the Secretary of State June 2, 2008.

BEFORE THE DEPARTMENT OF CORRECTIONS
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 20.7.801 pertaining to Eastmont)
Chemical Dependency Treatment)
Program)

TO: All Concerned Persons

1. On April 10, 2008 the Department of Corrections published MAR Notice No. 20-7-41 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 605 of the 2008 Montana Administrative Register, Issue Number 7.

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: Glendive resident Lori Muller, 6 Kensington Place, criticized how the survey was conducted and said it should have been conducted by a third party and not by the Department of Corrections. Mrs. Muller said she did not initially receive a survey in the mail and said she knows of three other homes in the Hillcrest subdivision that did not receive one. Mrs. Muller said the survey should have been anonymous and said some people did not return the survey because the survey form had spaces for respondents to indicate their name and address. She said the department should not conduct any future surveys in this manner and suggested one of the universities would be a more appropriate entity to conduct the survey. Mrs. Muller said the WATCH-East program is really good, although she opposes the program's expansion. Her concern is safety for residents in the neighborhood. Mrs. Muller said people in the facility can watch the neighborhood residents and see what they are doing. She said the program is wonderful, however the location is not appropriate.

RESPONSE #1: The Administrative Rules state, "The department shall conduct a survey of an unbiased representative sampling of the Glendive community and Georgetown subdivisions...." Therefore, the rules permit the department to conduct the survey. Recently, the department received bids for a survey relating to another matter from the universities which ranged from \$12,000 and \$18,000 per survey. The department chose not to expend the funds necessary to pay another entity to conduct the survey for this rule change. The department acknowledges that Mrs. Muller did not initially receive a survey. However, when the department became aware of the oversight, the department mailed a survey to her residence as well as to four other Hillcrest/Georgetown subdivision residences.

The department sent out 430 surveys to residents of Glendive, including 215 to residents of the Hillcrest and Georgetown subdivisions and 215 to a random sampling of Glendive residents living in other areas of town. The department received back 216 returned surveys, with 201 surveys indicating support for the proposed expansion of the facility and 15 opposing the expansion. Thirteen survey respondents did not include their name or address on the returned surveys; nonetheless, the department counted those responses.

COMMENT #2: In addition to her comments at the hearing, Mrs. Muller submitted two letters opposing the expansion. In one letter, she stated the increased capacity multiplies risks associated with having the facility in a residential area. In addition to that comment, Mrs. Muller's letter requested changes in how the property is currently being used and requested the department add perimeter plantings to reduce both noise and the opportunity for WATCH-East participants to view the neighborhood.

In another letter, Mrs. Muller complained about other Glendive residents who have publicly expressed a desire to change other provisions of the administrative rules, including a restriction that prohibits visitors from driving directly to the facility. Mrs. Muller included two letters to the editor printed in the Glendive newspaper. The letters expressed support for expansion of the WATCH-East facility and one letter advocated for changing the administrative rules to permit visitors to drive directly to the facility. In her letter, Mrs. Muller asked the department to request others to "end public lobbying for changes to the administrative rules and discourage others from engaging in venomous letter writing campaigns on their behalf..."

RESPONSE #2: The department will take under advisement Mrs. Muller's request for additional plantings on the property. The First Amendment to the United States Constitution and Art. II, § VII, of the Montana Constitution preclude the department from infringing on an individual's right to freedom of speech or expression.

COMMENT #3: Barbara Anderson, 112 West Main, Glendive, supports the expansion and said treatment is needed for people convicted of DUI. She said she disagreed with the notion that the Hillcrest subdivision is affected more by the location of the program than the rest of Glendive. She said Glendive is a small town and therefore all areas are equally affected by the program's presence in town, and noted the program's presence is positive for Glendive.

COMMENT #4: Pat Mischel, 47 Road 261, Glendive, supports the expansion and said only nonviolent offenders are placed at WATCH-East. He said it's more dangerous to have DUI offenders in the communities, driving their cars, than having them in treatment.

COMMENT #5: Deb Mooer, 521 Hemlock, Glendive, supports the program and said she visits the facility and feels the program participants are good people who have made bad choices.

COMMENT #6: Gary Gaub, 311 E. Williams, Glendive, said he supports the proposal to increase the capacity of WATCh-East. Mr. Gaub is the chair of the WATCh-East screening committee, and he said the committee takes the screening process very seriously. The committee meets numerous times to screen offenders for placement and take each case individually. He feels the program is valuable to society and may prevent someone from getting hurt by a drunk driver.

COMMENT #7: Bob Ackerman, 414 E. Barry, Glendive, supports the program because it helps people with drug and alcohol problems and provides good jobs with good benefits for Glendive.

COMMENT #8: Bob Anderson, 111 Glenwood Ave., Glendive, said he supports the expansion because he has personal experience with alcoholism. He said the devastation to families is terrible and treatment is needed.

COMMENT #9: Bob Patterson, 201 1st Street, Highland Park, Glendive, said he supports the WATCh-East program 100%. The program is good for Glendive because it employs many residents, buys groceries in town, and brings business to town. He said he supports the expansion.

COMMENT #10: Jim O'Conner, 402 Little Street, Glendive, said he supports the WATCh-East program. He is a pastor and he leads Bible study at WATCh-East on Wednesday nights. He said program participants are good people who have made bad mistakes in their lifetime. He said incarceration without help is a waste of money.

COMMENT #11: Neville and Joan Peterson, Glendive, submitted a letter expressing support for the proposed increase in capacity for the WATCh-East program. The Petersons said the program benefits both participants of the treatment program and the citizens of Montana by lessening the danger posed by DUI offenders.

RESPONSE TO COMMENTS #3-11: The department appreciates the community's support of the WATCh-East program.

/s/ Colleen A. White
COLLEEN A. WHITE
Rule Reviewer

/s/ Mike Ferriter
MIKE FERRITER
Director
Department of Corrections

Certified to the Secretary of State June 2, 2008.

BEFORE THE DEPARTMENT OF CORRECTIONS
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 20.7.1101 and 20.7.1102)
pertaining to conditions on probation)
or parole)

TO: All Concerned Persons

1. On December 6, 2007, the Department of Corrections published MAR Notice No. 20-7-38 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 1984 of the 2007 Montana Administrative Register, Issue Number 23. On February 14, 2008, the Department of Corrections published MAR Notice No. 20-7-39 pertaining to the second public hearing and extension of comment period of the above-stated rules at page 273 of the 2008 Montana Administrative Register, Issue Number 3.

2. The department amends ARM 20.7.1102 as proposed.

3. The department amends ARM 20.7.1101 as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

20.7.1101 CONDITIONS ON PROBATION OR PAROLE

(1) through (5) remain as proposed.

(6) The offender must obtain permission from his/her supervising officer before engaging in a business, purchasing real ~~or personal~~ property, purchasing an automobile, or incurring a debt.

(7) and (8) remain as proposed.

(9) The offender is prohibited from using or possessing alcoholic beverages and illegal drugs, ~~including marijuana, regardless of whether the offender has received a registry identification card from the Department of Public Health and Human Services pursuant to Title 50, chapter 46, part 1, MCA.~~ The offender is required to submit to bodily fluid testing for drugs or alcohol on a random or routine basis and without reasonable suspicion.

(10) and (11) remain as proposed.

(12) The Montana Board of Pardons and Parole and the sentencing court have the authority to order the offender to abide by additional conditions and such conditions must be contained in the judgment or parole decision. ~~The Department of Corrections may require an offender committed to the department to abide by additional conditions for the privilege of serving the offender's sentence in the community instead of in a correctional facility, prerelease center, or other correctional facility.~~

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: The following individuals objected to the department's proposal to prohibit offenders on probation and parole from using marijuana, regardless of whether an offender has received a medical marijuana card from the Department of Public Health and Human Services:

At hearings: Jim Wheelis, Joslyn Hunt, Greg Hood, Ed Sheehy Jr., Tom Daubert, Angela Goodhope, Elizabeth Griffing, D. Steven Cape, David Michaud, Eric Billings, James Gustafson, Scott Hubeny, and Scott Day.

Written comments: Edwin L. Stickney, John Masterson, Elizabeth Griffing, Jeanne Farnworth, Norm Stamper, Tamara Carnival, Brian Moody, Richard Mabee, Carol E. Maurer, Mitchell "Mitch" Ronshaugen, Kevin Tewey, Paul Befumo, Cole Moeller, Shawn Heren, D. Steven Cape, Zane Hurst, Prairie Wolf, Tom Daubert, Nancy Mills, David and Medina Kinney, Edward Rudd, Bruce Scharf, Colin Stephens, Cole Moeller, James Wolfe, Steve Guettermann, Donald Morley, Frank Gary, and Patricia J. Sewell.

Ron Alsbury, Probation and Parole Bureau Chief, Pam Bunke, Administrator of the Adult Community Corrections Division, and Probation and Parole Supervisors Kim Christensen and Amy Gault spoke in favor of restricting marijuana use among the offender population.

RESPONSE #1: Based on information presented, the Department of Corrections has considered these comments and is withdrawing its proposal relative to medical marijuana.

COMMENT #2: The following individuals objected to proposed rules restricting alcohol and gambling and cited the case of *State v. Ommundson*, 1999 MT 16, 293 Mont. 133, 974 P.2d 620: Jim Wheelis, Joslyn Hunt, Greg Hood, Ed Sheehy Jr., and Elizabeth Griffing. Additionally, others objected to the restrictions on gambling and alcohol use on other grounds.

The following individuals spoke in favor of the alcohol and gambling restrictions: Pam Bunke, Ron Alsbury, Amy Gault, Kim Christensen, Mike Boston, Alex Vukovich, and Leo Gallagher.

RESPONSE #2: Since the first hearing on these proposed rules changes, the Montana Supreme Court decided the cases of *State v. Ashby*, 2008 MT 83, and *State v. Winkel*, 2008 MT 89, which significantly altered the legal landscape with respect to probation and parole conditions. While *Ommundson* restricted courts in imposing such conditions to conditions that relate to the offender's crime, *Ashby* and *Winkel* expanded the authority to impose conditions that relate to the underlying crime *or* the offender and his or her characteristics and history.

The department believes that every offender should be precluded from drinking, frequenting bars and casinos, and gambling while on probation. The alcohol and gambling restrictions, the department believes, will enhance public safety, allow offenders to more readily engage in self improvement efforts, make restitution payments to victims, and improve officer safety. The department believes that such conditions should be a normal part of probation and that they coincide with its mission for public safety and offender accountability. Bars and casinos are not conducive to positive offender behavior. Offenders who are allowed to frequent places where alcohol is the chief item of sale are legitimately in an environment that is frequently detrimental to their rehabilitation, detrimental to positive behavior, and is often detrimental to successful completion of community supervision. The department believes that restricting alcohol use serves the same purposes as the standard conditions: it ensures the offender is living in a healthy, structured environment; it provides a measure of security to probation officers when they visit offenders at home as a part of their supervisory duties; and it provides an effective tool for overall supervision of offenders.

All of the standard rules for probation and parole serve to provide consistency and structure for offenders who often times have lived in chaotic circumstances and provide effective tools for probation and parole officers with which to supervise offenders. All of the standard conditions including prohibitions on alcohol, bars and casinos, and gambling allow the department to fulfill its mission and operate a system of probation and parole.

If an offender wishes to consume alcohol or gamble while on probation, the offender may request the district court remove that condition. After careful consideration, the department is keeping this provision of the rule amendments.

COMMENT #3: Elizabeth Griffing asserted that the Department of Corrections does not have rulemaking authority.

RESPONSE #3: The Department of Corrections has explicit authority to adopt rules for the conduct of persons placed on parole or probation. This provision is found at 46-23-1002(3), MCA. Reference is also made to 53-1-203(1)(a), 2-4-201, and 46-18-801, MCA.

COMMENT #4: Ed Sheehy Jr. objected to the proposal that would require offenders to first obtain permission from their supervising officer before taking up residence in a location.

RESPONSE #4: The Department of Corrections believes it is important for the supervising officer to inspect the offender's proposed residence and approve or deny the residence based on public safety, officer safety, and the offender's rehabilitation. In order to supervise the offender, the officer will conduct home visits and, when necessary, searching the residence. In the interest of officer safety, it is important to know the general layout of the residence.

COMMENT #5: The following individuals objected to the provision requiring offenders to notify their employers of their status on probation or parole: Ed Sheehy Jr., D. Steven Cape, Scott Hubeny, B.F. "Chris" Christiaens, and Jerry McKinney.

RESPONSE #5: The Department of Corrections believes this provision is essential to its mission of public safety. Montana law requires probationers and parolees convicted of theft from an employer to notify subsequent employers of their crime. The Department of Corrections considers this a minimum requirement set forth by law and does not preclude the department from promulgating rules that obligate all offenders, regardless of their crimes, to notify their employers and others deemed necessary to protect the public. The Department of Corrections is particularly concerned about sex offenders and views it essential that employers know of the crime that their employee was convicted of committing. This is especially important when offenders are employed in the trades and go into residences to perform work. Given the risks involved, it is the department's position that an employer must know of an employee's conviction.

Some individuals commented that such requirement would inhibit an offender's ability to obtain employment. Pam Bunke, Administrator of Adult Community Corrections Division, stated that the department believes it has a duty to the public and Montana employers to ensure they are aware of the criminal history of their employees. Additionally, Probation and Parole Supervisor Amy Gault stated that she had a 99 percent employment rate among her offenders in Kalispell who were required to notify their employer. She reiterated the department's obligation to protect the public and specifically cited the risk posed by sex offenders.

COMMENT #6: Ed Sheehy Jr. objected to the final sentence in (12), under special conditions, which provides that the department may impose additional conditions on offenders committed to the department.

RESPONSE #6: The Department of Corrections agrees with Mr. Sheehy's comment and withdraws this sentence from the rule proposal.

COMMENT #7: D. Steven Cape, James Gustufson, Dawn King, Scott Hubeny, and B.F. "Chris" Christiaens objected to the provision that requires an offender to obtain permission from his supervising officer before engaging in a business or incurring a debt. Additionally, a commenter stated that requiring prior permission to purchase personal property is unreasonably restrictive.

RESPONSE #7: This comment refers to (6), which proposes to add "incurring a debt" to the list of financial activities that requires prior approval from the supervising officer. Probation and parole officers are charged with assisting offenders in rehabilitating themselves, and paying restitution to victims is a primary means of rehabilitation. Starting a business, purchasing an automobile, or incurring a debt involve significant financial obligations and should be undertaken only after a careful consideration of the offender's obligation to the victim.

The comment regarding personal property is well taken and the department withdraws that language.

/s/ Colleen A. White
Colleen A. White
Rule Reviewer

/s/ Mike Ferriter
Mike Ferriter
Director
Department of Corrections

Certified to the Secretary of State June 2, 2008

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 23.16.1805 concerning refund of)
permit fee)

TO: All Concerned Persons

1. On April 24, 2008, the Department of Justice published MAR Notice No. 23-16-195 regarding the public hearing on the proposed amendment of the above-stated rule at page 762, 2008 Montana Administrative Register, Issue Number 8.

2. The Department of Justice has amended ARM 23.16.1805 exactly as proposed.

3. A public hearing was held on May 14, 2008. No adverse comments or suggestions were offered at the public hearing and no changes have been made to the proposed rule.

By: /s/ Mike McGrath
MIKE McGRATH
Attorney General, Department of Justice

/s/ Stuart Segrest
STUART SEGREST
Rule Reviewer

Certified to the Secretary of State June 2, 2008.

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

In the matter of the amendment) NOTICE OF AMENDMENT
of ARM 24.174.301 definitions, 24.174.401)
fee schedule, 24.174.1122 ambulatory)
surgical facilities, and 24.174.2104)
continuing education)

TO: All Concerned Persons

1. On March 13, 2008, the Board of Pharmacy (board) published MAR Notice No. 24-174-58 regarding the amendment of the above-stated rules, at page 447 of the 2008 Montana Administrative Register, issue no. 5.

2. On April 3, 2008, a public hearing was held on the proposed amendment of the above-stated rules in Helena. Several comments were received by the April 11, 2008, deadline.

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

COMMENT 1: One commenter suggested that defining the fiscal year from July 1 to June 30 without any year designation in ARM 24.174.2104(2) is confusing.

RESPONSE 1: Given the opposition to other portions of the proposed rule change, the board is not proceeding with the proposed amendments to this rule.

COMMENT 2: Numerous commenters opposed to the proposed elimination of the CEU carryover from one year to the next. Several commenters stated that the change would impose an undue burden on rural area pharmacists having limited access to CE credits and facing greater travel time, additional difficulty, and expense in securing relief pharmacists to cover the pharmacy. Commentators opposed the change stating it would discourage pharmacists' attendance at the beneficial but fairly expensive regional or national conferences since any excess CE credits would be wasted. Many argued Montana's group credit requirement is an additional hurdle that would be made more difficult by removing CE carryover and suggested eliminating the group CE requirement if CE carryover is disallowed.

Several individuals opposed eliminating carryover because it would remove the security of having a CE cushion for use in case of illness, emergency, or inclement weather at the time of a planned CE forum.

Several commenters recognized CE fraud as a problem, but objected to punishing all pharmacists for the bad acts of a few. Commenters suggested the board impose more effective discipline on those caught cheating and perform more effective audits to catch those committing fraud. Suggestions for improving the audit

system included staggered, two-year renewal cycles, annual reporting of CE credits with license renewal, requiring CE providers to send attendance confirmation to the board, and/or auditing two or three years at a time.

RESPONSE 2: The board concluded that many of the commenters' suggestions warrant further review and the issues of CE requirements and board audit procedures will be placed on a future board agenda. Several suggestions, including changing group CE credits, would involve substantive rule changes not within the scope of this notice and would require a separate rulemaking process. Following review and discussion, the board decided to not proceed with the proposed amendments to ARM 24.174.2104 at this time.

4. The board has amended ARM 24.174.301, 24.174.401, and 24.174.1122 exactly as proposed.

5. The board is not amending ARM 24.174.2104 at this time.

BOARD OF PHARMACY
JAMES CLOUD, CPHT, PRESIDENT

/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 June 2, 2008

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)
36.25.801, 36.25.804, 36.25.805,)
36.25.807, 36.25.808, 36.25.810,)
36.25.811, 36.25.812, 36.25.813,)
36.25.815, and the repeal of ARM)
36.25.806 regarding the land banking)
program)

NOTICE OF AMENDMENT
AND REPEAL

To: All Concerned Persons

1. On February 14, 2008, the Department of Natural Resources and Conservation published MAR Notice No. 36-22-122 regarding a notice of public hearing on the proposed amendment and repeal of the above-stated rules at page 289 of the 2008 Montana Administrative Register, Issue No. 3.

2. The department has amended ARM 36.25.801, 36.25.804, 36.25.805, 36.25.808, 36.25.810, 36.25.811, 36.25.812, 36.25.813, and 36.25.815 as proposed and repealed ARM 36.25.806 as proposed.

3. The department has amended ARM 36.25.807 as proposed but with the following changes from the original proposal, matter to be stricken interlined, new matter underlined:

36.25.807 TERMINATION OF LESSEE-INITIATED LAND BANKING SALE
AFTER DEPOSIT AND PROCESSING COSTS PAID BY LESSEE

(1) remains as proposed.

(2) If the lessee cancels the sale ~~after the department has given notice of the auction~~, the lessee shall pay all costs incurred by the department in preparing the sale, including but not limited to:

(2)(a) through (4) remain as proposed.

4. No comments or testimony were received.

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

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

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

Certified to the Secretary of State June 2, 2008.

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,
Rule I, the amendment of ARM	)	AMENDMENT, AND REPEAL
37.78.102, 37.78.103, 37.78.215,)	
37.78.216, 37.78.402, 37.78.406,)	
37.78.420, and 37.78.806, and the)	
repeal of ARM 37.78.425 pertaining to)	
Temporary Assistance for Needy)	
Families (TANF))	

TO: All Interested Persons

1. On March 27, 2008, the Department of Public Health and Human Services published MAR Notice No. 37-434 pertaining to the public hearing on the proposed adoption, amendment, and repeal of the above-stated rules, at page 534 of the 2008 Montana Administrative Register, issue number 6.
2. The department has adopted New Rule I (37.78.833) as proposed.
3. The department has amended ARM 37.78.102, 37.78.103, 37.78.215, 37.78.216, 37.78.402, 37.78.406, 37.78.420, and 37.78.806 and repealed ARM 37.78.425 as proposed.
4. No comments or testimony were received.

/s/ Francis Clinch
Rule Reviewer

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

Certified to the Secretary of State June 2, 2008.

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

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

NOTICE OF AMENDMENT

TO: All Interested Persons

- 1. On April 10, 2008, the Department of Public Health and Human Services published MAR Notice No. 37-435 pertaining to the public hearing on the proposed amendment of the above-stated rule, at page 607 of the 2008 Montana Administrative Register, issue number 7.
- 2. The department has amended ARM 37.85.212 as proposed.
- 3. No comments or testimony were received.
- 4. The proposed rule changes are effective July 1, 2008.

/s/ Geralyn Driscoll
Rule Reviewer

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

Certified to the Secretary of State June 2, 2008.

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

In the matter of the amendment of ARM	)	NOTICE OF AMENDMENT
37.86.805, 37.86.1004, 37.86.1506,)	
37.86.2405, 37.86.2505, and)	
37.86.2605 pertaining to hearing aid)	
services, dental, home infusion therapy,)	
durable medical equipment, and)	
ambulance services)	

TO: All Interested Persons

1. On April 24, 2008, the Department of Public Health and Human Services published MAR Notice No. 37-440 pertaining to the public hearing on the proposed amendment of the above-stated rules, at page 797 of the 2008 Montana Administrative Register, issue number 8.

2. The department has amended ARM 37.86.805, 37.86.1004, 37.86.1506, 37.86.2405, 37.86.2505, and 37.86.2605 as proposed.

3. No comments or testimony were received.

4. These rule amendments are effective July 1, 2008.

/s/ John Koch
Rule Reviewer

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

Certified to the Secretary of State June 2, 2008.

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

In the matter of the amendment of ARM)
37.86.1101, 37.86.1102, and)
37.86.1105 pertaining to Medicaid)
requirements and reimbursement for)
outpatient drugs)

NOTICE OF AMENDMENT

TO: All Interested Persons

1. On April 24, 2008, the Department of Public Health and Human Services published MAR Notice No. 37-439 pertaining to the public hearing on the proposed amendment of the above-stated rules, at page 792 of the 2008 Montana Administrative Register, issue number 8.

2. The department has amended ARM 37.86.1101, 37.86.1102, and 37.86.1105 as proposed.

3. The department has thoroughly considered all commentary received. The comments received and the department's response to each follow:

COMMENT #1: We agree that the dispensing fee should be increased. We hope that the department will increase it further to approach the actual cost of the service.

RESPONSE: The department thanks the commentor for their support of the increased dispensing fee as allowed through legislative appropriations. The department will continue to evaluate a provider's cost to dispense prescription drugs and make necessary adjustments within the department's budget.

COMMENT #2: We believe that dispensing a 90 day supply would harm patients by limiting interactions with the pharmacy.

RESPONSE: The department disagrees. This service is intended only for very select classes of medications and only after the patient is established on a stable dose. A patient filling a prescription for a new medication or new strength of medication would not be allowed to fill a maintenance supply of a medication until it has been demonstrated that the patient can tolerate and appropriately respond to the medication. The department intends that it will be one to two months or more before a new prescription becomes a "maintenance medication" for that patient. Since this service applies only to generic tablet or capsule form maintenance medications, the pharmacy will likely continue to be filling other prescriptions for the patient on a monthly basis. The department based this rule on a study demonstrating increased medication compliance by allowing maintenance supplies of certain medications. The commentors provided no evidence to the contrary.

COMMENT #3: We are concerned that dispensing a 90 day supply of medication could potentially magnify the problem of patients filling prescriptions at more than one pharmacy.

RESPONSE: If a patient's medication has been determined to be a maintenance drug, a prescription for a new strength of a maintenance drug would not meet the definition of a "maintenance medication" and a maximum 34 day supply would be allowed. If the patient decided to go to a different pharmacy, Medicaid's Prospective Drug Utilization Review (ProDUR) edits would alert the new pharmacist to any potential issues. Nothing in these amendments changes the patient's ability to use the pharmacy of their choice.

COMMENT #4: Rural access could be adversely affected if pharmacy business is adversely affected by a large number of patients obtaining medication by mail order. We are concerned about the potential losses when dispensing maintenance supplies of medications. This could run rural pharmacies out of business, especially if other payors follow Medicaid's lead.

RESPONSE: The department disagrees. This service is intended only for very select classes of medications and only after the patient is established on a stable dose. The department acknowledges that pharmacies will not collect three dispensing fees for filling one prescription. However, maintenance supplies are permitted only in a select few categories of generic drugs where compliance increases positive outcomes for patients. Medications not on the list of maintenance medications, the majority of Medicaid pharmacy claims, would still be limited to a 34 day supply. Thus, the effect on even a small pharmacy, if any, should be minimal.

Medicaid is secondary to other third party payors. These amendments will allow Medicaid to conform to federal mandates requiring that Medicaid be the payor of last resort. By allowing 90 day or 100 dose supplies to be billed to both a patient's primary insurance as well as Medicaid, these amendments ensure the department will be the payor of last resort.

COMMENT #5: Dispensing a 90 day supply will cause waste due to lost or changing prescriptions. It could be used to obtain medications when a patient is no longer eligible for Medicaid.

RESPONSE: The commentors were concerned with the cost of medications when a patient does not have consecutive monthly spans of Medicaid eligibility. They argued that if eligibility spans are not consecutive, an oversupply of medication would result, to the detriment of Montana taxpayers. The department researched this argument thoroughly, and disagrees with the commentors. The department acknowledges the possibility that some patients may not have consecutive monthly spans of eligibility considering the month-to-month eligibility determination for Medicaid, however there are no statistics to support that this is a widespread issue or that it has a significant effect on Medicaid expenditures.

4. These amendments are effective July 1, 2008.

/s/ John Koch
Rule Reviewer

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

Certified to the Secretary of State June 2, 2008.

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

In the matter of the repeal of ARM)
37.88.1111 pertaining to the direct care)
wage add-on for certain mental health)
care providers)

NOTICE OF REPEAL

TO: All Interested Persons

1. On April 10, 2008, the Department of Public Health and Human Services published MAR Notice No. 37-436 pertaining to the proposed repeal of the above-stated rule, at page 612 of the 2008 Montana Administrative Register, issue number 7.
2. The department has repealed ARM 37.88.1111 as proposed.
3. No comments or testimony were received.

/s/ John Koch
Rule Reviewer

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

Certified to the Secretary of State June 2, 2008.

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):

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

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through March 31, 2008. This table includes those rules adopted during the period April 1, 2008, through June 30, 2008, 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 March 31, 2008, 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 2007 and 2008 Montana Administrative Register.

To aid the user, the Accumulative Table includes rulemaking actions of such entities as boards and commissions listed separately under their appropriate title number.

GENERAL PROVISIONS, Title 1

- 1.3.101 and other rules - Secretary of State's Model Rules, p. 1003
- 1.3.211 and other rules - Attorney General's Model Rules, p. 988

ADMINISTRATION, Department of, Title 2

- I-IV Mortgage Lender Surety Bond - Branch Office Licensing - Supervision of Branch Offices and Loan Officers - Responsibility for Acts of Agents, p. 862
- 2.4.202 and other rule - Minimum Refunds - State's Volume Cap Allocation, p. 1351, 35
- 2.5.120 and other rules - Procurement of Supplies and Services - Surplus Property, p. 1116, 1657, 36
- 2.6.101 Insurance Requirements, p. 1130, 37
- 2.6.205 and other rule - State Vehicle Use, p. 355, 614
- 2.13.202 and other rules - Implementing HB 27: Defining Eligibility and Distribution of HB 27 Surcharge Funds for Wireless 911 Emergency Systems, p. 210, 558
- 2.59.1401 and other rules - Regulation of Title Lenders - Title Loan Designation - Notification to the Department - Rescinded Loans - Failure to Correct Deficiencies - Department's Cost of Administrative Action - Examination Fees - Required Record Keeping - Sale of Repossessed Property - Unfair Practice, p. 846

2.59.1701 and other rules - Licensing and Regulation of Mortgage Brokers and Loan Originators - Continuing Education - Prelicensing Examination - Designated Managers - Examinations - Failure to Correct Deficiencies - Grounds for the Denial of an Application - Costs in Bringing the Administrative Action - Scheme to Defraud or Mislead, p. 666

(Public Employees' Retirement Board)

2.43.304 Actuarial Rates and Assumptions, p. 430, 1018

2.43.441 Purchase of Service Credit Through Trustee-to-Trustee Fund Transfers, p. 1841, 117

(Teachers' Retirement Board)

2.44.301A and other rules - Definitions - Optional Retirement Program - Calculating Service Credits - Corrections of Errors, Family Law Orders - Withholding of Insurance Premium from Retirement Benefit, p. 1132, 2120

2.44.308 and other rules - Independent Contractors - Calculating Service Credits - Termination Pay - Earned Compensation - Benefit Adjustments, p. 1558, 2121, 38

(State Compensation Insurance Fund)

2.55.320 Classifications of Employments, p. 1566, 2123

(State Lottery Commission)

2.63.1201 and other rule - State Lottery's Procedures Pertaining to Prizes and Sales Incentives, p. 1569, 2009

AGRICULTURE, Department of, Title 4

I-VII (Departments of Agriculture and Livestock) Montana Certified Natural Beef Cattle Marketing Program, p. 1, 564

4.2.101 and other rules - Model Procedural Rules - Wheat and Barley Procedural Rule - Public Participation Rule in the Mint Program - Hail Insurance Program Public Participation, p. 433, 942

4.4.303 Insured Crops, p. 215, 562

4.5.201 and other rules - Noxious Weed List Categories, p. 217, 563

STATE AUDITOR, Title 6

I-IV Debt Collections, p. 509, 943

I-VI Permitting the Recognition of Preferred Mortality Tables for Use in Determining Minimum Reserve Liabilities, p. 1844, 136

I-XII Funeral Insurance Rules, p. 1718, 118

6.6.3101 and other rules - Long-Term Care, p. 222, 615

6.6.4201 Continuing Education Program for Insurance Producers, Adjusters, and Consultants, p. 868

- 6.6.5221 Small Business Health Insurance Purchasing Pool and Tax Credits, p. 436, 944
- 6.6.8301 Updating References to the NCCI Basic Manual for New Classifications for Various Industries, p. 513

COMMERCE, Department of, Title 8

- I Administration of Treasure State Endowment (TSEP) Grants Awarded by the 2007 Legislature, p. 872
- I Administration of the 2008-2009 Federal Community Development Block Grant (CDBG) Program, p. 1850, 802
- I Submission and Review of Applications to the Treasure State Endowment Program (TSEP), p. 1853, 315
- 8.99.401 and other rules - Microbusinesses, p. 1730, 486, 624
- 8.99.901 and other rules - Award of Grants and Loans Under the Big Sky Economic Development Program, p. 1981, 324

(Montana Coal Board)

- I Internal Management Procedures of the Montana Coal Board, p. 603

(Hard-Rock Mining Impact Board)

- 8.104.101 and other rules - Organizational and Procedural Rules of the Hard-Rock Mining Impact Board, p. 81, 945

(Board of Housing)

- 8.111.305 and other rule - Homeownership Program, p. 267
- 8.111.501 and other rules - Housing Loans, p. 1855, 40

(Montana Heritage Preservation and Development Commission)

- 10.125.101 and other rules - Transfer from the Department of Education - Sale of Real and Personal Property by the Montana Heritage Preservation and Development Commission, p. 2026, 492

FISH, WILDLIFE, AND PARKS, Department of, Title 12

(Fish, Wildlife, and Parks Commission)

- I Notice of Adoption of a Temporary Emergency Rule - Closing the Smith River From Camp Baker to Eden Bridge, p. 626, 805
- I No Wake Zone on Echo Lake, p. 85, 1019
- I No Wake Zone on Swan Lake, p. 87, 1024
- I-III Delegating Commission Authority to the Department to Close Public Waters in the Event of a Fire Emergency, p. 520
- I-VI Angling Restrictions and Fishing Closures, p. 516

ENVIRONMENTAL QUALITY, Department of, Title 17

- I-III Definitions - Certification of Energy Production, Transportation, and Research Facilities for Tax Abatement and Classification, p. 2046, 1027
- 17.50.501 and other rules - Licensing and Operation of Solid Waste Landfill Facilities, p. 688, 985
- 17.56.502 and other rules - Underground Storage Tanks - Reporting and Numbering Petroleum Releases, p. 1743, 2124

(Board of Environmental Review)

- 17.30.502 and other rules - Water Quality - Subdivisions - CECRA - Underground Storage Tanks - Department Circular DEQ-7, p. 2035, 946
- 17.30.610 Water Quality - Surface Water Quality, p. 2043, 948
- 17.30.617 and other rule - Water Quality - Outstanding Resource Water Designation for the Gallatin River, p. 2294, 328, 1398, 438

TRANSPORTATION, Department of, Title 18

- 18.6.202 and other rule - Transportation Commission - Electronic Billboards, p. 523

CORRECTIONS, Department of, Title 20

- 20.7.801 Eastmont Chemical Dependency Treatment Program, p. 605
- 20.7.1101 and other rule - Conditions on Probation or Parole, p. 1984, 273

JUSTICE, Department of, Title 23

- I-XXV Establishment of Peace Officers Standards and Training (POST), p. 732
- 1.3.211 and other rules - Model Rules, p. 988

(Board of Crime Control)

- 23.14.401 and other rules - Transfer of POST Duties to a New Division - Decision-making Authority - Payments of Claims - Establishing Appeal Procedures From POST Decisions - Changes in Statute, p. 748

(Gambling Control Division)

- I Procedure for Providing Notice to Multi-Game Machine Owners and Lessees to Connect to an Approved Accounting and Reporting System, p. 440, 806
- 23.16.102 and other rules - Effective Date of Forms - Removal of Form 1 from the Rules - Application Time Limit for Utilizing an Approved Automated Accounting and Reporting System as Part of a Vending Agreement, p. 1572, 1859, 2010, 2126
- 23.16.1805 Refund of Permit Fee, p. 762

LABOR AND INDUSTRY, Department of, Title 24

Boards under the Business Standards Division are listed in alphabetical order following the department rules.

- 8.11.101 and other rules - Transfer from the Department of Commerce - Licensed Addiction Counselors, p. 380
- 24.7.302 and other rules - Board of Labor Appeals Procedural Rules, p. 8, 628
- 24.17.127 Prevailing Wage Rates for Public Works Projects Using Building Construction Services, Heavy Construction Services, and Highway Construction Services, p. 765
- 24.29.1402 and other rules - Workers' Compensation Medical Fee Schedule for Facilities, p. 768
- 24.29.1529 Allowable Charges for Prescription Drugs Under a Workers' Compensation Claim, p. 1581, 2011
- 24.101.413 and other rule - Licensed Addiction Counselors - Renewals - Fees, p. 444, 949

(Alternative Health Care Board)

- 24.111.407 and other rules - Nonroutine Applications - Licensing by Examination - Licensing by Endorsement - Natural Substance Formulary - Apprenticeship Requirements, p. 358, 1033

(Board of Architects and Landscape Architects)

- 24.114.401 and other rule - Fee Schedule - Examination, p. 11

(Board of Barbers and Cosmetologists)

- 24.121.301 and other rules - Definitions - Premises and General Requirements - Applications for Licensure - School-Facility and Operation - Teacher-Training Curriculum - Salons/Booth Rental - Sanitary Standards - Unprofessional Conduct - Anonymous Complaints - Disinfecting Agents - Blood Spills, p. 1502, 382

(Board of Clinical Laboratory Science Practitioners)

- 24.129.401 and other rules - Fees - Supervision - Standards for Licensure - Unprofessional Conduct - Inspections - Notification, p. 1584, 629

(Board of Dentistry)

- 24.138.407 and other rules - Functions for Dental Hygienists - Specialty Advertising - Hygiene Diagnosis and Treatment Planning, p. 14, 566
- 24.138.502 and other rules - Licensure, p. 527

(Board of Medical Examiners)

- 24.156.1306 Professional Conduct - Standards of Professional Practice, p. 1751, 807

(Board of Nursing)

- 24.159.301 and other rules - Definitions - Foreign Educated Applicants for RN Licensure Requirements - APRNs, p. 875
- 24.159.301 and other rules - Definitions - Standards Related to the Practical Nurse - Prohibited IV Therapies, p. 279, 532

(Board of Occupational Therapy Practice)

- 24.165.404 and other rule - Licensure - Approved Instruction, p. 997

(Board of Pharmacy)

- 24.174.301 and other rules - Definitions - Fee Schedule - Ambulatory Surgical Facilities - Continuing Education, p. 447
- 24.174.401 Fee Schedule, p. 2051, 631

(Board of Private Alternative Adolescent Residential or Outdoor Programs)

- 24.101.413 and other rules - Renewals - Registration Fee Schedule - Fee Abatement - Licensing Fee Schedule, p. 451, 1031

(Board of Private Security)

- 24.182.401 and other rule - Experience Requirements, p. 89, 951

(Board of Radiologic Technologists)

- 24.204.401 and other rules - Fees - Permit Fees - Applications - Examinations, p. 1754, 325

(Board of Realty Regulation)

- 24.210.641 Unprofessional Conduct, p. 366, 808

(Board of Speech-Language Pathologists and Audiologists)

- 24.222.301 and other rules - Definitions - Licensure - Temporary Practice Permits - Supervision - Functions of Aides or Assistants - Continuing Education, p. 2054, 385

(Board of Veterinary Medicine)

- 24.225.401 and other rules - Fees - Infectious Waste - Licensing - Embryo Transfer - Euthanasia Technicians and Agencies - Complaints - Screening Panel - Nonroutine Applications, p. 2062, 633

LIVESTOCK, Department of, Title 32

(Board of Horse Racing)

- I-VIII Advance Deposit Account Wagering on Horse Racing and Greyhound Racing, p. 18, 494
- 32.28.709 and other rules - Horse Racing, p. 1861, 41

MILITARY AFFAIRS, Department of, Title 34

- I-VIII Montana Military Family Relief Fund, p. 1870, 43
- 34.7.101 and other rules - Reimbursement for Life Insurance Premiums Paid by Montana Reserve Component Service Members Serving Outside Montana in a Contingency Operation, p. 1864, 42

NATURAL RESOURCES AND CONSERVATION, Department of, Title 36

- 36.12.101 and other rules - Definitions - Filing Fee Refunds - Objection to Application, p. 1527, 567
- 36.12.101 and other rule - Definitions - Basin Closure Area Exceptions and Compliance, p. 1164, 140
- 36.12.102 and other rule - Forms - Form and Special Fees, p. 2075, 326

(Board of Land Commissioners)

- 36.25.301 and other rules - Coal Leasing Rules, p. 900
- 36.25.801 and other rules - Land Banking Program, p. 289

PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

- I & II General Medicaid Services - Physician Administered Drugs, p. 376, 956
- I-VIII Newborn Hearing Screening, p. 2082, 171
- I-IX Awarding Grants to Carry Out the Purposes of the Montana Community Health Center Support Act, p. 1990, 959
- I-X 72-Hour Presumptive Eligibility for Adult Crisis Stabilization Services, p. 307, 641
- I-XVI Home and Community Services for Seriously Emotionally Disturbed Youth, p. 2100, 335
- 37.8.102 and other rules - Vital Statistics, p. 1768, 2127, 169
- 37.12.401 Laboratory Testing Fees, p. 1000
- 37.12.401 Laboratory Testing Fees, p. 780
- 37.30.405 Vocational Rehabilitation Program Payment for Services, p. 369, 953
- 37.30.730 Vocational Rehabilitation Program Provider Fees, p. 1588, 2012
- 37.40.302 and other rules - Medicaid Nursing Facility Reimbursement, p. 783
- 37.57.301 and other rules - Newborn Screening Tests and Eye Treatment, p. 1790, 44
- 37.70.601 Low Income Energy Assistance Program (LIEAP), p. 372, 810
- 37.78.102 and other rules - Temporary Assistance for Needy Families (TANF), p. 534
- 37.78.102 and other rules - Temporary Assistance for Needy Families (TANF), p. 1296, 1818, 172
- 37.79.102 and other rules - Children's Health Insurance Program (CHIP), p. 1591, 49
- 37.80.101 and other rules - Child Care Assistance Program, p. 1758, 174

- 37.81.104 and other rules - Pharmacy Access Prescription Drug Benefit Program (Big Sky Rx), p. 457, 954
- 37.82.101 and other rules - Medicaid Eligibility, p. 915
- 37.82.101 Medicaid Eligibility, p. 1619, 2131
- 37.82.435 Medicaid Real Property Liens, p. 1608, 2132
- 37.85.212 Resource Based Relative Value Scale (RBRVS), p. 607
- 37.86.805 and other rules - Hearing Aid Services - Dental - Home Infusion Therapy - Durable Medical Equipment - Ambulance Services, p. 797
- 37.86.1101 and other rules - Medicaid Requirements and Reimbursement for Outpatient Drugs, p. 792
- 37.86.1101 and other rule - Medicaid Reimbursement for Dispensing Fees and Outpatient Compound Prescriptions, p. 1611, 53
- 37.86.1801 and other rules - Durable Medical Equipment - Medical Supplies, p. 1633, 2134
- 37.86.2207 Medicaid Reimbursement for the Therapeutic Portion of Therapeutic Youth Group Home Treatment Services, p. 31, 634
- 37.88.1111 Direct Care Wage Add-on for Certain Mental Health Care Providers, p. 612
- 37.104.601 and other rules - Automated External Defibrillators, p. 2094, 337
- 37.106.1946 and other rules - Crisis Stabilization Facilities, p. 905
- 37.108.507 Components of Quality Assessment Activities, p. 301, 958

PUBLIC SERVICE REGULATION, Department of, Title 38

- 38.2.5001 and other rules - Protective Orders - Protection of Confidential Information, p. 833, 2135
- 38.5.1902 Cogeneration and Small Power Production, p. 1020, 2140
- 38.5.2202 and other rule - Pipeline Safety, p. 1642, 2145
- 38.5.6001 and other rules - Public Utilities - Electricity Suppliers - Natural Gas Suppliers, p. 93, 575
- 38.5.8301 and other rule - Renewable Energy Standards for Public Utilities and Electricity Suppliers, p. 1798, 2146

REVENUE, Department of, Title 42

- I Property Tax Refund Hardship Request, p. 1804, 2156
- I & II Tax Year 2007 Property Tax Credit, p. 1807, 58
- I-III Property Tax Incentives for New Investment, Development Research, and Technology Related to Renewable Energy, p. 1878, 811
- I-IV Biodiesel and Biolubricant Tax Credit, p. 1892, 61
- I-XII Local Government Tax Increment Financing Districts (TIFD), p. 548
- 42.2.304 and other rules - General Department Rules, p. 2000, 340
- 42.4.118 and other rules - Alternative Energy Tax Credits, p. 1913, 387
- 42.4.502 Capital Gain Credit, p. 1896, 57
- 42.4.1603 and other rule - New and Expanded Industry Credits, p. 1889, 60
- 42.4.2701 and other rule - Qualified Endowment, p. 1885, 62
- 42.4.3102 and other rule - Contractor's Gross Receipts Taxes, p. 1883, 63

- 42.4.3301 and other rules - Movie, Television, and Related Media Tax Credits, p. 1919, 64
- 42.15.108 and other rules - Individual Income Taxes, p. 1905, 178
- 42.17.101 and other rules - Mineral Royalty Backup Withholding, p. 1647, 2151
- 42.17.105 and other rules - Estimated Tax Payments, p. 1900, 65
- 42.18.128 and other rule - Property Taxes - Appraisal Plan Definitions and Disabled Veterans, p. 1645, 2155
- 42.31.501 Telecommunications License and Telecommunications Excise Tax, p. 1655, 642

SECRETARY OF STATE, Office of, Title 44

- 1.3.101 and other rules - Model Rules, p. 1003
- 44.2.101 and other rules - Commissioning of Notaries Public, p. 1923, 66
- 44.3.102 and other rules - Elections, p. 930

(Commissioner of Political Practices)

- I Limitations on Individual and Political Party Contributions, p. 471, 1034
- 44.10.335 and other rules - Constituent Services Accounts, p. 474