

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 5

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 The Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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

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BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the proposed)	AMENDED NOTICE OF PUBLIC
amendment of ARM 2.59.1501 pertaining	)	HEARING ON PROPOSED
to definitions and ARM 2.59.1502	)	AMENDMENT AND ADOPTION
pertaining to application procedure)	
required to engage in deposit lending,)	
and the proposed adoption of NEW)	
RULE I pertaining to reports, NEW)	
RULE II pertaining to schedule of charges,)	
NEW RULE III pertaining to employees')	
character and fitness, NEW RULE IV)	
pertaining to electronic deductions, and)	
NEW RULE V pertaining to income)	
verification)	

TO: All Concerned Persons

1. On February 23, 2006 the Division of Banking and Financial Institutions published MAR Notice No. 2-2-369 at page 375 of the 2006 Montana Administrative Register, issue number 4 regarding the proposed amendment and adoption of the above-stated rules. The public hearing will remain scheduled on March 22, 2006, at 10:00 a.m. in Room 342 of the Park Avenue Building, 301 S. Park, Helena, Montana.

2. This amended notice is being filed to provide more information in the rationale regarding the necessity for the proposed adoption of New Rule III and to correct an error made in the implementation section of New Rule V.

3. The reasonable necessity regarding New Rule III is amended as follows: New Rule III is needed to clarify the procedure for licensees to comply with the employees' character and fitness standards enacted during the 2005 Regular Legislative Session. In particular, New Rule III will enable the Division of Banking and Financial Institutions to verify that the deferred deposit loan licensees are complying with 31-1-705(3)(b), MCA. That section of the Montana Deferred Deposit Loan Act states that the Department may not issue or renew a license if the criminal history of the employees of the applicant demonstrates any convictions involving fraudulent or dishonest financial dealings or if the Department's findings show adverse civil judgments involving fraudulent or dishonest financial dealings.

4. The correction to Rule V reads as follows, stricken matter interlined, new matter underlined:

NEW RULE V INCOME VERIFICATION (1) and (2) remain as proposed.

AUTH: 31-1-702, MCA

IMP: ~~31-1-722~~, 31-1-723, MCA

5. The Department of Administration, Division of Banking and Financial Institutions, will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice. If you require an accommodation, contact the Division of Banking and Financial Institutions no later than 5:00 p.m. on March 17, 2006, to advise us of the nature of the accommodation that you need. Please contact Christopher Romano, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; telephone (406) 841-2928; TDD (406) 444-1421; facsimile (406) 841-2930; e-mail to cromano@mt.gov.

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 Mark Prichard, Legal Counsel, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; faxed to the office at (406) 841-2930; e-mailed to mprichard@mt.gov, and must be received no later than March 27, 2006.

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

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

9. The Division of Banking and Financial Institutions maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this division. Persons who wish to have their name added to the mailing list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding division rulemaking actions. Such written requests may be mailed or delivered to Christopher Romano, Division of Banking and Financial Institutions, 301 S. Park, Ste. 316, P.O. Box 200546, Helena, Montana 59620-0546; faxed to the office at (406) 841-2930; e-mailed to cromano@mt.gov, or may be made by completing a request form at any rules hearing held by the Division of Banking and Financial Institutions.

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

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

BY: /s/ Ali Bovingdon
Ali Bovingdon, Rule Reviewer
Department of Administration

Certified to the Secretary of State February 27, 2006.

BEFORE THE DEPARTMENT OF TRANSPORTATION
OF THE STATE OF MONTANA

In the matter of the amendment of ARM	)	NOTICE OF PROPOSED
18.8.1501, 18.8.1502, and 18.8.1505 to	)	AMENDMENT
incorporate amendments to federal)	
regulations pertaining to motor vehicle	)	NO PUBLIC HEARING
standards previously incorporated by	)	CONTEMPLATED
reference in current rules and to make)	
general revisions to clarify scope of rules)	

TO: All Concerned Persons

1. On April 10, 2006, the Department of Transportation proposes to amend the above-stated rules.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact Daniel Moore no later than 5:00 p.m. on April 5, 2006, to advise us of the nature of the accommodation that you need. Please contact Daniel Moore, MDT Motor Carrier Services, P.O. Box 4639, Helena, MT 59604, (406) 444-0454, TTY (406) 444-7696 or (800) 335-7592, fax (406) 444-7670, or e-mail dmoore@mt.gov.

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

18.8.1501 TRANSPORTATION OF HAZARDOUS MATERIALS - INTRASTATE OPERATION - DEFINITIONS (1) A commercial motor vehicle or motor carrier subject to regulation by the department under ~~44-1-1005~~ 61-10-154, MCA, shall comply with and the department adopts by reference the following federal regulations of the Department of Transportation concerning the transportation of hazardous materials. The regulations adopted by reference are 49 CFR part 107, 49 CFR part 171, 49 CFR part 172, 49 CFR part 173, 49 CFR part 177, 49 CFR part 178, and 49 CFR part 180. The regulations adopted may be found in the Code of Federal Regulations, Title 49, chapter I, subchapters B and C, as updated through ~~October 1, 2003~~ January 1, 2006. Copies may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

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

(f) "Gross vehicle weight (GVW)" means the weight of a vehicle without load plus the weight of any load on the vehicle. In the absence of a readily available means to determine the weight of a vehicle, GVW will be deemed to equal the ~~vehicle's declared weight, as that term is defined in 61-1-510, MCA,~~ maximum weight limit for which the vehicle is licensed under Title 61, chapter 10, MCA, or the actual physical weight of the vehicle, or the aggregate value of the tire rating in pounds for each tire on a vehicle missing a manufacturer's rating certification plate,

whichever is greater.

(g) through (j) remain the same.

AUTH: 44-1-1005, 69-12-201, MCA

IMP: 44-1-1005, 69-12-201, MCA

18.8.1502 FEDERAL MOTOR CARRIER SAFETY RULES AND STATE MODIFICATIONS (1) Any commercial motor vehicle or motor carrier subject to regulation by the department under ~~44-1-1005~~ 61-10-154, MCA, shall comply with and the department adopts by reference the following portions of the Federal Motor Carrier Safety Regulations of the Department of Transportation, subject to the provisions of (2). The regulations adopted are 49 CFR part 382, 49 CFR part 385, 49 CFR part 387, 49 CFR parts 390 through 399, and Appendix G to subchapter B of chapter III, Title 49 of the Code of Federal Regulations, as updated through ~~October 1, 2003~~ January 1, 2006. Copies of the regulations may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

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

AUTH: 44-1-1005, 69-12-101, 69-12-103, 69-12-201, MCA

IMP: 44-1-1005, 61-10-141, 69-12-103, 69-12-201, MCA

18.8.1505 SAFETY INSPECTION PROGRAM: PURPOSE AND OUT-OF-SERVICE CRITERIA (1) remains the same.

(2) In addition to the federal regulations adopted in ARM ~~23.5.102~~ 18.8.1502, the safety inspection program will follow Commercial Vehicle Safety Alliance (CVSA), North American Uniform Out-of-Service Criteria (~~January 1, 2004~~) (April 2006, and August 2005), incorporated by reference. A copy of the North American Uniform Out-of-Service Criteria may be obtained from the Commercial Vehicle Safety Alliance, 1101 17th Street, NW, Suite 803, Washington, DC 20036.

(3) remains the same.

AUTH: 44-1-1005, 69-12-201, MCA

IMP 44-1-1005, 69-12-201, 69-12-201, MCA

4. REASONS: ARM 18.8.1501(1) is being amended because this change is necessary due to the most recent changes in the federal rules, particularly those pertaining to drivers hours of service.

ARM 18.8.1501(2)(f) is being amended because this change is necessary because 61-1-510, MCA, was repealed effective January 1, 2006.

ARM 18.8.1502(1) is being amended because this change is necessary to reference the correct statute and to include the most recent changes in the federal rules.

ARM 18.8.1505(2) is being amended because this change is necessary to

include the 2005 version and its updates. 2006 is included because the Out of Service Criteria is updated annually in April.

5. Concerned persons may present their data, views or arguments concerning the proposed amendment in writing to Daniel Moore, MDT Motor Carrier Services, P.O. Box 4639, Helena, MT 59604. Any comments must be received no later than April 6, 2006.

6. If persons who are directly affected by the proposed amendment wish to express their data, views and arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments they have to Daniel Moore, MDT Motor Carrier Services, P.O. Box 4639, Helena, MT 59604. A written request for hearing must be received no later than April 6, 2006.

7. If the agency receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action; from the appropriate administrative rule review committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, 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 500 persons based on the current number of intrastate motor carriers operating (3,000), and interstate motor carriers domiciled (2,000) in the state.

8. The Department of Transportation maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding a specific subject or subjects. Such written request may be mailed or delivered to Lyle Manley, Legal Services, Department of Transportation, P.O. Box 201001, Helena, MT 59620-1001, (406) 444-6097, TTY (406) 444-7696, fax (406) 444-7277, e-mail lmanley@mt.gov, or may be made by completing a request form at any rules hearing held by the department.

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

By: /s/ James D. Currie
James D. Currie, Deputy Director
Department of Transportation

/s/ Lyle Manley
Lyle Manley, Rule Reviewer

Certified to the Secretary of State, February 27, 2006.

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

In the matter of the proposed) NOTICE OF PUBLIC
amendment of ARM 24.114.301) HEARING ON PROPOSED
definitions, 24.114.401, 24.114.402,) AMENDMENT AND REPEAL
24.114.403, 24.114.404, 24.114.405,)
24.114.406, and 24.114.407)
pertaining to general provisions,)
24.114.501, 24.114.502, 24.114.503,)
and 24.114.510 pertaining to licensing,)
24.114.2101 pertaining to renewals,)
24.114.2301 pertaining to unprofessional)
conduct, and 24.114.2402 pertaining)
to screening panel, and the proposed)
repeal of 24.114.2401 pertaining to)
complaint procedure)

TO: All Concerned Persons

1. On March 30, 2006, at 1:00 p.m., a public hearing will be held in room B-07 of the Park Avenue Building, 301 South Park Avenue, Helena, Montana to consider the proposed amendment and repeal of the above-stated rules.

2. The Department of Labor and Industry (Department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Architects (Board) no later than 5:00 p.m., on March 24, 2006, to advise us of the nature of the accommodation that you need. Please contact Brooke Jasmin, Board of Architects, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2351; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2309; e-mail dlibsduc@mt.gov.

3. GENERAL STATEMENT OF REASONABLE NECESSITY: As part of the periodic administrative rule review, the Board is proposing a substantial number of revisions to its rules. Some of the proposed amendments are technical in nature, such as renumbering and reorganization of rules for easier flow and understanding and to streamline the rules. Similar technical changes substitute modern language for archaic phrasing and neutral for gender-specific references, amend catchphrases for accuracy and update obsolete or inappropriate statutory citations. Accordingly, the Board believes that there is reasonable necessity to generally amend certain existing rules at this time. Where additional specific bases for a proposed action exist, the Board will identify those reasons immediately following that rule. Additionally, the Board has determined it is reasonably necessary to amend authority and implementation cites throughout to accurately reflect all statutes

implemented through the rules, to provide the complete sources of the Board's rulemaking authority and to delete references to repealed or erroneous statutes.

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

24.114.301 DEFINITIONS (1) "Emergency" means earthquake, eruption, flood, storm, hurricane, or other catastrophe designated as a major disaster or emergency by the president of the United States or governor or other duly authorized official of the state.

(2) "NCARB" means the National Council of Architectural Registration Boards located at 1801 K Street NW, Suite 1100, Washington, DC, 20006-1310.

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

AUTH: ~~37-65-101, 37-65-102,~~ 37-1-319, 37-65-204, MCA

IMP: 37-1-319, ~~37-65-204,~~ 37-65-308, MCA

REASON: The Board determined it is reasonably necessary to amend the rule to add two definitions that existed elsewhere in the Board rules. Keeping all definitions in one rule furthers consistency and lessens confusion among readers.

24.114.401 FEE SCHEDULE (1) The following fees apply:

- (a) Application fee for applicants registered in another state or jurisdiction \$100
- ~~(2) (b) Biennial renewal (if paid by July 31st)~~ 110
- ~~(3) (c) Late biennial renewal (if paid after July 31st)~~ 170
- ~~(4) (d) Original license fee, if licensed in an even-year (prorated for licensure in midrenewal year)~~ 80
- ~~(5) Original license fee, if licensed in an odd year~~ 40
- (6) and (7) remain the same but are renumbered (e) and (f).
- (8) remains the same but is renumbered (2).

AUTH: 37-1-131, 37-1-134, 37-65-204, ~~37-65-307,~~ MCA

IMP: 37-1-134, ~~37-65-201,~~ ~~37-65-304,~~ ~~37-65-306,~~ 37-65-307, MCA

REASON: It is reasonably necessary to amend the rule to delete the original license fee for licensure in an odd-numbered year. The Board will no longer charge a specific fee for licensure in the middle of a 2-year licensure period, but will prorate the original licensure fee.

24.114.402 INDIVIDUAL SEAL (1) remains the same.

(2) All technical submissions prepared by an architect ~~shall~~ must be stamped and signed with the architect's seal or the seal of the firm. The permit set must bear the architect's original signature. Electronically generated seals and signatures are acceptable under this rule.

AUTH: 37-1-131, 37-65-204, MCA

IMP: 37-65-308, MCA

REASON: The Board determined it is reasonable and necessary to amend the rule to allow electronically generated seals and signatures on technical submissions. Due to current technology, and because more firms and licensees have the capability to submit plans electronically, the Board is amending the rule accordingly.

24.114.403 BUSINESS ENTITY PRACTICE (1) remains the same.

(2) Nothing shall prevent a ~~partnership (including a registered limited liability partnership)~~, professional limited liability company, or a professional corporation (including a ~~professional corporation~~) from performing or holding itself out as able to perform any of the services involved in the practice of architecture, provided that:

(a) two-thirds of the total ~~general partners (if a partnership)~~, managers (if a professional limited liability company), or directors (if a professional corporation) are registered under the laws of any United States jurisdiction or any foreign jurisdiction approved by the board as architects or engineers; and

(b) one-third of the total ~~general partners~~, managers or directors are registered as architects in Montana.

AUTH: 35-4-301, 35-8-1304, 37-1-131, 37-65-204, MCA

IMP: 35-4-205, 35-4-207, 35-4-208, 35-4-209, 35-4-301, 35-8-1304, 37-65-101, 37-65-302, MCA

REASON: It is reasonably necessary to amend the rule to accurately reference and implement the Board's authority regarding professional corporations and professional limited liability companies. The Board is statutorily authorized to restrict or condition ownership of these professional entities to preserve ethical standards of the profession and further the protection of the public.

24.114.404 ARCHITECT PARTNERSHIPS TO FILE STATEMENT WITH BOARD OFFICE (1) All licensees who enter into partnerships, limited partnerships or profit corporations, sub-chapter S corporations or any other form of business entity in which their professional talent and service are utilized, ~~must~~ shall file with the board office a statement of the existence of the business entity and ~~of their~~ the licensee's relationship to it.

AUTH: 37-1-131, 37-65-204, MCA

IMP: 35-4-209, 37-65-302, MCA

24.114.405 QUALIFICATIONS REQUIRED FOR MONTANA BRANCH OFFICE (1) remains the same.

AUTH: 37-1-131, 37-65-204, MCA

IMP: 37-65-303, ~~37-65-305~~, MCA

24.114.406 SOLICITATION OF BUSINESS BY NONRESIDENT ARCHITECTS FROM OTHER STATES (1) A nonresident architect ~~who holds a~~

~~current, unexpired, unrestricted license to practice architecture issued by the state in which the architect's principal offices are located and who holds a current NCARB certificate, may, upon furnishing the board with verification of licensure from the other state licensing authority, and verification of NCARB certification, offer architectural services in this state, but may accept no commission or otherwise engage in the practice of architecture within this state until licensed by the board. may offer architectural services in this state without compensation upon submission to the board of verification of the following:~~

~~(a) a current, unexpired, unrestricted architecture license issued by the state where the architect's principal offices are located; and~~

~~(b) a current NCARB certificate.~~

~~(2) The nonresident architect may not accept a commission or otherwise engage in the practice of architecture within this state until licensed by the board.~~

AUTH: ~~37-1-131, 37-1-319,~~ 37-65-204, MCA

IMP: ~~37-1-305, 37-65-301,~~ MCA

24.114.407 EMERGENCY USE OF ARCHITECTS (1) Nothing shall prevent a person who is not currently registered in this state and is currently registered in another United States or Canadian jurisdiction, from providing uncompensated (other than reimbursement of expenses) professional services at the scene of an emergency at the request of a public officer, public safety officer, or municipal or county building inspector, acting in an official capacity. "Emergency" shall mean ~~earthquake, eruption, flood, storm, hurricane, or other catastrophe that has been designated as a major disaster or emergency by the president of the United States or governor or other duly authorized official of the state.~~

AUTH: ~~37-65-101, 37-65-102,~~ 37-1-131, 37-65-204, MCA

IMP: 37-65-101, ~~37-65-204,~~ 37-65-301, MCA

REASON: It is reasonably necessary to amend this rule for consistency and move the definition of "emergency" to ARM 24.114.301, the Board's definitions rule.

24.114.501 EXAMINATION (1) ~~Licensure may be granted to an applicant who has Applicants for licensure in Montana shall successfully passed pass the architectural registration examination (ARE). To be admitted to the national architectural examination ARE, an applicant applicants shall have completed complete the education and training requirements and have obtained obtain a council record.~~

(2) (a) ~~All eligibility Eligibility requirements shall have been must be verified by the council record and have been satisfied in accordance with the NCARB handbook for interns and architects. The handbook is available through from NCARB the National Council of Architectural Registration Boards, 1801 K Street NW, Suite 1100, Washington, DC 20006-1310 or the Montana board of architects office and is adopted and incorporated herein by reference.~~

(3) (2) ~~The applicant shall satisfy one of the following educational requirements Applicants shall either:~~

(a) remains the same.

(b) meet the alternate education criteria outlined in the NCARB education standards handbook. The handbook is available through the National Council of Architectural Registration Boards, 1801 K Street NW, Suite 1100, Washington, DC 20006-1310, or the Montana board of architects.

~~(4)~~ (3) ~~The exam candidate must~~ Applicants shall successfully pass all sections of the national architectural registration examination ARE and request ~~submittal to the board of all exam scores for every section of the national exam taken~~ passed.

(a) Applicants shall be permitted to retake any or all sections of the examination that the applicant failed to pass.

~~(5) All applicants who are registered in another state and who meet all the requirements of ARM 24.113.503 except the seismic force exam may take only that exam, and must achieve a passing score to satisfy licensure requirements.~~

~~(6)~~ (4) Examination records, pursuant to the requirements of this chapter, shall be confidential and shall not be considered public records. Nothing herein shall prevent the board from reporting applicants' scores to architectural registration boards in other jurisdictions or to NCARB.

~~(7) An applicant failing to pass the examination is entitled to re-examination on divisions of the examination that the applicant failed to pass.~~

AUTH: 37-1-131, 37-65-204, ~~37-65-303~~, MCA

IMP: 37-65-301, 37-65-303, MCA

REASON: The Board determined it is reasonable and necessary to move the definition and address for NCARB to the Board's definitions rule at ARM 24.114.301. Grammar has been amended and the rule has been reorganized throughout for easier reading and increased clarity.

~~24.114.502 LICENSURE OF APPLICANTS BY EXAMINATION~~ (1) An applicant may apply Applicants for licensure by examination by taking and passing the national architectural registration examination. shall:

(a) submit to the board a completed application, on forms prescribed by the board, including all required fees and documentation;

(b) take and pass the ARE;

~~(2) The applicant will submit an application on board approved forms to the board office for consideration of licensure.~~

~~(3)~~ (c) ~~The applicant must verify the passage of all sections of the national architectural registration examination by submitting~~ submit the examination ARE scores from the applicant's designated state. ; and

~~(4)~~ (d) ~~The applicant must meet all the requirements set forth in ARM 24.114.501(1) through (4), (6) and (7).~~

~~(5) The applicant shall pay the appropriate licensure fee.~~

AUTH: 37-1-131, 37-65-204, ~~37-65-303~~, MCA

IMP: 37-65-301, 37-65-303, MCA

24.114.503 LICENSURE OF APPLICANTS WHO ARE REGISTERED IN ANOTHER STATE (1) ~~An applicant who holds~~ Applicants holding a valid license licensure to practice architecture in another state or jurisdiction, ~~and who is seeking licensure to practice architecture in Montana shall:~~

(a) submit to the board a completed application, on forms prescribed by the board, including all required fees and documentation;

(b) present proof the applicant is the holder of a blue cover certificate issued by the national council of architectural registration boards (NCARB) NCARB. All such applications Applications for the certificate shall be sent to the NCARB office for processing.

~~(a) The address of the office of the NCARB is NCARB, 1801 K Street NW, Suite 1100, Washington, DC 20006-1310.~~

AUTH: 37-1-131, 37-65-204, MCA

IMP: 37-1-304, 37-65-301, MCA

REASON: It is reasonably necessary to amend the rule to specify that the Board requires out-of-state licensees to submit NCARB blue-cover certificates, since NCARB does issue other certificates that would not fulfill the Board's licensure requirements.

24.114.510 USE OF TITLE ARCHITECTS-IN-TRAINING (1) Persons who are not licensed under Title 37, chapter 65, MCA, may use ~~certain titles~~ the title "architect-in-training" in representing themselves to the public, as long as such persons: the titles clearly delineate the nature and level of training. ~~Such persons may use the title "architect-in-training," provided that such persons perform their activities under the direct supervision and responsibility of a licensed architect.~~

(a) perform their work activities under the direct supervision and responsibility of a licensed architect;

~~(a) (b) the architect-in-training must have obtained the proper degree; and~~

~~(c) be are actively pursuing training toward licensure; and~~

~~(b) (2) the An architect-in-training must cease use of the title if he/she the person ceases activities or work in pursuit of licensure.~~

~~(2) (3) Principals of firms employing architects-in-training may use the title "architect-in-training" as they deem appropriate when making presentations, or in promotional materials, etc.~~

AUTH: 37-1-131, 37-65-204, MCA

IMP: 37-65-301, MCA

24.114.2101 RENEWALS (1) ~~Biennial renewals shall be issued by the board, upon receipt of biennial renewal fee. Licenses shall be two-year licenses and shall be renewed biennially. Notice The board shall mail notice of biennial renewal shall be mailed to each licensed architect in advance of the renewal date. The notice shall be returned with the renewal fee or late renewal fee to the board office.~~

~~(2) The renewal fee~~ Renewal forms and fees shall be due on the date set forth in ARM 8.2.208 department rule. However, a one-month grace period

~~thereafter is provided by statute.~~ A late renewal fee will be imposed upon due for any license ~~which has not been renewed by on or before~~ July 31. Both a renewal fee and late renewal fee will be imposed due for each year a license is ~~lapsed~~ not renewed.

(3) A license that has ~~lapsed~~ is not renewed for three successive years within two years of the most recent renewal date automatically terminates, ~~and The terminated license may not be reinstated~~ reactivated, and a new original license must be obtained, and appropriate fees must be paid.

AUTH: 37-1-131, 37-65-204, MCA

IMP: ~~37-1-131~~, 37-1-141, 37-65-301, 37-65-306, MCA

REASON: The 2005 Montana Legislature enacted Chapter 467, Laws of 2005 (House Bill 182), an act generally revising and consolidating professional and occupational licensing laws and distinguishing between department and board or program duties regarding licensure, examination and fees. The bill was signed by the Governor on April 28, 2005, and became effective on July 1, 2005. The Board determined it is reasonable and necessary to amend the rule to comply with and further implement the amendments to 37-1-141, MCA, due to House Bill 182.

24.114.2301 UNPROFESSIONAL CONDUCT (1) through (1)(c) remain the same.

(d) accepting compensation for architectural services from more than one party on a project, unless the circumstances are fully disclosed to, and agreed to ~~(such disclosure and agreement to be in writing)~~ by, in writing by all interested parties;

(e) through (k) remain the same.

(l) performing professional services which have not ~~in general~~ been authorized by the client or the client's legal representative; and

(m) remains the same.

AUTH: 37-1-131, 37-1-319, 37-65-204, MCA

IMP: 37-1-316, MCA

24.114.2402 SCREENING COMMITTEE PANEL (1) The board screening panel shall consist of three members of the board including the current president of the board, and two other board members, as chosen by the president. The president may reappoint ~~screening panel members~~, or replace screening panel members as necessary at the president's discretion.

(2) The screening panel shall review anonymous complaints to determine whether appropriate investigative or disciplinary action may be pursued, or whether the matter may be dismissed for lack of sufficient information.

AUTH: 37-1-131, 37-65-204, MCA

IMP: 37-1-307, MCA

REASON: The Board determined it is reasonable and necessary to amend the rule to specify the procedure the Board's screening panel will use to address anonymous complaints of licensee unprofessional conduct. Although the Board has and is currently following this procedure, it was never before delineated in rule.

5. The rule proposed to be repealed is as follows:

24.114.2401 COMPLAINT PROCEDURE found at ARM page 24-8335.

AUTH: 37-65-204, MCA

IMP: 37-1-308, 37-1-309, MCA

REASON: It is reasonably necessary to repeal the above rule as complaint procedures are adequately and substantially addressed in statute at Title 37, chapter 1, MCA.

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 by mail to Brooke Jasmin, Board of Architects, Department of Labor and Industry, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2309, or by e-mail to dlibsduc@mt.gov and must be received no later than 5:00 p.m., April 6, 2006.

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

8. The Board of Architects maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all Board of Architects administrative rulemaking proceedings or other administrative proceedings. Such written request may be mailed or delivered to the Board of Architects, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2309, e-mailed to dlibsduc@mt.gov or may be 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, apply and have been fulfilled.

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

BOARD OF ARCHITECTS
TOM WOOD, PRESIDENT

/s/ MARK CADWALLADER
Mark Cadwallader
Alternate Rule Reviewer

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

Certified to the Secretary of State February 27, 2006

BEFORE THE BOARD OF BARBERS AND COSMETOLOGISTS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the proposed amendment of) NOTICE OF PUBLIC HEARING
ARM 24.121.301 definitions, 24.121.401 fees,) ON PROPOSED AMENDMENT,
24.121.405 variances, 24.121.601 applications) ADOPTION, AND REPEAL
for licensure, 24.121.603 out-of-state applicants,)
24.121.803 school requirements, 24.121.805)
school operating standards, 24.121.809)
student withdrawal, transfer, or graduating,)
24.121.1105 teacher-training curriculum,)
24.121.2101 continuing education-instructors/)
inactive instructors, 24.121.2301 unprofessional)
conduct, the proposed adoption of NEW RULE I)
fee abatement and NEW RULE II continuing)
education-licensees/inactive licensees, and the)
proposed repeal of ARM 24.121.811 field trips)

TO: All Concerned Persons

1. On March 31, 2006, at 10:00 a.m., a public hearing will be held in room 489 of the Park Avenue Building, 301 South Park Avenue, Helena, Montana to consider the proposed amendment, adoption and repeal of the above-stated rules.

2. The Department of Labor and Industry (Department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or who need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Barbers and Cosmetologists (Board) no later than 5:00 p.m., March 24, 2006, to advise us of the nature of the accommodation you need. Please contact Andy Verbanac, Board of Barbers and Cosmetologists, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2335; Montana Relay 1-800-253-4091; TDD (406) 444-2978; Facsimile (406) 841-2309; e-mail dlibsdcos@mt.gov.

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

24.121.301 DEFINITIONS The following definitions shall apply as used in this chapter:

(1) through (9) remain the same.

(10) "Distance education" means education such as computer based training, internet, video tape, or other mode of distance delivery where the instructor and student are separated by distance and in some cases time.

(10) through (12) remain the same, but are renumbered (11) through (13).

(14) "Inactive" means the status of any licensee or instructor who fails to meet the continuing education requirement.

(13) through (20) remain the same, but are renumbered (15) through (22).

AUTH: 37-1-131, 37-1-319, 37-31-203, MCA

IMP: ~~37-31-403~~, 37-1-306, 37-31-203, 37-31-204, 37-31-303, 37-31-305, 37-31-309, 37-31-311, MCA

REASON: The Board determined it is reasonably necessary to amend this rule to define new terms being introduced within this Notice. The Board is proposing New Rule II to require all practitioners licensed with the Board to obtain annual continuing education. Distance education is becoming more prevalent in today's education world and the Board is defining the term to address distance education offerings in continuing education. Inactive status is not a new concept to the Board, but a definition has never before been delineated in rule. The addition of the definition will clarify to licensees the Board's intent regarding compliance with continuing education requirements. Authority and implementation cites are being amended to accurately reflect all statutes implemented through the rule and to provide the complete sources of the Board's rulemaking authority.

24.121.401 FEES (1) through (12) remain the same.

~~(13) Student enrollment/re-enrollment~~ ~~25~~

(14) remains the same, but is renumbered (13).

(14) Variance request 20

(15) through (20) remain the same.

AUTH: 37-1-131, 37-1-134, 37-31-203, MCA

IMP: 37-1-134, 37-31-302, 37-31-304, 37-31-305, 37-31-311, 37-31-312, ~~37-31-321~~, ~~37-31-322~~, 37-31-323, MCA

REASON: It is reasonable and necessary to amend this rule and eliminate the fee currently collected for the registration of students and the reporting of student enrollment hours. The Board is amending several rules at this time to no longer require school submission of student records to the Board or the Board's maintenance of such records. The Board is deleting the fee for student enrollment and re-enrollment to comply with these amendments. The Board reviews and acts upon numerous requests for variances from licensees each year and is adding a fee for the processing of such requests to comply with 37-1-134, MCA, that requires the Board to set fees commensurate with associated Board costs.

Elimination of the student re/enrollment fee will affect approximately 367 licensees for an estimated Board revenue decrease of \$9,175.00. Addition of a variance request fee will affect approximately 50 licensees and generate approximately \$1,000.00 in revenue. The aggregate fiscal impact is estimated as a \$8,175.00 decrease in fees paid and revenue received annually. Implementation cites are being amended to delete references to repealed statutes.

24.121.405 VARIANCES (1) Upon application, the board may only grant a variance from requirements of the safety and sanitation rules upon the board's determination that:

- (a) ~~special conditions exist which preclude strict compliance with the rules would be overly burdensome or impractical due to special conditions or cause; and~~
(b) ~~the public or private interest in the granting of a variance clearly outweighs the application of uniform rules; and~~
(c) ~~(b)~~ alternative measures will provide adequate public health and safety protection.

AUTH: 37-1-131, 37-31-203, 37-31-204, MCA
IMP: 37-31-204, MCA

REASON: The Board determined it is reasonably necessary to clarify the circumstances under which a variance may be approved. The Board considers a variety of these requests and seeks to clarify the Board's intent as to the purpose of variances and the standard used in considering whether to grant a variance.

24.121.601 APPLICATIONS FOR LICENSURE (1) through (2)(a) remain the same.

(b) a barbering, cosmetology, electrology, esthetics, or manicuring school diploma from a board licensed school;

(c) through (3) remain the same.

(4) The board shall accept hours of instruction from jurisdictionally licensed schools located outside Montana towards fulfillment of the hour requirements for the various categories of licenses.

(5) remains the same.

AUTH: 37-1-131, 37-31-203, MCA
IMP: 37-31-303, 37-31-304, 37-31-308, ~~37-31-324~~, MCA

REASON: The Board determined it is reasonably necessary to amend this rule to clarify that the education required for licensure must be obtained from schools licensed in either Montana or other jurisdictions. This amendment will provide clarification in an area that was potentially confusing for applicants. Implementation cites are being amended to delete reference to a repealed statute.

24.121.603 OUT-OF-STATE APPLICANTS (1) remains the same.

(a) "Board approved" means the examination is written and administered by ~~the national interstate council of state boards of cosmetology or any other~~ nationally recognized examination service.

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

(i) For the purposes of 37-1-304, MCA, "substantially equivalent" for barbers means 1,500 hours of formal training and successful completion of a board approved examination by a passing score set forth in rule. Applicants who have not completed 1,500 hours of formal training shall be required to pass ~~the~~ a board approved examination as specified in rule. Work experience obtained in the profession will not be considered as part of a barbering applicant's qualifications or credit for hours.

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

(i) For the purposes of 37-1-304, MCA, "substantially equivalent" for cosmetologists means 2,000 hours of formal training and successful completion of a board approved examination by a passing score set forth in rule. Applicants who have not completed 2,000 hours of formal training shall be required to pass ~~the~~ a board approved examination as specified in rule. Work experience obtained in the profession will not be considered as part of a cosmetologist applicant's qualifications or credit for hours.

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

(i) For the purposes of 37-1-304, MCA, "substantially equivalent" for electrologists means 600 hours of formal training and successful completion of a board approved examination with a passing score set forth in rule. Applicants who have not completed 600 hours of formal training shall be required to pass ~~the~~ a board approved examination as specified in rule. Work experience obtained in the profession will not be considered as part of an electrologist applicant's qualifications or credit for hours.

(ii) through (5)(a) remain the same.

(i) For the purposes of 37-1-304, MCA, "substantially equivalent" for estheticians means 650 hours of formal training and successful completion of a board approved examination with a passing score set forth in rule. Applicants who have not completed 650 hours of formal training shall be required to pass ~~the~~ a board approved examination as specified in rule. Work experience obtained in the profession will not be considered as part of an esthetician applicant's qualifications or credit for hours.

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

(i) For the purposes of 37-1-304, MCA, "substantially equivalent" for manicurists means 350 hours of formal training and successful completion of a board approved examination with a passing score set forth in rule. Applicants who do not possess 350 hours of formal training shall successfully pass ~~the~~ a board approved examination as specified in rule. Work experience obtained in the profession will not be considered as part of a manicurist applicant's qualifications or credit for hours.

(ii) through (9) remain the same.

AUTH: 37-1-131, 37-31-203, MCA

IMP: 37-1-304, 37-31-303, 37-31-304, 37-31-305, 37-31-308, MCA

REASON: The Board determined it is reasonably necessary to amend this rule to clarify that the Board may accept national licensure examinations in addition to those administered by the National Interstate Council of State Boards of Cosmetology for out-of-state applicants seeking Montana licensure. Therefore, language is being amended throughout the rule to address the Board's acceptance of other nationally recognized exams.

24.121.803 SCHOOL REQUIREMENTS (1) through (5) remain the same.

(6) Schools must provide students with sufficient supplies, equipment, and tools to meet educational training needs throughout their curriculum.

~~(6)~~ (7) Barbering schools or cosmetology schools offering a separate barbering course shall provide the following equipment:

(a) through (h) remain the same.

(i) one protective covering per student; and

(j) one current board law and rule book per student; and .

~~(k) one barbering kit per student, issued and personally given to each individual student upon enrollment, for use by the student and consisting of the following:~~

~~(i) a barbering textbook;~~

~~(ii) a barbering workbook;~~

~~(iii) two dozen assorted clips;~~

~~(iv) one blow dryer;~~

~~(v) one marcel curling iron;~~

~~(vi) six brushes;~~

~~(vii) one dozen styling combs;~~

~~(viii) six tail combs;~~

~~(ix) one dozen taper combs;~~

~~(x) six flat top combs;~~

~~(xi) two capes;~~

~~(xii) one water bottle;~~

~~(xiii) two pair of shears (one at least 7.5 inches);~~

~~(xiv) one straight razor and blades;~~

~~(xv) one styling razor with guard;~~

~~(xvi) one pair thinning shears;~~

~~(xvii) one electric clipper;~~

~~(xviii) one T-edger;~~

~~(xix) one tint bottle;~~

~~(xx) one color bowl and brush;~~

~~(xxi) one mannequin and holder;~~

~~(xxii) one box of rubber gloves;~~

~~(xxiii) one color drape for student; and~~

~~(xxiv) 30 dozen permanent rods of assorted sizes.~~

~~(7)~~ (8) Cosmetology schools shall provide the following equipment:

(a) through (i) remain the same.

(j) one protective covering per student; and

(k) one current board law and rule book per student; and .

~~(l) one cosmetology kit per student, issued and personally given to each individual student upon enrollment, for use by the student and consisting of the following:~~

~~(i) a cosmetology textbook;~~

~~(ii) a cosmetology workbook;~~

~~(iii) a roller rack and rollers;~~

~~(iv) assorted single and double prong clips;~~

~~(v) one blow dryer;~~

~~(vi) one marcel curling iron;~~

~~(vii) one dozen brushes;~~

~~(viii) one dozen wave combs;~~

- ~~(ix) one dozen tail combs;~~
- ~~(x) two capes;~~
- ~~(xi) one water bottle;~~
- ~~(xii) one pair of shears;~~
- ~~(xiii) one razor;~~
- ~~(xiv) one cuticle pusher;~~
- ~~(xv) one cuticle nipper;~~
- ~~(xvi) two orange wood sticks;~~
- ~~(xvii) one tweezer;~~
- ~~(xviii) one file or assorted emery boards;~~
- ~~(xix) one manicure bowl and brush;~~
- ~~(xx) one acrylic nail brush;~~
- ~~(xxi) one tint bottle;~~
- ~~(xxii) one color bowl and brush;~~
- ~~(xxiii) 10 assorted duck bills;~~
- ~~(xxiv) one mannequin and holder;~~
- ~~(xxv) one pair of rubber gloves;~~
- ~~(xxvi) one color drape per student; and~~
- ~~(xxvii) 30 dozen permanent rods of assorted sizes.~~

~~(8)~~ (9) Electrology schools shall provide the following equipment:

(a) remains the same.

(b) a minimum of two stations for the first three students enrolled, with one station added for each additional two students. ~~Each station shall include: ;~~

- ~~(i) one epilator;~~
- ~~(ii) one table or chair for patron;~~
- ~~(iii) one stool, adjustable in height;~~
- ~~(iv) one illuminated magnifying lamp;~~
- ~~(v) one stand for placing instruments and sterilizers;~~
- ~~(vi) liquid sanitizer and an autoclave;~~
- ~~(vii) one dry container for sterile instruments;~~
- ~~(viii) one covered soiled linen container;~~
- ~~(ix) 15 pair of tweezers; and~~
- ~~(x) one covered garbage container;~~

(c) and (d) remain the same.

(9) through (11)(j)(ii) remain the same, but are renumbered (10) through (12)(j)(ii).

(iii) one covered garbage container; ~~and ;~~

~~(k) one basic esthetics kit per student, issued and personally given to each individual student upon enrollment, for use by the student and consisting of the following:~~

- ~~(i) esthetics textbook covering basic esthetics including manual, chemical and mechanical exfoliation;~~
- ~~(ii) esthetics text workbook;~~
- ~~(iii) protective covering;~~
- ~~(iv) spatulas;~~
- ~~(v) hair cover;~~
- ~~(vi) one client cape;~~

- ~~(vii) rubber gloves;~~
- ~~(viii) spray bottle;~~
- ~~(ix) disposal facial sponges;~~
- ~~(x) tweezers;~~
- ~~(xi) extractor;~~
- ~~(xii) fan brush;~~
- ~~(xiii) cosmetic brushes;~~
- ~~(xiv) basic skin care and makeup kit; and~~
- ~~(xv) sanitizing container.~~

~~(42) (13)~~ Manicuring schools or cosmetology schools offering a separate manicure course shall provide the following equipment:

- ~~(a) through (h) remain the same.~~
- ~~(i) two covered waste containers; and~~
- ~~(j) electric nail file and appropriate bits; and~~
- ~~(k) one manicuring kit per student, issued and personally given to each~~

~~individual student upon enrollment, for use by the student and consisting of the following:~~

- ~~(i) a manicuring textbook;~~
- ~~(ii) a manicuring workbook;~~
- ~~(iii) one protective covering;~~
- ~~(iv) one lap cover;~~
- ~~(v) rubber gloves;~~
- ~~(vi) a cuticle pusher;~~
- ~~(vii) emery boards;~~
- ~~(viii) a manicure brush;~~
- ~~(ix) a manicure bowl;~~
- ~~(x) acrylic nail brushes;~~
- ~~(xi) toenail and nail clippers;~~
- ~~(xii) acrylic nail clippers;~~
- ~~(xiii) toe separators;~~
- ~~(xiv) orange wood sticks;~~
- ~~(xv) cuticle nipper;~~
- ~~(xvi) a pedi-paddle;~~
- ~~(xvii) one two-ounce dispenser bottle and one four-ounce dispenser bottle;~~
- ~~(xviii) sanitizing container; and~~
- ~~(xix) dappen dishes.~~

AUTH: 37-1-131, 37-31-203, 37-31-311, MCA
IMP: 37-31-311, MCA

REASON: It is reasonable and necessary to amend this rule to eliminate the requirement of specific equipment, tools and supplies that schools must provide to students as a kit. The Board determined it is more beneficial to students to require schools to maintain and provide all equipment, supplies and tools necessary to learn the techniques and processes of the appropriate profession. Further, the Board concluded it is not necessary to require students to purchase items that may not be used or used very little with current products and styles. This amendment places the

burden of maintaining adequate and appropriate supplies on the schools rather than the students.

24.121.805 SCHOOL OPERATING STANDARDS (1) through (3) remain the same.

~~(4) Schools shall submit student registrations to the board office within five working days of the first day of instruction.~~

(5) through (8)(a) remain the same, but are renumbered (4) through (7)(a).

~~(9) Schools shall record student daily attendance records onto monthly hour sheets, either as provided by the board or using the school's own form, provided it contains the same information as the board's form.~~

~~(a) The monthly hour sheets must:~~

~~(i) be received in the board office on or before the 15th of each month;~~

~~(ii) accurately reflect attendance by all students; and~~

~~(iii) be available upon request of the inspector or designee.~~

~~(b) Clock hours must be verified by a time-keeping system sufficient to protect against tampering and capable of rounding attendance to the nearest quarter hour. Monthly hour calculations shall be submitted to the board office in hours and minutes (000:00).~~

(10) through (17) remain the same, but are renumbered (8) through (15).

~~(18) Schools shall send each student's final hour records to the board within five days of the student's completion of the applicable required hours of training and graduation.~~

AUTH: 37-1-131, 37-31-203, 37-31-311, MCA

IMP: 37-31-311, MCA

REASON: It is reasonable and necessary to amend this rule to eliminate the requirement for the Board office to receive and maintain records of student registration, daily attendance and final student hours. The Board concluded that these records are more appropriately maintained by the school where registration, attendance and student progress are continually monitored. This amendment coincides with the elimination of the student registration fee proposed in the fee schedule. The Board is also amending the rule to no longer specify the rounding requirements of the schools' time clocks as it is sufficient to simply require that the time-keeping systems are protected against tampering.

24.121.809 STUDENT WITHDRAWAL, TRANSFER, OR GRADUATING

(1) Students withdrawing, transferring, or graduating from a school shall be provided a current and accurate official transcript reflecting hours and grades and obtain a statement of good standing from the school in order to receive credit for their education for their hours to transfer. ~~Schools shall provide a copy of the statement to the board within five days of the withdrawal.~~

~~(2) Upon the withdrawal of a student, schools shall submit to the board office a statement of total hours and grades within the required curriculum areas and the student's standing on a form prescribed by the board. The verification must set forth the hours of training in which the student was enrolled as provided in rule.~~

~~(3)~~ (2) ~~Upon transfer between licensed schools and receipt of a statement of good standing and hour verification from the previous school(s), the~~ When transferring between licensed schools, the transferring student shall provide the new school with a statement of good standing and official transcript from the previous school. The new school shall grant full credit for all hours and grades completed by the transferring student within five years of the student's original enrollment date.

~~(4)~~ (3) Schools shall not allow a student who re-enrolls to practice on members of the public until the school receives a ~~verified~~ an official transcript of the student's hours and grades within the required curriculum areas.

AUTH: 37-1-131, 37-31-203, 37-31-311, MCA

IMP: 37-31-311, MCA

REASON: The Board determined that it is reasonably necessary to amend this rule to eliminate the requirement for the Board office to receive and maintain records of students who withdraw, transfer or graduate. The Board concluded that these records are more appropriately maintained by the schools when the students are in attendance, and then by the individual students. This amendment coincides with the elimination of other requirements for Board record keeping proposed in this Notice. It is reasonable and necessary to amend this rule to require schools to provide an official transcript to students as verification of attendance or completion of coursework. This amendment will allow the student to obtain and maintain those records rather than relying on others to do so.

24.121.1105 TEACHER-TRAINING CURRICULUM (1) through (3) remain the same.

~~(4) When a student or cadet instructor has completed the required hours of teacher training, the school shall send the student's final hour records to the board within five days.~~

AUTH: 37-1-131, 37-31-203, 37-31-311, MCA

IMP: 37-31-305, 37-31-311, MCA

REASON: It is reasonably necessary to eliminate the requirement for the Board to receive and maintain records of teacher-training hours. The Board concluded that these records are more appropriately maintained by the schools that monitor student and cadet instructor course completion and progress. This amendment coincides with the elimination of other Board record keeping requirements proposed in this Notice.

24.121.2101 CONTINUING EDUCATION - INSTRUCTORS/INACTIVE INSTRUCTORS (1) Active instructors shall complete 30 hours of continuing education (CE) per renewal period to maintain active status licensure.

(2) The board shall may approve, on a case-by-case basis, each continuing education course CE courses offered by providers not currently recognized by the board or not offered through attendance at an accredited academic college or university before credits are granted to any licensee for such course.

(3) Courses taught via distance education must first be certified through an agency or organization approved by the board that certifies each course's instructional design and delivery before credits are granted to any licensee for such course.

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

~~(4) (5) Requests for approval of continuing education CE courses for providers or subject matter not currently recognized by the board must be submitted on a the appropriate form, prescribed by the board and including the following information:~~

~~(a) course dates;~~

~~(b) course location;~~

~~(c) course instructor and credentials of the instructor;~~

~~(d) a detailed course syllabus/outline;~~

~~(e) number of credits requested; and~~

~~(f) method of verifying attendance.~~

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

~~(6) At renewal, licensees shall submit either certified statements, certificates or affidavits showing dates and hours as proof of continuing education attendance.~~

(7) Continuing education CE courses must be completed prior to applying for renewal of an active instructor license. Failure to meet the CE requirement will automatically result in the license being placed on inactive status.

(8) remains the same.

(9) Schools shall maintain records of CE credits for their instructors for a minimum of three years. Individual instructors not affiliated with a school shall maintain records of their CE credits for a minimum of three years.

(10) The board shall audit for compliance with CE requirements.

AUTH: 37-1-131, 37-1-319, 37-31-203, MCA

IMP: 37-1-306, MCA

REASON: It is reasonably necessary to amend this rule to simplify and more clearly delineate the Board's approval process for instructor continuing education (CE) not already recognized by the Board, the required record keeping associated with CE, and the Board's CE audit process. The Board concluded there existed confusion among licensees concerning the CE requirements and approval of courses. The Board is also amending the rule to address CE courses obtained via distance education that meet specific design and delivery requirements. This amendment will ensure quality coursework through distance education providers. Further, the rule is being amended to clearly outline the consequences of failing to meet the CE requirements.

24.121.2301 UNPROFESSIONAL CONDUCT (1) through (1)(s) remain the same.

(t) advertising or otherwise implying that the licensee is providing treatment, healing, correcting, or diagnosing any medical condition; or

(u) aiding or abetting unlicensed practice by intentionally or unintentionally encouraging, assisting, or failing to prevent the commission of unlicensed practice; or

(v) failing to provide verification of completed continuing education when requested by the board.

(2) remains the same.

AUTH: 37-1-131, 37-1-136, 37-1-319, 37-31-203, MCA
IMP: 37-1-136, 37-1-137, 37-31-301, 37-31-331, MCA

REASON: The Board determined that it is reasonably necessary to include failure to comply with a continuing education audit as an act of unprofessional conduct. The Board has clarified CE requirements for all licensees of the Board within this Notice as well as the Board's CE audit process. This amendment places the licensee on notice of the expectations of the Board and the consequences for failing to comply with the audit requirements.

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

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

AUTH: 37-1-131, MCA
IMP: 17-2-302, 17-2-303, 37-1-134, MCA

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

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

NEW RULE II CONTINUING EDUCATION LICENSEES/INACTIVE LICENSEES (1) Active licensees shall complete 10 hours of CE per renewal period to maintain active status licensure.

(2) The board may approve, on a case-by-case basis, CE courses offered by providers not currently recognized by the board or not offered through attendance at an accredited academic college or university.

(3) Courses taught via distance education must first be certified through an agency or organization that certifies each course's instructional design and delivery and is approved by the board before credits are granted to any licensee for such course.

(4) CE courses must be germane to the practice of barbering, cosmetology, electrology, esthetics, or manicuring.

(5) Requests for approval of CE courses for providers or subject matter not currently recognized by the board must be submitted on the appropriate form.

(6) CE courses must be completed prior to applying for renewal of an active license. Failure to meet the CE requirement will automatically result in the license being placed on inactive status.

(7) To activate an inactive license, licensees shall submit evidence of completion of five hours of approved CE obtained within the 12-month period prior to activating the license. Licensees shall also be required to complete an additional 10 hours of CE before the renewal date.

(8) Licensees shall maintain records of their CE credit for a minimum of three years.

(9) The board shall audit for compliance with CE requirements.

AUTH: 37-1-131, 37-1-319, 37-31-203, MCA

IMP: 37-1-306, MCA

REASON: To further protect the public, the Board determined it is reasonably necessary to adopt New Rule II to require that all active licensed practitioners complete a minimum of 10 hours of CE every two years. This amendment places CE requirements and course approval burden on practitioners as were previously established for instructors, including the specifications for activating an inactive license. The New Rule also identifies who must maintain CE completion records and that the Board will audit for CE compliance.

5. The rule proposed to be repealed provides as follows:

24.121.811 FIELD TRIPS found at ARM page 24-9141.

AUTH: 37-1-131, 37-31-203, MCA

IMP: 37-31-311, MCA

REASON: The Board finds it reasonably necessary to repeal this rule addressing field trips. The Board determined field trips are an integral part of course instruction and do not require a separate rule to outline their requirements.

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 by mail to Ms. Anita Verbanac, Board of Barbers and Cosmetologists, Department of Labor and Industry, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2309, or by e-mail to dlibsdcos@mt.gov and must be received no later than 5:00 p.m., April 10, 2006.

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

8. The Board of Barbers and Cosmetologists maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this Board. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all Board of Barbers and Cosmetologists administrative rulemaking proceedings or other administrative proceedings. Such written request may be mailed or delivered to the Board of Barbers and Cosmetologists, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2309, e-mailed to dlibsdcos@mt.gov or may be 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. Jack Atkins, attorney, has been designated to preside over and conduct this hearing.

BOARD OF BARBERS AND
COSMETOLOGISTS
WENDELL PETERSEN, PRESIDING
OFFICER

/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 February 27, 2006

BEFORE THE BOARD OF FUNERAL SERVICE
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the proposed amendment) NOTICE OF PUBLIC HEARING
of ARM 24.147.302 definitions, 24.147.401,) ON PROPOSED AMENDMENT,
24.147.402 and 24.147.403 substantive) ADOPTION, AND REPEAL
rules, 24.147.501, 24.147.502 and)
24.147.505 licensing, 24.147.901 mortuary)
requirements, 24.147.1101, 24.147.1114)
and 24.147.1115 crematory rules,)
24.147.1301, 24.147.1302, 24.147.1304,)
24.147.1305, 24.147.1312, 24.147.1313,)
and 24.147.1314 cemetery regulation rules,)
24.147.1501 and 24.147.1503 branch)
facilities and prearranged funeral)
agreements, 24.147.2108 continuing)
education, 24.147.2401 complaint filing,)
the proposed adoption of NEW RULE I fee)
abatment, NEW RULE II renewal of)
cemetery licenses, and the proposed repeal)
of 24.147.1311 cemetery authority rules)

TO: All Concerned Persons

1. On March 30, 2006, at 9:30 a.m., a public hearing will be held in room B-07, of the Park Avenue Building, 301 South Park Avenue, Helena, Montana, to consider the proposed amendment, adoption, and repeal of the above-stated rules.

2. The Department of Labor and Industry (Department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Funeral Service (Board) no later than 5:00 p.m., on March 23, 2006, to advise us of the nature of the accommodation that you need. Please contact Cheryl Brandt, Board of Funeral Service, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2394; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail dlibsdfnr@mt.gov.

3. GENERAL STATEMENT OF REASONABLE NECESSITY: The 2005 Montana Legislature enacted Chapter 467, Laws of 2005 (House Bill 182), an act generally revising and consolidating professional and occupational licensing laws and distinguishing between department and board or program duties regarding licensure, examination and fees. The bill was signed by the Governor on April 28, 2005, and became effective on July 1, 2005. The Board determined it is reasonably necessary to amend certain existing rules to timely implement the 2005 legislation and in keeping with the 2005 Montana Legislature's intent to simplify and

standardize the licensure and renewal processes for all boards and licensees within the Department.

It is reasonable and necessary to amend the rules throughout to achieve consistent use of terminology within the rules of the Board and also between the Board's and Department's statutes and rules. Amendments to certain catchphrases, as well as grammatical, organizational and formatting changes, are being made to simplify and streamline the Board's rules and to comply with ARM formatting requirements. Where additional specific bases for a proposed action exist, the Board will identify those reasons immediately following that rule. Authority and implementation cites are amended throughout to accurately reflect all statutes implemented through the rules, to provide the complete sources of the Board's rulemaking authority and to delete references to repealed statutes.

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

24.147.302 FUNERAL SERVICE DEFINITIONS As used in this chapter, the following definitions apply:

~~(1) "Cemetery authority" is defined as being the same as "cemetery company" as set forth in 37-19-101, MCA.~~

(9) and (10) remain the same but are renumbered (1) and (2).

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

(7) "Permit" as referred to in 37-19-814, MCA, is defined to be synonymous with "license" for purposes of this chapter.

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

(11) through (13) remain the same.

AUTH: 37-1-131, 37-19-202, MCA

IMP: 37-19-705, 37-19-814, 37-19-827, 37-19-828, 37-19-829, MCA

REASON: It is reasonably necessary to delete the definition of "cemetery authority" in this rule and replace the term with "cemetery company" throughout the rules to achieve consistent use of the term as defined in 37-19-101, MCA.

24.147.401 FEE SCHEDULE

(1) Morticians, crematory operator, crematory technician application	\$150
(2) Reactivation of inactive license	50
(3) Original mortician license fee	60
(4) Original mortuary license	200
(5) Branch facility application fee (includes original license fee)	200
(6) Intern license	100
(7) Annual renewals	
(a) Funeral director renewal	40
(b) Mortician renewal	125
(c) Inactive status renewal	50

(d) Inactive funeral director renewal	15
(e) Mortuary renewal (includes inspection fee)	200
(f) Branch facility renewal (annual inspection not required)	50
(g) Crematory operator renewal	60
(h) Crematory technician renewal	30
(i) and (j) remain the same but are renumbered (7) and (8).	
(8) Re-examination fee	45
(9) Inspection fee for new facility	200
(10) Re-inspection fee	200
(11) Crematory application fee (includes original license fee)	200
(12) Crematory original inspection fee	200
(13) Crematory renewal	200
(14) Crematory temporary permit	25
(15) Cemetery permit application	200
(16) Cemetery original license (five-year license)	1,000
(17) Cemetery initial inspection fee	200
(18) Cemetery permit renewal fee (five year, includes inspection fee)	1,000
<u>(1) Facility application fees</u>	
<u>(a) Mortuary</u>	<u>\$ 250</u>
<u>(b) Mortuary branch facility</u>	<u>250</u>
<u>(c) Crematory</u>	<u>250</u>
<u>(d) Cemetery</u>	<u>1250</u>
<u>(2) Facility inspection or reinspection fees</u>	
<u>(a) Mortuary</u>	<u>200</u>
<u>(b) Mortuary branch facility</u>	<u>200</u>
<u>(c) Crematory</u>	<u>200</u>
<u>(d) Cemetery</u>	<u>200</u>
<u>(3) Individual application fees</u>	
<u>(a) Mortician</u>	<u>250</u>
<u>(b) Crematory operator</u>	<u>200</u>
<u>(c) Crematory technician</u>	<u>200</u>
<u>(d) Mortician intern</u>	<u>220</u>
<u>(4) Activation of inactive license</u>	
<u>(a) Mortician</u>	<u>100</u>
<u>(b) Crematory operator</u>	<u>50</u>
<u>(c) Crematory technician</u>	<u>50</u>
<u>(5) Facility renewal fees (includes annual inspection)</u>	
<u>(a) Mortuary</u>	<u>300</u>
<u>(b) Mortuary branch facility</u>	<u>50</u>
<u>(c) Crematory</u>	<u>300</u>
<u>(d) Cemetery (five-year renewal)</u>	<u>1000</u>
<u>(6) Individual renewal fees</u>	
<u>(a) Mortician - active</u>	<u>200</u>

<u>(b) Mortician - inactive</u>	<u>100</u>
<u>(c) Crematory operator - active</u>	<u>100</u>
<u>(d) Crematory operator - inactive</u>	<u>50</u>
<u>(e) Crematory technician - active</u>	<u>100</u>
<u>(f) Crematory technician - inactive</u>	<u>50</u>
<u>(9) Jurisprudence reexamination fee</u>	<u>100</u>
<u>(10) All fees are nonrefundable.</u>	

AUTH: 37-1-131, 37-19-202, 37-19-301, 37-19-303, 37-19-304, 37-19-403, 37-19-702, 37-19-808, 37-19-814, 37-19-815, 37-19-816, 37-19-703, MCA
 IMP: 37-1-134, 37-19-301, 37-19-303, 37-19-304, ~~37-19-306, 37-19-401,~~
 37-19-402, 37-19-403, 37-19-702, 37-19-703, 37-19-808, 37-19-814, 37-19-815, 37-19-816, MCA

REASON: It is reasonable and necessary for the Board to raise fees to meet the Board's budget for fiscal years (FY) 2006 and 2007. The current budgeted revenue for FY '06 and '07 is \$62,664.00. The current budgeted appropriation is \$81,288.00 for FY '06 and \$82,874.00 for FY '07. The increased budgeted appropriation is due to an increase in rent, salaries, gas, utilities and numerous miscellaneous expenses. At the current rate, the Board would be left with only \$14,555.00 cash balance at the end of FY '07. The proposed fee increases will generate an additional \$23,235.00 annually. The total annual revenue (starting in FY '07) with the increased fees is projected to be \$92,960.00. With this increase, the Board will meet its budget and still have a reasonable cushion should it face any unforeseen legal or other expenses. The proposed fee increases will affect approximately 428 licensees.

24.147.402 MORTICIAN APPLICATIONS (1) Any person applying to the board for permission to take the examination shall present to the board evidence in the form of:

- (a) certified copy of the transcript of completion of 60 semester credit hours or 90 quarter credit hours from ~~an accredited a~~ college or university accredited by a regional accrediting agency recognized by the U.S. Department of Education; ;
 - (b) certified copy of the final transcript from an accredited college of mortuary science accredited by the American Board of Funeral Service or its successor; ;
 - (c) properly completed application form furnished by the ~~board~~ department; ;
- and
- (d) certified copy of the certification form verifying successful completion of ~~the conference of funeral service examining board's~~ International Conference of Funeral Service Examining Board's examination.

(2) All applications for licensure by the board will be considered nonroutine in nature and will be reviewed and approved by the board prior to issuance of the license.

AUTH: 37-1-131, 37-19-202, MCA
 IMP: 37-19-302, 37-19-303, MCA

REASON: The Board determined it is reasonably necessary to specify which accrediting agencies have been approved by the Board regarding the educational requirements for mortician licensure. This clarification will assist applicants in determining whether their education meets the requirements of the Board.

24.147.403 INSPECTIONS (1) through (4) remain the same.

(5) Reinspection shall be made of a mortuary that does not meet the requirements of the board in ~~ARM 8.30.602 through 8.30.606~~ and 24.147.901.

AUTH: 37-1-131, 37-19-202, 75-10-1006, MCA

IMP: 37-19-403, 75-10-1001, 75-10-1002, 75-10-1003, 75-10-1004, 75-10-1005, 75-10-1006, MCA

REASON: It is reasonable and necessary to delete the references to ARM 8.30.602 through 8.30.606 as these rules were repealed via 2001 legislation transferring the Board from the Department of Commerce to the Department of Labor and Industry.

24.147.501 LICENSURE OF OUT-OF-STATE APPLICANTS (1) Upon payment of the proper license fee, the board may issue a license to a person who, at the time of application, holds a current, active license in good standing, as a funeral director, mortician, or crematory operator, issued by the proper authority of any state. When a person applies for licensure under this provision, the applicant shall provide information from the other state(s), and the board shall determine whether the requirements for obtaining such other license(s) are substantially equivalent to or stricter than the requirements of Montana law, as listed in ARM 24.147.402 and 24.147.1114 and 37-19-302 and 37-19-703, MCA.

(2) through (5) remain the same.

AUTH: 37-1-131, 37-19-202, MCA

IMP: 37-1-304, 37-19-302, 37-19-703, MCA

REASON: It is reasonably necessary to specify the licensure requirements the Board considers when evaluating out-of-state licensure applications. This amendment will assist applicants in determining whether licensure standards in the state(s) of licensure are substantially equivalent to or stricter than Montana's.

24.147.502 INACTIVE STATUS AND REACTIVATION ACTIVATION

(1) and (2) remain the same.

(3) Upon application and payment of the appropriate fee, the board may ~~reactivate~~ activate an inactive license if the applicant does each of the following:

(a) signifies to the board, in writing, that upon issuance of the active license, the applicant intends to be an active practitioner in the state of Montana; ;

(b) presents satisfactory evidence that the applicant has attended six hours of continuing education which comply with the continuing education rules of the board for each year or portion of a year that licensee has been inactive, not to exceed 12 hours; ;

(c) submits certification from the licensing body of all jurisdictions where the applicant is licensed or has practiced that the applicant is in good standing and has not had any disciplinary actions taken against the applicant's license, or if the applicant is not in good standing by that jurisdiction, an explanation of the nature of the violation(s) resulting in that status, including the extent of the disciplinary treatment imposed; and

(d) and (4) remain the same.

AUTH: 37-1-131, 37-1-319, 37-19-202, MCA

IMP: 37-1-319, MCA

24.147.505 RENEWAL OF LICENSE (1) All licenses, whether individual or establishment, with the exception of cemeteries, ~~expire~~ must be renewed annually and ~~may be renewed~~ pursuant to 37-1-141, MCA the provisions of this rule. ~~If a license is not renewed, practice by a licensee, whether individual or an establishment, after the renewal date set forth in ARM 8.2.208 will constitute unlicensed practice and will subject the licensee to disciplinary action as provided by statute and rule.~~

(2) Prior to the renewal date, the ~~board office~~ department will mail a renewal form notice to the licensee's preferred mailing address on file with the ~~board~~ department. Failure to receive such renewal form notice shall not relieve the licensee of the licensee's obligation to renew and pay renewal fees in a timely manner.

(3) ~~Renewal forms~~ Renewals that are in any manner incomplete on receipt by the ~~board office~~ department will be returned to the licensee for completion and resubmission. To be considered complete, the renewal ~~form~~ must:

~~(a) bear the original signature of the licensee or, if an establishment, the licensed manager of that establishment;~~

~~(b) (a)~~ be accompanied by the appropriate renewal fee. Checks returned to the ~~board~~ department for any reason will be returned to the licensee for payment. The license will be considered not renewed until proper payment is received;

~~(c) (b)~~ be accompanied by a completed and signed include an affidavit of continuing education if required for the license being renewed as specified in ARM 24.147.2101; and

~~(d) (c)~~ be accompanied by any other material or documentation the board may require for renewal as identified on the renewal ~~form~~ notice.

(4) Complete ~~renewal forms~~ renewals submitted to the ~~board~~ department after the ~~dates~~ specified in ARM 8.2.208 and [NEW RULE II] shall be considered late and subject to a late penalty fee in addition to the renewal fee. In the event of a late renewal, the licensee may be subject to disciplinary action by the ~~board~~ department for unlicensed practice.

~~(5) Licensees who fail to renew, or notify the board of their intent not to renew, before the established renewal date will be notified in writing by the board office of the lapsing of their license.~~

AUTH: 37-19-202, 37-19-301, ~~37-19-306~~, MCA

IMP: 37-1-141, 37-19-301, ~~37-19-306~~, MCA

24.147.901 SANITARY STANDARDS - PREPARATION ROOM (1) through (7) remain the same.

(8) Waste and refuse shall be disposed of in a sanitary manner.

~~(a) Infectious wastes and sharps must be stored for disposal and disposed of in accordance with Title 75, chapter 10, part 10, MCA.~~

~~(b) The use of standard embalming agents is a scientifically proven method of rendering infectious wastes noninfectious.~~

~~(c) Used sharps, even if sterilized, must be placed in leakproof, rigid, puncture-resistant containers and securely taped or capped when full to prevent the loss of the contents during waste disposal processes.~~

AUTH: 37-19-202, 75-10-1006, MCA

IMP: 37-19-403, 75-10-1001, 75-10-1002, 75-10-1003, 75-10-1004, 75-10-1005, MCA

REASON: It reasonable and necessary to amend this rule as the infectious waste standards are already addressed in the Department of Public Health and Human Services statutes at Title 75, chapter 10, part 10, MCA.

24.147.1101 CREMATORY FACILITY REGULATION (1) through (9) remain the same.

(10) Prior to beginning the cremation process, the crematory must have in its possession, written authorization(s) bearing the original, photocopied, or facsimile signatures of the authorizing agent and, if the death occurred in Montana, the coroner having jurisdiction ~~or the state medical examiner~~. In addition, the following information must be included in the authorization and kept on record:

(a) identification of the decedent;

(b) identification and relationship of the authorizing agent;

(c) hazardous implants or other medical devices;

(d) personal property and disposition thereof;

(e) disposition of cremated remains;

(f) a description of the cremation process;

(g) a release from liability per 37-19-707, MCA; and

(h) any other information pertinent to the individual cremation.

(11) remains the same.

AUTH: 37-1-131, 37-19-202, 37-19-703, MCA

IMP: 37-19-702, 37-19-703, 37-19-705, MCA

REASON: It is reasonable and necessary to amend this rule because the State Medical Examiner does not have the authority to authorize cremation. The Board determined it is reasonably necessary to specify the criteria that need to be included in a cremation authorization to provide greater protection to the consumer and the public in general.

24.147.1114 LICENSURE AS A CREMATORY OPERATOR (1) Applicants for original licensure as a crematory operator shall submit an application, ~~on a form prescribed~~ provided by the ~~board~~ department, and the application fee.

(2) remains the same.

AUTH: 37-1-131, 37-19-202, MCA
IMP: 37-19-702, 37-19-703, MCA

24.147.1115 LICENSURE AS A CREMATORY TECHNICIAN (1) Applicants for original licensure as a crematory technician shall submit an application, ~~on a form prescribed~~ provided by the ~~board~~ department, and the application fee.

(2) remains the same.

AUTH: 37-1-131, 37-19-202, MCA
IMP: 37-19-702, 37-19-703, MCA

24.147.1301 APPLICATIONS FOR CEMETERY CERTIFICATES OF AUTHORITY LICENSES (1) Applications for a ~~certificate of authority license~~ to operate a cemetery shall be filed on a form furnished by the ~~board~~ department at the principal office of the board. In addition to the payment of the fees, each application shall be accompanied by the following:

(a) remains the same.

(i) articles of incorporation, if applicable;

(ii) and (iii) remain the same.

(iv) perpetual care and maintenance trust agreement executed by the ~~board of directors of the cemetery authority owner, the presiding officer, or other agent~~;

(b) a statement signed by a majority and verified by ~~one of the directors of the applicant owner, the presiding officer, or other agent~~, which shall set forth:

(i) names and addresses of the owners, partners, incorporators, directors, officers, and trustees of the perpetual care and maintenance fund, including the person who will be in charge of sales;

(ii) through (e) remain the same.

AUTH: 37-1-131, 37-19-202, 37-19-807, MCA
IMP: 37-19-807, 37-19-814, MCA

REASON: It is reasonable and necessary to specify the individuals responsible for providing certain application information for cemetery licensure and address situations where the applicant does not have a board of directors. Further, it is reasonably necessary to clarify that articles of incorporation are only required when the cemetery licensure applicant is a corporation.

24.147.1302 MANAGERS (1) Each cemetery for which a new ~~certificate of authority license~~ is required shall be operated under the supervision of a ~~managing officer~~ cemetery manager. The applicant for a new ~~certificate of authority~~ cemetery license will designate the ~~managing officer~~ cemetery manager. The cemetery

authority company will notify the board within 30 days of a change in the ~~managing officer~~ cemetery manager.

(2) remains the same.

AUTH: 37-1-131, 37-19-202, 37-19-807, MCA

IMP: 37-19-814, 37-19-822, MCA

REASON: It is reasonable and necessary to replace "managing officer" with "cemetery manager" to achieve consistency in terminology use within the rules.

24.147.1304 PERPETUAL CARE AND MAINTENANCE FUND REPORTS

(1) remains the same.

(2) Each cemetery authority company shall file with the board annually, on or before June 1, or within five months after close of their fiscal year provided approval has been granted by the board, a written report in a format prescribed by the board setting forth:

(a) and (b) remain the same.

(c) a statement showing separately the total amount of the general and special perpetual care and maintenance funds invested in each of the investments authorized by law, and the amount of cash on hand not invested, which statement shall actually show financial condition of the funds; ~~and~~

(d) a statement showing separately the location, description, and character of the investments in which the perpetual care and maintenance funds are invested. The statement shall show the valuations of any securities held in the perpetual care and maintenance fund; and

(e) the report shall be verified by the ~~president or vice president and one other officer~~ owner, presiding officer, or their agent of the cemetery ~~corporation~~ company, and shall be certified by the accountant or auditor preparing the report.

(3) Any cemetery authority company that does not file its report within the time prescribed may be subject to disciplinary action as prescribed by the Montana Administrative Procedure Act, and 37-1-304, MCA, including a fine of up to \$1,000.

(a) A cemetery authority company may request waiver or reduction of a fine by making a written request. The request shall be postmarked within 30 days of notice of the fine, and shall be accompanied by a statement showing good cause for the request.

(b) The board may waive or reduce the fine where a timely request is made and where it determines, in its discretion, that the cemetery authority company has made a sufficient showing of good cause for the waiver or reduction.

(c) The board shall examine the reports filed with it as to the cemetery authority's company's compliance with all relevant statutes, as to the amount of perpetual care and maintenance funds collected and as to the manner of investment of such funds.

(d) In the event that the board requires an audit, the board shall contract with a licensed or certified public accountant and the fee charged by the accountant for the actual cost of the audit must be paid by the cemetery authority company.

AUTH: 37-1-131, 37-19-202, 37-19-807, MCA

IMP: 37-19-807, 37-19-822, 37-19-823, MCA

REASON: It is reasonable and necessary to replace "corporation" with "company" to clarify that even though not all private-for-profit cemeteries in Montana are incorporated, the owner or agent must still comply with the requirements in this rule.

24.147.1305 AUDIT FEES (1) In the event that the board requires an audit, the board shall contract with a licensed or certified public accountant and the fee charged by the accountant for the actual cost of the audit must be paid by the cemetery authority company.

AUTH: 37-1-131, 37-19-202, 37-19-807, MCA

IMP: 37-19-807, 37-19-808, 37-19-822, 37-19-823, MCA

24.147.1312 RESTRICTIONS ON OFFICERS USE OF CEMETERY FUNDS

~~(1) No director or officer of any cemetery authority, or as the partner or agent of others, person or entity associated with the cemetery company shall directly or indirectly borrow from any funds of the cemetery corporation or association, including perpetual care funds, and maintenance funds, or any trust funds of the cemetery company. No director shall become an endorser or surety for loans to others, nor in any manner be an obligor for money borrowed of or loaned by the corporation or association. No corporation, of which a director or an officer is a stockholder, or in which either of them is in any manner interested, shall borrow any of the funds of the corporation or association.~~

AUTH: 37-1-131, 37-19-202, 37-19-807, MCA

IMP: 37-19-807, 37-19-822, MCA

REASON: It is reasonable and necessary to amend this rule to clarify that no individual or entity associated with a cemetery company may borrow from or against funds of the cemetery company. The Board concluded that the amendment is necessary to implement the statutory mandate at 37-19-822, MCA, that trust fund money must be used exclusively for cemetery care and maintenance and not for any other purpose.

24.147.1313 TRANSFER OF CEMETERY OWNERSHIP (1) Whenever ownership of any cemetery authority company is proposed to be transferred, the cemetery authority company shall notify the board ~~of funeral service in the department of labor and industry~~. A change in ownership, for purposes of this rule, shall be deemed to occur whenever more than 50% of the equitable ownership of a cemetery authority company is transferred in a single transaction, or in a related series of transactions to one or more persons, associations, or corporations. The notice shall specify the address of the principal offices of the cemetery authority company, and whether it will be changed or unchanged, and shall specify the name and address of each new owner and/or the stockholders thereof.

(2) Notice of such a change of ownership shall be published in a newspaper of general circulation in the county in which the cemetery is located. The notice shall

specify the address of the principal offices of the cemetery authority company, whether changed or unchanged, and shall specify the name and address of each new owner and/or each stockholder owning more than 5% of the stock of each new owner.

(3) When there is a change of ownership pursuant to this rule, the existing ~~certificate of authority license~~ shall lapse and a new ~~certificate of authority license~~ shall be obtained from the board of funeral service. ~~No person shall purchase a cemetery, including purchase at a sale for delinquent taxes, or purchase more than 50% of the equitable ownership of a cemetery authority without having obtained a certificate of authority from the board of funeral service prior to the purchase of the cemetery, or such an ownership interest in the cemetery authority.~~

(4) Every cemetery authority company shall post and continuously maintain at the main public entrance to the cemetery, a sign specifying the current name and mailing address of the cemetery authority company, a statement that the name and mailing address of each owner, presiding officer, and/or their agent ~~director and officer~~ of the cemetery authority company may be obtained by contacting the board of funeral service of the department of labor and industry, and the mailing address of the board of funeral service. Such signs shall be at least 16 inches high and 24 inches wide and shall be prominently mounted upright and vertical.

(5) The board of funeral service shall suspend the ~~certificate of authority license~~ of any cemetery authority company which is in violation of the sign or public notice requirements of this rule. Such ~~certificate license~~ may be reinstated only upon compliance with such requirements.

AUTH: 37-1-131, 37-19-202, 37-19-807, 37-19-816, MCA
IMP: ~~37-19-815, 37-19-816~~, MCA

24.147.1314 PERPETUAL CARE AND MAINTENANCE FUNDS (1) Every cemetery authority company which now or hereafter maintains a cemetery, shall place its cemetery under perpetual care and maintenance and establish, maintain, and operate a perpetual care and maintenance fund. Perpetual care and maintenance funds may be commingled for investment, and the income therefrom shall be divided between the perpetual care and maintenance fund in the proportion that each fund contributed to the principal sum invested. The funds shall be held in the name of the cemetery authority company or in the name of the trustees appointed by the cemetery authority company.

(2) The principal of all funds for perpetual care and maintenance funds shall be invested, and the income only ~~maybe~~ may be used for the care, maintenance, additions, improvements, or fixtures to the cemetery property, in accordance with the provisions of law and the resolutions, bylaws, rules, and regulations, or other actions or instruments of the cemetery authority company and for no other purpose. Perpetual care and maintenance funds shall be maintained separate and distinct from all other funds, and the trustees shall keep separate records thereof.

(3) The cemetery authority company may from time to time adopt plans for the general care and maintenance of its cemetery, and charge and collect from all subsequent purchasers of plots such reasonable sum as, in the ~~judgement~~ judgment

of the cemetery ~~authority~~ company, will aggregate a fund, the reasonable income from which will provide care and maintenance.

(4) and (5) remain the same.

AUTH: ~~37-1-131, 37-19-202~~, 37-19-807, MCA

IMP: 37-19-807, 37-19-822, MCA

24.147.1501 BRANCH FACILITY (1) A branch facility need only consist of space for the purpose of visitation and funeral rites. Funeral arrangements and sale of funeral goods and services shall be permitted in this facility. Performance of embalming shall not be permitted. An annual renewal fee is required but no annual inspection will be mandated.

AUTH: 37-1-131, ~~37-19-101~~, 37-19-202, MCA

IMP: 37-19-827, 37-19-828, 37-19-829, MCA

REASON: It is reasonably necessary to address confusion among licensees and specify that no annual inspection is required for branch facilities.

24.147.1503 REQUIREMENTS FOR SALE OF AT-NEED, PRE-NEED, AND PREPAID FUNERAL ARRANGEMENTS (1) through (4) remain the same.

(5) Any funeral trust agreement shall include ~~that a provision that a pre-need purchaser shall receive a receipt for the deposited funds from shall be returned to the purchaser of the depository institution.~~ The funeral trust agreement must include a disclosure to the pre-need purchaser that the purchaser should receive the receipt within 30 days, and if the receipt is not received within the 30-day timeframe, the purchaser should contact the pre-need seller.

AUTH: 37-1-131, ~~37-19-101~~, 37-19-202, MCA

IMP: 37-19-827, 37-19-828, 37-19-829, MCA

REASON: The Board determined that it is reasonably necessary to further protect the public by requiring disclosure in the funeral trust agreement that the pre-need purchaser should receive a receipt from the depository institution. By requiring the disclosure, the purchaser will be provided notice that they are to receive timely confirmation that their funds have been properly deposited.

24.147.2108 EXCEPTIONS - NOT ENGAGING IN THE PRACTICE OF FUNERAL SERVICE (1) The board has authority to make a written exception from the continuing education requirements for those persons who certify that they do not intend to engage in the practice of funeral service. Applicants for certificate or license renewal must certify their intention to the board on a ~~form prescribed~~ notice furnished by the board department. The board defines "practice of funeral service" to mean:

(a) a person engaging in providing shelter, care, and custody of the human dead;

(b) the practice of preparing of the human dead by embalming or other methods for burial or other disposition;

(c) in making arrangements at or prior to need, financial or otherwise, for the providing of such services and/or the same of funeral merchandise, whether for present or future use; or;

(d) in general, engaging in the practice or performing any functions of funeral directing and/or embalming as presently known including those stipulated herein.

AUTH: 37-1-131, 37-1-319, 37-19-202, ~~37-19-316~~, MCA

IMP: ~~37-19-316~~ 37-1-306, MCA

24.147.2401 COMPLAINT FILING (1) remains the same.

(2) Complaints must be in writing, and shall be filed on the proper complaint form prescribed by the ~~board~~ department.

(3) Upon receipt of the written complaint form, the ~~board-office~~ department shall log in the complaint and assign it a complaint number. The complaint shall then be sent to the licensee complained about for a written response. Upon receipt of the licensee's written response, both complaint and response shall be considered by the screening panel of the board for appropriate action including dismissal, investigation, or a finding of reasonable cause of violation of a statute or rule. The ~~board-office~~ department shall notify both complainant and licensee of the determination made by the screening panel.

(4) and (5) remain the same.

AUTH: 37-1-131, 37-19-202, MCA

IMP: 37-1-307, 37-1-308, 37-1-309, MCA

5. The Board proposes to adopt the following new rules:

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

AUTH: 37-1-131, MCA

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

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

Adoption and incorporation of ARM 24.101.301 will allow the Department to promptly eliminate excess cash balances of the Board that result from unexpectedly high licensing level or other nontypical events. Abatement in such instances will allow the licensees who have paid fees into the Board's program to receive the temporary

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

NEW RULE II RENEWAL OF CEMETERY LICENSE (1) All cemetery licenses must be renewed every five years beginning on July 1, 2000.

(2) Prior to the renewal deadline date, the department will mail a renewal notice to the cemetery's preferred mailing address on file with the department. Failure to receive such renewal notice shall not relieve the licensee of the licensee's obligation to renew and pay renewal fees in a timely manner.

(3) Renewals that are in any manner incomplete on receipt by the department will be returned to the licensee for completion and resubmission. To be considered complete, the renewal must:

(a) be accompanied by the appropriate renewal fee. Checks returned to the department for any reason will be returned to the licensee for payment. The license will be considered not renewed until proper payment is received; and

(b) be accompanied by any other material or documentation the board may require for renewal as identified on the renewal notice.

(4) Complete renewals submitted to the department after the renewal deadline date shall be considered late and subject to a late penalty fee in addition to the renewal fee. In the event of a late renewal, the licensee may be subject to disciplinary action by the department for unlicensed practice.

AUTH: 37-19-814, MCA

IMP: 37-19-814, MCA

REASON: It is reasonable and necessary for the Board to adopt NEW RULE II to set the renewal process and renewal date for cemeteries, as per 37-19-814, MCA. The statute provides that the renewal date for cemeteries must be set in Board rule, therefore it cannot be included in the Department rule, ARM 8.2.208.

6. The Board proposes to repeal the following rule:

24.147.1311 CEMETERY AUTHORITY RULES found at ARM page 24-13687.

AUTH: 37-19-807, MCA

IMP: 37-19-807, MCA

REASON: The Board determined that it is reasonable and necessary to repeal this rule as the Board does not intend to designate how cemetery companies may run their businesses. The Board is not in the business of managing cemetery companies and specifying that the companies may enact rules does nothing to further the public's protection.

7. Concerned persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Board of Funeral Service, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to dlibsdfnr@mt.gov, and must be received no later than 5:00 p.m., April 6, 2006.

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

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

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

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

BOARD OF FUNERAL SERVICE
R.J. (DICK) BROWN, 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 February 27, 2006.

BEFORE THE DEPARTMENT OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the proposed	)	NOTICE OF PROPOSED
amendment of ARM 32.6.701, 32.6.702,	)	AMENDMENT
32.6.703, 32.6.704, 32.6.705, 32.6.706,)	
32.6.707, 32.6.708, 32.6.709, 32.6.710,)	
32.6.711, 32.6.801, 32.6.802, 32.6.803,)	
32.6.804, 32.6.805, 32.6.806, 32.6.807,)	
32.6.808, 32.6.809, 32.6.810, 32.6.811,	)	NO PUBLIC HEARING
32.6.812, 32.6.813, 32.6.814, and	)	CONTEMPLATED
32.6.815 pertaining to animal feeding,)	
slaughter, and disposal)	

To: All Concerned Persons

1. On April 9, 2006, the Department of Livestock proposes to amend the above-stated rules pertaining to animal feeding, slaughter, and disposal.

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 March 30, 2006, to advise us of the nature of the accommodation that you need. Please contact Marc Bridges, 301 N. Roberts St., Room 308, PO Box 202001, Helena, MT 59620-2001; phone: (406) 444-7323; TTD number: 1-800-253-4091; fax: (406) 444-1929; e-mail: mbridges@mt.gov.

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

- 32.6.701 DEFINITIONS In this subchapter:
- (1) remains the same but is renumbered (8).
 - (2) remains the same but is renumbered (5).
 - (3) remains the same.
 - (4) remains the same but is renumbered (1).
 - (5) remains the same but is renumbered (2).
 - (6) remains the same but is renumbered (4).
 - (6) "Mobile slaughter facility" is defined in 81-9-217, MCA.
 - (7) remains the same.

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

32.6.702 APPLICATIONS TO BE IN WRITING; INSPECTION OF PLANS AND FACILITIES PRIOR TO ISSUANCE OF LICENSE (1) Any person, firm, or corporation desiring to maintain or conduct a slaughterhouse, meat packing house,

mobile slaughter facility, or meat depot shall file a written application for a license on a form to be provided by the Department of Livestock.

(2) remains the same.

(3) No license for a slaughterhouse, meat packing house, mobile slaughter facility, or meat depot may be granted until a representative of the Montana Department of Livestock, ~~animal health~~ meat, milk, and egg inspection division has inspected the establishment, or facility, and premises proposed to be licensed, and has specified in writing, addressed to the applicants, the requirements for sanitation and necessary facilities for sanitary operation in conformity with the requirements of this subchapter.

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

IMP: 81-2-102, 81-9-201, 81-9-217, 81-9-219, 81-9-220, 81-9-226, 81-9-227, 81-9-228, 81-9-229, 81-9-230, 81-9-231, MCA

32.6.703 SANITARY CONDITION REQUIREMENTS (1) Slaughterhouses, meat packing houses, mobile slaughter facilities, and meat depots must be constructed to be operated and maintained in a sanitary condition.

(2) remains the same.

(3) There must be an efficient drainage and plumbing system for the establishment and premises or facility. All drains and gutters must be properly installed, with approved traps and vents. The disposal of wastes must be conducted in a manner approved by the Montana Department of Livestock, ~~animal health~~ meat, milk, and egg inspection division, the Montana Department of Environmental Quality, and local health departments.

(4) The water supply must be ample, clean, and potable, with adequate facilities for its distribution in the ~~plant~~ establishment or facility and its protection against contamination and pollution. Every establishment or facility must state, and whenever required allow inspection of, the source of its water supply, the storage facilities, and the distribution system.

(a) Equipment using potable water must be installed to prevent back-siphonage into the potable water system.

(b) Non-potable water is permitted only in those parts of the establishment or facility where no edible product is handled or prepared, and then only for limited purposes, such as on ammonia condensers not connected with the potable water supply, in vapor lines serving inedible product rendering tanks in connection with equipment used for hashings and washing inedible products preparatory to tanking, and in sewer lines for moving heavy solids in the sewage.

(i) Non-potable water is not permitted for washing floors, areas, or equipment involved for trucking materials to and from edible products departments, nor is it permitted in hog scalding vats, dehairing machines, or vapor lines serving edible products rendering equipment, or for clean-up of shacking pens, bleeding areas, or runways within the slaughtering department.

(c) In all cases, non-potable water lines must be clearly identified and may not be cross-connected with the potable water supply unless this is necessary for fire protection. A cross-connection must have an adequate break to assure against

accidental contamination, and must be approved by local authorities and by the Montana Department of Livestock.

(a) through (6) remain the same.

(7) Every practicable precaution must be taken to exclude flies, gnats, mice, and other vermin. The use of poisons for any purpose in rooms or compartments where any unpacked product is stored or handled is forbidden, except under such restrictions and precautions as the Montana Department of Livestock may prescribe. The use of bait poisons in hide cellars, inedible compartments, outbuildings, or similar places, or in storerooms containing canned or tierced products, is not forbidden, but only those bait poisons approved by the Montana Department of Livestock, animal health-meat, milk, and egg inspection division may be so used. So-called rat viruses may not be used in any part of an establishment or the premises thereof.

(8) remains the same.

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

IMP: 81-2-102, 81-9-217, 81-9-220, 81-9-233, MCA

32.6.704 SANITARY FACILITIES AND ACCOMMODATIONS: SPECIFIC REQUIREMENTS (1) Adequate sanitary facilities and accommodations must be furnished by every licensed establishment or facility. The following are specifically required:

(1) and (2) remain the same but are renumbered (a) and (b).

~~(3)~~ (c) Toilet soil lines must be separate from house drainage lines to a point outside the buildings. Drainage from toilet bowls, holding tanks, and urinals may not be discharged into grease catch-basins.

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

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

IMP: 81-2-102, 81-9-217, 81-9-220, 81-9-233, MCA

32.6.705 EQUIPMENT TO BE EASILY CLEANED; INEDIBLE PRODUCTS EQUIPMENT TO BE MARKED (1) through (3) remain the same.

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

IMP: 81-2-102, 81-9-217, 81-9-220, 81-9-233, MCA

32.6.706 SCABBARDS FOR KNIVES (1) remains the same.

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

IMP: 81-2-102, 81-9-217, 81-9-220, 81-9-233, MCA

32.6.707 ROOMS, COMPARTMENTS, ETC., TO BE CLEAN AND SANITARY (1) Rooms, compartments, places, equipment, and utensils used for preparing, storing, or otherwise handling any product, and all other parts of the establishments or facilities, must be kept in a clean, sanitary condition.

(2) remains the same.

AUTH: 81-2-102, 81-9-220, MCA
IMP: 81-2-102, 81-9-217, 81-9-220, 81-9-233, MCA

32.6.708 OPERATIONS, PROCEDURES, ROOMS, CLOTHING, UTENSILS, ETC., TO BE CLEAN AND SANITARY (1) remains the same.

(2) Rooms and compartments, or facilities, in which animals are slaughtered or in which any product is processed or prepared must be kept sufficiently free from steam and vapors to ensure clean operations. The walls, ceilings, and overhead structures of rooms and compartments, or facilities, in which products are prepared, handled, or stored must be kept reasonably free from moisture.

(3) Butchers and others who dress or handle diseased carcasses or parts must, before handling or dressing other carcasses or parts, clean their hands with liquid soap and hot water and rinse them in clean water. Implements used in dressing diseased carcasses must be thoroughly cleaned in boiling water, or in a prescribed disinfectant followed by rinsing in clean water. The employees of the establishment or facility who handle any product must keep their hands clean and in all cases after visiting the toilet rooms or urinals shall wash their hands before handling any product or implements used in preparation of products.

(4) and (5) remain the same.

AUTH: 81-2-102, 81-9-220, MCA
IMP: 81-2-102, 81-9-217, 81-9-220, 81-9-233, MCA

32.6.709 INEDIBLE OPERATING AND STORAGE ROOMS: OUTER PREMISES, DOCKS, DRIVEWAYS, APPROACHES: PENS, ALLEYS, ETC., FLY-BREEDING MATERIAL: NUISANCES (1) All operating and storage rooms and departments of licensed establishments or facilities used for inedible materials must be maintained in an acceptably clean condition.

(2) The outer premises of every licensed establishment or facility, embracing docks, and areas where cars and vehicles are loaded, and driveways, approaches, yards, pens, and alleys must be properly paved and drained and kept in a clean and orderly condition.

(3) through (5) remain the same.

(6) No nuisance is allowed in any establishment or facility or on its premises.

AUTH: 81-2-102, 81-9-220, MCA
IMP: 81-2-102, 81-9-217, 81-9-220, 81-9-233, MCA

32.6.710 EMPLOYMENT OF DISEASED PERSONS (1) No establishment or facility may employ any person affected with tuberculosis or other communicable disease in a transmissible stage in any department where any product is handled or prepared.

AUTH: 81-2-102, 81-9-220, MCA
IMP: 81-2-102, 81-9-217, 81-9-220, 81-9-233, MCA

32.6.711 DISPOSAL OF OFFAL, PAUNCH CONTENTS, AND OTHER VISCERA (1) Offal must be disposed of by burial, incineration, tanking, composting, or by other methods approved by the Montana Department of Livestock, animal health meat, milk, and egg inspection division and Department of Environmental Quality. Disposal of material must be in conformance with solid waste laws and rules.

(2) The contents of the paunch and other viscera may be deposited or temporarily stored in a properly constructed, lined manure pit, not nearer than 300 yards from the establishment or facility, or by other means approved by the Montana Department of Livestock, animal health meat, milk, and egg inspection division and Department of Environmental Quality. Manure pits must be emptied at least annually.

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

IMP: 81-2-102, 81-9-217, 81-9-220, 81-9-233, MCA

32.6.801 DEFINITIONS In this subchapter:

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

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

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

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

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

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

(2) "Mobile slaughter facility" is defined in 81-9-217, MCA, and includes a "poultry mobile slaughter facility".

AUTH: 81-2-102, 81-9-220, 81-20-101, MCA

IMP: 81-2-102, 81-9-217, 81-9-220, 81-20-101, MCA

32.6.802 APPLICATION: INSPECTION OF PLANS AND FACILITIES PRIOR TO ISSUANCE OF LICENSE (1) Any person, firm, or corporation desiring to maintain or conduct a poultry slaughterhouse, poultry meat packing house, poultry mobile slaughter facility, or poultry meat depot shall file a written application for a license on a form to be provided by the department.

(2) Complete drawings and specifications for remodeling establishments or poultry mobile slaughter facilities and for new construction must be submitted to the department and approval obtained from the department for the plans in advance of construction.

(3) No license for a poultry slaughterhouse, poultry meat packing house, poultry mobile slaughter facility, or poultry meat depot may be granted until a representative of the Montana Department of Livestock has inspected the establishment, poultry mobile slaughter facility, and premises proposed to be licensed and certified in writing that the requirements for sanitation and necessary facilities for sanitary operation are in conformity with the requirements of this chapter.

AUTH: 81-2-102, 81-9-220, 81-20-101, MCA

IMP: 81-2-102, 81-9-201, 81-9-217, 81-9-219, 81-9-220, 81-9-226, 81-9-227, 81-9-228, 81-9-229, 81-9-230, 81-9-231, 81-20-101, MCA

32.6.803 BUILDINGS ESTABLISHMENT OR FACILITY (1) The buildings establishment or facility must be of sound construction and kept in good repair, and must be of such construction as to prevent the entrance or harboring of vermin.

(2) The doors, windows, skylights, and other outside openings of the buildings establishment or facility, except receiving rooms and feeding rooms, must be protected against the entrance of flies and other insects by properly fitted screens or other suitable devices.

(3) remains the same.

AUTH: 81-2-102, 81-9-220, 81-20-101, MCA

IMP: 81-2-102, 81-9-217, 81-9-220, 81-9-233, 81-20-101, MCA

32.6.804 ROOMS AND COMPARTMENTS (1) Rooms, compartments, facilities, or receptacles used for edible products must be separate and distinct from inedible products departments and from rooms where live poultry are held or slaughtered. Separate rooms must be provided when required for conducting processing operations in a sanitary manner. All rooms must be of sufficient size to permit the installation of the necessary equipment for processing operations and the sanitary conduct of such operations.

(2) The licensed establishment or poultry mobile slaughter facility should have separate rooms for each of the following operations, but in no case may receiving or feeding of live poultry or killing operations be permitted in rooms in which eviscerating operations are performed:

(a) the receiving and feeding of live poultry;

(b) killing, scalding, and roughing operations;

(c) pinning, finishing, eviscerating, chilling, and packing operations of edible poultry food products;

(d) inedible products departments.

(e) Separate refuse rooms or equally adequate facilities, are required in eviscerating plants where accumulations of refuse occur. These refuse rooms must have tight-fitting doors and be properly ventilated.

(3) through (5) remain the same.

AUTH: 81-2-102, 81-9-220, 81-20-101, MCA

IMP: 81-2-102, 81-9-217, 81-9-220, 81-9-233, 81-20-101, MCA

32.6.805 FLOORS, WALLS, CEILINGS, ETC. (1) remains the same.

(2) All floors, except those in receiving rooms and feeding rooms, and floors which are kept dry, must be constructed of hardened concrete, tile laid closely together with impervious joint material, or of other similar impervious material, and be kept in good repair. The floors in killing, icecooling, icepacking, and evisceration rooms must be graded to permit runoff with no standing water. ~~In new construction and renovated plants the pitch may be not less than 1/4 inch per foot to drain. In~~

~~new construction the junction of the wall with the floor must be covered on a radius of not less than 2 inches.~~

(3) Ceilings and walls in rooms and compartments where exposed edible products are processed, handled, or stored must have tiled, enameled, or other smooth surfaces impervious to moisture. Cooler and freezer rooms must have interior surfaces impervious to moisture so as to permit thorough cleaning. ~~Window ledges shall be set at an angle of approximately 45 degrees F. All upper horizontal surfaces must be kept at a minimum.~~

AUTH: 81-2-102, 81-9-220, 81-20-101, MCA
IMP: 81-2-102, 81-9-217, 81-9-220, 81-9-233, 81-20-101, MCA

32.6.806 BLOOD DISPOSAL (1) Adequate facilities must be provided for the disposal of blood in a sanitary manner. When bleeding troughs are used they must be long enough to catch the blood during the bleeding process and must be cleaned daily. Such troughs must be installed to at a pitch of at least 1/2 inch per foot toward a smooth metal catch basin or basins, be of sufficient capacity for a day's operation at peak production, or else be flushed continuously.

AUTH: 81-2-102, 81-9-220, 81-20-101, MCA
IMP: 81-2-102, 81-9-217, 81-9-220, 81-9-233, 81-20-101, MCA

32.6.807 DRAINING AND PLUMBING (1) ~~The plant~~ establishment, facility, and premises must have an efficient draining and plumbing system.

~~(4)~~ (2) All drains and gutters must be properly installed with approved traps and vents. The drainage and plumbing system must provide for the quick runoff of all water from plant buildings or a poultry mobile slaughter facility, and surface water around the ~~plant~~ establishment or facility and on the premises. All such water must be disposed of without creating a nuisance or health hazard.

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

~~(6)~~ (7) Floor drainage lines should be of metal and at least 4 inches in diameter and open into main drains of at least 6 inches in diameter adequate. They must be properly vented to the outside air.

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

AUTH: 81-2-102, 81-9-220, 81-20-101, MCA
IMP: 81-2-102, 81-9-217, 81-9-220, 81-9-233, 81-20-101, MCA

32.6.808 WATER SUPPLY (1) remains the same.

(2) Hot water at a temperature ~~not less than 180 degrees F.~~ sufficient to sanitize must be available for sanitation purposes.

(3) Hose connections ~~with steam~~ and water mixing valves or hot water hose connections must be provided at convenient locations throughout the plant for cleaning purposes.

(4) remains the same.

AUTH: 81-2-102, 81-9-220, 81-20-101, MCA

IMP: 81-2-102, 81-9-217, 81-9-220, 81-9-233, 81-20-101, MCA

32.6.809 LAVATORY ACCOMMODATIONS (1) Modern lavatory accommodations, and properly located facilities for cleaning utensils and hands, must be provided.

~~(1)~~ (2) Adequate lavatory and toilet accommodations, including, but not limited to, running hot and cold water, soap, and towels, must be ~~provided~~ available.

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

AUTH: 81-2-102, 81-9-220, 81-20-101, MCA

IMP: 81-2-102, 81-9-217, 81-9-220, 81-9-233, 81-20-101, MCA

32.6.810 LIGHTING AND VENTILATION (1) remains the same.

(2) All rooms in which poultry are killed, eviscerated, or otherwise processed, must have ~~at least 30 foot-candles of light intensity~~ adequate lighting on all working surfaces, ~~except that at grading and inspection stations the light intensity must be 50 foot-candles. In all other rooms there must be at least 5 foot-candles of light intensity when measured at a distance of 30 inches from the floor.~~

(3) remains the same.

AUTH: 81-2-102, 81-9-220, 81-20-101, MCA

IMP: 81-2-102, 81-9-217, 81-9-220, 81-9-233, 81-20-101, MCA

32.6.811 EQUIPMENT AND UTENSILS (1) Equipment and utensils used for preparing, processing, or otherwise handling any product in the ~~plant establishment or facility~~ establishment or facility must be suitable for the purpose intended and be of material and construction which will allow ready and thorough cleaning and which will ~~ensure~~ ensure cleanliness in the preparation and handling of products. Insofar as practical, equipment and utensils must be made of metal or other impervious material. Trucks and receptacles used for handling inedible products must be of similar construction, be conspicuously and distinctly marked, and may not be used for handling any edible products.

(2) through (4) remain the same.

(a) The scalding tanks, when used, must be constructed, to prevent contamination of potable water lines and to permit water to enter continuously ~~at the rate of 1/4 gallon per bird per minute~~ and to flow through an overflow.

(b) through (17) remain the same.

AUTH: 81-2-102, 81-9-220, 81-20-101, MCA

IMP: 81-2-102, 81-9-217, 81-9-220, 81-9-233, 81-20-101, MCA

32.6.812 RESTRICTION ON USE OF EQUIPMENT AND UTENSILS

(1) Equipment and utensils used in a licensed ~~plant~~ establishment or facility may not be used outside the licensed ~~plant~~ establishment or facility except under such conditions as may be prescribed or approved by the department. Equipment used in the preparation of any article (including, but not limited to animal food) from

inedible material may not be used outside the inedible products department except under such conditions as may be prescribed by the department.

AUTH: 81-2-102, 81-9-220, 81-20-101, MCA
IMP: 81-2-102, 81-9-217, 81-9-220, 81-9-233, ~~81-20-101~~, MCA

32.6.813 ACCESSIBILITY FOR CLEANING (1) remains the same.

(2) When used in a ~~plant~~ establishment or facility, mechanical pickers must be accessible for thorough cleaning and removal of the accumulation of feathers.

AUTH: 81-2-102, 81-9-220, 81-20-101, MCA
IMP: 81-2-102, 81-9-217, 81-9-220, 81-9-233, ~~81-20-101~~, MCA

32.6.814 CLEANING ROOMS AND COMPARTMENTS (1) through (11) remain the same.

AUTH: 81-2-102, 81-9-220, 81-20-101, MCA
IMP: 81-2-102, 81-9-217, 81-9-220, 81-9-233, ~~81-20-101~~, MCA

32.6.815 CLEANING OF EQUIPMENT AND UTENSILS (1) through (13) remain the same.

AUTH: 81-2-102, 81-9-220, 81-20-101, MCA
IMP: 81-2-102, 81-9-217, 81-9-220, 81-9-233, ~~81-20-101~~, MCA

REASON: The proposed amendments will implement HB 484 passed by the 2005 Legislature. The proposed amendments are reasonably necessary to address licensing and sanitation requirements for mobile slaughter units, which will now be allowed under licensure and inspection in Montana. Previously, only fixed location "official establishments" were allowed to conduct slaughter of livestock and poultry in Montana. The new rules will allow licensing and inspection of mobile slaughter facilities, and also require these new mobile facilities to adhere to the same stringent standards for sanitation and inspection by the Department of Livestock. The proposed amendments will also update authorization and implementation statutory citations to include existing slaughter statutes and the newly amended mobile slaughter statutes.

4. Concerned persons may submit their data, views or arguments concerning the proposed amendment in writing to Marc Bridges, 301 N. Roberts St., Room 308, PO Box 202001, Helena, MT 59620-2001, by faxing to (406) 444-1929, or by e-mailing to mbridges@mt.gov to be received no later than 5:00 p.m. April 6, 2006.

5. If persons who are directly affected by the proposed amendment wish to express their data, views and arguments orally or in writing at a public hearing, they must make 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. April 6, 2006.

6. If the department receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action; from the appropriate administrative rule review committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a 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, which includes the name and mailing address of the person to receive notices and specifies the area of interest that the person wishes to receive notices regarding. Such written request may be mailed or delivered to Marc Bridges, 301 N. Roberts St., Room 308, PO Box 202001, Helena, MT 59620-2001; faxed to (406) 444-1929 "attention Marc Bridges"; or e-mailed to mbridges@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, apply and have been fulfilled.

DEPARTMENT OF LIVESTOCK

BY: /s/ Marc Bridges
Marc Bridges
Executive Officer
Board of Livestock
Department of Livestock

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

Certified to the Secretary of State February 27, 2006.

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

In the matter of the amendment of ARM)
37.111.825 pertaining to public)
accommodations, school health)
supervision and maintenance)

NOTICE OF EXTENSION OF
COMMENT PERIOD ON
PROPOSED AMENDMENT

TO: All Interested Persons

1. On December 22, 2005, the Department of Public Health and Human Services published MAR Notice No. 37-364 at page 2555 of the 2005 Montana Administrative Register, issue number 24, regarding the proposed amendment of ARM 37.111.825. The Department is extending the comment period for the proposed amendment.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice. If you need to request an accommodation, contact the Department no later than 5:00 p.m. on March 17, 2006, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970; Email dphhslegal@mt.gov.

2. The hearing on the proposed amendment was held on January 11, 2006, at 10:30 a.m. in the auditorium of the Department of Public Health and Human Services Building, 111 N. Sanders, Helena, Montana. The deadline for submitting comments to the Department was January 19, 2006. The Department's interested persons mailing list did not include the Montana Office of Public Instruction. Given that the proposed amendment affects the state's public schools, the Department is now formally extending the comment period to March 23, 2006.

3. Interested persons may submit their data, views or arguments in writing to Gwen Knight, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 202951, Helena, MT 59620-2951, no later than 5:00 p.m. on March 23, 2006. Data, views or arguments may also be submitted by facsimile (406)444-9744 or by electronic mail via the Internet to dphhslegal@mt.gov. The Department also maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. For placement on the mailing list, please write to Gwen Knight at the above address.

/s/ Dawn Sliva
Rule Reviewer

/s/ Russ Cater for
Director, Public Health and
Human Services

Certified to the Secretary of State February 27, 2006.

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

In the matter of the adoption of new) NOTICE OF ADOPTION
rule I (ARM 12.3.185) pertaining to an)
annual lottery of hunting licenses)

TO: All Concerned Persons

1. On December 22, 2005, the Commission (commission) published MAR Notice No. 12-318 regarding the proposed adoption of the above-stated rule at page 2503 of the 2005 Montana Administrative Register, Issue No. 24.

2. The commission has adopted new rule I (ARM 12.3.185) exactly as proposed.

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

Comment 1: A number of comments were offered in general, unqualified support of the super-tag rule.

Response: The commission appreciates the support of the individuals offering these comments.

Comment 2: One individual suggested that the commission group all permitted species into one super-tag, charge \$50 to \$100 for chances and allow use of the tag from archery season into rifle season.

Response: HB 235 (2005), codified at 87-1-271, MCA, sets out that the commission may issue through lottery one deer tag, one elk tag, one Shiras moose tag, one mountain sheep tag and one mountain goat tag. The law does not provide for one tag that includes all five of the species. In addition, the commission believes that more people would be able to participate in the lottery if the tickets are priced at \$5 and if there are five different tags to win. Hopefully, more participation will maximize profits that will be dedicated to hunting access programs and law enforcement. The super-tag is valid during any open general season for a species, including archery season. However, not all species have an archery season, so a tag could not be used during archery season for a species that does not have one. For example, a super-tag could not be used during archery season for moose, sheep, and goat since they don't have one.

Comment 3: A number of people had questions and comments about residency and the super-tag. One person asked if nonresidents could purchase chances for a super-tag if they have a conservation license. Another comment stated that if a nonresident wins a super-tag that license should be subtracted from the quota of nonresident licenses. Others thought nonresidents should be charged more to

purchase a chance. Some believed that nonresidents and clients of outfitters should not be allowed to purchase chances for a super-tag.

Response: Under the new rule (ARM 12.3.185), nonresidents who purchase a conservation license may purchase chances for a super-tag. By statute, the super-tag license is a completely separate entity from the licenses and quotas of the existing special license drawing. The Private Lands/Public Wildlife Council (PLPWC) which created the concept of a super-tag in Montana recommended that chances for super-tags be available to both residents and nonresidents for a \$5 fee. The council thought the fees and availability would maximize super-tag revenue for enforcement and hunting access programs. The commission agreed with the council's reasoning and decided to accept its recommendations.

Comment 4: Several comments were offered in support of the new super-tag rule with the suggestion to limit the number of chances an individual can purchase in order to provide equity of opportunity.

Response: HB 235 was presented to the 2005 Legislature as a recommendation from the PLPWC to create additional funding for hunting access enhancement programs and law enforcement. Super-tags are limited to issuance of five licenses total with one license each for moose, sheep, goat, elk and deer. The funding potential of super-tags is maximized by allowing purchase of unlimited chances. For those concerned about equity of opportunity, almost all chances for special licenses are still available through drawings which are equitable.

Comment 5: A number of comments were in general, unqualified opposition to a lottery for hunting licenses.

Response: HB 235 was presented as a recommendation from the PLPWC to create additional funding for hunting access enhancement programs and law enforcement. The Montana legislature passed HB 235, which allows the commission to issue through a lottery one license each year for deer, elk, Shiras moose, mountain sheep, and mountain goat. All proceeds from the annual lottery of these hunting licenses are dedicated to hunting access enhancement and law enforcement. The commission has decided to implement the lottery in order to increase funding for law enforcement and hunting access enhancement programs and is adopting rules to that effect.

Comment 6: A few people were against the lottery because it is a form of gambling. Some stated they would rather pay higher license fees if more money is needed.

Response: Views differ on the appropriateness of a lottery for distribution of the five special licenses. The 2005 legislature authorized the commission to issue the five hunting licenses via lottery, and the commission has decided to implement the lottery in order to increase funding for hunting access programs and enforcement. Fee increases for hunting licenses must be approved by the legislature. Any change to the law permitting a lottery of hunting licenses would also require legislation.

It is the department's and commission's experience that people generally do not favor license fee increases.

Comment 7: Some individuals opposed the lottery because they believe it is commercializing and/or privatizing wildlife which is a public resource. Some thought that it was ironic that the department emphasizes ethics in hunting while the commission is considering offering licenses via lottery, a practice they believe reflects questionable ethics. Some thought the new rule detracts from Montana's hunting heritage.

Response: Views differ on the appropriateness of a lottery for distribution of the five special licenses. The commission believes that the lottery of only five hunting licenses in order to raise additional funds for hunting access programs and enforcement does not commercialize or privatize a public resource or detract from Montana's hunting heritage. The commission thinks that the additional funds could help open up more hunting opportunities for the public. The lottery of these five licenses does not affect a resident's opportunities to purchase deer and elk permits, and equitable opportunities for drawing special licenses are still administered in the same way as in years past.

Comment 8: A number of individuals had recommendations for the use of the funds generated by the super-tag. Some believed that these funds should not go to private landowners, through department programs, who do not allow public hunting. A few thought the proceeds should go to habitat restoration or hunting access. Others thought Block Management should not be appropriated any super-tag proceeds because the program has been allowed enough funds. Another stated he might support the super-tag if its proceeds were applied to reopening roads and trails that have been closed by private parties and outfitters. One person stated that the funds should be put to good use and another stated that the funds should go to enhance wildlife.

Response: The commission will take these recommendations under advisement. Under 87-1-271, MCA, proceeds from the lottery must be used for hunting access programs and law enforcement.

Comment 9: A few people stated that super-tags should not affect general quotas and overall hunting opportunities.

Response: The super-tag is a separate entity from other hunting licenses and does not affect general quotas and overall hunting opportunities. When the 2005 Legislature passed HB 325, the department was consulted and it evaluated biologic data available. The department determined that issuance of one extra license for each species would not jeopardize any of the species, so the super-tags will not affect existing quotas and hunting opportunities.

Comment 10: A large number of those in opposition to the license lottery adamantly expressed that the super-tag makes hunting inequitable in Montana and creates a "rich man's" sport since those with more money can afford to buy more tickets and increase their chances of receiving a license. Some supporting the lottery believed the number of chances for licenses should be limited so the rich would not have greater opportunities for licenses than the "average Joe."

Response: HB 235 was presented as a recommendation from the PLPWC to create additional funding for hunting access enhancement programs and law enforcement. The Montana legislature passed HB 235, which allows the commission to issue through a lottery one license each year for deer, elk, Shiras moose, mountain sheep, and mountain goat. All proceeds from the annual lottery of these hunting licenses are dedicated to hunting access enhancement and law enforcement. Allowing unlimited chances maximizes the funding potential for these programs.

For those concerned about equitable opportunity for permits, the commission does not believe that the lottery of only five hunting licenses makes hunting in Montana a "rich man's" sport. Almost all special licenses are still being issued through the department's license drawing, and it is being administered in the same manner as in years past. In addition, residents may still purchase elk and deer permits in the same manner as in years past.

Comment 11: Some individuals voiced opposition because they thought the current special license drawing system was being replaced with a lottery for all special licenses.

Response: The super-tag lottery is in addition to the current drawings for big game species and provides additional opportunities to hunters. The special license drawing is not being replaced by the super-tag lottery.

Comment 12: Four comments were in support of the super-tag rule with a suggestion to increase the commission for license agents to \$.50 per chance.

Response: Currently, commissions are paid to department license agents on a per transaction basis. A transaction in this case means the purchase of one or more super-tag chances of the same species at one time. For example, if a person purchases five lottery tickets for the opportunity to get a Shiras moose license, it is considered one transaction. Additionally, if that person also purchases ten lottery tickets for the opportunity to get an elk license, it is considered another transaction. Agents will receive a \$.50 commission for each super-tag transaction for a species, which is consistent with all other license commissions the department pays.

Comment 13: One comment was in support of the super-tag rule with a suggestion to increase the fee for nonresident chances to \$10 per chance and add bison to the list of species.

Response: The PLPWC recommended that the prices per chance be the same for both residents and nonresidents. The commission decided to accept this recommendation in order to keep the administration of the lottery tickets easy, reduce errors, and maximize funding. Bison was not one of the species listed by the Montana legislature in HB 235 when it passed. Therefore, the law does not authorize the commission to issue bison licenses through the super-tag lottery.

Comment 14: One comment requested an additional super-tag for antelope.

Response: Antelope was not one of the species listed by the Montana legislature in HB 235 when it was passed. Therefore the law does not authorize the commission to issue antelope licenses through the super-tag lottery.

Comment 15: One comment was in support of the super-tag rule with an increased price for the moose, sheep, and goat chances.

Response: The commission decided to keep all lottery chances the same price to reduce confusion and errors and make the program easier to administer.

Comment 16: One comment was in support of the super-tag rule and suggested the license be transferable to a nonresident family member for use in any legal hunting district.

Response: There is no statute that allows for the transfer of a super-tag license to another individual. The commission does not believe it has the statutory authority to allow super-tag license transfers, except in limited circumstances provided for in the statutes. Specifically, a license that is purchased or drawn by an individual cannot be transferred to another individual.

Comment 17: One comment was in support of the super-tag rule and suggested an increase to \$10 per chance.

Response: In order to create greater participation in the super-tag lottery, the commission determined that \$5 per chance would be more affordable and increase the amount of contributions.

Comment 18: A few people had questions about hunting with a super-tag. One person asked if a super-tag would be for a male, female or either sex of a species. Another asked if hunting district-specific rules must be followed when using a super-tag or if the tag could be used anywhere, regardless of the district rules. For example, if a district was spike only, this person wondered if a hunter with a super-tag could hunt for a bull.

Response: The new rule (ARM 12.3.185(5)) provides that, "A super-tag may be used in any legally described hunting district open for hunting of that species. A super-tag may be used only during the legal hunting season for the species for which it is issued. The person using the super-tag may use it only during a hunting

district's open season and is subject to all hunting regulations, including special weapons regulations, that apply to a hunting district." The sex the super-tag holder hunts for will be determined by the district's regulations also. If a hunting district's general and permit seasons allow only antlerless to be hunted, the super-tag holder may only hunt antlerless etc. If a hunting district's regulations allow only antlerless to be hunted and that district also has a special permit to hunt bulls, the super-tag holder may opt to hunt for either sex without obtaining the special permit.

Comment 19: One person suggested that the seven-year wait be applied to someone who received a super-tag license. One commentor thought that the super-tag license should be a once in a lifetime license. Another person wondered if a person who drew a license which required a seven year waiting period before the person could enter the drawing again had to wait seven years to purchase super-tag chances.

Response: Section 87-1-271(2), MCA, specifically states that "The restriction in 87-2-702(4) that a person who receives a moose, mountain goat, or mountain sheep special license is not eligible to receive another license for that species for the next seven years does not apply to a person who receives a license through a lottery conducted pursuant to this section." Therefore, the commission does not have the authority to limit the number of years a person must wait in order to get another super-tag license. Additionally, the legislature set out that the waiting requirements for individuals fortunate enough to draw a moose, sheep or goat permit do not affect that individual's ability to draw a super-tag.

/s/ Steve Doherty
Steve Doherty
Chairman, Fish, Wildlife and
Parks Commission

/s/ Rebecca Dockter
Rebecca Dockter
Rule Reviewer

Certified to the Secretary of State February 27, 2006

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

In the matter of the amendment of ARM) NOTICE OF AMENDMENT
12.11.501 pertaining to the list of water)
bodies (index rule))

TO: All Concerned Persons

1. On November 23, 2005, the Commission (commission) published MAR Notice No. 12-317 regarding the proposed amendment of the above-stated rule at page 2285 of the 2005 Montana Administrative Register, Issue No. 22.
2. The commission has amended ARM 12.11.501 exactly as proposed.
3. No comments or testimony were received.

/s/ Steve Doherty
Steve Doherty
Chairman, Fish, Wildlife and
Parks Commission

/s/ Rebecca Dockter
Rebecca Dockter
Rule Reviewer

Certified to the Secretary of State February 27, 2006

BEFORE THE DEPARTMENT OF TRANSPORTATION
OF THE STATE OF MONTANA

In the matter of the amendment of ARM) NOTICE OF AMENDMENT
18.9.704 regarding definitions for motor)
fuels)

TO: All Concerned Persons

1. On January 12, 2006, the Department of Transportation published MAR Notice No. 18-112 regarding the proposed amendment of ARM 18.9.704 at page 14 of the 2006 Montana Administrative Register, Issue Number 1.

2. The agency has amended ARM 18.9.704 as proposed.

3. No hearing was requested.

4. No comments or testimony were received.

By: /s/ James D. Currie
James D. Currie, Deputy Director
Department of Transportation

/s/ Lyle Manley
Lyle Manley, Rule Reviewer

Certified to the Secretary of State February 17, 2006.

BEFORE THE DEPARTMENT OF CORRECTIONS
OF THE STATE OF MONTANA

In the matter of the amendment)	CORRECTED NOTICE OF AMENDMENT
of ARM 20.9.601, 20.9.602,)	
20.9.603, 20.9.604, 20.9.605,)	
20.9.606, 20.9.607, 20.9.608,)	
20.9.609, 20.9.610, 20.9.611,)	
20.9.612, 20.9.613, 20.9.614,)	
20.9.615, 20.9.616, 20.9.617,)	
20.9.618, 20.9.619, 20.9.620,)	
20.9.621, 20.9.622, 20.9.623,)	
20.9.624, 20.9.625, 20.9.626,)	
20.9.627, 20.9.628, 20.9.629,)	
20.9.630, 20.9.631, 20.9.632,)	
20.9.633, and 20.9.634)	
pertaining to licensure of)	
youth detention facilities)	

TO: All Concerned Persons

1. On September 22, 2005, the Department of Corrections published MAR Notice No. 20-7-36 regarding the proposed amendment of the above-stated rules at page 1722 of the 2005 Montana Administrative Register, Issue number 18. On December 22, 2005 the department published the notice of amendment at page 2665 of the 2005 Montana Administrative Register, Issue number 24.

2. The reason for the correction is that the rules were amended as proposed but the notice of amendment did not reflect all sections that were addressed.

3. The rules proposed to be amended should have read as follows with stricken matter interlined, new matter underlined:

20.9.624 SERVICES AND PROGRAMS (1) through ~~(4)~~ (5) remain the same.

AUTH: 41-5-1802, MCA
IMP: 41-5-1802, MCA

20.9.625 EDUCATION (1) and (2) remains the same.

AUTH: 41-5-1802, MCA
IMP: 41-5-1802, MCA

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

/s/ Bill Slaughter

BILL SLAUGHTER, Director
Department of Corrections

/s/ Colleen A. White

Colleen A. White, Rule Reviewer
Department of Corrections

Certified to the Secretary of State February 22, 2006.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 24.17.127, pertaining to prevailing)
wage rates for public works projects -)
nonconstruction services and heavy and)
highway construction services)

TO: All Concerned Persons

1. On November 23, 2005, the Department of Labor and Industry published MAR Notice No. 24-29-199 regarding the public hearing on the proposed amendment of the above-stated rule at page 2290 of the 2005 Montana Administrative Register, Issue no. 22.

2. On December 14, 2005, the department held a public hearing in Helena regarding the above-stated rule at which oral comments were received. No additional comments were received prior to the closing date of December 21, 2005.

3. The Department has thoroughly considered the comments and testimony received from the public. The following is a summary of the public comments received and the Department's response to those comments:

Comment 1: A commenter stated that all contractors are having problems recruiting new workers to the construction trades, and that the wage rates are set too low.

Response 1: The Department sympathizes with employers that are facing a labor shortage, and notes that it actively promotes entry of new workers into the construction industry through its Apprenticeship and Training program. The Department also notes that prevailing wage rates merely establish a minimum level for wages paid on a public works project, not a ceiling or maximum. During periods of a relative scarcity of qualified workers, employers may have to offer wage rates that are higher than the established prevailing rates in order to obtain and keep a qualified workforce.

4. After consideration of the comments, the Department has amended the rule exactly as proposed.

/s/ MARK CADWALLADER
Mark Cadwallader,
Alternate Rule Reviewer

/s/ DORE SCHWINDEN
Dore Schwinden, Deputy Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State February 27, 2006.

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

In the matter of the amendment of)
ARM 32.28.501 and 32.28.601) NOTICE OF AMENDMENT
pertaining to horse racing)

TO: All Concerned Persons

1. On January 26, 2006, the Board of Horse Racing, Department of Livestock, published MAR Notice No. 32-6-179 regarding the proposed amendment of ARM 32.28.501 and 32.28.601 pertaining to horse racing at page 194 of the 2006 Montana Administrative Register, Issue Number 2.

2. The Board of Horse Racing has amended ARM 32.28.501 and 32.28.601 exactly as proposed.

3. No comments or testimony were received.

BOARD OF HORSE RACING
DEPARTMENT OF LIVESTOCK

BY: /s/ Marc Bridges
Marc Bridges
Executive Officer
Department of Livestock

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

Certified to the Secretary of State February 27, 2006.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption of New) NOTICE OF ADOPTION
Rules I (ARM 42.2.202), II (ARM)
42.2.203), III (ARM 42.2.204), IV)
(ARM 42.2.205), V (ARM 42.2.206),)
and VI (ARM 42.2.207) relating to the)
issuance of administrative summons)
by the department)

TO: All Concerned Persons

1. On December 22, 2005, the department published MAR Notice No. 42-2-755 regarding the proposed adoption of the above-stated rules relating to the issuance of administrative summons by the department at page 2635 of the 2005 Montana Administrative Register, issue no. 24. On February 9, 2006, the department published MAR Notice No. 42-2-757 extending the comment period on the proposed adoption of the above-stated rules at page 312 of the Montana Administrative Register, issue no. 3.

2. A public hearing was held on January 17, 2006, to consider the proposed adoption. Oral and written testimony received at the hearing is summarized as follows along with the response of the department:

COMMENT NO. 1: The Montana Bankers Association (MBA) asked if the department intended to name a contact person in the summons and provide the necessary information of how that person could be contacted. They further asked if the department contact person would have the authority to make reasonable accommodations as to the time, place of production of records, identity of the taxpayer or business transaction, and other matters relating to problems that arise.

RESPONSE NO. 1: MBA is correct. New Rule III (ARM 42.2.204(5)) states that the department will provide the name of the department's contact person for each summons issued by the department. It is further anticipated that this person will have the necessary authority to address the concerns raised by MBA.

COMMENT NO. 2: The MBA and the Montana Credit Union Network (MCUN) asked if the department would serve the summons on registered agents. They also asked if a financial institution could designate a specific office to receive all service of process.

RESPONSE NO. 2: The department appreciates the suggestion that we serve the registered agent and to the extent that they are known, the department will attempt to make service on them. The department will amend the rule to include a statement that allows financial institutions the opportunity to request a specific office be designated as a service office for that financial institution. When the department

does not have such a designation, service will be made on the financial institution in the city the department believes will best provide information regarding the subject of the summons.

COMMENT NO. 3: The MBA and MCUN stated that financial institutions are required to keep their customers' information confidential and any release of information by mistake can result in liability. Therefore, it is essential that the summons contain as much specific information about the taxpayer as possible, including full name, address, social security number or taxpayer identification number, and other identifying information. The MBA suggested that the department include language from the Section 7609 IRC which requires the identity of the taxpayer to whom the summons relates or the other person to whom the records pertain.

RESPONSE NO. 3: The department believes that information is already contained in New Rule III (ARM 42.2.204). Additionally, the department will make every effort to adequately identify the taxpayer to whom the summons relates.

COMMENT NO. 4: The MBA suggested that the proposed rule as it relates to financial institutions must identify the taxpayer or person whose records are subject to the summons. They asked how a financial institution which has its customers' records by name and number, should respond if the taxpayer is not identified, or an identifying number is not furnished. They further asked how a taxpayer would be given a due process notice and an opportunity to quash if not identified and notified.

RESPONSE NO. 4: The department understands the concerns raised by MBA, but does not anticipate that requests of this nature will generally be addressed to financial institutions. To the extent that the department has the taxpayer's name and any other identifying information (such as a social security number or taxpayer identification number), such data will be provided to the financial institution. The department points out that in some instances the taxpayer's identity may be unknown when the summons is issued. Similar to the Internal Revenue Service's use of such a summons, the intent of issuing a summons in those cases would likely be to identify taxpayers. In those situations, once the taxpayer's identity is known to the department, the taxpayer will be notified accordingly.

COMMENT NO. 5: The MBA stated that the proposed rule requires that where the summons is served upon a person other than the identified person, notice to the identified person must be given within three days after the date of service. They also stated that this requirement is part of the rule under Section 7609 IRC. The MBA pointed out that Section 3405, Chapter 35, Title 12, as to federal administrative summons requires a written notice to the customer to be given concurrently with the service of the summons on the financial institution. Finally, MBA advocated providing the taxpayer with at least a 23 day window between the time the taxpayer was notified of the summons and the date proscribed for performance of the summons by the third-party recordkeeper. This period would allow the taxpayer sufficient opportunity to quash the summons. MBA notes that this

23 day period is the same period the Internal Revenue Service utilizes pursuant to Section 7609, IRC.

RESPONSE NO. 5: The department appreciates the effort undertaken by MBA to cite the Federal Right to Privacy Act and the Bank Secrecy Act, however those acts do not apply to state agencies. On the other hand, the Gramm–Leach–Bliley Act, (113 STAT. 1338 Public Law 106–102—Nov. 12, 1999), generally prohibits the disclosure of non-public personal information without first notifying the customer of the request for information and providing the customer an opportunity to deny the request. (See Section 502(a) and (b)) However, Section 502(e) specifically exempts financial institutions from the requirements imposed by Section 502(a) and Section 502(b) and allows for the immediate disclosure of such information in order to comply with a properly authorized summons issued by a state agency. Thus, the notice requirements imposed by the federal acts mentioned above do not apply to an administrative summons issued by the department. Further, the department feels that the three day notice provided for in New Rule III (ARM 42.2.204) is adequate. However, the Department does agree that a period of time between the receipt of the notice and time for performance is appropriate. Therefore, the department proposes to amend New Rule III (ARM 42.2.204) further to address this concern.

COMMENT NO. 6: The MBA suggested that the rule incorporate the right to seek a protective order for the protection of confidential information by court proceeding. They stated that the proposed rule allows a court proceeding to quash, it should allow a court proceeding to obtain a court issued protective order for protected information such as a trade secret.

RESPONSE NO. 6: The department believes this mechanism is already available in the proposed rule and a specific provision of this nature is unnecessary.

COMMENT NO. 7: The MBA and MCUN suggested that the proposed rules should provide for the reimbursement of costs associated with the production of documents requested by the department in an administrative summons. The MBA suggested that the department consider similar language as provided by the IRS in Section 7610 IRC, which provides for reimbursement of such costs that are reasonably necessary and connected to the search, production, and relevant data provided by the summons request. The MCUN stated that hard and soft copies could be considerable and there should be some provision for reimbursement of reasonable costs. Perhaps a de minimus threshold of \$50, below which costs would not be reimbursed.

RESPONSE NO. 7: The department appreciates the suggestions made by MBA and MCUN. The department agrees that in some instances producing documents requested in an administrative summons could be burdensome for third-party record keepers. Therefore, the department proposes to amend New Rule III (ARM 42.2.204), to place a \$50 threshold for the cost of copying documents requested in an administrative summons. Reasonable commercial rates, such as those charged by companies such as Kinko's will apply when calculating whether

this threshold has been reached. Thus, copying costs incurred by a third-party record keeper below this threshold amount are not reimbursable. Accordingly, the department would agree to reimburse third-party record keepers for copying expenses that exceed \$50. Again, for such amounts in excess of \$50, the reimbursement will be based on existing commercial rates. The department will not reimburse for copying costs incurred by taxpayers themselves. Finally, the department will not reimburse taxpayers or third-party record keepers for any other costs associated with the production of the requested information (except for the payment for mileage and witness fee as already discussed in the proposed rule).

COMMENT NO. 8: The MCUN stated that the rule indicates that the summons will instruct the parties where to deliver the records sought by the summons and it is important that adequate time be allowed for delivery, especially if records are extensive. They suggested that a time frame of no less than 30 days would be appropriate.

RESPONSE NO. 8: The department agrees that there should be a reasonable time period for response to the summons, and believes this concern is adequately addressed in Response No. 5, above.

3. As a result of the comments received the department adopts New Rule III (ARM 42.2.204) with the following changes:

NEW RULE III (ARM 42.2.204) ISSUANCE OF AN ADMINISTRATIVE SUMMONS (1) An administrative summons issued under the authority of 15-1-301, MCA, will be issued by the director or the director's designee.

(2) FINANCIAL INSTITUTIONS MAY, AT THEIR DISCRETION, DESIGNATE A SPECIFIC OFFICE WHERE SERVICE OF ADMINISTRATIVE SUMMONS MAY BE ACCEPTED. IF NO SUCH DESIGNATION IS MADE, THE DEPARTMENT SHALL SERVE THE SUMMONS ON THE FINANCIAL INSTITUTION IN THE CITY WHERE THE DEPARTMENT BELIEVES THE REQUESTED INFORMATION MAY BE FOUND.

(2) through (7) remain as proposed but are renumbered (3) through (8).

~~(8)~~(9) If the summons requires the giving of testimony or relates to the production of any records with respect to any person, KNOWN TO THE DEPARTMENT AT THE TIME OF THE ISSUANCE OF THE SUMMONS, other than the person who is identified in the summons (THIRD-PARTY RECORDKEEPER), the department ~~will~~ SHALL, within three days ~~after the date of service of the summons~~, mail a copy of the summons by registered or certified mail, to that person. Additionally, the department will explain the person's right to bring a proceeding to quash the summons. IN NO EVENT SHALL THE DEPARTMENT REQUIRE THE PRODUCTION OF DOCUMENTS OR THE GIVING OF TESTIMONY EARLIER THAN 30 DAYS FROM THE ISSUANCE TO THE THIRD-PARTY RECORDKEEPER.

(9) remains as proposed but is renumbered (10).

(11) IN THE EVENT THAT A THIRD-PARTY RECORDKEEPER INCURS COPYING COSTS IN EXCESS OF \$50 FOR ANY ONE ADMINISTRATIVE

SUMMONS ISSUED BY THE DEPARTMENT, THE DEPARTMENT SHALL REIMBURSE THE THIRD-PARTY RECORDKEEPER FOR THOSE COPYING COSTS IN EXCESS OF \$50. REIMBURSEMENT WILL BE AT REASONABLE COMMERCIAL RATES, SUCH AS A RATE CHARGED BY A PRIVATE COPY SERVICE. CALCULATING THE AMOUNT OF COPYING COSTS INCURRED BY A THIRD-PARTY RECORDKEEPER WILL BE DETERMINED BY EXAMINING THE ACTUAL COSTS EXPENDED (AS SHOWN ON A RECEIPT OR INVOICE) OR BY APPLYING A REASONABLE COMMERCIAL RATE PER PAGE COPIED AND PRODUCED TO THE DEPARTMENT, WHICHEVER AMOUNT IS LOWER.

(A) TAXPAYERS WILL NOT BE REIMBURSED FOR THEIR OWN COPYING CHARGES.

(B) TAXPAYERS OR THIRD-PARTY RECORDKEEPERS WILL NOT BE REIMBURSED FOR ANY OTHER COSTS ASSOCIATED WITH THE PRODUCTION OF THE REQUESTED INFORMATION, EXCEPT FOR THE PAYMENT FOR MILEAGE AND WITNESS FEES STATED IN THIS RULE.

(10) remains as proposed but is renumbered (12).

AUTH: 15-1-201 and 25-5-103, MCA

IMP: 15-1-301, MCA

4. Therefore, the department adopts New Rule III (ARM 42.2.204) with the amendments listed above and New Rules I (ARM 42.2.202), II (ARM 42.2.203), IV (ARM 42.2.205), V (ARM 42.2.206), and VI (ARM 42.2.207) as proposed.

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

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

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

Certified to Secretary of State February 27, 2006

CORRECTIONS - Establishing methamphetamine treatment programs through contracts with private Montana nonprofit corporations;
DRUGS - Establishing methamphetamine treatment programs through contracts with private Montana nonprofit corporations;
PUBLIC CONTRACTS - Inapplicability of privatization review procedures where legislature requires implementation of program through contracts with private vendors;
STATUTORY CONSTRUCTION - Plain meaning of statutory language requires no extrinsic aids to interpretation;
STATUTORY CONSTRUCTION - "Shall" generally connotes mandatory duty;
STATUTORY CONSTRUCTION - Specific requirement controls over inconsistent general provision;
MONTANA CODE ANNOTATED - Title 2, chapter 8, part 3; Title 18; sections 1-2-101, -102, 1-3-223, 2-8-301 to -304, -301(1), (3)(a), (4), -302, (2) to (5)(a), (6), -303, 45-9-102, 53-1-203, (1)(a), (1)(c), (2), 46-18-201, -202, 53-1-203, (1), (a), (c), (ii), (2);
MONTANA CONSTITUTION - Article VI, section 10(2);
OPINIONS OF THE ATTORNEY GENERAL - 51 Op. Att'y Gen. No. 4 (2005).

HELD: When the Department of Corrections contracts with a Montana private nonprofit corporation to establish residential methamphetamine treatment programs pursuant to Mont. Code Ann. § 53-1-203(1)(c)(ii), it need not undergo the privatization plan process outlined in Mont. Code Ann. §§ 2-8-302 and 2-8-303.

February 28, 2006

Mr. Bill Slaughter, Director
Department of Corrections
1539 Eleventh Avenue
Helena, MT 59620-1301

Dear Mr. Slaughter:

You have requested my opinion on a question that I have phrased as follows:

When the Department of Corrections contracts with a Montana private nonprofit corporation to establish residential methamphetamine treatment programs pursuant to Mont. Code Ann. § 53-1-203(1)(c)(ii), must the Department first undergo the privatization plan process outlined in Mont. Code Ann. §§ 2-8-302 and 2-8-303?

Your question arises from the adoption of HB 326 of the 2005 legislative session, which directed the Department of Corrections (DOC) to establish residential

methamphetamine treatment programs through contracts with private Montana nonprofit corporations. Since 1991, Montana law has contained procedural restrictions on the authority of government agencies to "privatize" government functions. Mont. Code Ann. §§ 2-8-301 to 304. You ask whether the privatization statutes apply to the contracts referred to in the HB 326 amendments.

Montana Code Annotated Title 2, chapter 8, part 3 creates an administrative review process that must be followed before "an agency" may "privatize" a "program." "'Agency' means an office, position, commission, committee, board, department, council, division, bureau, section, or any other entity or instrumentality of the executive, legislative, or judicial branch of state government." Mont. Code Ann. § 2-8-301(1). "'Program' means a legislatively or administratively created function, project, or duty of an agency. Id., (4). "'Privatize' means an agency contracting with the private sector to provide services that are currently or normally conducted directly by the employees of the state." Id., (3)(a).

The privatization review statutes create an administrative process for evaluating privatization proposals prior to implementation by an agency. Under Mont. Code Ann. § 2-8-302, an agency proposing to privatize a program must prepare a privatization plan and release it to the public and any involved labor unions and submit it to the legislative audit committee at least 180 days in advance of the implementation of the proposal. The legislative audit committee must hold a public hearing on the proposal at least 90 days before implementation, release a summary of the hearing and its findings and conclusions at least 45 days before implementation, and vote on an advisory recommendation to approve or disapprove the proposal and transmit its recommendation to the Governor at least 30 days before implementation. The Governor then must approve or disapprove the proposal no less than 15 days prior to its proposed implementation date.

HB 326 was introduced to provide sentencing alternatives for persons convicted of second or subsequent offenses of methamphetamine possession. It amended Mont. Code Ann. § 45-9-102, the statute prohibiting possession of dangerous drugs, to provide a specific sentence for second-offense possession of methamphetamine that included a possibility of placement in a residential community-based methamphetamine treatment program.

Recognizing that no such centers existed in Montana, the legislature included section 3 in HB 326, which amended Mont. Code Ann. § 53-1-203, the statute setting forth the general powers and duties of DOC. These amendments gave DOC rulemaking authority regarding residential methamphetamine treatment programs, Mont. Code Ann. § 53-1-203(1)(a).

They also added to the existing subsection (1)(c) of the statute, which provided that DOC "shall...contract with private, nonprofit Montana corporations to establish and maintain . . . prerelease centers for inmates at a Montana prison," the language at issue in this matter. The newly added language, read together with the existing provision to which it is attached, provides that DOC

shall . . . contract with private nonprofit Montana corporations to establish and maintain . . .

(ii) residential methamphetamine treatment programs for the purpose of alternative sentencing as provided for in 45-9-102, 46-18-201, 46-18-202, and any other sections relating to alternative sentences for persons convicted of possession of methamphetamine. The department shall issue a request for proposals using a competitive process and shall follow the applicable contract and procurement procedures in Title 18.

In interpreting statutory language, I follow the same rules applied in courts. The plain language of a statute controls, and I may neither add what has been omitted nor omit what the legislature has included. Mont. Code Ann. § 1-2-101. Where the language of a statute is plain on its face, resort to extrinsic rules of construction is inappropriate. See, e.g., Marriage of Christian, 1999 MT 189, ¶ 12, 295 Mont. 352, 983 P.2d 966. Here, the language of the statute admits only one interpretation--that the legislature required DOC to establish the methamphetamine treatment program through contracts with private vendors rather than through a state agency within the department.

The use of the word "shall" generally connotes a mandatory duty rather than a discretionary one. Here, the word appears three separate times in Mont. Code Ann. § 53-1-203 as amended, initially in the first line of subsection (1) as it sets forth the affirmative duties of DOC, next in the requirement that DOC "shall issue requests for proposals using a competitive process," and finally in the requirement that DOC "shall follow the applicable contract and procurement procedures in Title 18." (Emphasis added.) The suggestion that the legislature expected that there should be a further discretionary determination by the Governor through the privatization review process as to whether to follow these requirements finds no support in any statutory language, and I cannot through construction of such plain language insert a requirement that the legislature omitted. In the absence of some statutory language qualifying the mandatory import of the terminology the legislature used, I am unable to find a legislative intent to subject this program to privatization review under Mont. Code Ann. tit. 2, ch. 8, pt. 3.

The argument that this language contemplated that DOC would first comply with the privatization review process before letting the contract that the legislature said it "shall" make with "private nonprofit Montana corporations" is fraught with difficulty. First, the decision to assign this function to private contractors was made by the legislature, not DOC. While the definition of "agency" in Mont. Code Ann. § 2-8-301(1) includes "an office, position, commission, committee, board, department, council, division, bureau, section, or any other entity or instrumentality of the . . . legislative . . . branch," the idea that it includes the legislature as a body exercising its constitutional legislative power is anomalous. The legislature exercises plenary constitutional power to establish state policy by enacting laws. The privatization statutes cannot be construed to add mandatory procedural requirements that the legislature must meet in exercising its own power to make law. Cf. 51 Op. Att'y Gen.

No. 4 (2005) (legislatively enacted spending cap is not an enforceable bar to subsequent legislature's spending in excess of cap). HB 326 states that the residential methamphetamine treatment programs are to be privately contracted. The legislature need not follow the general provisions of the privatization process statutes when it exercises its own power to legislate.

The application of the privatization procedures in this context also would require an idle act. See Mont. Code Ann. § 1-3-223 ("The law neither does nor requires idle acts."). The legislature dictated that DOC would perform this function through private contracts. The Governor signified his assent to this requirement by his signature on the bill. Had he wanted the sentencing changes and the treatment program without the private contracting provision, he could have exercised his amendatory veto under Mont. Const. Art. VI, § 10(2), but he did not. The privatization review process culminates in a discretionary decision by the Governor to approve or disapprove the project. Mont. Code Ann. § 2-8-302(6). The Governor has already exercised his discretion regarding this project by signing the bill without suggested changes as to the requirement of private contracts. A second review would be an idle act.

In at least some cases the application of the privatization process would create conflicting provisions with respect to the function of the legislative audit committee. Mont. Code Ann. § 53-1-203(2) provides a function for the audit committee for contracts made under subsection (1)(c) of the statute, which would include the contracts for residential methamphetamine treatment under HB 326. If the contract term will exceed ten years, DOC must submit the contract to the audit committee, and consider any comments or recommendations the committee might choose to make. This provision contains no requirements for the public hearing and recommendation vote that would be required under the privatization statutes. Compare Mont. Code Ann. § 53-1-203(2) with Mont. Code Ann. § 2-8-302(2) to (5)(a). Presumably, if the term of a contract under Mont. Code Ann. § 53-1-203(1)(c) does not exceed ten years, the audit committee plays no role. The provision in Mont. Code Ann. § 53-1-203(2) of a specific but more limited role for the committee in contracts under Mont. Code Ann. § 53-1-203(1)(c) negates the inference that the general but more extensive requirements for committee review in the privatization statutes also apply. Mont. Code Ann. § 1-2-102 ("When a general and particular provision are inconsistent, the latter is paramount to the former, so a particular intent will control a general one that is inconsistent with it.").

I express no opinion here as to the application of the privatization review statutes in cases in which the legislature has not required implementation of a program through contracts with private parties rather than through establishment of a program within an agency. Your letter and the submissions of interested parties have argued as to whether the creation of a new program that will not displace existing state workers constitutes "privatization" under Mont. Code Ann. § 2-8-301(3)(a) ("Privatize" means an agency contracting with the private sector to provide services that are currently or normally conducted directly by the employees of the state."), focusing on the effect of amendments to the privatization statutes adopted in the 2005 legislative session

in SB 299. Since I have concluded that the legislature did not intend to subject these contracts to privatization review under Mont. Code Ann. tit. 2, ch. 8, pt. 3, it is unnecessary to consider in this opinion whether HB 326 would have triggered privatization review in the absence of a legislative direction to implement the treatment programs through private contracts.

THEREFORE, IT IS MY OPINION:

When the Department of Corrections contracts with Montana private nonprofit corporations to establish residential methamphetamine treatment programs pursuant to Mont. Code Ann. § 53-1-203(1)(c)(ii), it need not undergo the privatization plan process outlined in Mont. Code Ann. §§ 2-8-302 and 2-8-303.

Sincerely,

/s/ Mike McGrath
MIKE McGRATH
Attorney General

mm/cdt/jym

NOTICE OF FUNCTION OF ADMINISTRATIVE RULE REVIEW COMMITTEE

Interim Committees and the Environmental Quality Council

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

Economic Affairs Interim Committee:

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

Education and Local Government Interim Committee:

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

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

- Department of Public Health and Human Services.

Law and Justice Interim Committee:

- Department of Corrections; and
- Department of Justice.

Energy and Telecommunications Interim Committee:

- Department of Public Service Regulation.

Revenue and Transportation Interim Committee:

- Department of Revenue; and
- Department of Transportation.

State Administration and Veterans' Affairs Interim Committee:

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

Environmental Quality Council:

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

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

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

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

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

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

Use of the Administrative Rules of Montana (ARM):

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

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through September 30, 2005. This table includes those rules adopted during the period September 1, 2005 through December 31, 2005 and any proposed rule action that was pending during the past six-month period. (A notice of adoption must be published within six months of the published notice of the proposed rule.) This table does not, however, include the contents of this issue of the Montana Administrative Register (MAR or Register).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through September 30, 2005, this table, and the table of contents of this issue of the MAR.

This table indicates the department name, title number, rule numbers in ascending order, catchphrase or the subject matter of the rule, and the page number at which the action is published in the 2004 and 2005 Montana Administrative Registers.

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

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