

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 11

The Montana Administrative Register (MAR), 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 The notice section contains state agencies' proposed new, amended or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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 indicates that the proposed rule action is adopted and lists any changes made since the proposed stage. The interpretation section contains the attorney general's opinions and state declaratory rulings. Special notices and tables are found at the back 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 Administrative Rules Bureau at (406) 444-2055.

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BEFORE THE PUBLIC EMPLOYEES' RETIREMENT BOARD
OF THE STATE OF MONTANA

In the matter of the adoption)	NOTICE OF PROPOSED
of new Rule I and amendment of	)	ADOPTION AND AMENDMENT
ARM 2.43.1104 pertaining to the)	
Municipal Police Officers')	
Retirement System Deferred	)	NO PUBLIC HEARING
Retirement Option Plan	)	CONTEMPLATED
administered by the Public)	
Employees' Retirement Board)	

TO: All Concerned Persons

1. On August 1, 2003, the Public Employees' Retirement Board proposes to adopt new Rule I and amend ARM 2.43.1104 pertaining to the Municipal Police Officers' Retirement System Deferred Retirement Option Plan administered by the Public Employees' Retirement Board.

2. The Public Employees' Retirement Board 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 Public Employees' Retirement Board no later than 5:00 p.m. on June 27, 2003, to advise us of the nature of the accommodation that you need. Please contact Lucie Willson, Public Employees' Retirement Board, 100 North Park Avenue, Suite 100, P.O. Box 200131, Helena, MT 59620-0131; telephone 406-444-7939; TDD 406-444-1421; FAX 406-444-5428; e-mail lwillson@state.mt.us.

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

RULE I DISTRIBUTION OF DROP BENEFIT PURSUANT TO FAMILY LAW ORDER

(1) A family law order (FLO) may distribute all or a portion of a DROP participant's DROP benefit to an alternate payee. To do so, the FLO must specifically reference distribution of a DROP benefit and provide a specific method for determining the amount of the DROP benefit to be paid to the alternate payee.

(2) The alternate payee named in the FLO is entitled to the same distribution options available to the participant and as allowed by the IRS.

(3) A FLO may distribute all or a portion of a DROP participant's DROP benefit even if the participant joined the DROP subsequent to approval of the FLO.

(4) A FLO that does not specifically address a DROP benefit will not be considered to distribute any portion of the payee's DROP benefit to an alternate payee.

(5) A FLO cannot specifically require or forbid that the payee participate in the DROP.

(6) To distribute any portion of a participant's DROP benefit, a FLO approved prior to the enactment of the DROP legislation (May 1, 2001) must be amended to specifically address the DROP benefit.

(7) A DROP benefit cannot be distributed pursuant to a FLO until the DROP participant terminates employment.

AUTH: 19-2-403, 19-9-1203, MCA
IMP: 19-9-1208, MCA

REASON: Section 19-9-1208, MCA provides that DROP benefits may be distributed pursuant to a Family Law Order (FLO). Current FLO statutes and rules do not address the unique circumstances related to the distribution of a DROP benefit. The proposed new Rule I establishes the procedures and limitations for distributing DROP benefits pursuant to FLOs.

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

2.43.1104 DROP APPLICATION PROCESS (1) Members Eligible members who wish to participate in the DROP must file a DROP information request with the MPERA.

(2) The information request must include the member's:

- (a) full name;
- (b) social security number;
- (c) mailing address;
- (d) date of birth; and
- (e) anticipated date to start the DROP period.

(3) The MPERA will calculate estimates of monthly DROP accruals and the DROP benefit. The estimates and a DROP application will be sent to the member.

(4) A An eligible member who wishes to participate must complete the DROP application and return it to the MPERA.

(a) Except as provided in (4)(b), MPERA must receive the completed application at least two weeks before the first day of the month the member wants the DROP period to be effective; otherwise MPERA will notify the member that the DROP period will be effective the following month. If a birth certificate or other acceptable proof of age is required by the application, it must accompany the application for the application to be complete.

(b) An eligible member who retroactively applies to participate in the DROP within the window provided for in 19-9-1204(6), MCA, must file the application on or before October 1, 2003.

(5) Once the application is received by the MPERA, the election to participate in the DROP is irrevocable.

AUTH: 19-2-403, 19-3-2103, MCA
IMP: 19-9-1203, 19-9-1204, MCA

REASON: The window House Bill 686 provides to eligible members of the Municipal Police Officers' Retirement System

(MPORS) to retroactively apply to participate in the Deferred Retirement Option Plan (DROP) creates an exception to the existing requirements for filing the DROP application. Currently, the Montana Public Employees' Retirement Administration (MPERA) must receive all DROP applications at least two weeks prior to the start of the member's DROP period. By its very nature, a retroactive participation window permits applications to be received following the commencement of the DROP period. The proposed amendments address this circumstance.

5. Concerned persons may submit their data, views, or arguments concerning the proposed actions in writing to Mike O'Connor, Executive Director, Public Employees' Retirement Board, 100 North Park Avenue, Suite 100, P.O. Box 200131, Helena, MT 59620-0131; FAX 406-444-5428; e-mail moconnor@state.mt.us no later than 5:00 p.m. on July 10, 2003.

6. If persons who are directly affected by the proposed actions 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 Lucie Willson, P.O. Box 200131, Helena, MT 59620-0131; telephone 406-444-7939; FAX 406-444-5428; e-mail lwillson@state.mt.us. A written request for a hearing must be received no later than 5:00 p.m. on July 10, 2003.

7. If the agency receives requests for a public hearing on the proposed actions from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed actions; 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 55 persons based on 2002 payroll reports of active Municipal Police Officers' Retirement System members.

8. The Public Employees' Retirement Board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the 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 public retirement rulemaking actions. Such written request may be mailed or delivered to Lucie Willson, Public Employees' Retirement Board, 100 North Park Avenue, Suite 100, P.O. Box 200131, Helena, MT 59620-0131; faxed to the office at 406-444-5428; or e-mailed to lwillson@state.mt.us, or may be made by completing a request

form at any rules hearing held by the Public Employees' Retirement Board.

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

/s/ Terry Teichrow
Terry Teichrow, Chairman
Public Employees' Retirement Board

/s/ Kelly Jenkins
Kelly Jenkins, General Counsel and
Rule Reviewer

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

Certified to the Secretary of State on June 2, 2003.

BEFORE THE PUBLIC EMPLOYEES' RETIREMENT BOARD
OF THE STATE OF MONTANA

In the matter of the amendment	)	NOTICE OF PROPOSED
of ARM 2.43.441, 2.43.1015, and	)	AMENDMENT
2.43.1040 pertaining to the Public)	
Employees' Retirement System)	
Defined Contribution Retirement)	
Plan administered by the Public	)	NO PUBLIC HEARING
Employees' Retirement Board	)	CONTEMPLATED

TO: All Concerned Persons

1. On August 1, 2003, the Public Employees' Retirement Board proposes to amend ARM 2.43.441, 2.43.1015, and 2.43.1040 pertaining to the Public Employees' Retirement System Defined Contribution Retirement Plan administered by the Public Employees' Retirement Board.

2. The Public Employees' Retirement Board 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 Public Employees' Retirement Board no later than 5:00 p.m. on June 27, 2003, to advise us of the nature of the accommodation that you need. Please contact Lucie Willson, Public Employees' Retirement Board, 100 North Park Avenue, Suite 100, P.O. Box 200131, Helena, MT 59620-0131; telephone 406-444-7939; TDD 406-444-1421; FAX 406-444-5428; e-mail lwillson@state.mt.us.

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

2.43.441 PURCHASE OF SERVICE THROUGH DIRECT TRUSTEE-TO-TRUSTEE TRANSFER OF FUNDS (1) At any time prior to retirement, a member who is statutorily eligible to do so, may purchase service in the member's current retirement system through a rollover of funds from an eligible retirement plan account belonging to the member or a direct trustee-to-trustee transfer of funds from the member's 26 U.S.C. 403(b) or 26 U.S.C. 457 governmental plan.

AUTH: 19-2-403, 19-3-2104, MCA
IMP: 19-2-704, 19-3-2115, MCA

2.43.1015 PURCHASE OF SERVICE NOT PERMITTED BY PARTICIPANT IN DEFINED CONTRIBUTION RETIREMENT PLAN (1) A member of the PERS with an existing service purchase contract entered into pursuant to any MPERA statute or rule who wishes to elect the defined contribution retirement plan (DCRP) or the Montana university system's optional retirement plan (ORP) must terminate or complete the service purchase contract before the election will be confirmed by MPERA.

(2) If a member of the PERS with an existing service purchase contract files an election form electing either the DCRP or the ORP, MPERA will send written notice to the member that the election cannot be confirmed until the service purchase contract is either terminated or completed.

(3) The notice will give the member 30 days to provide MPERA with written notification of the member's intentions.

(4) The member must choose one of the following options:

(a) pay to MPERA in a lump sum the entire amount remaining due under the service purchase contract and have the entire amount of service purchased under the contract transferred to the DCRP; or

(b) pay nothing more to MPERA and have the prorated amount of service purchased under the contract transferred to the DCRP; or

(c) change the member's election to the DBRP.

(5) If a member chooses the option in (4)(a), the member may, pursuant to ARM 2.43.441, complete the service purchase contract with a rollover of funds from an eligible retirement plan account belonging to the member or a direct trustee-to-trustee transfer of funds from the member's 26 U.S.C. 403(b) or 26 U.S.C. 457 governmental plan.

(6) If a member chooses the option in (4)(a), but then fails to complete the service purchase contract by the end of the member's 12-month election window, MPERA will unilaterally implement (4)(b).

(7) If a member with an existing service purchase contract fails to provide MPERA with written notice of the member's intentions within 30 days, MPERA will unilaterally implement (4)(b). MPERA will take this action at the close of the 30-day timeframe.

(8) A member with an existing service purchase contract who elects the DCRP or the ORP in the last month of the member's 12-month election window may pay to MPERA in a lump sum the entire amount remaining due under the service purchase contract and have the entire amount of service purchased under the contract transferred to the DCRP. The payment must accompany the election form.

(a) If the member does not pay the entire amount due at the time the member files the election form, MPERA will unilaterally implement (4)(b).

(b) The member will not be given time to pay off the existing service purchase contract after the close of the member's 12-month election window.

(9) A PERS member with an existing service purchase contract entered into pursuant to any MPERA statute or rule who does not elect the DCRP or the ORP may not terminate the service purchase contract pursuant to this rule.

AUTH: 19-3-2104, MCA

IMP: 19-2-710, 19-3-2111, 19-3-2115, MCA

2.43.1040 DISABILITY BENEFITS FOR MEMBERS OF THE DEFINED CONTRIBUTION RETIREMENT PLAN (1) Members of the defined

contribution retirement plan (DCRP) who are found by the board to be disabled are entitled to a disability benefit pursuant to 19-3-2141, MCA.

(2) The disability benefit awarded a member of the DCRP is calculated based on the member's years of service credit, not years of membership service. The applied factor, either 1/56 or 1/50, is based on membership service.

(3) The disability benefit awarded a member of the DCRP is not a retirement benefit, but a benefit paid from the long-term disability trust fund established pursuant to 19-3-2141, MCA.

(4) The disability benefit awarded a member of the DCRP is not subject to option 2, option 3 or option 4 contained in 19-3-1501, MCA.

~~(5) A member of the DCRP who is receiving a disability benefit may not, prior to age 60, terminate the member's disability benefit in order to access the member's DCRP individual account.~~

~~(6)~~(5) The disability benefit paid to a member of the DCRP is not subject to distribution pursuant to a family law order or a qualified domestic relations order.

~~(7)~~(6) Disability benefits paid from the long-term disability trust fund will be tax-reported to the receiving participant and the IRS on the appropriate IRS form.

AUTH: 19-3-2104, 19-3-2141, MCA

IMP: 19-3-2141, MCA

REASON: These rules were initially adopted as part of the process of implementing Defined Contribution Retirement Plan statutes. The Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA) had also been recently adopted. The EGTRRA permitted the direct trustee-to-trustee transfer of funds from the member's 26 U.S.C. 403(b) or 26 U.S.C. 457 governmental plans to purchase service. This new option was included in the rules. However, even before EGTRRA, members of the Defined Benefit Retirement Plan could purchase service through a rollover of funds from an eligible retirement plan account. The proposed amendments to ARM 2.43.441 and 2.43.1015 recognize this option.

The initial long-term disability benefit available to Defined Contribution Retirement Plan participants was amended by the 2003 legislature (HB 213) to comply with the Age Discrimination in Employment Act. Existing language in ARM 2.43.1040(5) is not consistent with the new statutory language and should be deleted.

4. Concerned persons may submit their data, views, or arguments concerning the proposed amendments in writing to Mike O'Connor, Executive Director, Public Employees' Retirement Board, 100 North Park Avenue, Suite 100, P.O. Box 200131, Helena, MT 59620-0131; FAX 406-444-5428; e-mail moconnor@state.mt.us no later than 5:00 p.m. on July 10, 2003.

5. If persons who are directly affected by the proposed amendments 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 Lucie Willson, P.O. Box 200131, Helena, MT 59620-0131; telephone 406-444-7939; FAX 406-444-5428; e-mail lwillson@state.mt.us. A written request for a hearing must be received no later than 5:00 p.m. on July 10, 2003.

6. If the agency receives requests for a public hearing on the proposed amendments 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 3,000 persons, based on 2002 payroll reports of active members.

7. The Public Employees' Retirement Board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the 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 public retirement rulemaking actions. Such written request may be mailed or delivered to Lucie Willson, Public Employees' Retirement Board, 100 North Park Avenue, Suite 100, P.O. Box 200131, Helena, MT 59620-0131; faxed to the office at 406-444-5428; or e-mailed to lwillson@state.mt.us, or may be made by completing a request form at any rules hearing held by the Public Employees' Retirement Board.

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

/s/ Terry Teichrow
Terry Teichrow, Chairman
Public Employees' Retirement Board

/s/ Kelly Jenkins
Kelly Jenkins, General Counsel and
Rule Reviewer

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

Certified to the Secretary of State on June 2, 2003.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the adoption of new) NOTICE OF PUBLIC
Rule I regarding examination fees for) HEARING ON PROPOSED
consumer loan businesses and the) ADOPTION AND
amendment of ARM 2.59.307 regarding) AMENDMENT
dollar amounts to which consumer loan)
rates are to be applied)

TO: All Concerned Persons

1. On July 2, 2003, at 10:00 a.m., a public hearing will be held in Room 342 of the Park Avenue Building, 301 S. Park, Helena, Montana, to consider the adoption of new Rule I and the amendment of ARM 2.59.307.

2. The Department of Administration, Division of Banking and Financial Institutions, 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 Division of Banking and Financial Institutions no later than 5:00 p.m. on June 27, 2003, to advise us of the nature of the accommodation that you need. Please contact Susan Pendergast, 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 spendergast@state.mt.us.

3. The proposed new rule provides as follows:

RULE I EXAMINATION FEES (1) A consumer loan business shall pay the division of banking and financial institutions a fee in the amount of \$300 a day for each examiner required to conduct an investigation or examination under 32-5-402 or 32-5-403, MCA.

AUTH: 32-5-401, 32-5-403, MCA
IMP: 32-5-402, 32-5-403, MCA

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

2.59.307 DOLLAR AMOUNTS TO WHICH CONSUMER LOAN RATES ARE TO BE APPLIED (1) The dollar amounts in the following statutory sections are changed to the new designated amounts as follows:

<u>Authority</u>	<u>Stated Amount</u>	<u>Changed Designated Amount</u>
32-5-201(4), MCA	\$1,000	\$1,900 <u>\$2,000</u>
32-5-306(7), MCA	\$ 300	\$ 570 <u>\$ 600</u>

AUTH: 32-5-104, MCA
IMP: 32-5-104, 32-5-201, 32-5-301, 32-5-302, 32-5-306,
MCA

5. Section 32-5-403, MCA, requires that the Division of Banking and Financial Institutions conduct annual examinations of all consumer loan licensees. That section also states that the Division's expenses incurred in these examinations will be billed at a rate to be established by the Division by administrative rule. New Rule I is being proposed to establish the rate at which these examination expenses will be billed. Section 32-5-104, MCA, provides that certain dollar amounts contained within the Montana Consumer Loan Act will be subject to change based on changes which occur in the Consumer Price Index for Urban Wage Earners and Clerical Workers. Changes have occurred in this Consumer Price Index which therefore require adjustments to the dollar amounts contained in ARM 2.59.307.

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 Peter Funk, 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 pfunk@state.mt.us, and must be received no later than July 10, 2003.

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

8. 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 Susan Pendergast, Division of Banking and Financial Institutions, 846 Front Street, P.O. Box 200546, Helena, MT 59620-0546; faxed to the office at (406) 841-2930, emailed to spendergast@state.mt.us, or may be made by completing a request form at any rules hearing held by the Division of Banking and Financial Institutions.

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

By: /s/ Scott Darkenwald
Scott Darkenwald, Director
Department of Administration

By: /s/ Dal Smilie
Dal Smilie, Rule Reviewer

Certified to the Secretary of State June 2, 2003.

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

In the matter of the proposed)
adoption of New Rules I and II) NOTICE OF PUBLIC HEARING
pertaining to prohibition of)
discretionary clauses in)
insurance policy forms)

TO: All Concerned Persons

1. On March 27, 2003, the State Auditor in his capacity as commissioner of insurance published MAR Notice No. 6-140 at page 504 of the 2003 Montana Administrative Register, Issue Number 6, of the proposed adoption of the above-captioned rules. The notice of proposed agency action is amended because the required number of persons designated therein have requested a public hearing.

2. On July 16, 2003, at 9:30 a.m., a public hearing will be held in the 2nd floor conference room of the State Auditor's Office, 840 Helena Avenue, Helena, Montana, to consider the adoption of New Rules I and II, pertaining to prohibition of discretionary clauses in insurance policy forms.

3. The State Auditor's Office 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 State Auditor's Office no later than 5:00 p.m., on July 9, 2003, to advise us of the nature of the accommodation that you need. Please contact Pamela Weitz, State Auditor's Office, 840 Helena Ave., Helena, MT 59601; telephone (406) 444-1744; Montana Relay 1-800-332-6145; TDD (406) 444-3246; facsimile (406) 444-3497 or e-mail to pweitz@state.mt.us.

4. Concerned persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to Darla Sautter, Montana Insurance Department, 840 Helena Avenue, Helena, Montana 59601, or by e-mail to dsautter@state.mt.us, and must be received no later than July 23, 2003.

5. Elizabeth L. Griffing has been designated to preside over and conduct the hearing.

6. The State Auditor's Office 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 whether the person wishes to receive notices regarding insurance rules, securities rules, or both. Such written requests may be mailed or delivered to the State Auditor's Office, 840 Helena Avenue, Helena, MT 59601, faxed to (406) 444-3497, e-mailed to dsautter@state.mt.us, or may be made by completing a request form at any rules hearing held by the State Auditor's Office.

JOHN MORRISON, State Auditor
and Commissioner of Securities

By: /s/ Angela Huschka
Angela Huschka
Deputy Insurance Commissioner

By: /s/ Elizabeth L. Griffing
Elizabeth L. Griffing
Rules Reviewer

Certified to the Secretary of State on June 2, 2003.

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION
OF THE STATE OF MONTANA

In the matter of the proposed) NOTICE OF PUBLIC HEARING
amendment of ARM 10.13.307) ON PROPOSED AMENDMENT
and 10.13.312 relating to)
traffic education)

TO: All Concerned Persons

1. On July 8, 2003 at 10:00 a.m. a public hearing will be held at the Office of Public Instruction, Superintendent's Conference Room, 1227 11th Avenue, Helena, Montana, to consider the amendment of the above stated rules relating to traffic education.

2. The Office of Public Instruction 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 Office of Public Instruction no later than 5:00 p.m. on June 23, 2003 to advise us of the nature of the accommodation that you need. Please contact David Huff, P.O. Box 202501, Helena, MT 59620-2501, telephone: (406)444-4396, TDD number: (406)444-0235, FAX: (406)444-1373, e-mail: dhuff@state.mt.us.

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

10.13.307 PROGRAM REQUIREMENTS (1) through (1)(d) remain the same.

(e) be scheduled so that a sufficient number of courses are provided to allow every eligible ~~youth~~ student within the school's geographic jurisdiction an equitable opportunity to enroll;

(f) through (3) remain the same.

(4) As used in ~~this rule~~ sub-chapter 3, program standards and course requirements for traffic education, the following definitions apply:

(a) remains the same.

(b) "Eligible student" means any youth who lives within the geographic boundaries of the public school district whether or not they are enrolled in the public school district and who meets the age requirements of ARM 10.13.312 and has not yet reached 19 years of age on or before September 10 of the school year in which the student participates in traffic education.

(i) For the purposes of this rule, traffic education programs conducted during summer months shall be considered part of the school year immediately preceding the summer months.

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

AUTH: Sec. 20-7-502, MCA
IMP: Sec. 20-7-502, MCA

10.13.312 STUDENT ENROLLMENT (1) The trustees of any district operating a public junior high school or high school may establish and maintain a traffic education course for eligible students within the district's geographic jurisdiction, provided that students enrolled in the course will have reached their 15th birthday within six months of course completion. The district shall not be reimbursed for students completing the course at a younger age.

AUTH: Sec. 20-7-502, MCA
IMP: Sec. 20-7-502, MCA

Statement of Reasonable Necessity: The Office of Public Instruction (OPI) proposes the amendments to these rules to fulfill the legislative requirement of 20-7-504, MCA, which requires OPI to establish basic traffic education course requirements; establish traffic education teacher qualifications; establish criteria for traffic education course approval; and promulgate policy for the distribution of traffic education funds. These particular amendments are needed to clarify which youth are eligible to participate in public school district traffic education programs. There is presently a discrepancy in language used in ARM 10.13.307 and 10.13.312; "eligible youth" is used in one rule and "eligible student" is used in another. This ambiguity confuses OPI's intended policy that all students in a district's geographic boundary, whether or not they are enrolled as a student in the public school district, are eligible for enrollment into the public school district's traffic education program. These amendments correct the language and provide a definition of eligible student.

4. Concerned persons may present their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted by mail to the Office of Public Instruction, Traffic Education Division, P.O. Box 202501, Helena, Montana 59620-2501, or by e-mail to opirules@state.mt.us and must be received no later than 5:00 p.m. on July 10, 2003.

5. Jeffrey A. Weldon, OPI Chief Legal Counsel, has been designated to preside over and conduct the hearing.

6. The Office of Public Instruction 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 Office of Public Instruction rulemaking actions or other school related rulemaking actions.

Such written request may be mailed or delivered to Legal Division, Office of Public Instruction, P.O. Box 202501, Helena, Montana 59620-2501, faxed to the office at (406) 444-2893, or may be made by completing a request form at any rules hearing held by the Office of Public Instruction.

7. The bill sponsor requirements of 2-4-302, MCA, do not apply. The requirements of 20-1-501, MCA, have been fulfilled. Copies of these rules have been sent to all tribal governments in Montana.

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

/s/ Jeffrey S. Weldon
Jeffrey A. Weldon
Rule Reviewer
Office of Public Instruction

Certified to the Secretary of State on June 2, 2003.

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

In the matter of the proposed) NOTICE OF PUBLIC HEARING
amendment of ARM 24.17.127,) ON PROPOSED AMENDMENT OF
pertaining to prevailing) PREVAILING WAGE RATES-
wage rates) BUILDING CONSTRUCTION
) SERVICES

TO: All Concerned Persons

1. On July 8, 2003, at 10:00 a.m., a public hearing will be held in the auditorium of the Scott Hart Building, 303 North Roberts, Helena, Montana, to consider the proposed amendment of ARM 24.17.127, establishing the prevailing wage rates. The Department proposes to incorporate by reference the 2003 building construction services rates.

2. The Department of Labor and Industry will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department by not later than 5:00 p.m., June 30, 2003, to advise us of the nature of the accommodation that you need. Please contact the Research and Analysis Bureau, Workforce Services Division, Attn: Bob Schleicher, P.O. Box 1728, Helena, MT 59624-1728; telephone (406) 444-2992; TTY (406) 444-0532; fax (406) 444-2638.

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

24.17.127 ADOPTION OF STANDARD PREVAILING RATE OF WAGES

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

(e) The current building construction services rates are contained in the ~~2002~~ 2003 version of "The State of Montana Prevailing Wage Rates - Building Construction Services" publication.

(6) through (3) remain the same.

AUTH: 2-4-307, 18-2-409, 18-2-431 and 39-3-202, MCA
IMP: 18-2-401, 18-2-402, 18-2-403, 18-2-406, 18-2-411, 18-2-412, 18-2-422 and 18-2-431, MCA

REASON: There is reasonable necessity to amend ARM 24.17.127 to update the building construction services rates. Pursuant to Chapter 517, Laws of 2001 (House Bill 500), the Department is to conduct an annual survey of contractors engaged in construction services who are registered under Title 39, chapter 9, MCA, in order to set the standard prevailing rate of wages for construction services. Prior to the enactment of Chap. 517, L. of 2001, the Department conducted biennial surveys to establish the wage rates. There is reasonable necessity to amend the prevailing wages for building construction services, which were

last updated in 2002. Use of prevailing wage rates is required in public contracts by 18-2-422, MCA.

4. Concerned persons may submit their data, views, or comments, either orally or in writing, at the hearing. Written data, views, or comments may also be submitted to:

Bob Schleicher
Research and Analysis Bureau
Workforce Services Division
Department of Labor and Industry
P.O. Box 1728
Helena, Montana 59624-1728

and must be received no later than 5:00 p.m., July 14, 2003.

5. An electronic copy of this Notice of Public Hearing is available through the Department's site on the internet at <http://dli.state.mt.us/calendar.htm>, under the Calendar of Events, Administrative Rule Hearings section. Interested persons may make comments on the proposed rules via the comment forum, <http://forums.dli.state.mt.us>, linked to the Notice of Public Hearing, but those comments must be posted to the comment forum by 5:00 p.m., July 14, 2003. 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 comment forum does not excuse late submission of comments.

6. A copy of the proposed 2003 publication, identified as "preliminary building construction rates", is available and can be accessed on-line via the internet at: <http://rad.dli.state.mt.us/pw/>.

7. The Department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the 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 any specific topic or topics over which the Department has rulemaking authority. Such written request may be delivered to Mark Cadwallader, 1327 Lockey St., room 412, Helena, Montana, mailed to Mark Cadwallader, P.O. Box 1728, Helena, MT 59624-1728, faxed to the office at (406) 444-1394, or made by completing a request form at any rules hearing held by the Department.

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

9. The Department proposes to make the amendment effective August 1, 2003. The Department reserves the right to adopt only portions of the proposed amendment, or to adopt some or all of the proposed amendment at a later date.

10. The Hearings Bureau of the Centralized Services Division of the Department has been designated to preside over and conduct the hearing.

/s/ MARK CADWALLADER
Mark Cadwallader
Rule Reviewer

/s/ WENDY KEATING
Wendy Keating,
Commissioner
DEPARTMENT OF LABOR & INDUSTRY

Certified to the Secretary of State: June 2, 2003.

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

In the matter of the proposed) NOTICE OF PROPOSED
amendment of ARM 24.156.606) AMENDMENT
pertaining to examination)
) NO PUBLIC HEARING
) CONTEMPLATED

TO: All Concerned Persons

1. On July 14, 2003, the Board of Medical Examiners (Board) proposes to amend the above stated rule.

2. The Department of Labor and Industry will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Medical Examiners no later than 5:00 p.m., on July 2, 2003, to advise us of the nature of the accommodation that you need. Please contact Jeannie Warsech, Board of Medical Examiners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2360; Montana Relay 1-800-253-4091; TTD (406) 444-2978; facsimile (406) 841-2363; e-mail dlibsmed@state.mt.us.

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

24.156.606 EXAMINATION (1) remains the same.

(2) USMLE Step III must be taken within seven years of the applicant's first examinations under (1)(c) ~~above~~ unless the applicant is or has been a student in a recognized M.D./Ph.D. program in a field of biological sciences tested in the Step I content. Applicants seeking an exception to the seven-year rule shall present a verifiable and rational explanation for being unable to meet the seven-year limit.

(3) through (6) remain the same.

AUTH: 37-3-203, MCA

IMP: 37-3-306, 37-3-307, 37-3-308, 37-3-311, MCA

REASON: There is reasonable necessity to amend ARM 24.156.606 in order to allow otherwise qualified applicants who have delayed taking the USMLE Step III on account of being in a joint M.D./Ph.D. program to explain why their course work precluded their taking Step III within seven years. The Board has recently become aware of an apparently otherwise qualified applicant whose ability to become licensed in Montana is jeopardized by the application of the existing version of the rule. The Board believes that applicants may have valid reasons for not taking Step III within the seven-year period,

and the proposed amendment allows the Board to consider those reasons.

4. Concerned persons may present their data, views or arguments in writing to the Board of Medical Examiners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2363, or by e-mail to dlibsmed@state.mt.us, and must be received no later than 5:00 p.m., July 10, 2003.

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 written request for a hearing and submit this request along with any written comments they have to Jeannie Worsech, Board of Medical Examiners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2363, or by e-mail to dlibsmed@state.mt.us. The comments must be received no later than 5:00 p.m., July 10, 2003.

6. If the Board receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendment; 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 25 persons based on approximately 250 new applicants.

7. An electronic copy of this Notice of Public Hearing is available through the Department's and Board's site on the World Wide Web at <http://www.discoveringmontana.com/dli/med>. 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 does not excuse late submission of comments.

8. The Board of Medical Examiners 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 Medical Examiners administrative rulemaking proceedings or other administrative proceedings. Such written request may be mailed or delivered to the Board of Medical Examiners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2363, e-mailed to dlibsmed@state.mt.us, 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. Anne O'Leary, attorney, has been designated to preside over and conduct this hearing.

11. The Board of Medical Examiners will meet by conference call on July 14, 2003, at 7:00 a.m., to consider the comments made by the public, the proposed responses to those comments, and take final action on the proposed amendment. Interested persons may listen to the conference call at the Board's offices on the fourth floor of the Park Avenue Building, 301 South Park Avenue, Helena, Montana.

BOARD OF MEDICAL EXAMINERS
Anne M. Williams, M.D., CHAIRMAN

/s/ WENDY J. KEATING
Wendy J. Keating, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

/s/ MARK CADWALLADER
Mark Cadwallader
Alternate Rule Reviewer

Certified to the Secretary of State June 2, 2003

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

In the matter of the	)	NOTICE OF PUBLIC HEARING
amendment of ARM 37.108.301,	)	ON PROPOSED AMENDMENT
37.108.305, 37.108.310 and)	
37.108.315 pertaining to)	
quality assurance independent)	
review of health care)	
decisions and ARM 37.108.507)	
pertaining to components of)	
quality assessment activities)	

TO: All Interested Persons

1. On July 2, 2003, at 10:00 a.m., a public hearing will be held in the auditorium of the Department of Public Health and Human Services Building, 111 N. Sanders, Helena, Montana to consider the proposed amendment of the above-stated rules.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice or provide reasonable accommodations at the public hearing site. If you need to request an accommodation, contact the department no later than 5:00 p.m. on June 25, 2003, 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@state.mt.us.

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

37.108.301 INDEPENDENT REVIEW OF HEALTH CARE DECISIONS:
DEFINITIONS The following definitions, in addition to those contained in 33-37-101, MCA, apply to this chapter:

(1) "Expedited review" means an accelerated appeal of an adverse determination made by a health carrier or managed care entity involving an enrollee with urgent medical needs whose life or health would be seriously threatened by the delay of a standard appeals process.

(2) "Independent review organization" means a network of peers conducting an independent review of an adverse determination made by a health carrier or managed care entity.

(3) "Internal appeals process" means a process established by a health carrier or managed care entity by which a party affected by an adverse determination made by a health carrier or managed care entity may appeal the adverse decision within the deciding agency.

AUTH: Sec. 33-37-105, MCA

IMP: Sec. 33-37-101 and 33-37-105, MCA

37.108.305 INDEPENDENT REVIEW OF HEALTH CARE DECISIONS: PEER REVIEW PROCESS (1) A health carrier or managed care entity and an enrollee may agree on a peer to conduct an independent review, as specified in these rules, of any adverse determination made by the health carrier or managed care entity. If the health carrier or managed care entity and the enrollee are unable to agree on a peer to conduct the independent review, then the health carrier or managed care entity shall forward the case file to the independent review organization designated by the department.

(2) remains the same.

(3) In the case of routine health care decisions, the peer or independent review organization shall notify the health carrier or managed care entity, the enrollee, and the health care provider of its decision within 30 calendar days after receiving the case file. The notification shall include a statement of the basis for the decision and shall list the evidence the peer or independent review organization considered in making the decision. If the peer or independent review organization requires additional time to complete its review, it shall request an extension in writing from the department. The request for extension shall include the reasons for the request and state the specific time the review is expected to be completed.

(4) In the case of expedited review, the enrollee's health care provider must certify in writing, facsimile, or by electronic mail the need for the expedited review. Within 72 hours from the date the request for expedited review is received, the peer or independent review organization shall notify the health carrier or managed care entity, the enrollee, and the health care provider of its decision. The notification shall include a statement of the basis for the decision and shall list the evidence the peer or independent review organization considered in making the decision.

(5) A peer or independent review organization may not review any adverse determination in which the peer or independent review organization has an interest in the outcome. The peer or independent review organization must notify the health carrier or managed care entity and enrollee if there is a potential conflict of interest. The peer or independent review organization may not review any adverse determination which involves a potential conflict of interest unless the health carrier or managed care entity and enrollee provide a written acknowledgment of the conflict and waiver.

(6) A health carrier or managed care entity or its agent that provides medicaid-funded or any other publicly funded health care-related services is exempt from this peer review process for adverse determinations concerning clients covered by those programs.

AUTH: Sec. 33-37-105, MCA

IMP: Sec. 33-37-102 and 33-37-103, MCA

37.108.310 INDEPENDENT REVIEW OF HEALTH CARE DECISIONS: NOTICE OF ADVERSE DETERMINATION AND INDEPENDENT REVIEW RIGHTS (1) A health carrier or managed care entity shall notify an enrollee and the health care provider of any adverse determination within 10 calendar days from the date the decision is made if the decision involves routine medical care. A health carrier or managed care entity shall notify an enrollee and the health care provider of any adverse determination within 48 hours from the date the decision is made, excluding Sundays and holidays, if the decision involves a medical care determination which qualifies for expedited review.

(2) The notice shall:

(a) and (b) remain the same.

(c) explain the reasons for the adverse determination; and

(d) inform the enrollee that an expedited review process is available and explain how an enrollee may initiate an expedited review;

~~(d) (e) include an explanation of if the health carrier or managed care entity maintains an internal review process, state the enrollee's right to appeal the adverse determination or to submit the adverse determination for independent review and instructions on how an enrollee may initiate an appeal or independent review. to the health carrier or managed care entity, and to request an independent review after the internal review process is complete;~~

(f) if the health carrier or managed care entity does not maintain an internal appeal process, state that the enrollee has a right to submit the adverse determination for independent review;

(g) provide the enrollee with instructions on the process necessary to initiate an appeal or independent review; and

(h) if an internal appeal process exists:

(i) inform the enrollee of the enrollee's right to appeal any adverse determination by requesting an internal review within 180 days after the date the adverse decision is made; and

(ii) notify the enrollee, once the internal appeals process has been exhausted, of the enrollee's right to seek an independent review of any adverse determination within 60 days after the date the internal review decision is made; or

(i) if an internal appeal process does not exist, inform the enrollee of the enrollee's right to seek an independent review of any adverse determination within 180 days after the date the adverse decision is made.

~~(3) The notice shall inform the enrollee that the expedited review process is available and shall explain how an enrollee initiates an expedited review.~~

AUTH: Sec. 33-37-105, MCA

IMP: Sec. 33-37-102, MCA

37.108.315 INDEPENDENT REVIEW OF HEALTH CARE DECISIONS: INTERNAL APPEALS PROCESS (1) If a health carrier or managed care entity has an internal appeals process in place, the

internal appeals process provided by the health carrier or managed care entity shall must be exhausted before the enrollee or the enrollee's authorized representative can submit a decision for independent review, unless:

(a) the internal appeals process is not completed within 60 calendar days from the date the request for appeal is received, in which case the internal appeals process shall will be interrupted and the case forwarded for independent review; or

(b) the health care treatment decision results in a serious threat to the health or threatens the life of, the enrollee, in which case upon certification by the health care provider as defined in (1)(b)(i), the internal appeals process shall will be bypassed and the matter shall immediately be submitted for expedited review.

(b)(i) remains the same.

(2) The health carrier or managed care entity shall maintain written records of all requests for appeal and shall retain all related data for a period of 3 three years unless a claim, audit, or litigation involving the records and data is pending, then in which case the records and data shall must be retained until the claim, audit, or litigation is finally resolved, or for 3 three years, whichever is longer.

(3) The peer or independent review organization shall retain all records and data generated by the peer or independent review organization for the purposes of completing the review for no less than 3 three years, unless a claim, audit or litigation is pending, then in which case the records or data shall must be retained until the claim, audit or litigation is finally resolved or for 3 three years, whichever is longer.

(4) remains the same.

AUTH: Sec. 33-37-105, MCA

IMP: Sec. 33-37-102, MCA

37.108.507 COMPONENTS OF QUALITY ASSESSMENT ACTIVITIES

(1) Annually, the health carrier shall evaluate its quality assessment activities by using the following HEDIS year ~~2002~~ 2003 measures:

(a) through (4) remain the same.

(4) The department hereby adopts and incorporates by reference the HEDIS year ~~2002~~ 2003 measures for the categories listed in (1)(a) through (1)(e) above. The HEDIS year ~~2002~~ 2003 measures are developed by the national committee for quality assurance and provide a standardized mechanism for measuring and comparing the quality of services offered by managed care health plans. Copies of HEDIS ~~2002~~ 2003 measures are available from the National Committee for Quality Assurance, 2000 L Street NW, Suite 500, Washington, DC 20036 or on the internet at www.NCQA.org.

AUTH: Sec. 33-36-105, MCA

IMP: Sec. 33-36-105 and 33-36-302, MCA

3. The amendments proposed above are necessary for the

following reasons:

ARM 37.108.301, 37.108.305, 37.108.310, and 37.108.315

The words "health carrier" are proposed to be added wherever "managed care entity" appears, because both terms are used in the statutes providing authority for these rules [Title 33, chapter 37, MCA], both entities are subject to those statutes and these rules, and, therefore, both terms should have been included when the original rules were adopted. Since some health carriers are not also managed care entities but are legally subject to these rules, the failure to include "health carrier" in the rules themselves has led to confusion over the past few years about whether the rules apply to health carriers other than managed care entities. The alternative of not adding the term health carrier was considered and rejected because the public would continue to be confused by the existing rules.

ARM 37.108.305

New section (6) needs to be added to ARM 37.108.305 in order to clearly indicate that decisions concerning clients receiving health care that is Medicaid-funded or otherwise publicly funded are exempt from the peer review process established in these rules, since the foregoing programs have other appeal mechanisms established in federal or state law. The alternative of not adding this language was considered and rejected because the absence of the language might lead a Medicaid or other publicly funded client to believe that the independent peer review process in these rules was the avenue of appeal that they should be pursuing. In addition, confusion about which review process applies could inadvertently result in delays in needed health care.

ARM 37.108.310

The amendments to subsection (2)(d) through (2)(i) of ARM 37.108.310 are needed to establish appropriate time lines for requesting an independent review of an adverse determination and to clarify the process for such requests. At the present time, the time frames are within the discretion of a health carrier or managed care entity, which has the potential to leave enrollees with appeal deadlines that the department considers to be too short to ensure fairness to enrollees. The Department is proposing time lines consistent with federal Department of Labor regulations on group health plans and other states' external review regulations. It is the Department's intent that an enrollee who is recuperating from an illness or injury has adequate time to make a decision concerning whether to pursue an independent review, along with providing a reasonable time frame for the health carrier or managed care entity to comply with statutory requirements. The alternative of not adding time lines was considered and rejected because there would likely be no consistently fair process among health carriers or managed

care entities for enrollees in a health benefit plan to appeal an adverse determination. In addition, since some health carriers and managed care entities may not have an internal review process, notice to enrollees regarding review processes specific to the type of review available is needed to prevent enrollee confusion about what review request process and time lines apply in their case.

ARM 37.108.507

ARM 37.108.507 requires health carriers to report their quality assessment activities to the department using health plan employer data and information set (HEDIS) measures, nationally-utilized measures that are updated annually. Since the HEDIS standards change somewhat every year, the rule must also be updated annually to reflect the current year's measures and ensure that national comparisons are possible, since the other states will also be using the same updated measures. The changes from adopted 2002 measures to the proposed 2003 measures are quoted below:

"Childhood Immunization Status

- CPT code 90712 should not be deleted [Note: The code was deleted in 2002 and should not have been.]. Due to the timing of the change in the ACIP guideline regarding OPV and the look-back period for this measure, some children may have received OPV.
- Change all references from "IPV" to "IPV/OPV" under the IPV and Combination #1 sections.
- Add CPT code 90712 for OPV to table E1-A.
- Add OPV to table E1-B under the Immunization column for the following contraindications: HIV-infected or household contact with HIV infection; Cancer of lymphoreticular of histiocytic tissue; Multiple myeloma and Leukemia.

Cervical Cancer Screening

- Delete V76.47 from Table E4-A. This code is for a vaginal smear after hysterectomy and would not be appropriate for the measure.

Comprehensive Diabetes Care

- Delete CPT codes 99381-99383 and 99391-99393 from outpatient/non-acute inpatient row of Table E11-B. These codes are for visits for age ranges not included in the eligible population for this measure.

Appendix 1 - Summary Table of Measures, Product Lines and Changes (CAHPS Survey)

- Under the "Applicable to" column, label the first sub-column "Medicaid", the second sub-column "Commercial" and the third sub-column "Medicare".

The option of not updating the HEDIS measures was considered and rejected because these are national quality measures which allow comparison among health plans. If the measures are not kept current, this function is lost.

4. Interested persons may submit their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to Kathy Munson, 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 July 10, 2003. Data, views or arguments may also be submitted by facsimile (406)444-1970 or by electronic mail via the Internet to dphhslegal@state.mt.us. The Department also maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. For placement on the mailing list, please write the person at the address above.

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

Dawn Sliva
Rule Reviewer

Russ Cater for
Director, Public Health and
Human Services

Certified to the Secretary of State June 2, 2003.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the) NOTICE OF PROPOSED REPEAL
proposed repeal of ARM)
42.31.702 relating to the)
reporting requirements for)
Montana tobacco wholesalers)
and retailers) NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On August 1, 2003, the department proposes to repeal ARM 42.31.702, relating to reporting requirements for Montana tobacco wholesalers and retailers.

2. The Department of Revenue 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 Revenue no later than 5:00 p.m. on July 3, 2003, to advise us of the nature of the accommodation that you need. Please contact Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 5805, Helena, Montana 59604-5805; telephone (406) 444-2855; fax (406) 444-3696; e-mail canderson@state.mt.us.

3. The department proposes to repeal the following rule:

42.31.702 REPORTING REQUIREMENTS which can be found on page 42-3163 of the Administrative Rules of Montana.

AUTH: Sec. 16-11-402, MCA

IMP: Sec. 16-11-403, MCA

REASONABLE NECESSITY: The department is proposing to repeal ARM 42.31.702 because the 58th Legislature enacted HB 663, which changed the reporting requirements for Montana wholesalers and retailers. Montana wholesalers and retailers must now file all necessary information with the Attorney General within 20 calendar days after the end of each calendar quarter rather than with the Department of Revenue. Therefore, this rule is no longer applicable to the department.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to:

Cleo Anderson
Department of Revenue
Director's Office
P.O. Box 5805
Helena, Montana 59604-5805
no later than July 11, 2003.

5. If persons who are directly affected by the proposed action wish to express their data, views and arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments they have to Cleo Anderson at the above address no later than July 11, 2003.

6. If the agency receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action; from the appropriate administrative rule review committee; from a governmental subdivision or agency; or from an association having no 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.

7. An electronic copy of this Proposal Notice is available through the Department's site on the World Wide Web at http://www.state.mt.us/revenue/rules_home_page.htm, under the Notice of Rulemaking section. The Department strives to make the electronic copy of this Proposal 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.

8. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notice regarding particular subject matter or matters. Such written request may be mailed or delivered to the person in 4 above or faxed to the office at (406) 444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

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

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

/s/ Linda M. Francis
LINDA M. FRANCIS
Director of Revenue

Certified to Secretary of State June 2, 2003

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the proposed	)	NOTICE OF PUBLIC HEARING
repeal of ARM 44.6.101	)	ON PROPOSED REPEAL,
Uniform Commercial Code	)	AMENDMENT, AND ADOPTION
Filing Fees, 44.6.102 UCC)	
Refiling Fees, 44.6.107)	
Agriculture Filing Fees, the)	
amendment of ARM 44.6.104)	
Federal Tax Lien Fees,)	
44.6.105 UCC Filing Fees,)	
44.6.110 Title 71 Lien)	
Requirements, and the)	
adoption of new rules I)	
through V regarding UCC)	
Filings, Farm Bill Master)	
List, and On-line UCC Lien)	
Filings)	

TO: All Concerned Persons

1. On July 2, 2003, a public hearing will be held at 10:00 a.m. in the Secretary of State's Office Conference Room of the State Capitol, Helena, Montana, to consider the proposed repeal, amendment, and adoption of the above-stated rules.

2. The Secretary of State 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 Secretary of State no later than 5:00 p.m. on June 24, 2003, to advise us of the nature of the accommodation that you need. Please contact Janice Doggett, Secretary of State's Office, P.O. Box 202801, Helena, MT 59620-2801; telephone (406) 444-5375; FAX (406) 444-4196; or e-mail jdoggett@state.mt.us.

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

44.6.101 FEES FOR FILING NEW UNIFORM COMMERCIAL CODE SECURED TRANSACTIONS DOCUMENTS COVERING AGRICULTURAL PROPERTY found on page 44-241 of the Administrative Rules of Montana.

AUTH: ~~30-9-422(4)~~ 30-9A-502, MCA
IMP: ~~30-9-422~~ 30-9A-502, MCA

REASON: The Secretary of State proposes to repeal this rule to eliminate duplication and possible confusion. The filing fees for agriculture liens are accurately represented in ARM 44.6.105, and are the same as fees for filing Uniform Commercial Code liens. The authority and implemented cites

are being amended to reflect the renumbering of Title 30, chapter 9 to Title 30, chapter 9A, MCA.

44.6.102 FEES FOR REFILING EXISTING UNIFORM COMMERCIAL CODE SECURED TRANSACTIONS DOCUMENTS COVERING AGRICULTURAL PROPERTY found on page 44-241 of the Administrative Rules of Montana.

AUTH: ~~30-9-422(4)~~ 30-9A-501, MCA
IMP: ~~30-9-422~~ 30-9A-501, MCA

REASON: The Secretary of State proposes to repeal this rule because it is not required under 30-9A-501(1), MCA. Agricultural liens were relocated from the county offices to the Secretary of State's Office during a one-year period from July 1985 through July 1986. In September 1986, Montana was certified as a central notification state and it was no longer necessary to refile existing secured transactions with the Secretary of State's Office. The requirement was eliminated when Revised Article 9 of the Uniform Commercial Code was implemented. The authority and implemented cites are being amended to reflect the renumbering of Title 30, chapter 9 to Title 30, chapter 9A, MCA.

44.6.107 FEES FOR FILING AGRICULTURAL LIENS found on page 44-242 of the Administrative Rules of Montana.

AUTH: ~~30-9-403~~ 30-9A-502, MCA
IMP: 30-9A-502 and 71-3-125, MCA

REASON: The Secretary of State proposes the repeal of this fee listing because the fees for filing agricultural liens are listed under ARM 44.6.105, and are the same as fees for filing Uniform Commercial Code liens. The authority and implemented cites are being amended to reflect the renumbering of Title 30, chapter 9 to Title 30, chapter 9A, MCA.

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

44.6.104 FEES FOR FILING NOTICE OF FEDERAL TAX LIEN

(1) Effective May 1, 1988, the secretary of state and the county clerk and recorder shall charge and collect for:

- (a) filing a notice of federal tax lien, \$7.00;
- (b) filing any amendment, \$7.00;
- (c) filing a certificate of release/termination statement, no fee; and
- (d) issuing a certificate of federal tax lien from the filing officer, \$7.00 per name.

AUTH: ~~71-3-206~~ 30-9A-525 and 30-9A-526, MCA
IMP: ~~30-9-403~~ 30-9A-519, 30-9A-525 and 71-3-205, MCA

REASON: The Secretary of State proposes this amendment to clarify the fee for obtaining a certificate of federal tax lien.

44.6.105 FEES FOR FILING DOCUMENTS -- UNIFORM COMMERCIAL CODE (1) The secretary of state and the county clerk and recorder shall charge and collect for:

- (a) filing a financing statement, \$7.00;
- (b) filing a termination statement, no fee;
- (c) filing a continuation statement, \$5.00;
- (d) filing a ~~financing statement~~ indicating an assignment, \$5.00;
- (e) filing a statement of partial release, \$5.00;
- (f) filing a statement, adding, to or changing, or deleting collateral, \$5.00;
- (g) filing ~~any amendment a statement, adding, changing, or deleting debtor information name, and/or addresses,~~ \$5.00;
- (h) filing a statement, adding, any amendment changing, or deleting secured party information name, and/or addresses, \$5.00;
- (i) filing any other amendment, \$5.00;
- (j) issuing a certificate from the filing officer, \$7.00 per name;
- (k) ~~monthly~~ hookup fee for public access to ~~u~~Uniform eCommercial eCode computer system per month, \$25.00;
- (l) computer printout of farm product collateral description, no fee; and
- (m) copies of Uniform Commercial Code documents, \$.50 per page. ~~any of the filing and indexing in (a), (b), or (e) where the collateral is equipment or rolling stock of railroads or street railways, \$15.00;~~
- (n) ~~no additional fee shall be charged for an updated search of facsimile filing when the original search listed a provisional facsimile filing.~~

AUTH: 30-9-403 30-9A-525 and 30-9A-526, MCA
IMP: 30-9-403 30-9A-525 and 71-3-125, MCA

REASON: The Secretary of State proposes this amendment to clarify the fees for filing Uniform Commercial Code and Effective Financing Statement lien documents and to eliminate fees that are no longer required.

44.6.110 REQUIREMENTS OF THE FORMAT REQUIREMENTS FOR THE FILING OF A TITLE 71 AGRICULTURAL LIEN (1) Requirements for filing the notice of a Title 71 agricultural lien are as follows:

- (a) the names and addresses of the debtor and lienor:
 - ~~(i)~~(b) the social security number and/or tax ID number for every debtor listed;
 - ~~(b)~~(c) description of lien type and its statutory authority;
 - ~~(c)~~(d) ~~description of collateral.~~

- ~~(i)~~ the a collateral description ~~must be~~ specific as to the type of crop(s) covered, e.g., wheat, barley, oats, (the description of grain or feed will not suffice); and
- ~~(ii)~~(e) list the county where the crop is located;
- ~~(d)~~(f) notation by the secretary of state of the date of filing; and
- ~~(e)~~(g) signature of the lienor.

AUTH: 71-3-125 30-9A-526, MCA
IMP: 71-3-125 30-9A-502, MCA

REASON: The Secretary of State proposes this amendment to clarify that the rule applies only to Title 71 liens and not to agricultural liens.

5. The proposed new rules provide as follows:

NEW RULE I FORMAT REQUIREMENTS FOR THE FILING OF UNIFORM COMMERCIAL CODE LIENS (1) The format for filing a Uniform Commercial Code lien is as follows:

(a) font size on all documents must be at least a 10 point normal (not condensed) font;

(b) all forms must be typewritten (handwritten forms will be rejected); and

(c) all forms must be printed on 8 1/2" by 11" paper.

(2) All Uniform Commercial Code liens are required to be filed on one of the following national forms or they will be rejected:

(a) Uniform Commercial Code national financing statement;

(b) Uniform Commercial Code national financing statement amendment;

(c) Uniform Commercial Code national financing statement addendum;

(d) Uniform Commercial Code national financing statement additional party;

(e) Uniform Commercial Code national financing statement amendment addendum;

(f) Uniform Commercial Code national financing statement amendment additional party;

(g) Uniform Commercial Code national correction statement;

(h) Uniform Commercial Code national information request;

(i) notice of federal tax lien;

(j) notice of federal tax lien refiled notice;

(k) certificate of release of federal tax lien;

(l) notice of child support lien;

(m) Title 71 lien; and

(n) consumer goods refiling.

(3) The forms listed in (2), as they existed on [the effective date of this rule], are herein incorporated by reference. Copies of the forms listed in (2)(a) through (h), (m), and (n) are available at www.sos.state.mt.us. Copies of

the forms listed in (2)(i) through (k) are available at www.irs.gov. Copies of the form listed in (2)(l) are available at www.dphhs.state.mt.us.

AUTH: 30-9A-526, MCA
IMP: 30-9A-102, 30-9A-501, 30-9A-502, MCA

REASON: The Secretary of State proposes this rule to provide a list of required forms and the appropriate format to insure accurate and consistent filing and recording of lien documents.

NEW RULE II LIENS APPEARING ON THE FARM BILL MASTER LIST AND FEES FOR OBTAINING THE FARM BILL MASTER LIST (1) An effective financing statement lien that meets the requirements set forth in [New Rule III] and has been submitted with the appropriate filing fee(s) will appear on the farm bill master list.

(2) The secretary of state shall charge and collect for the following for providing the farm bill master list:

- | | |
|--|----------|
| (a) on CD ROM, per month | \$ 20.00 |
| (b) on paper, per farm product category | 5.00 |
| (i) over 50 pages, per additional page | .10 |
| (c) on microfiche, per farm product category | 5.00 |
| (i) over 25 pages, per additional page | .20 |

AUTH: 30-9A-525, MCA
IMP: 30-9A-525, MCA

REASON: The Secretary of State proposes this rule to provide a list of fees required to obtain the farm bill master list. The fees have been in place since 1985 and affect approximately 55,000 customers resulting in revenue collection of approximately \$27,500.

NEW RULE III FORMAT REQUIREMENTS FOR FILING AN EFFECTIVE FINANCING STATEMENT LIEN UNDER THE FEDERAL FOOD SECURITY ACT OF 1985 (1) The format for filing an effective financing statement lien is as follows:

(a) font size on all documents must be at least a 10 point normal (not condensed) font;

(b) all forms must be typewritten (handwritten forms will be rejected); and

(c) all forms must be printed on 8 1/2" by 11" paper.

(2) Effective financing statement lien filings must be filed on the following forms or they will be rejected:

(a) effective financing statement;

(b) effective financing statement amendment;

(c) effective financing statement addendum; or

(d) effective financing statement amendment addendum.

(3) The forms listed in (2), as they existed on [the effective date of this rule], are herein incorporated by reference and are available at www.sos.state.mt.us.

(4) The following minimum required information must be included on all effective financing statements or they will be rejected:

(a) crop year, unless every crop of the farm product in question for the duration of the effective financing statement is to be subject to the particular security interest;

(b) specific farm product name (e.g., wheat, barley, hay, cattle, horses, hogs);

(c) each county in the state where the farm product is produced or will be produced;

(d) name and address of each person (debtor) subjecting the farm product to the security interest;

(e) signature of the debtor;

(f) social security number or, if other than a natural person, internal revenue service taxpayer identification number of each such person;

(g) further details of the farm product subject to the security interest if needed to distinguish it from other such product owned by the same person or persons, but not subject to the particular security interest;

(h) secured party name and address; and

(i) signature of the secured party.

(5) An amendment to an effective financing statement is required when a change would render the farm bill master list entry no longer informative as to what is subject to the security interest in question. The effective financing statement amendment form must be used and must include:

(a) the secured party's signature; and

(b) the debtor's signature.

(i) An amendment that is a continuation statement does not require the signature of the debtor.

AUTH: 30-9A-526, MCA

IMP: 30-9A-501, 30-9A-502 and 71-3-125, MCA

REASON: The Secretary of State proposes this rule to insure accurate and consistent recording of effective financing statements.

NEW RULE IV FARM BILL MASTER LIST (1) The farm bill master list is a list of farm product liens filed in the secretary of state's office under the authority of the Federal Food Security Act of 1985. Secured parties are protected only to the extent of the interest that is properly identified and filed with the office of the secretary of state. Buyers should refer to the farm bill master list before purchasing farm products to determine if a security interest exists against the product. If a security interest exists against the product being sold, the buyer is responsible for writing the check as follows:

(a) in the seller's name; and

(b) in the lender's name who holds the security interest.

(2) The farm bill master list is published:

- (a) on the fifteenth day of every month; or
- (b) on the preceding business day if the fifteenth falls on a weekend or holiday.
- (3) The farm bill master list is distributed to registered buyers no later than the twentieth of each month.

AUTH: 30-9A-526, MCA
IMP: 30-9A-302, MCA

REASON: The Secretary of State proposes this rule to provide guidance for grain elevator users, livestock yard users and general users to obtain and utilize the farm bill master list. As a central notification state, Montana is required to notify registered farm bill buyers of the existence of active agricultural liens against specific farm products.

NEW RULE V DEFINITIONS AND REQUIREMENTS FOR ON-LINE FILING (1) The following definitions apply for filing Uniform Commercial Code liens on-line:

(a) "submitter" is a person or entity that files a Uniform Commercial Code lien on-line;

(b) "compliance officer" is a person who works in the secretary of state's office who is qualified to certify that a lien document meets the requirements of the law;

(c) "registered user" is a person or entity who is registered with a private vendor to file liens using the on-line filing system available through internet technology.

(2) Fees and payment methods for on-line filing of Uniform Commercial Code liens are published on-line by the private vendor.

(3) Liens filed through the use of internet technology are considered to be liens filed on-line.

(4) The following liens are acceptable for on-line filing:

(a) initial financing statements that meet the requirements of Title 30, chapter 9, MCA;

(b) effective financing statements that meet the requirements of the federal Food Security Act of 1985.

(i) An effective financing statement lien may be filed electronically without the signature of the debtor and secured party.

(ii) If an original or reproduced paper document is filed, the lien must be signed by the secured party and the debtor, and be filed by the secured party.

(5) The following liens are unacceptable for on-line filing:

- (a) transmitting utility liens;
- (b) notice of child support liens;
- (c) notice of federal tax liens; and
- (d) Title 71 liens.

(6) On-line filing is available between the hours of 7:00 a.m. and 7:00 p.m. Monday through Friday.

(7) On-line filing is not available on weekends or state holidays, or between 7:01 p.m. and 6:59 a.m. each working day.

(8) Submitters will be notified on-line if on-line filing is not available due to technology problems.

(9) The following requirements must be met in order to successfully complete an on-line lien filing:

(a) the requirements set forth under Title 30, chapter 9A, MCA; and

(b) the requirements set forth under the federal Food Security Act of 1985.

(10) A Uniform Commercial Code document that is successfully completed and submitted on-line will be considered filed upon receipt by the secretary of state's office. The on-line technology application will insure the document is properly completed prior to acceptance. The submitter will be notified by an on-line message if required fields are not properly completed. A message confirming successful completion and acceptance will appear on-line when the filing is accepted.

(11) Submitters should print and retain their acknowledgement message as proof that the on-line filing was received by the secretary of state's office. The acknowledgement message will contain a unique filing number, filing date and time, filing type, debtor(s) information, secured party(ies) information and filing language.

(12) The following on-line filings will be rejected:

(a) a filing that is not machine readable; or

(b) a filing considered to be improper under 30-9A-420, MCA.

(13) The submitter will be notified by an on-line message if their document is rejected. If a filing is later determined to be improper under 30-9A-420, MCA, the secretary of state's office will notify the submitter of the rejection.

(14) The date and time a successfully submitted on-line filing is considered to be effective is the date and time the document was accepted on-line by the secretary of state's office.

AUTH: 30-9A-526, MCA

IMP: 30-9A-502 and 71-3-125, MCA

REASON: The Secretary of State proposes this rule to provide guidance for those who wish to file lien documents using technology available for on-line filing.

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 Janice Doggett, Secretary of State's Office, P.O. Box 202801, Helena, MT 59620-2801, or by e-mailing jdoggett@state.mt.us, and must be received no later than July 14, 2003.

7. Janice Doggett, at the address above, has been designated to preside over and conduct the hearing.

8. The Secretary of State 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 administrative rules, corporations, elections, notaries, records, Uniform Commercial Code or a combination thereof. Such written request may be mailed or delivered to the Secretary of State's Office, Administrative Rules Bureau, 1236 Sixth Avenue, P.O. Box 202801, Helena, MT 59620-2801, faxed to the office at (406) 444-5833, e-mailed to klubke@state.mt.us, or may be made by completing a request form at any rules hearing held by the Secretary of State's Office.

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

/s/ Bob Brown
BOB BROWN
Secretary of State

/s/ Janice Doggett
JANICE DOGGETT
Rule Reviewer

Dated this 29th day of May 2003.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the proposed	)	NOTICE OF PUBLIC HEARING ON
amendment of ARM 44.5.114	)	PROPOSED AMENDMENT
Corporations - Profit and)	
Nonprofit Fees, 44.5.116)	
Limited Liability Partnership)	
Fees, 44.5.119 Assumed)	
Business Name Fees, and)	
44.5.121 Miscellaneous Fees)	
regarding the Reduction or)	
Elimination of Business)	
Document Filing Fees)	

TO: All Concerned Persons

1. On July 2, 2003, a public hearing will be held at 10:00 a.m. in the Secretary of State's Office Conference Room of the State Capitol, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Secretary of State 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 Secretary of State no later than 5:00 p.m. on June 24, 2003, to advise us of the nature of the accommodation that you need. Please contact Janice Doggett, Secretary of State's Office, P.O. Box 202801, Helena, MT 59620-2801; telephone (406) 444-5375; FAX (406) 444-4196; or e-mail jdoggett@state.mt.us.

3. The following rules are proposed to be amended:

44.5.114 CORPORATIONS - PROFIT AND NONPROFIT FEES

(1) Domestic filings:	
(a) <u>for</u> articles of incorporation:	\$ 20.00
(i) <u>profit</u>	\$ 70.00
(ii) <u>nonprofit</u>	20.00
(b) license fee based on authorized shares	
for profit corporations only, \$20.00 plus:	
(i) 1 to 50,000 shares	50.00
(ii) 50,001 to 100,000 shares	100.00
(iii) 100,001 to 250,000 shares	250.00
(iv) 250,001 to 500,000 shares	400.00
(v) 500,001 to 1,000,000 shares	600.00
(vi) 1,000,001 shares and over	1000.00
(c)(b) reinstatement:	
(i) for profit corporations, the fee is one half	
of the original per share filing fee as listed in	
(1)(b)(i) through (vi), plus the \$20.00 \$30.00 filing fee,	
plus an additional fee of \$30.00 per year for each	
year of delinquent annual reports	

(ii) for nonprofit corporations	10.00
(d) (c) articles of correction	15.00
(e) (d) articles of amendment	15.00
(f) (e) restated articles	15.00
(g) (f) articles of merger	20.00
(h) (g) articles of dissolution	15.00
(i) (h) domestic business trust	70.00
(j) (i) articles of revocation of voluntary dissolution	15.00
(2) Foreign filings:	
(a) certificate of authority:	
(for profit corporations, add \$100 license fee)	\$ 20.00
<u>(i) profit</u>	<u>\$ 70.00</u>
<u>(ii) non-profit</u>	<u>20.00</u>
(b) amended certificate of authority	15.00
(c) withdrawal	15.00
(d) registration of name (per year)	10.00
(e) renewal of name registration (per year)	10.00
(f) foreign business trust	<u>70.00</u> 120.00
(3) Both domestic and foreign filings:	
(a) name reservation	10.00
(b) transfer/cancellation of reserved name	no charge
(c) cancellation of foreign name registration	15.00
(d) statement of change of:	
(i) registered office	no charge
(ii) registered agent	no charge
(e) annual report filed prior to April 15th	15.00
(f) annual report filed after April 15th	30.00
(g) certificate of existence (domestic)	5.00
(h) certificate of authorization (foreign)	5.00
(i) certificate of fact	15.00
(j) any other statement or report	15.00

AUTH: 35-1-1206, 35-1-1207, 35-1-1307, 35-6-201, MCA
IMP: 35-1-1206, 35-1-1207, 35-1-1307, 35-6-201, MCA

REASON: The Secretary of State proposes the changes in fee listings in order to simplify the registration and reinstatement process, and to reduce the average business registration fee to reflect the cost of resources necessary to process business registration documents. Approximately 1,600 foreign and domestic corporations will be affected by this change and revenue collection will be reduced by approximately \$82,000.

44.5.116 LIMITED LIABILITY PARTNERSHIP FEES

(1) Registration of limited liability partnership	<u>\$ 20.00</u> \$ 70.00
<u>(2) Partnership agreement or statement of partnership authority</u>	<u>20.00</u>
(2) (3) Renewal of registration	<u>20.00</u> 70.00
(3) (4) Amendment to registration	20.00
(4) (5) Reservation of name	10.00
(5) (6) Cancellation of registration	<u>no charge</u> 5.00

~~(6)~~(7) Filing of any other statement 15.00

AUTH: 30-13-217, MCA
IMP: 30-13-217, MCA

REASON: The Secretary of State proposes changes in the fee listings in order to reflect the cost of resources necessary to process limited liability partnership document filing, and to simplify the filing process. Approximately 1,175 limited liability partnerships will be affected by this change and the revenue collected will be reduced by approximately \$36,500.

44.5.119 ASSUMED BUSINESS NAME FEES

(1) Registration of assumed business name	\$ 20.00
(2) Partnership agreement or statement of partnership authority	20.00
(3) Renewal of registration	20.00
(4) Amendment to registration	20.00
(5) Reservation of name	10.00
(6) Cancellation of registration	no charge 5.00
(7) Filing of any other statement	<u>15.00</u> 20.00

AUTH: 30-13-217, MCA
IMP: 30-13-217, MCA

REASON: The Secretary of State proposes a change in the fee listings in order to simplify the filing process and to reflect the cost of resources necessary to process the documents. Approximately 500 business entities using assumed business names will be affected and the revenue collected will be reduced by \$2,500.

44.5.121 MISCELLANEOUS FEES

(1) Certificate of fact	\$ 15.00
(2) Copy of any document	10.00
(3) Documents or copies returned by fax up to 10 pages	3.00
(a) each additional page over 10	.50
(b) priority handling for all other documents/requests	20.00
(c) furnishing any certificate not otherwise provided for	15.00
(d) <u>resignation of registered agent</u>	<u>no charge</u>

AUTH: 2-15-405, MCA
IMP: 2-15-405, MCA

REASON: The Secretary of State proposes to reduce the identified fee in order to reflect the cost for notification of registered agent resignations. Approximately 20 registered agents will be affected by this change and revenue collected will be reduced by approximately \$300.

4. Concerned persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to Janice Doggett, Secretary of State's Office, P.O. Box 202801, Helena, MT 59620-2801, or by e-mailing jdoggett@state.mt.us, and must be received no later than July 14, 2003.

5. Janice Doggett, at the address above, has been designated to preside over and conduct the hearing.

6. The Secretary of State 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 administrative rules, corporations, elections, notaries, records, Uniform Commercial Code or a combination thereof. Such written request may be mailed or delivered to the Secretary of State's Office, Administrative Rules Bureau, 1236 Sixth Avenue, P.O. Box 202801, Helena, MT 59620-2801, faxed to the office at (406) 444-5833, e-mailed to klubke@state.mt.us, or may be made by completing a request form at any rules hearing held by the Secretary of State's Office.

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

/s/ Bob Brown
BOB BROWN
Secretary of State

/s/ Janice Doggett
JANICE DOGGETT
Rule Reviewer

Dated this 29th day of May 2003.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the proposed	)	NOTICE OF PUBLIC HEARING
adoption of new rule I	)	ON PROPOSED ADOPTION
regarding requirements for)	
filing trademark)	
applications, renewals, and)	
assignments)	

TO: All Concerned Persons

1. On July 2, 2003, a public hearing will be held at 10:00 a.m. in the Secretary of State's Office Conference Room of the State Capitol, Helena, Montana, to consider the proposed adoption of the above-stated rule.

2. The Secretary of State 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 Secretary of State no later than 5:00 p.m. on June 24, 2003, to advise us of the nature of the accommodation that you need. Please contact Janice Doggett, Secretary of State's Office, P.O. Box 202801, Helena, MT 59620-2801; telephone (406) 444-5375; FAX (406) 444-4196; or e-mail jdoggett@state.mt.us.

3. The proposed new rule provides as follows:

NEW RULE I REQUIREMENTS FOR FILING TRADEMARK APPLICATIONS, RENEWALS, AND ASSIGNMENTS (1) The requirements for filing trademark applications are as follows:

(a) submission of the completed application for registration of mark (trademark - service mark) form available at www.sos.state.mt.us or upon request from the secretary of state's office; or

(b) submission of a document that includes all information required on the Application for Registration of Mark (trademark - service mark) form; and

(c) the information provided must include the class that best describes the goods or services selected from the classes of goods and services available at www.sos.state.mt.us or at www.uspto.gov or from the secretary of state's office.

(2) The class of goods and services used by the Montana secretary of state's office is adopted from the United States patent and trademark office.

(3) The requirements for filing a renewal of a registered trademark are as follows:

(a) submission of the completed application for renewal of mark form available at www.sos.state.mt.us or upon request from the secretary of state's office; or

(b) submission of a document that includes all information required on the application for renewal of mark

form; and

(i) the information provided must list a class selected from the classes of goods and services available at www.sos.state.mt.us or at www.uspto.gov or from the secretary of state's office, if the renewal for a trademark is for a trademark registered before July 1, 2003; or

(ii) the information provided must list the same class used to describe the goods or services that was used on the original application if the original application was filed after July 1, 2003.

(4) The requirements for filing an assignment or statement of change of ownership are as follows:

(a) submission of the completed statement of change of ownership for trademark or service mark form available at www.sos.state.mt.us or upon request from the secretary of state's office; or

(b) submission of a document that includes all information required on the application for renewal of mark form.

AUTH: 30-13-311 and 31-13-331, MCA

IMP: 30-13-311 and 31-13-331, MCA

REASON: The Secretary of State proposes this new rule to provide guidance for customers to register, renew, or assign ownership for trademarks.

4. Concerned persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to Janice Doggett, Secretary of State's Office, P.O. Box 202801, Helena, MT 59620-2801, or by e-mailing jdoggett@state.mt.us, and must be received no later than July 14, 2003.

5. Janice Doggett, at the address above, has been designated to preside over and conduct the hearing.

6. The Secretary of State 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 administrative rules, corporations, elections, notaries, records, Uniform Commercial Code or a combination thereof. Such written request may be mailed or delivered to the Secretary of State's Office, Administrative Rules Bureau, 1236 Sixth Avenue, P.O. Box 202801, Helena, MT 59620-2801, faxed to the office at (406) 444-5833, e-mailed to klubke@state.mt.us, or may be made by completing a request form at any rules hearing held by the Secretary of State's Office.

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

/s/ Bob Brown
BOB BROWN
Secretary of State

/s/ Janice Doggett
JANICE DOGGETT
Rule Reviewer

Dated this 2nd day of June 2003.

BEFORE THE PUBLIC EMPLOYEES' RETIREMENT BOARD
OF THE STATE OF MONTANA

In the matter of the amendment)
of ARM 2.43.404 to change the) NOTICE OF AMENDMENT
required time for agencies to)
submit their payroll contribution)
reports to the Public Employees')
Retirement Board)

TO: All Concerned Persons

1. On April 10, 2003, the Public Employees' Retirement Board published MAR Notice No. 2-2-323 regarding the proposed amendment of ARM 2.43.404, to change the required time for agencies to submit payroll contribution reports to the Public Employees' Retirement Board at page 611 of the 2003 Montana Administrative Register, Issue Number 7.

2. The Board has amended ARM 2.43.404 as proposed.

3. The following comment was received and appears with the Board's response:

COMMENT 1: A comment was received from a payroll clerk questioning the requirement that all payroll contribution reports must be submitted through the Montana Public Employee Retirement Administration's (MPERA) online web-based reporting system and that all payments must be remitted through automated clearing house (ACH). The commenter believes that unreliable access to the Internet will result in the process consuming more time than using preprinted forms and submitting a warrant.

RESPONSE: The actual proposed amendments change the time to submit payroll contribution reports from "no later than five working days after the last regularly occurring payday of each month" to "no later than five working days after each regularly occurring payday." The requirement that the reporting be done online was adopted effective July 12, 2002.

The use of MPERA's online web-based reporting system and ACH has resulted in more timely and accurate reporting by employers and timely and accurate transfer of contributions to our members' retirement accounts. Timely transfer of contributions is especially important to participants in the PERS Defined Contribution Retirement Plan. Defined Contribution Retirement Plan participants cannot begin receiving earnings on their contributions until their contributions are invested. The quicker the contributions are received by MPERA, the quicker they can be invested in the participants' pre-selected retirement funds.

Once familiar with using the Internet and ACH process, other employers have found the process to be easier and less time-consuming than paper forms and warrant transfers. MPERA staff members are very willing to assist any employer in using MPERA's online web-based reporting system and the ACH. If you need assistance, please contact us at 444-3154.

/s/ Terry Teichrow
Terry Teichrow, President
Public Employees' Retirement Board

/s/ Kelly Jenkins
Kelly Jenkins, General Counsel and
Rule Reviewer

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

Certified to the Secretary of State June 2, 2003.

BEFORE THE PUBLIC EMPLOYEES' RETIREMENT BOARD
OF THE STATE OF MONTANA

In the matter of the amendment)
of ARM 2.43.801, 2.43.802,) NOTICE OF AMENDMENT
2.43.803, and 2.43.804 pertaining)
to the Volunteer Firefighters')
Compensation Act and reports)
required to be submitted by fire)
companies to the Public Employees')
Retirement Board)

TO: All Concerned Persons

1. On April 10, 2003, the Public Employees' Retirement Board published MAR Notice No. 2-2-324 regarding the proposed amendment of ARM 2.43.801, 2.43.802, 2.43.803, and 2.43.804, pertaining to the Volunteer Firefighters' Compensation Act and reports required to be submitted by fire companies to the Public Employees' Retirement Board at page 615 of the 2003 Montana Administrative Register, Issue Number 7.
2. The Board has amended ARM 2.43.801, 2.43.802, 2.43.803, and 2.43.804 as proposed.
3. No comments were received.

/s/ Terry Teichrow
Terry Teichrow, President
Public Employees' Retirement Board

/s/ Kelly Jenkins
Kelly Jenkins, General Counsel and
Rule Reviewer

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

Certified to the Secretary of State June 2, 2003.

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

In the matter of the)
adoption of an emergency) NOTICE OF ADOPTION OF A
rule closing Painted) TEMPORARY EMERGENCY RULE
Rocks Reservoir)

TO: All Concerned Persons

1. The Fish, Wildlife and Parks Commission (commission) believes the following reasons constitute action for the adoption of a temporary emergency rule:

(a) High water flows rushing over the spillway of Painted Rocks Reservoir have broken the safety boom placed there to restrain boats from entering hazardous waters next to the spillway.

(b) Suction of water going over the spillway is sufficient to carry watercraft or persons in the water over the top of the spillway to the Bitterroot River 130 feet below.

(c) An unusually large amount of debris is floating in the reservoir.

(d) Therefore, as this situation constitutes an imminent peril to public health, safety, and welfare, and this threat cannot be averted or remedied any other way, the commission intends to adopt the following temporary emergency rule. The emergency rule will be sent as a press release to newspapers throughout the state. Also, signs informing the public of the closure are posted at the reservoir. The rule will be sent to interested parties, and published as a temporary emergency rule in Issue No. 11 of the 2003 Montana Administrative Register.

2. The commission will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of the notice. If you require an accommodation, contact the department no later than 5:00 p.m. on June 19, 2003, to advise us of the nature of the accommodation that you need. Please contact Brandi Fisher, Fish, Wildlife and Parks, 1420 East Sixth Ave., P.O. Box 200701, Helena, MT 59620-0701; telephone (406) 444-4594, fax (406) 444-7456.

3. The temporary emergency rule is effective June 3, 2003.

4. The text of the temporary emergency rule provides as follows:

RULE I PAINTED ROCKS RESERVOIR CLOSURE (1) Painted Rocks Reservoir is located in Ravalli County.

(2) Painted Rocks Reservoir is closed to all boating, sailing, floating, and swimming.

(3) This rule is effective as long as high water flows create a hazardous situation. The commission delegates its authority to the department to determine when Painted Rocks Reservoir is again safe for boating, sailing, floating, and swimming.

(4) The following exceptions apply to this rule:

(a) maintenance and repair operations performed by the department of natural resources and conservation;

(b) official patrol;

(c) search and rescue operations; and

(d) necessary access for cabin-site owners as allowed by the department.

AUTH: 87-1-303, MCA

IMP: 87-1-303, MCA

5. The rationale for the temporary emergency rule is as set forth in paragraph 1.

6. This rule will expire as soon as the department determines the reservoir is again safe for boating, sailing, floating and swimming. Water flows should be decreasing in the next few weeks. Signs restricting use of the reservoir will be removed when the rule is no longer effective. Notice of repeal of this emergency rule will be published in the Montana Administrative Register.

7. Concerned persons are encouraged to submit their comments to the department. They should submit their comments along with their names and addresses to Brandi Fisher, Fish, Wildlife and Parks, 1420 East Sixth Ave., P.O. Box 200701, Helena, MT 59620-0701 or email to brfisher@state.mt.us.

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

9. The Environmental Quality Council has been notified of the adoption of this temporary emergency rule.

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

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

BY: /s/ Robert N. Lane
Robert N. Lane
Rule Reviewer

Certified to the Secretary of State June 3, 2003

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

In the matter of the amendment of) CORRECTED NOTICE OF
ARM 8.32.802, relating to continued) AMENDMENT
approval of nursing schools)

TO: All Concerned Persons

1. On November 27, 2002, the Board of Nursing published MAR Notice No. 8-32-58 regarding the above-stated rule at page 3207 of the 2002 Montana Administrative Register, Issue Number 22. On May 22, 2003, the Department of Labor and Industry published a notice of the amendment of ARM 8.32.802 at page 1080, 2003 Montana Administrative Register, Issue Number 10.

2. In the review of ARM replacement pages for the first quarter of 2003, it was discovered that the notice of proposed amendment inadvertently failed to delete section (11) to comport with the revised school approval process specified in this rule. Annual submission of school reports is no longer required and the Board intended to delete this section. Sections (9) and (10) are not addressed in this corrected notice because they were renumbered in the proposal.

8.32.802 CONTINUED APPROVAL OF SCHOOLS (1) through (8) remain as amended.

~~(11) Each program will submit an annual report to the board reflecting current status of the educational program. These reports will provide evaluation of the program during the interim between survey reviews.~~

AUTH: 37-8-202, 37-8-301, MCA

IMP: 37-8-301, 37-8-302, MCA

BOARD OF NURSING
KIM POWELL, RN, CHAIRMAN

By: /s/ WENDY J. KEATING
Wendy J. Keating, Commissioner
DEPARTMENT OF LABOR & INDUSTRY

By: /s/ MARK CADWALLADER
Mark Cadwallader
Alternate Rule Reviewer

Certified to the Secretary of State June 2, 2003.

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

In the matter of the) NOTICE OF AMENDMENT
amendment of ARM 8.39.804 and) AND ADOPTION
the adoption of NEW RULE I)
pertaining to net client)
hunter use)

TO All Concerned Persons

1. On March 13, 2003, the Board of Outfitters published MAR Notice No. 8-39-23 regarding the public hearing on the proposed amendment and adoption of the above-stated rules relating to net client hunter use at page 356 of the 2003 Montana Administrative Register, issue number 5.

2. The Board has amended ARM 8.39.804 exactly as proposed.

3. The Board adopted NEW RULE I (8.39.805) exactly as proposed.

4. On April 7, 2003, a public hearing on the proposed amendment and adoption of the above-stated rules was conducted in Helena. Two written comments were received. A summary of the comments and the Board's responses are as follows:

COMMENT 1: Jean Johnson of the Montana Outfitters and Guides Association stated that the proposed changes appear to be sound and make sense and furnish evidence that the Board of Outfitters understands the outfitters' business.

RESPONSE 1: The Board stated that it appreciated Ms. Johnson's comments and would send (her) a letter expressing that sentiment.

COMMENT 2: Jack Rich of Rich Ranch and Outfitting stated that this gives the outfitter tools he or she needs to respond to changes in Fish, Wildlife and Parks regulations. This would allow the outfitters to better serve the consumer.

RESPONSE 2: The Board once again thanked the commentor, expressed their appreciation for the comment and directed that a letter be sent expressing that sentiment.

BOARD OF OUTFITTERS
RAY RUGG, CHAIR

/s/ WENDY J. KEATING
Wendy J. Keating, Commissioner
Department of Labor and Industry

/s/ MARK CADWALLADER
Mark Cadwallader,
Alternate Rule Reviewer

Certified to the Secretary of State June 2, 2003.

BEFORE THE BOARD OF CLINICAL LABORATORY
SCIENCE PRACTITIONERS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the) NOTICE OF AMENDMENT
amendment of ARM 24.129.401,)
pertaining to fees)

TO: All Concerned Persons

1. On March 13, 2003, the Board of Clinical Laboratory Science Practitioners published MAR Notice No. 24-129-12 regarding the proposed amendment of the above-stated rule relating to fees at page 360 of the 2003 Montana Administrative Register, issue no. 5.

2. The Board has amended ARM 24.129.401 exactly as proposed.

3. One written comment was received. The following is a summary of the comment and appears with the Board's response.

COMMENT: Sharon Thomsen commented as follows:

"While I understand the expenses of the Board have increased; thus the need to increase the yearly renewal fees, the expenses for CLS's have also increased with minimal salary changes being made. Many of us have to adjust our budgets, thus I feel a compromise of a smaller increase such as \$50-\$55 would be a fairer amount."

RESPONSE: The Board appreciates Ms. Thomsen's comments. The Board is required by law to cover the cost of operation. It did consider the impact upon the licensees and made every effort to keep the increase at a minimum while at the same time looking to the future operating costs of the Board. The \$60 fee is projected to be the most equitable.

BOARD OF CLINICAL LABORATORY
SCIENCE PRACTITIONERS
Karen McNutt, PRESIDENT

/s/ WENDY J. KEATING
Wendy J. Keating, Commissioner
DEPARTMENT OF LABOR & INDUSTRY

/s/ MARK CADWALLADER
Mark Cadwallader
Alternate Rule Reviewer

Certified to the Secretary of State, June 2, 2003.

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

In the matter of the) NOTICE OF AMENDMENT
amendment of ARM 37.49.101,)
37.49.102, 37.49.108,)
37.49.112, 37.49.401,)
37.49.405, 37.49.406,)
37.49.412, 37.49.414 and)
37.49.701 pertaining to)
foster care services)

TO: All Interested Persons

1. On April 24, 2003, the Department of Public Health and Human Services published MAR Notice No. 37-282 pertaining to the public hearing on the proposed amendment of the above-stated rules relating to foster care services, at page 725 of the 2003 Montana Administrative Register, issue number 8.

2. The Department has amended rules 37.49.112, 37.49.405, 37.49.406, 37.49.412 and 37.49.701 as proposed.

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

37.49.101 IV-E FOSTER CARE ELIGIBILITY: DEFINITIONS For purposes of this subchapter, the following definitions apply:

(1) "Child" means a person who is under age 18 or who is age 18 or older if the person is a full-time student in a secondary school who is reasonably expected to obtain a secondary school diploma or its equivalent in or before the month of the person's 19th birthday.

(2) through (17) remain as proposed.

(18) "Placing worker" means an individual who has the authority and responsibility to make decisions regarding the placement of a child who has been removed from the child's home by a voluntary agreement entered into by the child's parent or legal guardian or as a result of a judicial determination that removal from the home will serve the child's welfare. A placing worker may be an employee or agent of a governmental unit, ~~private organization, or other entity, including but not limited to the department's child and public agency who has a IV-E agreement with child and family services division, an Indian tribe and department of justice.~~

(19) through (21) remain as proposed.

AUTH: Sec. 53-2-201 and 53-6-113, MCA

IMP: Sec. 53-2-201 and 53-6-131, MCA

37.49.102 IV-E FOSTER CARE ELIGIBILITY: GENERAL

REQUIREMENTS (1) through (2)(d) remain as proposed.

(3) If a child is determined to be financially IV-E eligible, eligibility continues as long as the child remains in state custody or jurisdiction until age 18, regardless of subsequent changes in the filing unit's income or resources. However, IV-E funds cannot be used for maintenance payments when:

(a) remains as proposed.

(b) the child is age 18, ~~unless~~ the child is a full-time student in a secondary school who is reasonably expected to obtain a secondary school diploma or its equivalent in or before the month of the child's 19th birthday.

~~(i) the child is age 18 and a full-time student in a secondary school who is reasonably expected to obtain a secondary school diploma or its equivalent in or before the month of the child's 19th birthday; and~~

~~(ii) the child is under the jurisdiction of a tribe which has a code that allows for foster care past age 18;~~

(c) through (5) remain as proposed.

AUTH: Sec. 53-2-201 and 53-6-113, MCA

IMP: Sec. 53-2-201 and 53-6-131, MCA

37.49.108 IV-E FOSTER CARE ELIGIBILITY: AGE (1) As a condition of IV-E eligibility, a child must be:

(a) remains the same.

(b) age 18 or older if the child is a full-time student in a secondary school who is reasonably expected to obtain a secondary school diploma or its equivalent in or before the month of the child's 19th birthday ~~and the child is under the jurisdiction of a tribe which has a tribal code that allows for foster care if the child is over 18.~~

AUTH: Sec. 53-2-201 and 53-6-113, MCA

IMP: Sec. 53-2-201 and 53-6-131, MCA

37.49.401 IV-E ELIGIBILITY: A CONDITION OF NEED MUST EXIST (1) remains as proposed.

(2) After the initial determination of IV-E financial eligibility, the child is not eligible for IV-E benefits as specified in ARM 37.49.102(4)(a) and (b) unless:

(a) deprivation of parental support as defined in ARM 37.49.113 exists, and:

(i) the child is under 18 years or less of age; or

~~(ii) the tribal code allows for a foster care~~ the youth who is age 18 and or a full-time student in a secondary school and who is reasonably expected to obtain a secondary school diploma or its equivalent in or before the month of the child's 19th birthday; and

(b) through (d) remain as proposed.

AUTH: Sec. 53-2-201 and 53-6-113, MCA

IMP: Sec. 53-2-201, 53-2-613 and 53-6-131, MCA

37.49.414 IV-E FOSTER CARE ELIGIBILITY: EXCLUDED UNEARNED INCOME (1) The following unearned income is not counted when comparing the filing unit's gross monthly income and net monthly income to the applicable G.I. and NMI standards:

(a) through (o) remain as proposed.

(p) payments to individual volunteers in service to America (VISTA) volunteers under Title I of P.L. 93-113, pursuant to section 404(g) of that law; and

(q) small nonrecurring gifts such as those for Christmas, birthdays, and graduation, up to \$30 per member of the filing unit in any period of three consecutive calendar months; and

(r) monetary allowances for certain children of Vietnam veterans as described in Administration for Children and Families (ACF) issuance IM-03-02 dated May 8, 2003.

(2) remains as proposed.

AUTH: Sec. 53-2-201 and 53-6-113, MCA

IMP: Sec. 53-2-201 and 53-6-131, MCA

4. The department has made two changes to the original proposal for clarification and they are as follows:

(1) ARM 37.49.102(3) the word "financially" was added for clarification; and

(2) ARM 37.49.401(2) the word "financial" was added for clarification.

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

COMMENT #1: In ARM 37.49.101(18), the definition for a "placing worker" would include the Department's child and family services division, an Indian tribe and the department of justice. The department of justice appears to be the incorrect department, and should be changed to juvenile probation officers and juvenile parole officers.

RESPONSE: The Department agrees that the department of justice is an incorrect entity as listed. However, simply changing the wording to juvenile probation officers and juvenile parole officers may not be completely accurate either. The "placing worker" must be employed by a public agency which has a formal, signed agreement with the Department for the purpose of appropriately accessing the Title IV-E federal funding. As a result, the Department believed it would be more appropriate to list the Title IV-E agreement as the requirement rather than listing the specific departments or agencies which currently have agreements.

COMMENT #2: In ARM 37.49.108(1)(b), youth under tribal jurisdiction may be eligible for Title IV-E federal funding until the 19th birthday if the youth meets the listed criteria. Is there opportunity for youth under the supervision of juvenile

probation or juvenile parole to be eligible for Title IV-E funding with similar eligibility requirements?

RESPONSE: After careful study, the Department has determined that a child may be eligible for Title IV-E funding if the child is age 18, a full-time student in a secondary school, and is reasonably expected to obtain a secondary school diploma or its equivalent in or before the month of the child's 19th birthday. The federal requirement is not limited to tribes whose legal codes allow for children over age 18 to remain in foster care. The language in ARM 37.49.108(1)(b) and 37.49.401(2)(a)(ii) have been modified to reflect that this requirement is limited to the Child and Family Services Division and entities or agencies which have the Title IV-E agreement as discussed in the response to Comment #1. In addition, ARM 37.49.101(1) and 37.49.102(3)(b) will revert back to the original language.

COMMENT #3: In ARM 37.49.401(2)(a)(i), the requirement for eligibility states that the child is 18 years or less, implying that the child may be eligible until age 19. Is this correct?

RESPONSE: The Department has determined that unless the exception listed in ARM 37.49.401(2)(a)(ii) is met, the wording is incorrect. The Department has changed the wording to read "the child is under 18 years of age".

COMMENT #4: A recent determination in federal policy allows unearned income of children of certain Vietnam veterans to be evaluated for Title IV-E as unearned income.

RESPONSE: The Department agrees. In ARM 37.49.414(1), an additional circumstance where unearned income is not counted with regard to Title IV-E eligibility has been added as subsection (r). The new subsection is as follows: "monetary allowances for certain children of Vietnam veterans as described in Administration for Children and Families (ACF) issuance IM-03-02 dated May 8, 2003".

Dawn Sliva
Rule Reviewer

John Chappuis for
Director, Public Health and
Human Services

Certified to the Secretary of State June 2, 2003.

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

In the matter of the) NOTICE OF AMENDMENT
amendment of ARM 37.86.2401,)
37.86.2402, 37.86.2501,)
37.86.2502, 37.86.2505,)
37.86.2601 and 37.86.2602)
pertaining to medicaid)
ambulance and transportation)
services reimbursement)

TO: All Interested Persons

1. On February 27, 2003, the Department of Public Health and Human Services published MAR Notice No. 37-272 pertaining to the public hearing on the proposed amendment of the above-stated rules relating to medicaid ambulance and transportation services reimbursement, at page 289 of the 2003 Montana Administrative Register, issue number 4.

2. The Department has amended rules 37.86.2401, 37.86.2402, 37.86.2501, 37.86.2502, 37.86.2505, 37.86.2601 and 37.86.2602 as proposed.

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

COMMENT #1: I am writing to voice my opposition to the proposed amendments of administrative rules governing the Medicaid ambulance and transportation services reimbursement. I am concerned that the proposed amendments will result in fewer Medicaid recipients getting the transportation services they need to acquire medical services, cutbacks in specialized transportation services provided to Medicaid recipients.

RESPONSE: The transportation rule amendments update and clarify the Department's current transportation program policies. Some amendments clarify recent issues raised in the fair hearings process. The amendments do not limit or deny needed transportation services.

COMMENT #2: The proposed requirement in ARM 37.86.2402 that Medicaid will only pay for transportation to the closest provider regardless of any individual client's relationship with that provider, even if that client has "financial or legal actions pending or filed against the provider" or other issues that may result in that individual being refused services by the medical provider. Who would expect a patient who had filed a lawsuit against a provider to seek subsequent medical care from that provider? This requirement would in effect deny medical treatment to an individual who was not comfortable seeking

medical assistance from the "closest provider" allowed by Medicaid. The denial of transportation service would effectively deny access to medical care.

RESPONSE: It is the current policy of the Medicaid transportation program to only pay transportation costs to the closest provider based on the appropriate licensure. This rule amendment clarifies that if a provider is unwilling to accept a client due to the client's behavior, the client will be responsible for the additional travel costs to the next closest provider willing to accept them as a Medicaid client.

This amendment does not inhibit a client's freedom of choice of providers. Clients choose providers based on varied reasons and methods, i.e. personal preference, past history, gender, recommendation of friends, etc. When a client chooses a provider who is farther away, over one who is closer, the costs of traveling the farther distance are the client's responsibility.

COMMENT #3: The proposed requirement that a new prior authorization be obtained if the original appointment has to be rescheduled adds additional bureaucratic steps that will result in denial of reimbursement, which in turn will result in Medicaid recipients not receiving vital transportation services. When you make it too difficult for individuals or providers to receive reimbursement for the rides they provide, you jeopardize the ongoing availability of that service. Neither transportation providers nor individuals (such as personal assistants or habilitation trainers who transport their clients) will continue to provide transportation if they routinely are denied reimbursement.

RESPONSE: This amendment was proposed due to the large number of cancellations and rescheduling of client appointments. Due to the nature of a practice, most rescheduled appointments are made beyond the current month. Medicaid is based on a monthly benefit and therefore eligibility is only known for the current month. This amendment does not define a new requirement and should not result in an increase in transportation denials.

COMMENT #4: I object to the proposal to eliminate mileage reimbursement for transportation provided within the town or city where the client resides. This too will result in Medicaid recipients not receiving much-needed transportation to medical appointments. It is not realistic to expect people to provide free transportation, especially given the rising costs of fuel.

RESPONSE: Medicaid does not currently reimburse for transportation within the city or town where the client resides. In extreme cases, the Medicaid transportation program would reimburse for a taxi, however this is uncommon. This amendment is a clarification of existing policy applied to travel requests and should not result in any new volume of denials.

COMMENT #5: The proposed additional requirements in ARM 37.86.2502 to be imposed upon specialized transportation providers add bureaucratic hurdles that will increase the difficulty and cost of scheduling and providing rides. The scheduling process is already complicated enough without additional prior authorization and record keeping requirements.

RESPONSE: This requirement of prior authorization for specialized transportation was implemented due to the current budget situation and the need to ensure the appropriate use of state and federal funds within the transportation program. The process will work the same as current taxi prior authorization.

Dawn Sliva
Rule Reviewer

John Chappuis for
Director, Public Health and
Human Services

Certified to the Secretary of State June 2, 2003.

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

In the matter of the) NOTICE OF AMENDMENT
amendment of ARM 37.86.5104)
and 37.86.5110 pertaining to)
PASSPORT enrollment and)
services)

TO: All Interested Persons

1. On April 24, 2003, the Department of Public Health and Human Services published MAR Notice No. 37-277 pertaining to the proposed amendment of the above-stated rules relating to PASSPORT enrollment and services, at page 689 of the 2003 Montana Administrative Register, issue number 8.

2. The Department has amended rules 37.86.5104 and 37.86.5110 as proposed.

3. No comments or testimony were received.

Dawn Sliva
Rule Reviewer

John Chappuis for
Director, Public Health and
Human Services

Certified to the Secretary of State June 2, 2003.

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;
- Department of Public Service Regulation; and
- Office of the State Auditor and Insurance Commissioner.

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.

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) 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
Number and
Department | 2. Go to cross reference table at end of each title which lists MCA section numbers and corresponding ARM rule numbers. |

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through March 31, 2003. This table includes those rules adopted during the period April 1, 2003 through June 30, 2003 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).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through March 31, 2003, 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 2002 and 2003 Montana Administrative Registers.

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