

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 14

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 The notice section contains state agencies' proposed new, amended or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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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DEPARTMENT OF ADMINISTRATION  
STATE OF MONTANA

In the matter of the ) NOTICE OF PROPOSED AMENDMENT  
amendment of ARM 2.4.406 )  
pertaining to a roster of ) NO PUBLIC HEARING CONTEMPLATED  
independent auditors )  
authorized to conduct audits )  
of local government entities )

TO: All Concerned Persons

1. On September 1, 2003, the Department of Administration proposes to amend ARM 2.4.406 pertaining to a roster of independent auditors authorized to conduct audits of local government entities.

2. The Department of Administration 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 Administration no later than 5:00 p.m. on August 15, 2003, to advise us of the nature of the accommodation that you need. Please contact Cathy Muri, Administrative Financial Services Division, P.O. Box 200102, Helena, MT 59620-0102; telephone (406) 444-4609; fax (406) 444-2812; e-mail cmuri@state.mt.us.

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

2.4.406 ROSTER OF INDEPENDENT AUDITORS AUTHORIZED TO CONDUCT AUDITS OF LOCAL GOVERNMENT ENTITIES

(1) through (4) remain the same.

(5) To be eligible for inclusion on the roster, an independent auditor must:

(a) if an individual, hold a current Montana certificate as a certified public accountant and hold a current ~~annual~~ permit to engage in the practice of public accounting under 37-50-314, MCA, or hold a current license as a licensed public accountant, have been licensed on or before December 31, 1970, and hold a current annual permit to engage in the practice of public accounting under 37-50-314, MCA;

~~(b) if a partnership or corporation, be currently registered as a partnership of certified public accountants or a corporation of certified public accountants under 37 50 331 or 37 50 332, MCA, or be currently registered as a partnership of licensed public accountants or a corporation of licensed public accountants under 37 50 333 or 37 50 334, MCA, have each office established or maintained in this state for the practice of public accounting by:~~

(i) a certified public accountant or a partnership or corporation of certified public accountants registered annually as provided under 37-50-335, MCA; or

(ii) a licensed public accountant or a partnership or corporation of licensed public accountants registered annually as provided under 37-50-335, MCA, and have been registered on or before December 31, 1970;

(c) meet the continuing education requirements specified in Government Auditing Standards, as established by the comptroller general of the United States;

(d) have an external quality control review at least once every three years that meets the requirements specified in Government Auditing Standards, as established by the comptroller general of the United States, and receive an unqualified review report from the reviewing firm, team or association;

(e) not have been restricted in the conduct of governmental auditing by the Montana board of public accountants;

(f) not have been debarred, suspended, proposed for debarment, declared ineligible, or otherwise excluded from performing audits by any state or federal department or agency;

(g) not have been deemed ineligible to conduct local government entity audits by the department because:

(i) ~~because~~ of failure to conduct local government entity audits under contract with the department during the previous two years in accordance with the audit standards described in ARM 2.4.405-~~7~~1;

(ii) ~~because~~ of failure during the previous two years to adhere to the terms and conditions of an audit contract with the department-~~7~~1 or

(iii) ~~because~~ the independent auditor is more than 90 days delinquent in filing an audit report required under an existing contract with the department and has not obtained the department's written consent to an extension of the contracted filing date.

(6) through (13) remain the same.

AUTH: Sec. 2-7-504 and 2-7-506, MCA

IMP: Sec. 2-7-504 and 2-7-506, MCA

Reasonable Necessity: The rule amendments are reasonably necessary because of statutory changes that occurred during the 2001 Legislative Session. Section 37-50-314, MCA, was amended to refer to "current permit" rather than "current annual permit." Therefore, subsection (5)(a) is amended to reflect this statutory language revision. Subsection (5)(b) was amended to delete the references to sections 37-50-331, 37-50-332, 37-50-333, and 37-50-334, MCA, which were repealed by Chapter 123, Laws of 2001. The repealed statutes were replaced by section 37-50-335, MCA, which is now referenced in the rule.

4. Concerned persons may submit their data, views or arguments concerning the proposed amendments in writing to Cathy Muri, Administrative Financial Services Division, P.O.

Box 200102, Helena, MT 59620-0102; telephone (406) 444-4609; fax (406) 444-2812; e-mail cmuri@state.mt.us. Any comments must be received no later than 5:00 p.m. on August 29, 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 Cathy Muri, Administrative Financial Services Division, P.O. Box 200102, Helena, MT 59620-0102; telephone (406) 444-4609; fax (406) 444-2812; e-mail cmuri@state.mt.us. A written request for hearing must be received no later than 5:00 p.m. on August 29, 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 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 six based on the fact that there are currently 59 certified public accounting firms on the Department of Administration's roster of independent auditors authorized to conduct audits of Montana local government entities for the period beginning July 1, 2003, and ending June 30, 2004 (roster established pursuant to section 2-7-506, MCA, and current ARM 2.4.406).

7. The Department of Administration 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 this list shall make a written request which includes the name and mailing address of the person to receive notices and specifies the specific areas over which the Department of Administration has rulemaking authority that the person wishes to receive notice regarding. Such written request may be mailed or delivered to Dal Smilie, Chief Counsel, Department of Administration, P.O. Box 200101, Helena, MT 59620-0101; telephone (406) 444-3310; fax (406) 444-2529; e-mail dsmilie@state.mt.us or may be made by completing a request form at any rules hearing held by the Department of Administration.

8. 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 July 21, 2003.

BEFORE THE DEPARTMENT OF AGRICULTURE  
OF THE STATE OF MONTANA

In the matter of the proposed ) NOTICE OF PROPOSED  
amendment of ARM 4.12.607 and ) AMENDMENT  
4.12.608 relating to the )  
reporting of fertilizer and ) NO PUBLIC HEARING  
fee schedules ) CONTEMPLATED

TO: All Concerned Persons

1. On August 30, 2003, the Montana Department of Agriculture proposes to amend the above stated rules relating to the reporting of fertilizer and fee schedules.

2. The Department of Agriculture 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 Agriculture no later than 5:00 p.m. on August 14, 2003, to advise us of the nature of the accommodation that you need. Please contact Gregory H. Ames at the Montana Department of Agriculture, 303 N. Roberts, P.O. Box 200201, Helena, MT 59620-0201; Phone: (406) 444-2944; TTY: (406) 444-4687; Fax: (406) 444-5409; or E-mail: agr@state.mt.us.

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

4.12.607 INVESTIGATIONAL ALLOWANCES AND OVERALL INDEX VALUE (1) A commercial fertilizer shall be deemed deficient if the analysis of nutrient is below the guarantee by an amount exceeding the values in the following schedule, or if the overall index value of the fertilizer is below 98%\*:-:

Guarantee Percent	Nitrogen Percent	Available Phosphoric Acid Present	Potash Percent
4 or less	0.49	0.67	0.41
5	0.51	0.67	0.43
6	0.52	0.67	0.47
7	0.54	0.68	0.53
8	0.55	0.68	0.60
9	0.57	0.68	0.65
10	0.58	0.69	0.70
12	0.61	0.69	0.79
14	0.63	0.70	0.87
16	0.67	0.70	0.94
18	<del>0.60</del> <u>0.70</u>	0.71	1.01
20	0.73	0.72	1.08
22	0.75	0.72	1.15
24	0.78	0.73	1.21

Guarantee Percent	Nitrogen Percent	Available Phosphoric Acid Present	Potash Percent
26	0.81	0.73	1.27
28	0.83	0.74	1.33
30	0.86	0.75	1.39
32 or more	0.88	0.76	1.44

For guarantees not listed, calculate the appropriate value by interpolation.

\*Overall index value - Example of calculation for a 10-10-10 grade found to contain 10.1% Total Nitrogen (N), 10.2% Available Phosphoric Acid (P<sub>2</sub>O<sub>5</sub>), and 10.1% Soluble Potash (K<sub>2</sub>O). Nutrient unit values are assumed to be \$3 per unit N, \$2 per unit P<sub>2</sub>O<sub>5</sub>, and \$1 per unit K<sub>2</sub>O.

10.0 units N	x 3 =	30.0
10.0 units P <sub>2</sub> O <sub>5</sub>	x 2 =	20.0
10.0 units K <sub>2</sub> O	x 1 =	<u>10.0</u>
<u>Commercial Value Guaranteed</u>		<u>60.0</u>
<del>Commercial Value Guarantees</del>		
10.1 units N	x 3 =	30.3
10.2 units P <sub>2</sub> O <sub>5</sub>	x 2 =	20.4
10.1 units K <sub>2</sub> O	x 1 =	<u>10.1</u>
Commercial Value Found		<u>60.8</u>

$$\text{Overall Index Value} = \frac{60.8}{60.0} \times 100 = 101.3\%$$

(2) Secondary and minor elements shall be deemed deficient if any element is below the guarantee by an amount exceeding the values in the following schedule:

Element	Allowable Deficiency
Calcium	→ 0.2 unit ± 5% of guarantee
Magnesium	→ 0.2 unit + 5% of guarantee
Sulfur	→ 0.2 unit + 5% of guarantee
Boron	→ 0.003 unit + 15% of guarantee
Cobalt	→ 0.0001 unit + 30% of guarantee
Molybdenum	→ 0.0001 unit + 30% of guarantee
Chlorine	→ 0.005 unit + 10% of guarantee
Copper	→ 0.005 unit + 10% of guarantee
Iron	→ 0.005 unit + 10% of guarantee
Manganese	→ 0.005 unit + 10% of guarantee
Sodium	→ 0.005 unit + 10% of guarantee
Zinc	→ 0.005 unit + 10% of guarantee

The maximum allowance when calculated in accordance ~~to~~ with the above shall be ± one unit (1%).

AUTH: 80-11-301, MCA  
IMP: 80-10-206, MCA

REASON: The investigational allowances for nitrogen at the guaranteed level of 18% is 0.70. The fact that it appears as 0.60 is a typographical error. The allowable deficiency for calcium is 0.2 units "plus" 5% of guarantee, the fact that it appears as a "minus" is a typographical error. It has also been noted that the text appearing underlined in (1) is a typographical error; the underline will be removed and only the ending punctuation changed.

4.12.608 REPORTING OF FERTILIZER AND FEE SCHEDULES

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

(b) Inspection fee at 95 ~~65~~ cents per ton for anhydrous ammonia fertilizer distributed;

(c) Inspection fee at 10 cents per ton for a soil amendment distributed and not less than \$5.00 total for reporting periods-; and

(d) through (5) remain the same.

AUTH: 80-11-301, MCA

IMP: 80-10-207, MCA

REASON: The anhydrous ammonia inspection program is solely funded by tonnage distribution fees assessed to the registrant of the anhydrous ammonia. The usage of anhydrous ammonia has steadily decreased due to the lingering effects of drought, thus reducing funding below what is needed to cover costs of required responsibilities of the department. Regulatory responsibilities conducted by the department include onsite storage inspections, site assessment and approval prior to starting operation, and education covering proper handling and preventing theft of anhydrous ammonia. To accomplish these regulatory duties, restoring funding to adequate levels requires this fee increase. Should agronomic conditions improve and the use of anhydrous ammonia return to historical levels, the department would then reduce these fees to prevent a surplus in the anhydrous ammonia account. This proposed fee increase would increase producer costs by .008 per acre for 40 units of nitrogen. Based on average tonnage of 35,000 tons per year, the \$0.30 increase will generate revenue of \$10,500 per year. This fee increase will be assessed to seven companies registering anhydrous ammonia with the department.

4. Concerned persons may submit their data, views or arguments concerning this proposed amendment in writing to Gregory H. Ames at the Montana Department of Agriculture, 303 N. Roberts, P.O. Box 200201, Helena, MT 59620-0201; Fax: (406) 444-5409; or E-mail: agr@state.mt.us to be received no later than August 28, 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 a written request for a hearing and submit this request along with any written comments they have to Gregory H. Ames at the

Montana Department of Agriculture, P.O. Box 200201, Helena, MT 59620-0201; Phone: (406) 444-2944; TTY: (406) 444-4687; Fax: (406) 444-5409; or E-mail: agr@state.mt.us. A written request for hearing must be received no later than August 28, 2003.

6. If the agency 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 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 23 persons based on 230 licensed fertilizer dealers.

7. The Department of Agriculture maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding noxious weed seed free forage, noxious weeds, alfalfa seed, agriculture in Montana schools program, agriculture development, pesticides, warehouseman, produce, mint, seed, alternative crops, wheat research and marketing, rural development and/or hail. Such written request may be mailed or delivered to Montana Department of Agriculture, 303 N. Roberts, P.O. Box 200201, Helena, MT 59620-0201; Fax: (406) 444-5409; or E-mail: agr@state.mt.us or may be made by completing a request form at any rules hearing held by the Department of Agriculture.

8. An electronic copy of this Notice of Proposed Amendment is available through the Department's website at [www.agr.state.mt.us](http://www.agr.state.mt.us), under the Administrative Rules section. The Department strives to make the electronic copy of the Notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the Department strives to keep its 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.

9. With respect to the amendment of ARM 4.12.607, the bill sponsor requirements of 2-4-302, MCA do not apply. With respect to the amendment of ARM 4.12.608, the bill sponsor notice requirements of 2-4-302, MCA apply and have been fulfilled.

DEPARTMENT OF AGRICULTURE

/s/ Ralph Peck  
Ralph Peck  
Director

/s/ Tim Meloy  
Tim Meloy, Attorney  
Rules Reviewer

Certified to the Secretary of State July 21, 2003.

BEFORE THE COMMUNITY DEVELOPMENT DIVISION  
DEPARTMENT OF COMMERCE  
STATE OF MONTANA

In the matter of the proposed ) NOTICE OF PUBLIC HEARING ON  
adoption of a new rule for the ) PROPOSED ADOPTION  
administration of projects )  
funded by the Treasure State )  
Endowment Program (TSEP) )

TO: All Concerned Persons

1. On August 20, 2003, at 1:30 p.m., a public hearing will be held in Room 202, at the Park Avenue Building, 301 South Park Avenue, Helena, Montana, to consider the adoption by reference of rules governing the administration of the Treasure State Endowment Program (TSEP) projects awarded by the 2003 Legislature.

2. The Department will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Community Development Division no later than 5:00 p.m., on August 13, 2003, to advise the Division of the nature of the accommodation that you need. Please contact Jim Edgcomb, Community Development Division, 301 South Park Avenue, Helena, Montana 59620; telephone (406) 841-2785; TDD (406) 841-2702; facsimile (406) 841-2771; email to jedgcomb@state.mt.us.

3. The proposed new rule provides as follows:

NEW RULE I INCORPORATION BY REFERENCE OF RULES FOR THE ADMINISTRATION OF TREASURE STATE ENDOWMENT GRANTS AWARDED BY THE 2003 LEGISLATURE (1) The department of commerce herein adopts and incorporates by reference the Montana Treasure State Endowment Program 2003 Project Administration Manual published by the department as rules for the administration of the TSEP projects awarded funding by the 2003 legislature.

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

- (a) project start up;
- (b) environmental requirements;
- (c) procurement requirements;
- (d) financial management;
- (e) civil rights;
- (f) labor requirements;
- (g) property acquisition;
- (h) public facilities construction management;
- (i) involving the public;
- (j) project monitoring;
- (k) project closeout;
- (l) preliminary engineering grants; and
- (m) emergency grants.

(3) Copies of the regulation adopted by reference in (1) may be obtained from the Department of Commerce, Community Development Division, P.O. Box 200523, Helena, Montana 59620-0523.

AUTH: 90-6-710, MCA  
IMP: 90-6-710, MCA

REASON: It is reasonably necessary to adopt this rule because local government entities must be made aware of the Department's requirements for obtaining the funds that have been awarded by the 2003 Legislature, administering the TSEP funds during the construction of their projects, and managing their construction projects. The rule is also reasonably necessary to set out the requirements for administering preliminary engineering and emergency grants.

4. Concerned persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Community Development Division, 301 South Park Avenue, Helena, Montana, 59620; by facsimile to (406) 841-2771; or email to jedgcomb@state.mt.us to be received no later than 5:00 p.m., August 29, 2003.

5. Jim Edgcomb has been designated to preside over and conduct this hearing.

6. The Community Development Division 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 list may 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 rules relating to the Treasure State Endowment Program. This request may be mailed or delivered to the Community Development Division, 301 South Park Avenue, Helena, Montana 59620; transmitted by facsimile to (406) 841-2771; or made by completing a request form at any rules hearing held by the Division.

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

Reviewed by:

COMMUNITY DEVELOPMENT DIVISION  
DEPARTMENT OF COMMERCE

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

By: /s/ MARK A. SIMONICH  
MARK A. SIMONICH, DIRECTOR  
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, July 21, 2003.

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

In the matter of the adoption of	)	NOTICE OF PROPOSED
new rules I through XIV,	)	ADOPTION,
amendment of ARM 12.11.501,	)	AMENDMENT, AND REPEAL
12.11.3435, 12.11.3455,	)	
12.11.3460 and the repeal of ARM	)	NO PUBLIC HEARING
12.11.345, pertaining to	)	CONTEMPLATED
recreational water use	)	

TO: All Concerned Persons

1. On October 9, 2003, the Fish, Wildlife and Parks Commission (commission) proposes to adopt new rules I through XIV, amend ARM 12.11.501, 12.11.3435, 12.11.3455, 12.11.3460, and repeal ARM 12.11.345, pertaining to recreational water use.

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 this notice. If you require an accommodation, contact the department no later than 5:00 p.m. on August 13, 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; email brfisher@state.mt.us.

3. The proposed new rules provide as follows:

NEW RULE I BLACK EAGLE DAM (1) Black Eagle Dam is located in Cascade County on the Missouri River and forms Black Eagle Reservoir.

(2) The waters 500 feet above the dam to 100 feet below the waterfalls are closed to all boating, sailing, floating and swimming. The closed waters will be identified and delineated by positive boat restraining systems or signs.

(3) All river and stream channel areas near the dam are closed to all public access below the ordinary high-water mark as defined by 23-2-301, MCA, from the dam to 100 feet below the waterfalls and will be identified by signs or fences installed by the owner or operator of the dam.

AUTH: 23-1-106, 87-1-303, MCA  
IMP: 23-1-106, 87-1-303, MCA

NEW RULE II COCHRANE DAM (1) Cochrane Dam is located in Cascade County on the Missouri River and forms Cochrane Reservoir.

(2) The waters 500 feet above the dam to 500 feet below the dam are closed to all boating, sailing, floating and

swimming. The closed waters will be identified and delineated by positive boat restraining systems or signs.

AUTH: 23-1-106, 87-1-303, MCA  
IMP: 23-1-106, 87-1-303, MCA

NEW RULE III FLINT CREEK DAM (1) Flint Creek Dam is located in Granite County on Flint Creek and forms Georgetown Lake.

(2) The waters 100 feet above the dam to 150 feet below the dam are closed to all boating, sailing, floating and swimming. The closed waters will be identified and delineated by positive boat restraining systems or signs.

AUTH: 23-1-106, 87-1-303, MCA  
IMP: 23-1-106, 87-1-303, MCA

NEW RULE IV HAUSER DAM (1) Hauser Dam is located in Lewis and Clark County on the Missouri River and forms Hauser Lake.

(2) The waters 250 feet above the dam to 600 feet below the dam are closed to all boating, sailing, floating and swimming. The closed waters will be identified and delineated by positive boat restraining systems or signs.

(3) All river and stream channel areas near the dam are closed to all public access below the ordinary high-water mark as defined by 23-2-301, MCA, from the dam to 100 feet below the dam from December 1 through April 1 annually and will be identified by signs or fences installed by the owner or operator of the dam.

AUTH: 23-1-106, 87-1-303, MCA  
IMP: 23-1-106, 87-1-303, MCA

NEW RULE V HEBGEN DAM (1) Hebgen Dam is located in Gallatin County on the Madison River and forms Hebgen Lake.

(2) The waters 100 feet above the dam to 100 feet below the outlet works are closed to all boating, sailing, floating and swimming. The closed waters will be identified and delineated by positive boat restraining systems or signs.

AUTH: 23-1-106, 87-1-303, MCA  
IMP: 23-1-106, 87-1-303, MCA

NEW RULE VI HOLTER DAM (1) Holter Dam is located in Lewis and Clark County on the Missouri River and forms Holter Lake.

(2) The waters 150 feet above the dam to 900 feet below the dam are closed to all boating, sailing, floating and swimming. The closed waters will be identified and delineated by positive boat restraining systems or signs.

AUTH: 23-1-106, 87-1-303, MCA  
IMP: 23-1-106, 87-1-303, MCA

NEW RULE VII MADISON DAM (1) Madison Dam is located in Madison County on the Madison River and forms Ennis Lake.

(2) The waters 600 feet above the dam to 700 feet below the dam are closed to all boating, sailing, floating and swimming. The closed waters will be identified and delineated by positive boat restraining systems or signs.

AUTH: 23-1-106, 87-1-303, MCA  
IMP: 23-1-106, 87-1-303, MCA

NEW RULE VIII MILLTOWN DAM (1) Milltown Dam is located in Missoula County and is situated at the confluence of the Blackfoot River and the Clark Fork River and forms Milltown Reservoir.

(2) The waters 200 feet above the dam to 200 feet below the dam are closed to all boating, sailing, floating and swimming. The closed waters will be identified and delineated by positive boat restraining systems or signs.

AUTH: 23-1-106, 87-1-303, MCA  
IMP: 23-1-106, 87-1-303, MCA

NEW RULE IX MORONY DAM (1) Morony Dam is located in Cascade County on the Missouri River and forms the Morony Reservoir.

(2) The waters 500 feet above the dam to 500 feet below the dam are closed to all boating, sailing, floating and swimming. The closed waters will be identified and delineated by positive boat restraining systems or signs.

AUTH: 23-1-106, 87-1-303, MCA  
IMP: 23-1-106, 87-1-303, MCA

NEW RULE X MYSTIC DAM (1) Mystic Dam is located in Stillwater County on West Rosebud Creek and forms Mystic Lake.

(2) The waters 100 feet above the dam are closed to all boating, sailing, floating and swimming. The closed waters will be identified and delineated by positive boat restraining systems or signs.

(3) All river and stream channel areas near the dam are closed to all public access below the ordinary high-water mark as defined by 23-2-301, MCA, from the south side of West Rosebud Creek from the powerhouse to the USGS concrete weir and will be identified by signs or fences installed by the owner or operator of the dam.

AUTH: 23-1-106, 87-1-303, MCA  
IMP: 23-1-106, 87-1-303, MCA

NEW RULE XI RAINBOW DAM (1) Rainbow Dam is located in Cascade County on the Missouri River and forms Rainbow Reservoir.

(2) The waters 600 feet above the dam to 100 feet below the waterfalls are closed to all boating, sailing, floating and swimming. The closed waters will be identified and delineated by positive boat restraining systems or signs.

(3) All river and stream channel areas near the dam are closed to all public access below the ordinary high-water mark as defined by 23-2-301, MCA, from the dam to 4,400 feet below the dam to the east end of Tailrace Island adjacent to the Rainbow Dam powerhouse and will be identified by signs or fences installed by the owner or operator of the dam.

AUTH: 23-1-106, 87-1-303, MCA  
IMP: 23-1-106, 87-1-303, MCA

NEW RULE XII RYAN DAM (1) Ryan Dam is located in Cascade County on the Missouri River and forms Ryan Reservoir.

(2) The waters 500 feet above the dam to 100 feet below the waterfalls are closed to all boating, sailing, floating and swimming. The closed waters will be identified and delineated by positive boat restraining systems or signs.

(3) All river and stream channel areas near the dam are closed to all public access below the ordinary high-water mark as defined by 23-2-301, MCA, from the dam to the east end of Ryan Island and will be identified by signs or fences installed by the owner or operator of the dam.

AUTH: 23-1-106, 87-1-303, MCA  
IMP: 23-1-106, 87-1-303, MCA

NEW RULE XIII THOMPSON FALLS DAM (1) Thompson Falls Dam is located in Sanders County on the Clark Fork River and forms Thompson Falls Reservoir.

(2) The waters 1,020 feet above the dam to 500 feet below the dam are closed to all boating, sailing, floating and swimming. The closed waters will be identified and delineated by positive boat restraining systems or signs.

AUTH: 23-1-106, 87-1-303, MCA  
IMP: 23-1-106, 87-1-303, MCA

NEW RULE XIV WEST ROSEBUD DAM (1) West Rosebud Dam is located in Stillwater County on West Rosebud Creek and forms West Rosebud Lake.

(2) The water 100 feet above the dam to the dam are closed to all boating, sailing, floating and swimming. The closed waters will be identified and delineated by positive boat restraining systems or signs.

AUTH: 23-1-106, 87-1-303, MCA  
IMP: 23-1-106, 87-1-303, MCA

Rationale: The restrictions contained within these new rules are not new restrictions. They already exist within ARM 12.11.345. Essentially, these new rules are part of a rule

clean-up proposal. Under 2-4-314, MCA, each agency is required to review its rules biennially and determine if any new rules should be adopted or if any existing rule should be modified or repealed. After conducting the department's biennial review, it was determined that ARM 12.11.345 contains outdated references to the Montana Power Company and is unwieldy to modify when amendments are needed because of Secretary of State formatting requirements. Additionally, department personnel requested that references to ARM 12.11.345 restrictions be included within ARM 12.11.501, the index rule, so that department personnel could more easily locate them. The commission proposes to repeal ARM 12.11.345, break it apart into the proposed new rules, and reference the new rules in ARM 12.11.501 to make the restrictions easier to amend, locate, and understand.

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

12.11.501 LIST OF WATER BODIES AND DAMS (1) The following is a list of specific regulations on bodies of water with the reference where the rules regarding those bodies of water are located:

- (a) Alva Lake ARM 12.11.3901
- (b) Arapooish Fishing Access (Pond) ARM 12.11.801
- (c) Banana Lake ARM 12.11.3401
- (d) Bear Mouth Rest Area Pond ARM 12.11.2701
- (e) Bearpaw Lake ARM 12.11.2801
- (f) Beaver Creek Reservoir ARM 12.11.2805
- (g) Beaver Lake ARM 12.11.2201
- (h) Beaverhead River ARM 12.11.202,  
12.11.205, &  
12.11.215
- ~~(h)~~(i) Beavertail Pond ARM 12.11.3905
- ~~(i)~~(j) Big Hole River ARM 12.11.601,  
12.11.202,  
12.11.210, &  
12.11.220
- ~~(j)~~(k) Bighorn River ARM 12.11.605
- ~~(k)~~(l) Bitterroot River ARM 12.11.610
- (m) Black Eagle Dam [New Rule I]
- ~~(l)~~(n) Blackfoot River ARM 12.11.615
- ~~(m)~~(o) Blanchard Lake ARM 12.11.3910
- ~~(n)~~(p) Bootjack Lake ARM 12.11.3405
- ~~(o)~~(q) Bozeman Ponds ARM 12.11.2301
- ~~(p)~~(r) Branum Pond ARM 12.11.1601
- ~~(q)~~(s) Brown's Lake ARM 12.11.4601
- ~~(r)~~(t) Cad Lake ARM 12.11.3410
- ~~(s)~~(u) Canyon Ferry Reservoir ARM 12.11.1001 &  
12.11.3201
- ~~(t)~~(v) Carpenter Lake ARM 12.11.3415
- ~~(u)~~(w) Castle Rock Reservoir ARM 12.11.5101
- ~~(v)~~(x) Cibid Lake ARM 12.11.3420
- ~~(w)~~(y) Clark Fork River ARM 12.11.620

<del>(x)</del> (z)	Clearwater Lake	ARM 12.11.3915	
<del>(y)</del> (aa)	Clearwater River	ARM 12.11.625	
(ab)	Cochrane Dam	[New Rule II]	
<del>(z)</del> (ac)	Cochrane Reservoir	ARM 12.11.1403	
<del>(aa)</del> (ad)	Colt Lake	ARM 12.11.3920	
<del>(ab)</del> (ae)	Cooney Reservoir	ARM 12.11.1201	
<del>(ae)</del> (af)	Cottonwood Lake	ARM 12.11.3925	
<del>(ad)</del> (ag)	Crystal Lake	ARM 12.11.2101	
<del>(ae)</del> (ah)	East Gallatin Pond	ARM 12.11.2305	
<del>(af)</del> (ai)	Elsina Lake	ARM 12.11.3930	
<del>(ag)</del> (aj)	Fitzpatrick Lake	ARM 12.11.5701	
<del>(ah)</del> (ak)	Flathead Lake	ARM 12.11.2205	
(al)	Flint Creek Dam	[New Rule III]	
<del>(ai)</del> (am)	Forest Lake	ARM 12.11.3701	
<del>(aj)</del> (an)	Fort Peck Dredge Cut Trout		
Pond		ARM 12.11.5901	
<del>(ak)</del> (ao)	Fort Peck Reservoir	ARM 12.11.2401	&
		12.11.3601	
<del>(al)</del> (ap)	Fenchtown Pond	ARM 12.11.3935	
<del>(am)</del> (aq)	Fresno Reservoir	ARM 12.11.2810	
<del>(an)</del> (ar)	Gartside Reservoir	ARM 12.11.4901	
<del>(ao)</del> (as)	Harpers Lake	ARM 12.11.3940	
<del>(ap)</del> (at)	Harrison Lake (Willow Creek		
Res.)		ARM 12.11.3501	
(au)	Hauser Dam	[New Rule IV]	
<del>(aq)</del> (av)	Hauser Reservoir	ARM 12.11.3205	
(aw)	Hebgen Dam	[New Rule V]	
<del>(ax)</del> (ay)	Hebgen Lake	ARM 12.11.2308	
<del>(ar)</del> (ay)	Helena Valley Equalizing		
Reservoir Regulations		ARM 12.11.3210	
<del>(as)</del> (az)	Henry Reservoir	ARM 12.11.5705	
<del>(at)</del> (ba)	Hidden Lake	ARM 12.11.3945	
<del>(au)</del> (bb)	Holland Lake	ARM 12.11.3950	
(bc)	Holter Dam	[New Rule VI]	
<del>(av)</del> (bd)	Holter Lake	ARM 12.11.3215	
<del>(aw)</del> (be)	Hyalite Reservoir	ARM 12.11.2310	
<del>(ax)</del> (bf)	Inez Lake	ARM 12.11.3955	
<del>(ay)</del> (bq)	Johnson Reservoir	ARM 12.11.1801	
<del>(az)</del> (bh)	Kerr Dam	ARM 12.11.3101	
<del>(ba)</del> (bi)	Lake Dinah	ARM 12.11.3960	
<del>(bb)</del> (bj)	Lake Elmo	ARM 12.11.6201	
<del>(bc)</del> (bk)	Lake Helena	ARM 12.11.3220	
<del>(bd)</del> (bl)	Lake Koochanusa	ARM 12.11.3425	
<del>(be)</del> (bm)	Lavon Lake	ARM 12.11.3430	
<del>(bf)</del> (bn)	Leon Lake	ARM 12.11.3435	
<del>(bg)</del> (bo)	Lilly Pad Lake	ARM 12.11.3440	
<del>(bh)</del> (bp)	Little Loon Lake	ARM 12.11.3445	
<del>(bi)</del> (bq)	Little McGregor Lake	ARM 12.11.2210	
<del>(bj)</del> (br)	Little Rainbow Lake	ARM 12.11.3450	
<del>(bk)</del> (bs)	Lost Lake	ARM 12.11.3455	
<del>(bl)</del> (bt)	Lower Carter Pond	ARM 12.11.2105	
(bu)	Madison Dam	[New Rule VII]	
<del>(bm)</del> (bv)	Middle Thompson Lake	ARM 12.11.3460	
(bw)	Milltown Dam	[New Rule VIII]	

<del>(bn)</del> (bx) Missouri River	ARM 12.11.630
(by) Morony Dam	[New Rule IX]
<del>(bo)</del> (bz) Morony Reservoir	ARM 12.11.1405
<del>(bp)</del> (ca) Morrell Lake	ARM 12.11.3965
<del>(bq)</del> (cb) Myron Lake	ARM 12.11.3465
(cc) Mystic Dam	[New Rule X]
<del>(br)</del> (cd) Park Lake	ARM 12.11.2901
<del>(bs)</del> (ce) Pelican Point Fishing Access	
Ponds	ARM 12.11.1401
<del>(bt)</del> (cf) Placid Creek	ARM 12.11.3970
(cg) Rainbow Dam	[New Rule XI]
<del>(bu)</del> (ch) Rainbow Lake	ARM 12.11.3470
<del>(bv)</del> (ci) Rainy Lake	ARM 12.11.3975
(cj) Ryan Dam	[New Rule XII]
<del>(bw)</del> (ck) Ryan Reservoir	ARM 12.11.1407
<del>(bx)</del> (cl) Salmon Lake	ARM 12.11.3980
<del>(by)</del> (cm) Savage Lake	ARM 12.11.3475
<del>(bz)</del> (cn) Seeley Lake	ARM 12.11.3985
<del>(ca)</del> (co) Smith River	ARM 12.11.635
<del>(cb)</del> (cp) South Sandstone Reservoir	ARM 12.11.2001
<del>(cc)</del> (cq) Spook Lake	ARM 12.11.3990
<del>(cd)</del> (cr) Spring Meadow Lake	ARM 12.11.3225
<del>(ce)</del> (cs) Summit Lake	ARM 12.11.3995
<del>(cf)</del> (ct) Swan River	ARM 12.11.640
(cu) Thompson Falls Dam	[New Rule XIII]
<del>(cg)</del> (cv) Tongue River Reservoir	ARM 12.11.805
<del>(ch)</del> (cw) Topless Lake	ARM 12.11.3480
<del>(ci)</del> (cx) Upper Carter Pond	ARM 12.11.2110
<del>(cj)</del> (cy) Upper Thompson Lake	ARM 12.11.3485
<del>(ck)</del> (cz) Upsata Lake	ARM 12.11.3999
(da) West Rosebud Dam	[New Rule XIV]
<del>(cl)</del> (db) Whitefish River	ARM 12.11.645
<del>(cm)</del> (dc) Whitetail Reservoir	ARM 12.11.1701
<del>(cn)</del> (dd) Willow Creek Res. (Harrison Lake)	ARM 12.11.3501
<del>(co)</del> (de) Wood Lake	ARM 12.11.3230

AUTH: 23-1-106, 87-1-303, MCA  
 IMP: 23-1-106, 87-1-303, MCA

Rationale: ARM 12.11.501 acts as an index rule so that individuals wishing to find restrictions on a body of water can refer to this rule and find the ARM number that details restrictions on that body of water. During rulemaking for Hebgen Lake, Beaverhead River, and Big Hole River, this index rule should have also been amended to include these bodies of water for reference. The purpose of this amendment is to rectify this omission and to add the proposed new rules to the index rule so that they can be easily located.

12.11.3435 LEON LAKE (1) Leon Lake is located in Lincoln County within the Thompson Chain of Lakes.

(2) Leon Lake is limited to a controlled no wake speed, as defined in ARM 12.11.101(1).

AUTH: 23-1-106, 87-1-303, MCA  
IMP: 23-1-106, 87-1-303, MCA

12.11.3455 LOST LAKE (1) Lost Lake is located in Lincoln County within the Thompson Chain of Lakes.

(2) Lost Lake is limited to a controlled no wake speed, as defined in ARM 12.11.101(1).

AUTH: 23-1-106, 87-1-303, MCA  
IMP: 23-1-106, 87-1-303, MCA

12.11.3460 MIDDLE THOMPSON LAKE (1) Middle Thompson Lake is located in Lincoln County within the Thompson Chain of Lakes.

(2) Middle Thompson Lake is limited to a controlled no wake speed, as defined in ARM 12.11.101(1) in the channel between Middle and Lower Thompson lakes.

AUTH: 23-1-106, 87-1-303, MCA  
IMP: 23-1-106, 87-1-303, MCA

Rationale: During the biennial rules review explained in the rationale of paragraph 3, department personnel noticed that all lakes located within the Thompson Chain of Lakes state that general location except Leon Lake and Lost Lake. For the purpose of clarity and consistency, the commission is amending ARM 12.11.3435 and 12.11.3455 to add that information.

During the same biennial rule review, department personnel discovered that ARM 12.11.3460 was incorrect. When Middle Thompson Lake was originally regulated by ARM 12.6.901, now repealed, the commission authorized a no wake zone only in the channel between Middle and Lower Thompson lakes. When ARM 12.6.901 was repealed and the rules recodified in January of 2001, the new rule, ARM 12.11.3460, incorrectly listed the entire Middle Thompson Lake as no wake. The commission is now correcting this error.

5. ARM 12.11.345 Use Restrictions at Montana Power Company Dams, the rule proposed to be repealed, is on page 12-2087 of the Administrative Rules of Montana.

AUTH: 87-1-303, MCA  
IMP: 87-1-303, MCA

Rationale: This rule is being repealed as part of the rule clean up proposal explained in the rationale of paragraph 3, this notice.

6. Concerned persons may submit their data, views or arguments concerning the proposed amendment in writing to Becky Price, 1420 East Sixth Avenue, P.O. Box 200701, Helena,

MT 59620-0701, or email them to beprice@state.mt.us. Any comments must be received no later than August 28, 2003.

7. 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 Becky Price, 1420 East Sixth Avenue, P.O. Box 200701, Helena, MT 59620-0701. A written request for hearing must be received no later than August 28, 2003.

8. If the department receives requests for a public hearing on the proposed actions from either 10% or 25, whichever is less, 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 4664 persons based on 46,634 watercraft registered with the State of Montana as of July 2000.

9. The department maintains a list of interested persons who wish to receive notice of rulemaking actions proposed by the department or commission. Persons who wish to have their name added to the list shall make 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 Avenue, 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.

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

/s/ Dan Walker  
Dan Walker, Chairman  
Fish, Wildlife and Parks  
Commission

/s/ Rebecca Dockter  
Rebecca Dockter  
Rule Reviewer

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

In the matter of the )  
amendment of ARM 12.9.211 ) NOTICE OF PUBLIC  
pertaining to the Teton-Spring) HEARING ON PROPOSED  
Creek Bird Preserve ) AMENDMENT

TO: All concerned Persons

1. On August 21, 2003, at 7:00 p.m. the Fish, Wildlife and Parks Commission (commission) and the Department of Fish, Wildlife and Parks (department) will hold a public hearing at the Choteau Public Library, 17 North Main Street, Choteau, Montana, to consider the amendment of ARM 12.9.211 pertaining to the Teton-Spring Creek Bird Preserve.

2. The department and commission will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m. on August 11, 2003, to advise us of the nature of the accommodation that you need. Please contact Tom Flowers, Fish, Wildlife and Parks, P.O. Box 598, Choteau, MT 59457; telephone (406) 466-2078; email fwpchot@3rivers.net.

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

12.9.211 TETON-SPRING CREEK BIRD PRESERVE BOUNDARY ADJUSTMENT (1) The boundary of the Teton-Spring Creek bird preserve established by 87-5-405, MCA, is adjusted by changing the eastern boundary in sections 12 and 13 in township 24 north, range 5 west, to the Truchot Road. This boundary adjustment removes all land in section 12 and all land in the northern 1/4 of section 13 in township 24 north, range 5 west from inclusion within the preserve.

(2) The boundary of the Teton-Spring Creek bird preserve is further adjusted to remove from inclusion within the preserve the following land owned by Pat Saylor or Bernice Van Setten in township 24 north, range 5 west:

(a) in section 4, PT. of SW1/4SW1/4;

(b) in section 9, N1/2;

(c) in section 10, PT. of NW1/4, SW1/4, S1/2SE1/4, PT. of N1/2SE1/4;

(d) in section 13, SW1/4NE1/4, W1/2NW1/4, SE1/4NW1/4, N1/2SW1/4, SE1/4SW1/4, W1/2SE1/4, PT. of SW1/4SW1/4;

(e) in section 14, E1/2NE1/2, PT. of W1/2NE1/4, PT. of E1/2SE1/4; and

(f) all of section 15.

AUTH: 87-1-301, 87-5-402, MCA

IMP: 87-1-305, 87-1-401, MCA

4. Section 87-5-402, MCA, states that the Department of Fish, Wildlife and Parks has the right, power, and authority, when properly petitioned, to alter and change the boundaries of or entirely do away with and abandon any preserve or refuge, excepting the Sun River game preserve, when in its opinion, it is in the best interest to do so. Additionally, the commission has the power to set wildlife protection policies and establish bird and game preserves under 87-1-301 and 87-1-305, MCA. Following precedent set by the adoption of ARM 12.9.211 in 1995, this rule amendment is proposed under both department and commission authority.

In December of 2002, two landowners properly petitioned the department and commission to remove a portion of their land from the Teton-Spring Creek Bird Preserve. In their petition, the landowners stated that they have long had problems with crop damage and over population of deer on their land.

The department and commission have been aware of game damage concerns on this preserve. Over the years, there have been a number of proposals to either abandon the preserve or adjust its boundaries. To address game damage concerns, in the fall of 2002, the department proposed a limited white tailed deer damage hunt. Because this damage hunt was not consistent with the firearms prohibition on bird preserves, the department cancelled the damage hunt. Subsequently, the landowners petitioned the department and commission to remove their lands from the preserve boundaries.

The department and commission are proceeding with the petitions with the understanding that there is no longer a biological need for the preserve. Upland birds, particularly pheasants, have become well established in suitable habitat in northcentral Montana and therefore there is no longer a need for this preserve to enhance upland birds.

The department and commission propose a concurrent process to address any safety concerns that would arise out of adjusting the boundaries and thus removing certain lands from the preserve and its limited firearm provisions. The department and commission propose to establish a "special weapons restricted area" for the existing Teton-Spring Creek Bird Preserve. This may be done through the commission's season setting rules. The department will also work with the landowners to establish "no shooting/safety zones" where needed.

5. Concerned persons may submit their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to Mike Aderhold, 4600 Giant Springs Road, Great Falls, MT 59406; telephone (406) 454-5840; fax (406) 761-8477; email

maderhold@state.mt.us. Any comments must be received no later than August 29, 2003.

6. Mike Aderhold has been designated to preside over and conduct the hearing.

7. The department maintains a list of interested persons who wish to receive notice of rulemaking actions proposed by department or commission. Persons who wish to have their name added to the list shall make 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, 1420 East Sixth Avenue, P.O. Box 200701, 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.

8. 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 and  
Director of the Department of  
Fish, Wildlife and Parks

By: /s/ Martha C. Williams  
Martha C. Williams  
Rule Reviewer

Certified to the Secretary of State July 21, 2003

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY  
OF THE STATE OF MONTANA

In the matter of the amendment )	NOTICE OF PUBLIC HEARING ON
of ARM 17.74.401, 17.74.402, )	PROPOSED AMENDMENT
17.74.403 and 17.74.404 )	AND REPEAL
pertaining to fees for )	
asbestos project permits, )	
accreditation and renewal of )	(ASBESTOS)
accreditation in an asbestos- )	
related occupation, approval )	
of training courses offered )	
for accreditation and audits )	
of training courses and )	
refresher courses, and the )	
repeal of ARM 17.74.405 )	
pertaining to penalties )	

TO: All Concerned Persons

1. On August 27, 2003, at 10:00 a.m. the Department of Environmental Quality will hold a public hearing in Room 111 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment and repeal of the above-stated rules.

2. The Department will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department no later than 5:00 p.m., August 18, 2003, to advise us of the nature of the accommodation you need. Please contact Jan Brown, Department of Environmental Quality, Air and Waste Management Bureau, P.O. Box 200901, Helena, Montana, 59620-0901; phone (406) 444-9741; fax (406) 444-1499; or email janbrown@state.mt.us.

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

17.74.401 FEES FOR PERMITS PERMIT FEES (1) ~~Applicants for permits must pay a permit fee to the department upon application for a permit~~ Concurrent with submittal of a permit application, the applicant shall submit a permit fee to the department as follows:

- (a) ~~asbestos abatement project permit:~~
- (i) ~~contract volume cost for asbestos abatement range:~~

~~If the contract volume is: Applicant pays:~~

<del>\$0 \$3,000</del>	<del>.....</del>	<del>4% of contract volume cost</del>
<del>\$3,001 \$10,000</del>	<del>.....</del>	<del>\$15 plus 3.5% of contract volume cost</del>
<del>\$10,001 \$50,000</del>	<del>.....</del>	<del>\$40 plus 3.25% of contract volume cost</del>
<del>\$50,001 \$100,000</del>	<del>.....</del>	<del>\$165 plus 3% of contract volume cost</del>
<del>\$100,001 \$500,000</del>	<del>.....</del>	<del>\$665 plus 2.5% of contract volume cost</del>

~~greater than \$500,000 ..... \$3,165 plus 2% of contract volume cost~~

<u>Contract Volume</u>	<u>Permit Fee</u>
\$0-\$500 .....	None
\$501-\$3,000 .....	\$ 91
\$3,001-\$5,000 .....	\$ 201
\$5,001-\$7,500 .....	\$ 304
\$7,501-\$10,000 .....	\$ 417
\$10,001-\$20,000 .....	\$ 686
\$20,001-\$50,000 .....	\$ 1,531
\$50,001-\$75,000 .....	\$ 2,652
\$75,001-\$100,000 .....	\$ 3,627
\$100,001-\$250,000 .....	\$ 6,552
\$250,001-\$375,000 .....	\$13,416
greater than \$375,000 .....	\$20,000

- (b) annual permit ..... \$850
- ~~(c) additional inspections of asbestos abatement project premises ..... \$400~~
- ~~(d) (c) amendments to annual permit ..... \$300~~

(2) ~~For the purposes of calculating the asbestos abatement project permit fee, the contract volume cost shall be is based upon the specific itemized contract charges directly associated with conducting the asbestos abatement project. If there is no specific itemization of charges associated with conducting the asbestos abatement project, the total of all of the charges associated with the contract shall be is the contract volume cost for the purposes of the asbestos abatement project permit fee. The cost of the asbestos abatement project permit fee is not included in the determination of the contract volume cost if the fee is separately itemized in the contract.~~

(a) The asbestos project permit applicant shall submit a copy of the contract to the department to verify the contract volume amount specified in the permit application.

(b) If the final contract volume of an asbestos project is more than two tiers greater than the volume specified in the permit application, the applicant shall apply to the department for an amended asbestos project permit and shall pay the difference between the original permit fee and the permit fee based on the new contract volume.

(3) The fee for requested inspections of asbestos projects is \$500 for each inspection.

AUTH: 75-2-503, MCA  
 IMP: 75-2-503, 75-2-504, MCA

17.74.402 ACCREDITATION AND ACCREDITATION RENEWAL APPLICATIONS FEES (1) All persons A person seeking accreditation or renewal of accreditation in an asbestos type asbestos-related occupation or renewal of accreditation in an asbestos type occupation must shall pay a fee to the department for accreditation or renewal for each accreditation or renewal

as follows: The fees for accreditation or renewal of accreditation are:

<del>(a) asbestos inspector</del> .....	<del>\$125</del>
<del>(b) asbestos management planner</del> .....	<del>\$125</del>
<del>(c) asbestos abatement project designer</del> .....	<del>\$125</del>
<del>(d) asbestos contractor/asbestos abatement supervisor</del> .....	<del>\$125</del>
<del>(e) asbestos worker</del> .....	<del>\$ 30</del>
<del>(a) asbestos project worker</del> .....	<del>\$ 40</del>
<del>(b) asbestos project contractor/supervisor</del> .....	<del>\$165</del>
<del>(c) asbestos inspector</del> .....	<del>\$165</del>
<del>(d) asbestos management planner</del> .....	<del>\$165</del>
<del>(e) asbestos project designer</del> .....	<del>\$165</del>

~~(2) The surcharge for individuals seeking For accreditation or accreditation renewal based on attendance completion of a an initial or refresher training course or refresher course that is not Montana approved shall be, as applicable, that has been approved by another state having accreditation requirements at least as stringent as Montana's, a person shall pay a surcharge of \$25 \$15 plus the accreditation or accreditation renewal fee for an application under (1)(a)-(d) of this rule, and, or \$10 \$35 plus the accreditation or accreditation renewal fee for an application under (1)(b) through (e) of this rule.~~

~~(3) For simultaneous accreditation and or accreditation renewal in more than one discipline with an application for each simultaneously submitted to the department asbestos-related occupation, the fee is \$250 \$325 plus the any applicable surcharges, if applicable, or the total of the 2 two highest fees plus the any applicable surcharges, if applicable, for those two occupations, whichever is less.~~

AUTH: 75-2-503, MCA  
IMP: 75-2-503, MCA

17.74.403 COURSE APPROVAL FEES (1) ~~All A~~ persons seeking approval of a training courses must for accreditation in an asbestos-related occupation shall pay to the department the following amounts: a fee of \$975 per course.

<del>(a) course approval</del> .....	<del>\$750</del>
<del>(b) course changes</del> .....	<del>\$300</del>

AUTH: 75-2-503, MCA  
IMP: 75-2-503, MCA

17.74.404 COURSE AUDITS FEES (1) ~~All audits of approved training courses and refresher courses are subject to the following fees, which must be paid by persons offering such courses to the department after the audit: A person offering a training course or refresher course for accreditation in an asbestos-related occupation that is audited by the department, as required under subchapter 3, shall pay the following fees, as applicable, within 60 days after receiving a bill from the department:~~

<del>(a)</del> (c)	asbestos inspector course .....	<del>\$1,000</del>	\$1,300
<del>(b)</del> (d)	asbestos management planner course .....	<del>\$600</del>	\$780
<del>(e)</del> (e)	asbestos <del>abatement</del> project designer course .....	<del>\$600</del>	\$780
<del>(d)</del> (b)	asbestos <del>abatement</del> project contractor/supervisor course .....	<del>\$1,000</del>	\$1,300
<del>(e)</del> (a)	asbestos <del>abatement</del> project worker course .....	<del>\$600</del>	\$780
(f)	<del>2 or more courses</del> asbestos inspector course and project management planner course presented in conjunction .....	<del>\$1,200</del>	\$1,560
(g)	refresher course .....	<del>\$250</del>	\$325
(h)	<del>2</del> <u>two</u> or more refresher courses presented consecutively .....	<del>\$400</del>	\$520

(2) For audits of approved training courses and refresher courses offered outside the state of Montana, in addition to the fees required in (1), the course provider shall pay actual and necessary department staff travel expenses as defined and provided in 2-18-501 through 2-18-503, MCA.

AUTH: 75-2-503, MCA  
 IMP: 75-2-503, MCA

4. The rule proposed for repeal provides as follows:

17.74.405 PENALTY (AUTH: 75-2-503, MCA; IMP: 75-2-503, 75-2-514, MCA), located at pages 17-8403 and 17-8404, Administrative Rules of Montana.

REASON: The Department is proposing to amend ARM 17.74.401, 17.74.402, 17.74.403, and 17.74.404, which specify the fees that must be paid to the Department for an asbestos project permit, accreditation and renewal of accreditation in an asbestos-related occupation, approval of a training course for accreditation in an asbestos-related occupation, and for the Department to audit a training course.

The Department has not increased the amount of these fees since they were established in 1993. Since that time, the costs of the Department's asbestos program have increased due to inflation. To meet these additional costs, it is necessary for the Department to increase the fees.

Although the asbestos program staff has not increased since 1993, there has been an increase in the number of asbestos project inspections program staff are required to conduct, the number of citizen complaints the program receives and must investigate, and the amount of time program staff are required to spend responding to general inquiries and educating the public and persons in asbestos-related occupations concerning the requirements of the Asbestos Control Act and the rules adopted under that Act.

In fiscal year 1993, the Department issued 237 asbestos project permits and conducted 48 inspections of project sites. In fiscal year 2002, the Department issued 240 project permits and conducted 115 inspections of project sites.

The Department is proposing to amend ARM 17.74.403(1)(b) by deleting the fee for course changes. It is important for course providers to keep courses up to date, and having to pay a fee for every change could discourage them from doing this.

Asbestos abatement project permit fee notice:

In fiscal year 2003, the Department issued 240 asbestos abatement project permits. In fiscal year 2004 the Department expects to issue 254 asbestos abatement project permits. In fiscal year 2004, the cumulative amount of the proposed new fees would be \$19,707.

Asbestos accreditation fee notice:

In fiscal year 2003, the Department issued 384 asbestos accreditations. In fiscal year 2004 the Department expects to issue approximately the same number. In fiscal year 2004, the cumulative amount of the proposed new fees would be \$14,480.

Asbestos course approval fee notice:

In fiscal year 2003, the Department approved seven asbestos training courses. In fiscal year 2004 the Department expects to approve two asbestos training courses. In fiscal year 2004, the cumulative amount of the proposed new fees would be \$450.

Asbestos training course audit fee notice:

In fiscal year 2003, the Department audited 12 asbestos training courses. In fiscal year 2004 the Department expects to audit 18 asbestos training courses. In fiscal year 2004, the cumulative amount of the proposed new fees would be \$6,135.

The Department is proposing to amend ARM 17.74.404 by adding a new section (2) that would require training course providers to pay travel expenses for department staff auditing courses offered outside of Montana.

The Department is also proposing minor editorial amendments that are not intended to change the meaning of the rules. These amendments are necessary to make corrections, to conform the language of the rules to the language of the Montana Asbestos Control Act, to clarify the rules, and to conform the rules to current rule drafting style.

The Department is proposing to repeal ARM 17.74.405, relating to penalties. This rule was superceded by 75-2-515, MCA, in 1999.

5. Concerned persons may submit their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to Vickie Walsh, Department of Environmental Quality, Air and Waste Management Bureau, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-9786; fax (406) 444-1499; or email vwalsh@state.mt.us no later than 5:00 p.m., September 4, 2003. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

6. Keith Christie has been designated to preside over and conduct the hearing.

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 list shall make a written request that includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supplies; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; opencut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA; underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. Such written request may be mailed or delivered to Elois Johnson, Department of Environmental Quality, 1520 East Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901, faxed to the office at (406) 444-4386, or may be made by completing a request form at any rules hearing held by the Department.

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

DEPARTMENT OF ENVIRONMENTAL  
QUALITY

By: Jan P. Sensibaugh  
JAN P. SENSIBAUGH, Director

Reviewed by:

David Rusoff  
David Rusoff, Rule Reviewer

Certified to the Secretary of State July 21, 2003.

BEFORE THE DEPARTMENT OF JUSTICE  
OF THE STATE OF MONTANA

In the matter of the adoption ) NOTICE OF PUBLIC HEARING  
of New Rule I concerning ) ON PROPOSED ADOPTION AND  
multi-game video gambling ) AMENDMENT  
machine approval, New Rule II )  
concerning software )  
specifications for video multi- )  
game machines, New Rule III )  
concerning automated accounting )  
and reporting system, video )  
gambling machine hardware and )  
software specifications, New )  
Rule IV concerning daily pot )  
raffles, amendment of ARM )  
23.16.102, 23.16.103, 23.16.117,) )  
23.16.401, 23.16.502, 23.16.508,) )  
23.16.1245, 23.16.1716, ) )  
23.16.1802, 23.16.1803, ) )  
23.16.1807, 23.16.1822, ) )  
23.16.1901, 23.16.1906, ) )  
23.16.1907, 23.16.1914, ) )  
23.16.1915, 23.16.1916, and ) )  
23.16.2001 concerning ) )  
definitions, requirements for ) )  
permitting and fees, software ) )  
specifications for multi-game ) )  
video gambling machines and ) )  
fingerprinting requirements ) )

TO: All Concerned Persons

1. On August 21, 2003, at 9:00 a.m. a public hearing will be held in the auditorium of the Scott Hart Building, 1st Floor, 202 North Roberts, Helena, Montana, to consider the adoption and amendment of the above-stated rules.

2. The Department of Justice will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m. on August 8, 2003, to advise us of the nature of the accommodation that you need. Please contact Rick Ask, Gambling Control Division, 2550 Prospect Avenue, P.O. Box 201424, Helena, MT 59620-1424; (406) 444-1971; FAX (406) 444-9157; or email rask@state.mt.us.

3. The proposed new rules provide as follows:

RULE I COMBINATION OF POKER, KENO AND BINGO (1) The department shall allow a video gambling machine to offer a multi-game subject to the following:

(a) the owner has received approval of an application to connect to the automated accounting and reporting system provided in 23-5-637, MCA; or

(b) the owner has entered into an agreement with the department for connection to the automated accounting and reporting system when the system becomes available. The agreement to connect to the automated accounting and reporting system shall be in the form of the agreement labeled Department of Justice, Gambling Control Division Form 31.

(2) Video gambling machines identified on Department of Justice, Gambling Control Division Form 31(a) shall be committed to connecting to the automated accounting and reporting system unless multi-game is removed from the video gambling machine.

(3) The department shall provide notice to the video gambling machine owner and the video gambling machine lessee not less than 90 days before the date that the video gambling machine is to be connected to the automated accounting and reporting system. The notice shall include a general description of the installation and an estimated cost for connection to the automated accounting and reporting system. Cost estimates for components of the system to be provided by manufacturers will only be included in the notice if available from manufacturers on a timely basis. A video gambling machine shall be committed unless the owner has submitted a Gambling Control Division Form 31(c), (Notice of Movement or Removal of Multi-Game) with the form required by ARM 23.16.1929 (service report) to the gambling control division at least 60 days prior to the date for which the owner has been provided notice that the video gambling machine is to be connected to the automated accounting and reporting system.

(4) If the licensed operator of the video gambling machine on which multi-game is available is not the video gambling machine owner, each agreement (Form 31) shall be accompanied by a form (Form 31(b)) that acknowledges that the licensed operator has reviewed, understands and agrees to the terms of the agreement (Form 31).

(5) The combination of games may not be offered for play prior to October 1, 2003.

AUTH: 23-5-115, 23-5-612, 23-5-621, MCA  
IMP: 23-5-621, 23-5-637, MCA

RULE II SOFTWARE SPECIFICATIONS FOR VIDEO MULTI-GAME MACHINES

(1) Each video multi-game machine must meet the following specifications for approval for use within the state of Montana, if applicable:

(a) video draw poker games must comply with ARM 23.16.1907;

(b) video keno games must comply with ARM 23.16.1908; and

(c) video bingo games must comply with ARM 23.16.1909.

AUTH: 23-5-115, 23-5-621, MCA  
IMP: 23-5-603, 23-5-621, 23-5-631, 23-5-637, MCA

RULE III AUTOMATED ACCOUNTING AND REPORTING SYSTEM, VIDEO GAMBLING MACHINE, HARDWARE AND SOFTWARE SPECIFICATIONS

(1) The logical interface communications protocol used shall be the full implementation of the Gaming Standards Association's (GSA) Slot Accounting System (SAS) protocol version 6.00 or later.

(a) The GSA SAS protocol specification documents may be obtained from GSA, 39355 California St., Suite 307, Fremont, CA 94538; (510) 744-4007; www.gamingstandards.com.

(b) The required minimum implementation of the GSA SAS protocol is defined in the Montana SAS Serial Protocol Implementation Guide. The guide is available on the Montana department of justice, gambling control division website (www.doj.state.mt.us/gaming) and is available by request from the Gambling Control Division, Technical Services Section, 2550 Prospect Ave., P.O. Box 201424, Helena, MT 59620-1424; (406) 444-1971.

(2) The physical interface specification is the Electronic Industries Association (EIA) standard EIA-232-F serial communication interface. Note: This standard is also known as RS-232 and TIA (telecommunication industry association).

(a) The physical interface at the video gambling machine shall be a female D-type 9-pin connector. The cable must be of sufficient length to easily reach the system interface board mounting regardless of the orientation of the interface board.

(b) The video gambling machine shall be configured as data terminal equipment with EIA-232 connector pin out in accordance with the standard as follows:

PIN	SIGNAL	Description
1	DCD	Data Carrier Detect (not used)
2	RX	Received Data
3	TX	Transmit Data
4	DTR	Data Terminal Ready (optional)
5	GND	Signal Ready
6	DSR	Data Set Ready (not used)
7	RTS	Request To Send (not used)
8	CTS	Clear To Send (not used)
9	RI	Ring Indicator (not used)

AUTH: 23-5-115, 23-5-621, MCA  
IMP: 23-5-603, 23-5-621, 23-5-631, 23-5-637, MCA

RULE IV AUTHORIZED SELECTION PROCESS FOR DAILY POT RAFFLES

(1) Daily pot raffles:

(a) may be conducted for an entry fee not to exceed 50 cents each day;

(b) may not accumulate entry fees and offer prize amounts exceeding \$500; and

(c) may continue for a period not to exceed 30 days.

(2) Daily pot raffles for which the prize is an accumulation of entry fees may only be sponsored by religious or nonprofit organizations.

(3) In the case of for profit sponsors, the sponsor must own the prize prior to collecting entry fees and the prize may

not be an accumulation of entry fees.

(4) Daily pot raffles may draw tickets or indicators each day for a period not to exceed 30 days or until the accumulated entry fees equal \$500.

(5) If no winner has been selected after 30 days from the date of the payment of the first entry fee; or the accumulated entry fees equal \$500, no further entries may be made and at that time the drawing of tickets or indicators must be continued until a winner is selected.

(6) All requirements for raffles as set out in 23-5-413, MCA, apply to the conduct of daily pot raffles.

AUTH: 23-5-112, 23-5-115, MCA

IMP: 23-5-112, 23-5-413, MCA

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

23.16.102 APPLICATION FOR GAMBLING LICENSE - LICENSE FEE

(1) through (3)(b) remain the same.

(c) a complete set of fingerprints, on a form (Form FD-258) provided by the department, obtained and certified by a local law enforcement agency, the department or a private security company approved by the department for each person required to complete a personal history statement;

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

(4) Forms 1 through 3, ~~and 10~~ and FD-258, as the forms read on ~~April 1, 2002~~ September 12, 2003, are incorporated by reference and available from the Gambling Control Division, 2550 Prospect Ave., P.O. Box 201424, Helena, MT 59620-1424.

(5) remains the same.

AUTH: 23-5-115, MCA

IMP: 16-4-414, 23-5-115, 23-5-177, MCA

23.16.103 INVESTIGATION OF APPLICANTS, FINGERPRINTS MAY TO BE REQUIRED - DISCLOSURE FROM NONINSTITUTIONAL LENDER

(1) An applicant for a gambling license must make full disclosure of all information, and provide fingerprints as required by the department, these rules, and Title 23, chapter 5, MCA.

(2) The department may, at its discretion, require additional information, documentation, or disclosure from an applicant for a gambling license. ~~This information may include fingerprints.~~

(3) The department may require any noninstitutional lender to complete a document (~~Form 13~~) authorizing examination and release of information and (~~Form 10~~) a personal history statement on the lender, fingerprints on a form provided by the department, as well as any contract, statement or other document from the lender deemed necessary to assess the suitability of an applicant's funding source as required in 23-5-176, MCA. The document must be signed and dated by the lender and attested to by a notary public. Forms 13, and form 10 and FD-258 as the forms read on ~~April 1, 2002~~ September 12, 2003, are incorporated

by reference and available from the Gambling Control Division, 2550 Prospect Ave., P.O. Box 201424, Helena, MT 59620-1424.

AUTH: 23-5-115, MCA  
IMP: 16-4-414, 23-5-115, 23-5-118, MCA

23.16.117 TRANSFER OF INTEREST TO NEW OWNER (1) through (8)(b) remain the same.

(9)(a) Transfers of ownership control of a licensed gambling operation into a receivership, trust or an estate mandated by court order require an amended application to be filed.

(a) Under this circumstance, gambling activity may continue pending the outcome of the license investigation if the following documents are submitted and determinations are made:

(i) through (iii) remain the same.

(iv) a complete set of fingerprints, on a form (Form FD-258) provided by the department, obtained and certified by a local law enforcement agency, the department or a private security company approved by the department for each person required to complete a personal history statement;

(iv) and (v) remain the same but are renumbered (v) and (vi).

(b) remains the same.

AUTH: 23-5-115, MCA  
IMP: 16-4-414, 23-5-115, 23-5-118, 23-5-176, MCA

23.16.401 APPLICATION FOR DEALER LICENSE (1) through (2)(a) remain the same.

(b) assign an identification number to the applicant and record this number in the proper locations on the application; ~~and~~

(c) obtain a photograph of the applicant utilizing the assigned identification number in a manner which will identify the applicant for future issuance of an annual dealer license as described by these rules; and

(d) receive a complete set of fingerprints, on a form (Form FD-258) provided by the department, obtained and certified by a local law enforcement agency, the department or a private security company approved by the department for each person required to complete a personal history statement.

(3) The first year license fee required by Title 23, chapter 5, MCA, and a fingerprint processing fee must accompany each application.

(4) The application for a dealer license is incorporated in these rules by reference as ~~form~~ Forms 4 and FD-258, as ~~that form~~ those forms read on October 1, 1991 September 12, 2003, and ~~may be inspected at~~ are available from the office of the ~~Gambling eControl eDivision, 2550 Prospect Ave., P.O. Box 201424, Helena, MT 59620-1424.~~

AUTH: 23-5-115, MCA  
IMP: 16-4-414, 23-5-308, MCA

23.16.502 APPLICATION FOR OPERATOR LICENSE (1) All applicants shall submit the following information on ~~Forms 5 and 5a 30 and FD-258~~, as those forms read on ~~April 1, 2002~~ September 12, 2003, which are incorporated by reference and available from the Gambling Control Division, 2550 Prospect Ave., P.O. Box 201424, Helena, MT 59620-1424:

(a) remains the same.

(b) a complete set of fingerprints, on a form (Form FD-258) provided by the department, obtained and certified by a local law enforcement agency, the department or a private security company approved by the department for each person required to complete a personal history statement;

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

(2) remains the same.

AUTH: 23-5-115, MCA

IMP: 16-4-414, 23-5-115, 23-5-118, 23-5-176, 23-5-177, MCA

23.16.508 CHANGES IN MANAGERS, OFFICERS, AND DIRECTORS

(1) remains the same.

(2) New management employees, officers, and directors shall submit a personal history statement and a complete set of fingerprints (form Forms 10 and FD-258) and the appropriate document authorizing the examination and release of information (~~Form 1, 2, or 3~~).

(3) remains the same.

AUTH: 23-5-115, MCA

IMP: 23-5-176, 23-5-177, MCA

23.16.1245 CARD ROOM CONTRACTORS LICENSE (1) remains the same.

(2) The application must include:

(a) remains the same.

(b) forms ~~1, and 10~~ and FD-258 as described in ARM 23.16.102;

(c) a complete set of fingerprints, on a form (Form FD-258) provided by the department, obtained and certified by a local law enforcement agency, the department or a private security company approved by the department for each person required to complete a personal history statement;

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

~~(d)(e)~~ a \$150 license fee; ~~and~~

(f) a fee to pay the charges to the department for obtaining background information from fingerprints; and

(e) remains the same but is renumbered (g).

(3) and (4) remain the same.

AUTH: 23-5-115, MCA

IMP: 16-4-414, 23-5-324, MCA

23.16.1716 SPORTS TAB GAME SELLER LICENSE (1) remains the same.

(a) a sports tab game seller license application. Forms ~~20 and 20a~~ 2 and FD-258, as the forms read on ~~April 1, 2002~~ September 12, 2003, are incorporated by reference and available upon request from the Gambling Control Division, 2550 Prospect Ave., P.O. Box 201424, Helena, MT 59620-1424;

(b) remains the same.

(c) a complete set of fingerprints, on a form (Form FD-258) provided by the department, obtained and certified by a local law enforcement agency, the department or a private security company approved by the department for each person required to complete a personal history statement;

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

(2) through (4) remain the same.

AUTH: 23-5-115, MCA  
IMP: 16-4-414, 23-5-115, 23-5-503, MCA

23.16.1802 DEFINITIONS (1) through (10) remain the same.

(11) "Multi-game" means a combination of approved poker, keno and bingo games within the same video gambling machine cabinet that has been approved by the department.

(11) through (15) remain the same but are renumbered (12) through (16).

~~(16)~~(17) "Video gambling machine" means a video draw poker, video keno, or video bingo machine as defined in 23-5-112, MCA, and including a multi-game machine as defined in this rule and authorized in 23-5-621, MCA.

(17) remains the same and is renumbered (18).

AUTH: 23-5-115, 23-5-605, 23-5-621, MCA  
IMP: 23-5-111, 23-5-112, 23-5-115, 23-5-151, 23-5-602, 23-5-603, 23-5-607, 23-5-609, 23-5-610, 23-5-612, 23-5-621, 23-5-637, MCA

23.16.1803 APPLICATION FOR PERMIT, FEE AND PERMIT REQUIREMENTS (1) and (2) remain the same.

(3) The permit fee required by 23-5-612, MCA, must accompany each permit application unless the permit application is for conversion of a permitted video gambling machine to multi-game and an agreement (Form 31) has been executed to commit the video gambling machine to be connected to the automated accounting and reporting system.

AUTH: 23-5-115, 23-5-605, 23-5-621, MCA  
IMP: 23-5-602, 23-5-609, 23-5-611, 23-5-612, 23-5-621, 23-5-637, MCA

23.16.1807 ISSUANCE OF PERMIT DECAL (1) through (4) remain the same.

(5) A new permit decal will not be required after renewal when a machine owner converts a keno, poker or bingo to a multi-game and commits the machine to connect to the automated

accounting and reporting system.

AUTH: 23-5-115, 23-5-605, 23-5-621, MCA  
IMP: 23-5-603, 23-5-605, 23-5-611, 23-5-612, 23-5-621,  
23-5-637, MCA

23.16.1822 PERMIT NOT TRANSFERABLE (1) and (2) remain the same.

(3) A permit is also restricted to the particular machine approved by the department and identified on the permit application. No additional permit fee will be charged when a licensed premises changes its location and its permitted video gambling machines also move to the new location. No additional permit fee will be charged when permitted video gambling machines are converted to multi-game and the owner of the machines has connected or signed an agreement with the department to be connected to the automated accounting and reporting system.

(4) through (8) remain the same.

AUTH: 23-5-115, 23-5-605, 23-5-621, MCA  
IMP: 23-5-603, 23-5-605, 23-5-611, 23-5-612, 23-5-621,  
23-5-637, MCA

23.16.1901 GENERAL SPECIFICATIONS OF VIDEO GAMBLING MACHINES (1) through (1)(d)(iv) remain the same.

(v)~~(A)~~ the machines may have:

(A) two mechanisms that accept coins, ~~hereinafter~~ referred to as "mechanism 1" and "mechanism 2." These mechanisms must have devices referred to as "lockouts" which prohibit the machine from accepting coins during periods when the machine is inoperable;

~~(B) the machine may have a machine manufacturer a~~ mechanism that accepts cash in the form of bills that do not exceed \$20;

(vi) through (x)~~(C)~~ remain the same.

~~(D) total games played and total games won; and~~

(E) total cents played and total cents won for each distinct payable available for play; and

~~(E) remains the same but is renumbered (F).~~

(xi) through (xv) remain the same.

~~(e) provide an available and unused serial port for automated accounting and reporting system communication. The serial port must be capable of supporting full duplex communication~~ video gambling machines submitted for approval on or after October 1, 2003 must comply with [NEW RULE III].

(2) and (3) remain the same.

AUTH: 23-5-605, 23-5-621, MCA  
IMP: 23-5-115, 23-5-136, 23-5-602, 23-5-606, 23-5-609,  
23-5-610, 23-5-621, 23-5-637, MCA

23.16.1906 GENERAL VIDEO GAMING MACHINE SOFTWARE SPECIFICATIONS FOR VIDEO GAMBLING MACHINES (1) through (1)(f)

remain the same.

(g) all electronic meters must be 8 eight digits in length except those used for tracking currency which must be 10 digits in length; and

(h) for any game played, the payable for that game must be prominently displayed and understandable to the player; and

(i) poker, keno or bingo game programs submitted for approval on or after October 1, 2003 and all multi-game programs must comply with [NEW RULE III].

(2) and (3) remain the same.

~~(4) Each video gambling machine must provide sufficient available and unused program and RAM storage space for automated accounting and reporting system communication protocol and related data.~~

AUTH: 23-5-115, 23-5-605, 23-5-621, MCA  
IMP: 23-5-111, 23-5-112, 23-5-115, 23-5-151, 23-5-602,  
23-5-603, 23-5-606, 23-5-607, 23-5-609, 23-5-621,  
23-5-637, MCA

23.16.1907 SOFTWARE SPECIFICATIONS FOR VIDEO DRAW POKER SOFTWARE MACHINES (1) through (1)(d) remain the same.

AUTH: 23-5-605, 23-5-621, MCA  
IMP: 23-5-606, 23-5-607, 23-5-621, MCA

23.16.1914 DISTRIBUTOR'S LICENSE (1) remains the same.

(a) a distributor's license application, ~~Forms 17 and 17a~~ and FD-258, as the forms read on ~~April 1, 2002~~ September 12, 2003, are incorporated by reference and available from the Gambling Control Division, 2550 Prospect Ave., P.O. Box 201424, Helena, MT 59620-1424;

(b) remains the same.

(c) a complete set of fingerprints, on a form (Form FD-258) provided by the department, obtained and certified by a local law enforcement agency, the department or a private security company approved by the department for each person required to complete a personal history statement;

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

(2) and (3) remain the same.

AUTH: 23-5-115, MCA  
IMP: 16-4-414, 23-5-115, 23-5-128, MCA

23.16.1915 ROUTE OPERATOR'S LICENSE (1) remains the same.

(a) a route operator license application, ~~Forms 17 and 17a~~ and FD-258, as the forms read on ~~April 1, 2002~~ September 12, 2003, are incorporated by reference and available from the Gambling Control Division, 2550 Prospect Ave., P.O. Box 201424, Helena, MT 59620-1424;

(b) remains the same.

(c) a complete set of fingerprints, on a form (Form FD-258) provided by the department, obtained and certified by a local law enforcement agency, the department or a private

security company approved by the department for each person required to complete a personal history statement;

- (c) and (d) remain the same but are renumbered (d) and (e).
- (2) and (3) remain the same.

AUTH: 23-5-115, MCA  
IMP: 16-4-414, 23-5-115, 23-5-129, MCA

23.16.1916 MANUFACTURER'S LICENSE (1) remains the same.

(a) a manufacturer's license application, ~~Forms 17 and 17a and FD-258~~, as the forms read on ~~April 1, 2002~~ September 12, 2003, are incorporated by reference and available from the Gambling Control Division, 2550 Prospect Ave., P.O. Box 201424, Helena, MT 59620-1424;

(b) remains the same.

(c) a complete set of fingerprints, on a form (Form FD-258) provided by the department, obtained and certified by a local law enforcement agency, the department or a private security company approved by the department for each person required to complete a personal history statement;

- (c) and (d) remain the same but are renumbered (d) and (e).
- (2) and (3) remain the same.

AUTH: 23-5-115, 23-6-605, MCA  
IMP: 16-4-414, 23-5-115, 23-5-605, 23-5-625, MCA

23.16.2001 MANUFACTURER OF ILLEGAL GAMBLING DEVICES - LICENSE - FEE - REPORTING REQUIREMENTS - INSPECTION OF RECORDS - REPORTS (1) remains the same.

(a) a manufacturer license application, ~~Form 17~~, as the form read on ~~April 1, 2002~~ September 12, 2003, is incorporated by reference and available from the Gambling Control Division, 2550 Prospect Ave., P.O. Box 201424, Helena, MT 59620-1424;

(b) forms ~~1, and 10~~ and FD-258 for all applicants as described in ARM 23.16.102;

(c) a complete set of fingerprints, on a form (Form FD-258) provided by the department, obtained and certified by a local law enforcement agency, the department or a private security company approved by the department for each person required to complete a personal history statement;

- (c) and (d) remain the same but are renumbered (d) and (e).
- (2) through (9) remain the same.

AUTH: 23-5-115, 23-5-152, MCA  
IMP: 16-4-414, 23-5-115, 23-5-152, 23-5-611, 23-5-614, 23-5-621, 23-5-625, 23-5-631, MCA

RATIONALE New Rule I and New Rule II, amendment of ARM 23.16.1802, 23.16.1803, 23.16.1807, 23.16.1822, 23.16.1901, 23.16.1906, 23.16.1907 - The 2003 Legislative Session passed HB 122, which updated laws relating to the delayed automated accounting and reporting system. An amendment to 23-5-621(1)(d), MCA, provided that if the automated accounting and reporting system was not available for connection by October 1,

2003, video gambling machine owners could install multiple game software on their machines if they entered into an agreement with the department to connect to a future automated accounting and reporting system. The statute, 23-5-621, MCA, directs the department to adopt rules in relation to several aspects of the automated accounting and reporting system. Rules I and II define multiple game software as another legal game. The rules also set out the process for entering into agreements for machines to be connected to the automated accounting and reporting system, including the designation of machines to be committed to the system. Because the future system was not funded and the details of the future system are not known, the commitment to connect can be nullified if the new multiple game software is removed from the video gambling machines. Because the future system is unknown, the specifications for hardware and communication software only establish a basic capacity to connect with any future system (New Rule III).

New Rule IV - Under state law the regulation of raffles is generally delegated to the County Commissioners in the county where the drawing is to be held. The only authority of the department in relation to raffles is found in 23-15-112, MCA, which is the delegation of rulemaking authority to define the random selection process for raffles. The proposed rule defines a random selection process for a raffle like game that has been common in the state but was not clearly a raffle because of the way the winners were selected. The proposed rule limits the amount of the prize and the amount of time that may pass before a winner must be drawn.

The Department of Justice proposes to amend the following rules: ARM 23.16.102, 23.16.103, 23.16.117, 23.16.401, 23.16.502, 23.16.508, 23.16.1245, 23.16.1716, 23.16.1914, 23.16.1915, 23.16.1916 and 23.16.2001 due to federal requirements that will soon limit background information to requests provided on the basis of fingerprints. Senate Bill 40 passed by the 2003 Legislature authorized the department and the Department of Revenue to obtain fingerprints in conducting background investigations of applicants for liquor and gambling licenses. After October 1, 2003 all new background investigations will require fingerprints. The proposed rules add the submission of fingerprints and collecting a fee to pay the cost of submitting the fingerprints as a requirement of the application for all gambling licenses.

Impact of assessing a fingerprint fee in ARM 23.16.401:

a. It is estimated that the total fees collected to process card dealer license applicant's fingerprints through the ID Bureau will be \$7,360 per year.

b. It is estimated that the number of card dealer license applicants requiring the submission of fingerprints and a fee will be 230 per year.

Impact of assessing a fingerprint fee in ARM 23.16.1245:

a. It is estimated that the total fees collected to process card room contractor fingerprints through the ID Bureau will be \$736 per year.

b. It is estimated that the number of card room contractor

license applicants requiring submission of fingerprints and a fee will be 20 per year.

6. Concerned persons may submit their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to Rick Ask, Gambling Control Division, 2550 Prospect Avenue, P.O. Box 201424, Helena, MT 59620-1424, and must be received no later than August 28, 2003.

7. Ali Bovington, Assistant Attorney General, Department of Justice, Legal Services Division, has been designated to preside over and conduct the hearing.

8. The Department of Justice 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 of rules regarding the Crime Control Division, the Central Services Division, the Forensic Sciences Division, the Gambling Control Division, the Highway Patrol Division, the Law Enforcement Academy, the Division of Criminal Investigation, the Legal Services Division, the Motor Vehicle Division, the Justice Information Systems Division, or any combination thereof. Such written request may be mailed or delivered to Ali Bovington, 215 North Sanders, P.O. Box 201401, Helena, MT 59620-1401, faxed to the office at (406) 444-3549, ATTN: Ali Bovington, e-mailed to [abovington@state.mt.us](mailto:abovington@state.mt.us), or may be made by completing a request form at any rules hearing held by the Department of Justice.

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

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

/s/ Ali Bovington  
ALI BOVINGTON, Rule Reviewer

Certified to the Secretary of State July 21, 2003.

BEFORE THE BOARD OF SOCIAL WORK EXAMINERS  
AND PROFESSIONAL COUNSELORS  
DEPARTMENT OF LABOR AND INDUSTRY  
STATE OF MONTANA

In the matter of the proposed ) NOTICE OF PUBLIC HEARING  
adoption of New Rule I, an ) ON PROPOSED ADOPTION  
ethics code )

TO: All Concerned Persons

1. On August 21, 2003, at 10:00 a.m., a public hearing will be held in room 471, 301 South Park Avenue, Helena, Montana, to consider the proposed adoption of New Rule I.

2. The Department of Labor and Industry (Department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Social Work Examiners and Professional Counselors (Board) no later than 5:00 p.m., on August 14, 2003, to advise us of the nature of the accommodation needed. Please contact Mary Hainlin, Board of Social Work Examiners and Professional Counselors, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2369; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2309; e-mail dlibsdswp@state.mt.us.

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

NEW RULE I CODE OF ETHICS - LICENSED PROFESSIONAL COUNSELORS AND LICENSED CLINICAL SOCIAL WORKERS (1) Pursuant to 37-22-201 and 37-23-103, MCA, the board hereby adopts the following professional and ethical standards for licensed professional counselors and licensed social workers to ensure the ethical, qualified, and professional practice of social work and professional counseling for the protection of the general public. These standards supplement current applicable statutes and rules of the board. A violation of the following is considered unprofessional conduct as set forth elsewhere in rule and may subject the licensee to such penalties and sanctions provided in 37-1-136, MCA.

(2) A licensed professional counselor or licensed social worker shall abide by the following code of professional ethics.

(a) Licensees shall not:

(i) commit fraud or misrepresent services performed;

(ii) divide a fee or accept or give anything of value for receiving or making a referral;

(iii) violate a position of trust by knowingly committing any act detrimental to a client;

(iv) exploit in any manner the professional relationships with clients or former clients, supervisees, supervisors, students, employees, or research participants;

(v) engage in or solicit sexual relations with a client,

or commit an act of sexual misconduct or a sexual offense if such act, offense or solicitation is substantially related to the qualifications, functions, or duties of the licensee;

(vi) condone or engage in sexual harassment. Sexual harassment is defined as deliberate or refuted comments, gestures, or physical contact of a sexual nature that are unwelcome by the recipient;

(vii) discriminate in the provision of services on the basis of race, creed, religion, color, sex, physical or mental disability, age or national origin;

(viii) provide professional services while under the influence of alcohol or other mind altering or mood altering drugs which impair delivery of services; or

(ix) engage in any advertising which is in any way fraudulent, false, deceptive, or misleading.

(b) All licensees shall:

(i) provide clients with accurate and complete information regarding the extent and nature of the services available to them;

(ii) terminate services and professional relationships with clients when such services and relationships are no longer required or where a conflict of interest exists;

(iii) make every effort to keep scheduled appointments;

(iv) notify clients promptly and seek the transfer, referral, or continuation of services pursuant to the client's needs and preferences if termination or interruption of services is anticipated;

(v) attempt to make appropriate referrals pursuant to the client's needs;

(vi) obtain informed written consent of the client or the client's legal guardian prior to the client's involvement in any research project of the licensee that might identify the client or place them at risk;

(vii) obtain informed written consent of the client or the client's legal guardian prior to taping, recording, or permitting third party observation of the client's activities that might identify the client or place them at risk;

(viii) safeguard information provided by clients. Except where required by law or court order, a licensee shall obtain the client's informed written consent prior to releasing confidential information; and

(ix) disclose to and obtain written acknowledgement from the client or prospective client as to the fee to be charged for professional services and/or the basis upon which the fee will be calculated.

AUTH: 37-22-201, 37-23-103, MCA

IMP: 37-22-101, 37-22-201, 37-23-101, 37-23-103, MCA

REASON: The Board has determined there is reasonable necessity to adopt this new rule to comply with recommendations of a legislative audit. Pursuant to statutory obligations in 37-22-201 and 37-23-103, MCA, the Board is required to adopt rules setting forth professional and ethical standards. The proposed

professional and ethical standards are based upon national standards of ethical behavior for licensed professional counselors and social workers. The statutes require the Board to establish professional ethics for people seeking to practice in licensed professional counseling and social work. This new rule will affect all licensees.

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 mailed to the Board of Social Work Examiners and Professional Counselors, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to (406) 841-2309, or e-mailed to [dlibsdswp@state.mt.us](mailto:dlibsdswp@state.mt.us) and must be received no later than 5:00 p.m., August 29, 2003.

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

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

7. The Board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wants to receive notices regarding all Board of Social Work Examiners and Professional Counselors administrative rulemaking proceedings or other administrative proceedings. Such written requests may be mailed or delivered to the Board of Social Work Examiners and Professional Counselors, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to (406) 841-2309, e-mailed to [dlibsdswp@state.mt.us](mailto:dlibsdswp@state.mt.us), or may be made by completing a request form at any rules hearing held by the Department.

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

9. The Board will meet to consider the comments made by the public, the proposed responses to the comments, and take final

action on the proposed adoption at the next regularly scheduled meeting on September 19, 2003, in Missoula, Montana. Members of the public are welcome to attend the meeting and listen to the Board's deliberations.

BOARD OF SOCIAL WORK EXAMINERS  
AND PROFESSIONAL COUNSELORS  
MARY MEIS, ACTING CHAIR

/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 July 21, 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 24.29.1526, ) ON PROPOSED AMENDMENT  
relating to disallowed )  
medical procedures for )  
workers' compensation purposes)

TO: All Concerned Persons

1. On August 22, 2003, at 10:00 a.m. the Department of Labor and Industry will hold a public hearing in the First Floor Conference Room of the Walt Sullivan Building, 1327 Lockey, Helena, Montana, to consider the proposed amendment of ARM 24.29.1526 to amend the list of disallowed medical procedures for workers' compensation purposes.

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 no later than 5:00 p.m., August 15, 2003, to advise us of the nature of the accommodation that you need. Please contact the Employment Relations Division, Workers' Compensation Regulation Bureau, Attn: Linda Wilson, P.O. Box 8011, Helena, Montana 59624-8011; telephone (406) 444-6531, fax (406) 444-3465, TDD (406) 444-5549, or email liwilson@state.mt.us.

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

- 24.29.1526 DISALLOWED PROCEDURES (1) remains the same.
- (2) Disputes arising over payment of medical services may be appealed pursuant to 39-71-704, MCA and, when applicable, ARM 24.29.1404.
- ~~(2)(3)~~ Medical services which are not payable include, but are not limited to, the following:
  - (a) ~~Thermography thermography; is not payable pursuant to this rule.~~
  - (b) intradiscal electrothermal (IDET) therapy;
  - (c) autologous cultured chondrocyte for implantation procedures except when it is performed on the knee; and
  - (d) endoscopic spinal procedure.

AUTH: 39-71-203, MCA  
IMP: 39-71-704, MCA

REASON: There is reasonable necessity to amend this rule to clarify that only procedures generally accepted by the medical community are payable under 39-71-704, MCA. While a specific list of procedures which are not payable is provided, the list is not intended to encompass every possible unscientific,

unproved, outmoded or experimental procedure excluded from compensability. The Department is required by 39-7-704(1)(g), MCA to seek the advice of the professional licensing boards affected by the rule. The procedures listed are those which have been specifically deemed unscientific, unproved, outmoded or experimental by the Board of Medical Examiners as of May 2003.

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:

Keith Messmer, Bureau Chief  
Workers' Compensation Regulation Bureau  
Employment Relations Division  
Department of Labor and Industry  
PO Box 8011  
Helena, Montana 59624-8011

and must be received by no later than 5:00 p.m., August 29, 2003. Comments may also be submitted electronically as noted in the following paragraph.

5. An electronic copy of this Notice of Public Hearing is available through the Department's site on the World Wide Web at <http://dli.state.mt.us/calendar.htm>, under the Calendar of Events, Administrative Rules 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., August 29, 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 do not excuse late submission of comments.

6. The Department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the mailing list shall make a written request which includes the name and mailing address of the person to receive notices and 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, e-mailed to [mcadwallader@state.mt.us](mailto:mcadwallader@state.mt.us), or made by completing a request form at any rules hearing held by the Department.

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

8. 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 J. KEATING  
Wendy J. Keating, Commissioner  
DEPARTMENT OF LABOR & INDUSTRY

Certified to the Secretary of State: July 21, 2003.

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

In the matter of the proposed ) NOTICE OF PUBLIC HEARING  
amendment of ARM 24.111.502, ) ON PROPOSED AMENDMENT  
licensing by examination; ARM ) AND ADOPTION  
24.111.602, direct-entry midwife )  
apprenticeship requirements; ARM )  
24.111.612, vaginal birth after )  
cesarean (VBAC) deliveries; ARM )  
24.111.2102, naturopathic )  
physician continuing education )  
requirements; ARM 24.111.2103, )  
midwives continuing education )  
requirements; and the proposed )  
adoption of new rule I defining )  
scope of practice for naturopaths)

TO: All Interested Persons

1. On August 29, 2003, at 10:00 a.m., a public hearing will be held in room B-07 of the Park Avenue Building, 301 South Park Avenue, Helena, Montana to consider the proposed amendment and adoption of the above-stated rules.

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 Board of Alternative Health Care no later than 5:00 p.m., on August 22, 2003, to advise us of the nature of the accommodation that you need. Please contact Becky Salminen, Board of Alternative Health Care, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, telephone (406) 841-2365, Montana Relay 1-800-253-4091; TDD (406) 444-0532; facsimile (406) 841-2343; e-mail dlibsdahc@state.mt.us.

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

24.111.502 LICENSING BY EXAMINATION (1) remains the same.

(2) All applicants must take the naturopathic physicians licensing examination (NPLEX) as endorsed by the board, or any other examination to be prescribed or endorsed by the board, and have their scores reported to the board office by the proper ~~NPLEX~~ North American board of naturopathic examiners (NABNE) interstate reporting service, or its equivalent.

~~(a) It is the responsibility of each applicant to take the NPLEX examination wherever and whenever possible. Montana will not administer the NPLEX examination unless deemed necessary by the board.~~ Applicants shall contact NABNE for

test dates and locations. NABNE may be contacted at #321, 9220 SW Barbur Blvd., Suite 119, Portland, Oregon 97219, (503) 778-7990, or via the internet at www.nabne.org.

(b) An applicant must achieve a passing score of 75 or better on the examination in order to obtain a license to practice naturopathic medicine in this state. The board will accept the compensatory scoring model for the core clinical examinations as endorsed by NABNE.

AUTH: 37-26-201, MCA

IMP: 37-26-402, 37-26-403, MCA

REASON: There is reasonable necessity to propose a rule change to clarify that the national Naturopathic Physician Licensing Examination (NPLEX) is administered at times and places determined by the North American Board of Naturopathic Examiners (NABNE). Applicants who need to take these exams must contact NABNE for the dates and locations. This change in rule was prompted by an audit citation by the legislative auditor stating that the Board of Alternative Health Care should be clearer to applicants in its rules as to how to obtain licensure examination information. The Board also wants to apprise applicants that it does accept the compensatory scoring model for the core clinical exam series. The compensatory scoring model was psychometrically derived and is endorsed by NABNE for the core clinical examinations only. This rule change will affect all those applying for a naturopathic physician license in Montana.

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

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

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

(i) A licensed direct-entry midwife supervisor shall have been licensed for one year and have 20 continuous care births as primary attendant, before becoming a supervisor for level II and III apprentices, except for those licensees who have successfully passed the first licensing exam administered by the board.

(ii) A licensed direct-entry midwife who has not been licensed for one year and/or completed 20 continuous care births may only supervise level I apprentices;

(b) review and sign all documents required by the board under the direct-entry midwife apprenticeship program;

(c) supervise no more than four direct-entry midwife apprentices at the same time;

(d) notify the board in writing of any change in the supervisory relationship, including advancement from personal to indirect supervision, termination of the supervisory

relationship or any other relevant changes and submit supervision change notification to the board so that it is received on or before the day that supervised tasks are performed in order for them to count toward licensure requirements; and

(e) remains the same.

AUTH: 37-27-105, MCA

IMP: 37-27-105, 37-27-201, 37-27-205, ~~37-27-210~~, 37-27-321, MCA

REASON: There is reasonable necessity to clarify that a supervisor of a direct-entry midwife apprentice must inform the Board of implementation of supervision so that the notification is received on or before the day that the supervision is to begin because there have been recent instances when the appropriate supervision forms have not been filed until some considerable time after the license experience tasks have been performed. The Board has determined that the supervised tasks will not count toward the licensure experience requirements if the proper forms are not received before the actual supervision begins. This change will affect all licensed direct-entry midwife supervisors and midwife apprentices.

24.111.612 VAGINAL BIRTH AFTER CESAREAN (VBAC) DELIVERIES (1) through (1)(b) remain the same.

(c) Licensee shall obtain prior doctor/hospital cesarean records, in writing, prior to acceptance of the woman as a client, and shall analyze the indication for the previous cesarean, and retain the records and a written assessment of the physical and emotional considerations in licensee's files. Records which show a previous classical uterine/vertical incision, any other uterine scars into the endometrium, or less than 18 months between last surgery to the next delivery are contraindications to VBAC at home, and shall require immediate transfer of care of the client. If a licensee is unable to obtain written records, the licensee shall not retain the woman as a client.

(d) and (2) remain the same.

AUTH: 37-27-105, MCA

IMP: 37-27-105, MCA

REASON: There is reasonable necessity that the Board require additional conditions for direct-entry midwives to comply with before a vaginal birth after cesarean (VBAC) delivery may be attempted at home. The recent VBAC review conducted by the Board determined that these additional requirements should be added to the Board's VBAC rule. This rule change will affect all direct-entry midwives performing VBAC deliveries.

24.111.2102 NATUROPATHIC PHYSICIAN CONTINUING EDUCATION REQUIREMENTS (1) through (2)(a)(iv) remain the same.

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

(b) through (ii) remain the same.

(iii) All licensed naturopaths must either submit attestation to the board, on the appropriate year's license renewal, ~~a report summarizing their that they have~~ obtained continuing education credits or submit a plan to complete CE credits. The board will review ~~these reports renewal forms~~ prior to October 30 of that same year and notify the licensee regarding his/her noncompliance. ~~Licensees found to be in noncompliance with the requirement will be asked to submit to the board for approval a plan to complete the continuing education requirements for licensure.~~ Prior to the next consecutive year's license renewal deadline, those licensees who ~~were found to be in noncompliance will be formally reviewed to determine their eligibility for license renewal.~~ Licensees, who at this time have not complied with continuing education requirements, will not be granted license renewal until they have fulfilled the board approved plan to complete the requirements. Those not receiving notice from the board regarding their continuing education should assume satisfactory compliance. Notices will be considered properly mailed when addressed to the last known address on file in the board office. No continuing education programs used to complete delinquent continuing education plan requirements for licensure may be used to meet the continuing education requirements for the next continuing education reporting period.

(iv) through (vi) remain the same.

(vii) ~~From the continuing education reports submitted each year, the~~ The board will randomly audit ~~5% 20%~~ of the ~~reports licensees and will request certificates of completion documentation~~ for continuing education credits reported as specified in board rule. Any continuing education non-compliance determined by the audit may be handled by the board as a disciplinary matter.

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

IMP: 37-1-306, MCA

REASON: There is reasonable necessity that the Alternative Health Care Board propose rule changes to modify the administration of continuing education (CE) for naturopathic physicians in order to take into account recent technology changes affecting CE. This modification is to provide for the attest method of reporting and allows for on-line license renewals. The Department has determined that there are not sufficient website resources to allow typing in

courses, sponsors, and other course information required for the full reporting of CE. This rule change allows licensees to attest to reporting of their CE requirements and provides that the Board will randomly audit 20% of the licensees. This change to the continuing education process will allow for computer on-line license renewal. The Board also wishes to clarify that programs targeted to educate the public such as CPR and first aid will not be acceptable for professional continuing education. This rule change will affect all naturopathic physicians renewing their license to practice.

24.111.2103 MIDWIVES CONTINUING EDUCATION REQUIREMENTS

(1) through (2)(b)(ii) remain the same.

(iii) All licensed direct-entry midwives must either submit attestation to the board, on the appropriate year's license renewal, a report summarizing their that they have obtained continuing education credits or submit a plan to complete CE credits. The board will review these reports renewal forms prior to October 30 of that same year and notify the licensee regarding his/her noncompliance. ~~Licensees found to be in noncompliance with the requirement will be asked to submit to the board for approval a plan to complete the continuing education requirements for licensure.~~ Prior to the next consecutive year's license renewal deadline, those licensees who ~~were found to be in noncompliance will be formally reviewed to determine their eligibility for license renewal.~~ Licensees, who at this time have not complied with continuing education requirements, will not be granted license renewal ~~until they have fulfilled the board approved plan to complete the requirements.~~ Those not receiving notice from the board regarding their continuing education should assume satisfactory compliance. Notices will be considered properly mailed when addressed to the last known address on file in the board office. No continuing education programs used to complete delinquent continuing education plan requirements for licensure may be used to meet the continuing education requirements for the next continuing education reporting period.

(iv) and (v) remain the same.

(vi) ~~From the continuing education reports submitted each year, the~~ The board will randomly audit ~~5%~~ 20% of the ~~reports~~ licensees and will request certificates of completion documentation for continuing education credits ~~reported as specified in board rule.~~ Any continuing education non-compliance may be handled by the board as a disciplinary matter.

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

IMP: 37-1-306, MCA

REASON: There is reasonable necessity that the Alternative Health Care Board propose rule changes to modify the administration of continuing education (CE) for direct-entry midwives in order to take into account recent technology

changes affecting CE. This modification is to provide for the attest method of reporting and allows for on-line license renewals. The Department has determined that there are not sufficient website resources to allow typing in courses, sponsors, and other course information required for the full reporting of CE. This rule change allows licensees to attest to reporting of their CE requirements and provides that the Board will randomly audit 20% of the licensees. This change to the continuing education process will allow for computer on-line license renewal and will affect all direct-entry midwives renewing their license to practice.

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

NEW RULE I NATUROPATHIC SCOPE OF PRACTICE (1) The board finds that the provisions of 37-26-301, MCA, and ARM 24.111.511 define the scope of practice for naturopathic physicians in Montana.

AUTH: 37-1-131, 37-26-201, MCA  
IMP: 37-26-201, MCA

REASON: There is reasonable necessity to implement a rule clarifying the scope of practice for naturopathic physicians because the Board was cited in a legislative audit for not promulgating a rule that would describe those practices allowed under the license held by a naturopathic physician. This rule change will affect all licensed naturopathic physicians in Montana.

5. Concerned persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Board of Alternative Health Care, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2343, or by e-mail to [dlibsdahc@state.mt.us](mailto:dlibsdahc@state.mt.us), and must be received no later than 5:00 p.m., August 29, 2003.

6. 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://discoveringmontana.com/dli/ahc>. The Department strives to make the electronic copy of this Notice of Public Hearing conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the Department strives to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems, and that a person's technical

difficulties in accessing or posting to the e-mail address do not excuse late submission of comments.

7. The Board of Alternative Health Care maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this Board. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all Board of Alternative Health Care administrative rulemaking proceedings or other administrative proceedings. Such written request may be mailed or delivered to the Board of Alternative Health Care, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2343, e-mailed to dlibsdahc@state.mt.us, or may be made by completing a request form at any rules hearing held by the agency.

8. The board of Alternative Health Care will meet on November 5, 2003, at 9:30 a.m. at its offices, 301 South Park Avenue (fourth floor), Helena, Montana, to consider the comments made by the public, the proposed responses to those comments, and take final action on the proposed rule changes. Members of the public are welcome to attend and listen to the board's deliberations.

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

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

BOARD OF ALTERNATIVE HEALTH CARE  
DOLLY BROWDER, L.M., CHAIRPERSON

/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 July 21, 2003

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION  
OF THE STATE OF MONTANA

In the matter of the ) NOTICE OF  
amendment of ARM 10.13.307 ) AMENDMENT  
and 10.13.312 relating to )  
traffic education )

TO: All Concerned Persons

1. On June 12, 2003 the Superintendent of Public Instruction published MAR Notice No. 10-13-110 regarding the public hearing on the proposed amendment of rules concerning traffic education at page 1152 of the 2003 Montana Administrative Register, Issue Number 11.

2. The Superintendent of Public Instruction has amended ARM 10.13.307 and 10.13.312 exactly as proposed.

3. The following comments were received and appear with the Superintendent of Public Instruction's response:

COMMENT 1: James P. Carroll, Executive Secretary of the Montana Traffic Education Association submitted a comment in support of the proposed amendments.

COMMENT 2: David Huff, Traffic Education Director for the Office of Public Instruction testified at the hearing and stated that the rule amendments eliminated an ambiguity in the use of the terms "student" and "youth", defined "eligible student" and provided that traffic education programs conducted during the summer months are considered a part of the school year immediately preceding the summer months. Mr. Huff recommended that the rules be amended as proposed.

RESPONSE: The Superintendent of Public Instruction thanks Mr. Carroll and Mr. Huff for their comments.

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

/s/ Cathy Warhank  
Cathy Warhank  
Rule Reviewer  
Office of Public Instruction

Certified to the Secretary of State July 21, 2003.

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

In the matter of the )  
adoption of new rule I )  
(ARM 12.3.180) pertaining )  
to variable priced ) NOTICE OF ADOPTION  
outfitter sponsored B-10 )  
and B-11 licenses )

TO: All Concerned Persons

1. On April 24, 2003, the Fish, Wildlife and Parks Commission (commission) published MAR Notice No. 12-291 regarding the public hearing on the proposed adoption of new rule I (ARM 12.3.180) pertaining to variable priced outfitter sponsored B-10 and B-11 licenses at page 686 of the 2003 Montana Administrative Register, Issue Number 8.

2. The commission has adopted option A to new rule I (ARM 12.3.180) exactly as proposed:

NEW RULE I (ARM 12.3.180) CALCULATION METHOD - VARIABLE PRICED OUTFITTER SPONSORED LICENSES B-10 AND B-11 (1) The commission shall determine the upcoming year's target number of the variable priced outfitter sponsored class B-10 and B-11 licenses using a unit method. The commission will evaluate the number of licenses sold in the previous years within the five year unit of time to determine the number of licenses to be sold in the upcoming license year.

(2) The five year unit of time is self-inclusive. Any under or over sale of licenses in a previous five year unit shall not affect the target number of licenses in the current five year unit. The adjustments to over or under sales of licenses shall be made only within the current five year unit.

(3) The year 2001 is the first year in the first five year unit under this rule, and the commission shall consider data from this year in making its target number calculations.

(4) The target amount of licenses to be sold is 27,500 class B-10 and 11,500 class B-11 within each five year unit.

AUTH: 87-1-268, MCA  
IMP: 87-1-268, MCA

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

COMMENT: An association stated that of the two options in the proposed rule, they supported option A as the preferred method of calculation for the variable priced outfitter sponsored licenses.

RESPONSE: The commission agrees and has adopted option A of the proposed rule for calculation of the variable priced outfitter sponsored licenses B-10 and B-11.

By: /s/ M. Jeff Hagener  
M. Jeff Hagener  
Commission Secretary

By: /s/ Martha Williams  
Martha Williams  
Rule Reviewer

Certified to the Secretary of State July 21, 2003

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW  
OF THE STATE OF MONTANA

In the matter of the amendment )	CORRECTED NOTICE OF
of ARM 17.38.101, 17.38.201A, )	AMENDMENT
17.38.202, 17.38.203, )	
17.38.206, 17.38.208, )	(PUBLIC WATER SUPPLY AND
17.38.216, 17.38.229, )	WASTEWATER SYSTEM
17.38.234, 17.38.239, )	REQUIREMENTS)
17.38.249, 17.38.302, and the )	
adoption of new rule I )	
pertaining to ground water )	
under the direct influence of )	
surface water determinations )	

TO: All Concerned Persons

1. On April 10, 2003, the Board of Environmental Review published MAR Notice No. 17-190 regarding a notice of public hearing on the proposed amendment and adoption of the above-stated rules at page 622, 2003 Montana Administrative Register, issue number 7. On June 26, 2003, the Board published the notice of amendment and adoption of the rules at page 1279, 2003 Montana Administrative Register, issue number 12.

2. This corrected notice of amendment is being published to reflect an amendment to an internal reference cite in ARM 17.38.101 that should have been proposed and adopted under MAR Notice No. 17-190 because of renumbering of sections. The amendment is shown below:

17.38.101 PLANS FOR PUBLIC WATER SUPPLY OR WASTEWATER SYSTEM (1) through (14) remain as adopted.

(15) A copy of any of the documents adopted under ~~(13) above,~~ (14) may be obtained from the Department of Environmental Quality, PO Box 200901, Helena MT 59620-0901.

3. The replacement pages for this corrected notice of amendment were filed with the Secretary of State's office on June 30, 2003.

Reviewed by: BOARD OF ENVIRONMENTAL REVIEW

<u>James M. Madden</u>	By: <u>Joseph W. Russell</u>
JAMES M. MADDEN	JOSEPH W. RUSSELL, M.P.H.,
Rule Reviewer	Chairman

Certified to the Secretary of State, July 21, 2003.

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

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

TO: All Concerned Persons

1. On June 12, 2003, the Department of Labor and Industry published MAR Notice No. 24-17-168 regarding the proposed amendment of ARM 24.17.127, pertaining to prevailing wage rates for public works projects, at page 1155 of the 2003 Montana Administrative Register, Issue Number 11.

2. On July 8, 2003, the Department held a public hearing in Helena. Members of the public attended and made oral comments and presented written materials. Additional written material was received by the Department prior to the July 14, 2003, close of the comment period.

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

Comment 1: Senator Vicki Cocchiarella stated in written comments that she assumed that because Senate Bill 188 had an immediate effective date, the Department would include data from licensed plumbers and licensed electricians in the current wage rates.

Response 1: Senate Bill 188 (enacted as Chapter 293, Laws of 2003) became effective on April 11, 2003. The bill addressed what was an apparent oversight in prevailing wage legislation enacted in 2001, which had the effect of excluding wage data from licensed plumbers and licensed electricians who were not registered as construction contractors pursuant to Title 39, chapter 9, MCA. (Licensed plumbers and electricians are not required by law to register as construction contractors.) The Department will survey licensed electricians and licensed plumbers, in addition to construction contractor registered pursuant to Title 39, chapter 9, MCA, in its next regular survey of employers engaged in commercial construction work.

However, the Department historically solicits wage survey data in November, December and January (which corresponds with the less busy months for many Montana construction contractors) and compiles, analyzes and tabulates the information during February, March, April and May before presenting it as proposed prevailing wage rates in June. The rates proposed for adoption are all based on wages paid during 2002. By the very nature of the survey, it looks at wages paid in a single year. Wage rates for next year will be based on 2003 wages, and will include data

from licensed electricians and licensed plumbers who respond to the survey. The Department did not have the resources (either financial or available staff) to conduct a supplemental wage survey immediately after the enactment of Senate Bill 188. In addition, an immediate supplemental survey would have delayed the publication of proposed rates beyond the customary May or June publication date. The Department notes that at the time it collected the survey data, Montana law did not authorize the Department to collect wage data from any employer that was not a registered construction contractor. The Department concludes that under the circumstances, it was not feasible to conduct a supplemental wage survey immediately upon the enactment of Senate Bill 188, nor is it feasible now.

Comment 2: John Forkan, UA 41 Plumbers and Pipefitters Business Agent stated that the Department should include wage data from licensed, but non-registered electricians and plumbers. He suggested that the Department should include data from licensed plumbers and electricians who submitted data during the survey period which ended January 23, 2003.

Response 2: As noted in Response 1, above, when the survey's data collection period ended in January 2003, the Department was not authorized by law to accept data from anyone who was not a registered construction contractor pursuant to Title 39, chapter 9, MCA. Likewise, the Department believes that inclusion of unsolicited data from a handful of employers is unfair to those employers who did not send in data due to their exclusion from the wage survey solicitation. The Department will include all licensed electricians and licensed plumbers in the next prevailing wage survey for construction services.

Comment 3: David Warner, representing the Carpenters Union, expressed some concerns about the fringe benefit amounts, but urged adoption of the rates as proposed.

Response 3: The Department acknowledges those comments.

Comment 4: Jack Campbell of Jack's Technical Assistance, Inc. opposed the Fringe Benefit rates for Plumbers and Pipefitters in District 5. He stated that he had entered into a multi-year contract with the State of Montana that adjusted payment rates to match the prevailing wage. He stated that the proposed wage rates are lower than his labor costs for workers in that occupation, and that he projected that he was going to lose money on the contract during the next year.

Response 4: The Department notes that the prevailing wage rates it establishes are merely minimum rates that workers on a public works contract must be paid. Depending on supply and demand, prevailing wage rates may end up being higher or lower than the amount being paid in the open labor market; sometimes the rates are exactly the same as what is being paid in the open labor market. The Department's role is to accurately collect,

tabulate and report wages and fringe benefits actually during the survey period. The Department does not establish economic policy nor does it attempt to define what rates are desirable or economically advantageous.

Comment 5: Edwin C. Anderson, President of Anderson Masonry, questioned the wage and benefit rate for Laborers Group 4 and submitted a 2003 collective bargaining agreement between his company and Laborers Local 1334.

Response 5: The collective bargaining agreement Mr. Anderson submitted is dated January 27, 2003. The agreement cannot be used in this survey cycle as the Department only accepted collective bargaining agreements that were in effect in 2002, just as it only accepts survey information for 2002.

Comment 6: Ms. Susan R. Wortman, Laborers Local 1334 wrote to question the use of the collective bargaining agreement submitted by Mr. Anderson of Anderson Masonry. She states Mr. Anderson was not a signatory contractor during the survey period.

Response 6: As noted in Response 5, above, the Department agrees that a 2003 agreement cannot be used for the 2002 survey period.

Comment 7: Lars Erickson, business agent for the Carpenters Union testified that the wrong union rates and travel rates were used for Drywall Applicators. Mr. Erickson suggested that Drywall Applicators are under the carpenters' union agreements and not under the painters' union agreements.

Response 7: The commenter is correct and the drywall applicator wage, fringe and travel rates have been changed to reflect the Carpenters' union agreements.

Comment 8: Additional data were provided for operating engineers in job classifications 2, 3 and 4, regarding wage and fringe benefits.

Response 8: The data submitted were used and those rates were re-computed. The rates have been changed to reflect the additional data.

4. After consideration of the comments, the Department has amended ARM 24.17.127 as proposed, but with the following changes to the wage and fringe benefit rates that are incorporated by reference:

Operating Engineers, group 2

District	wages		fringe	benefits
1	<del>\$16.62</del>	<u>\$17.40</u>	<del>\$3.49</del>	<u>\$5.05</u>
2	<del>\$18.09</del>	<u>\$18.21</u>	\$5.05	[no change]
3	<del>\$14.70</del>	<u>\$18.38</u>	<del>\$5.01</del>	<u>\$5.05</u>
4	<del>\$17.28</del>	<u>\$17.64</u>	<del>\$4.89</del>	<u>\$4.96</u>
5	<del>\$17.08</del>	<u>\$18.38</u>	<del>\$4.58</del>	<u>\$5.05</u>
6	<del>\$18.12</del>	<u>\$18.38</u>	<del>\$4.48</del>	<u>\$5.05</u>
7	<del>\$13.04</del>	<u>\$18.38</u>	<del>\$3.56</del>	<u>\$5.05</u>
8	\$18.38	[no change]	<del>\$4.88</del>	<u>\$5.05</u>
9	<del>\$14.86</del>	<u>\$18.38</u>	\$5.05	[no change]
10	\$18.38	[no change]	<del>\$4.30</del>	<u>\$5.05</u>

Operating Engineers, group 3

District	wages		fringe	benefits
1	<del>\$18.39</del>	<u>\$19.12</u>	<del>\$4.25</del>	<u>\$5.05</u>
2	<del>\$17.22</del>	<u>\$19.12</u>	<del>\$4.32</del>	<u>\$5.05</u>
3	<del>\$15.35</del>	<u>\$19.12</u>	\$5.05	[no change]
4	\$19.12	[no change]	\$5.05	[no change]
5	<del>\$18.75</del>	<u>\$19.12</u>	\$5.05	[no change]
6	<del>\$14.53</del>	<u>\$19.12</u>	<del>\$4.46</del>	<u>\$5.05</u>
7	<del>\$17.05</del>	<u>\$18.47</u>	<del>\$3.77</del>	<u>\$5.05</u>
8	\$19.12	[no change]	<del>\$4.55</del>	<u>\$5.05</u>
9	\$19.12	[no change]	<del>\$4.43</del>	<u>\$5.05</u>
10	\$19.12	[no change]	<del>\$4.30</del>	<u>\$5.05</u>

Operating Engineers, group 4

District	wages		fringe	benefits
1	\$19.71	[no change]	<del>\$2.00</del>	<u>\$5.05</u>
2	\$19.71	[no change]	\$5.05	[no change]
3	\$19.71	[no change]	\$5.05	[no change]
4	\$19.71	[no change]	\$5.05	[no change]
5	<del>\$15.87</del>	<u>\$19.71</u>	\$5.05	[no change]
6	\$19.71	[no change]	\$5.05	[no change]
7	\$19.71	[no change]	\$5.05	[no change]
8	\$19.71	[no change]	<del>\$4.56</del>	<u>\$5.05</u>
9	\$19.71	[no change]	\$5.05	[no change]
10	\$19.71	[no change]	\$5.05	[no change]

Drywall Applicator

District	wages		fringe	benefits
1	<del>\$16.35</del>	<u>\$17.85</u>	<del>\$5.90</del>	<u>\$5.15</u>
2	<del>\$16.35</del>	<u>\$18.85</u>	<del>\$5.90</del>	<u>\$5.15</u>
3	<del>\$18.40</del>	<u>\$15.26</u>	<del>\$8.13</del>	<u>\$5.97</u>
4	\$15.45	[no change]	<del>\$5.90</del>	<u>\$4.90</u>
5	<del>\$16.35</del>	<u>\$15.90</u>	<del>\$5.90</del>	<u>\$4.90</u>
6	\$13.56	[no change]	<del>\$8.13</del>	<u>\$4.90</u>
7	<del>\$18.40</del>	<u>\$16.49</u>	<del>\$8.13</del>	<u>\$5.15</u>
8	\$16.00	[no change]	<del>\$8.13</del>	<u>\$5.15</u>
9	<del>\$18.40</del>	<u>\$19.05</u>	<del>\$8.13</del>	<u>\$5.15</u>
10	<del>\$18.40</del>	<u>\$19.05</u>	<del>\$8.13</del>	<u>\$5.15</u>

Travel pay for Drywall Applicators:

~~All Districts:~~

~~0-10 mi free zone  
Over 10 mi. \$.20/mi  
Per Diem: \$32/day~~

Districts 1 & 2:

0-15 mi. free zone  
15-30 mi. \$.75/hr  
30-50 mi. \$1.00/hr  
Per Diem: none

District 3:

0-30 mi. free zone  
30-50 mi. \$18/day  
Over 50 mi. \$25/day  
Per Diem: none

Districts 4, 8, 9 & 10:

0-15 mi. free zone  
15-30 mi. \$10/day  
30-50 mi. \$15/day  
Over 50 mi. \$25/day  
Per Diem: none

Districts 5, 6 & 7:

0-30 mi. free zone  
30-60 mi. \$2.20/hr  
Over 60 mi. \$3.70/hr  
Per Diem: none

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

5. The Department notes that the amendment and new rates are effective August 1, 2003.

/s/ MARK CADWALLADER  
Mark Cadwallader  
Alternate Rule Reviewer

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

Certified to the Secretary of State July 21, 2003.

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

In the matter of the ) NOTICE OF AMENDMENT  
amendment of ARM 24.156.606, )  
pertaining to examination )

TO: All Concerned Persons

1. On June 12, 2003, the Board of Medical Examiners published MAR Notice No. 24-156-59 regarding the proposed amendment of the above-stated rule relating to examination at page 1158 of the 2003 Montana Administrative Register, Issue Number 11.

2. No public hearing on the proposed amendment of the above-stated rule was conducted. The Board received one comment concerning the proposed amendment. The Board has thoroughly considered the comment. The comment and the Board's response are as follows:

COMMENT NO. 1 The only comment received was in favor of the proposed rule changes.

RESPONSE NO. 1 The members appreciated the commenter's support and will adopt the rule changes as proposed.

3. The Board of Medical Examiners has amended the rule exactly as proposed.

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

/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 July 21, 2003.

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

In the matter of the amendment ) NOTICE OF AMENDMENT AND  
of ARM 37.57.102, 37.57.105, ) REPEAL  
37.57.106, 37.57.109, )  
37.57.110, 37.57.111, )  
37.57.112, 37.57.117 and )  
37.57.118 and the repeal of )  
ARM 37.57.125 pertaining to )  
children with special health )  
care needs )

TO: All Interested Persons

1. On February 13, 2003, the Department of Public Health and Human Services published MAR Notice No. 37-269 regarding the public hearing on the proposed amendment and repeal of the above-stated rules at page 180 of the 2003 Montana Administrative Register, issue number 3.

2. The Department has amended ARM 37.57.105, 37.57.109, 37.57.112, 37.57.117 and 37.57.118 and repealed ARM 37.57.125 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.

37.57.102 DEFINITIONS Unless otherwise indicated, the following definitions apply throughout this subchapter:

(1) and (2) remain as proposed.

(3) "Benefits" means payment by the department for CSHS-authorized medical care, ~~corrective, or surgical treatment, including evaluation,~~ for a child or youth eligible for the CSHS program.

(4) through (19) remain as proposed.

(20) "Poverty income guidelines" means the poverty income guidelines published in ~~2002~~ 2003 in the Federal Register by the U.S. department of health and human services. The department hereby adopts and incorporates by reference the federal poverty guidelines that establish income thresholds according to family unit size for purposes of determining eligibility for government assistance or services and that are published in the February ~~14, 2002~~ 7, 2003, Federal Register. A copy of the ~~2002~~ 2003 poverty guidelines may be obtained from the Department of Public Health and Human Services, Children's Special Health Services Program, 1218 East Sixth, Helena, MT 59620, telephone (406) 444-~~3620~~ 3617.

(21) remains as proposed.

(22) "Provider" means a supplier of medical care or services, medical appliances, ~~drugs~~ prescribed medications, or

formula or foods.

(23) remains as proposed.

(24) "Third party" means a public or private agency that is or may be liable to pay all or part of the medical costs for a client, including, but not limited to, private insurance, ~~CHAMPUS~~ tri-care, medicaid, medicare, CHIP, the caring program for children, and the early intervention program, part C, of the department's disabilities services division.

(25) remains as proposed.

AUTH: Sec. 50-1-202, MCA

IMP: Sec. 50-1-202, MCA

37.57.106 ELIGIBILITY FOR BENEFITS (1) With the exception noted in (6), a child or youth, to be eligible for CSHS benefits, must be:

(a) and (b) remain as proposed.

(c) a resident of the state of Montana and either a U.S. citizen or a qualified alien ~~if documentation from the U.S. immigration and naturalization service of qualified alien status is submitted with the application as defined under federal statute;~~

(d) a member of a family whose income, less any out-of-pocket expenses for health insurance ~~for the child or youth applying for CSHS~~, is at or less than 200% of the federal poverty income guidelines; and

(e) one of the following:

(i) remains as proposed.

(ii) eligible for medicaid, but in need of treatment services or benefits that ~~is are not available from covered by medicaid but is are~~ covered by CSHS; or

(iii) through (4) remain as proposed.

(5) CSHS financial eligibility will be determined in accordance with the financial eligibility guidelines contained in CHIP's ARM 37.79.201, with the following exceptions:

(a) remains as proposed.

(b) children may have health insurance coverage and the out-of-pocket expenses for health insurance ~~for the child or youth applying for CSHS~~ are deducted from household income; and

(c) through (6) remain as proposed.

AUTH: Sec. 50-1-202, MCA

IMP: Sec. 50-1-202, MCA

37.57.110 CONDITIONS, BENEFITS AND SERVICES (1) remains as proposed.

(2) Eligible conditions are:

(a) genitourinary conditions requiring surgical correction disorders;

(b) gastrointestinal conditions requiring surgical correction disorders;

(c) through (f) remain as proposed.

(g) ophthalmic conditions requiring surgical correction;

(h) asthma pulmonary disorders;

- (i) diabetes endocrine disorders;
- ~~(j) fetal alcohol syndrome;~~
- ~~(k) Down's syndrome;~~
- ~~(l) cystic fibrosis;~~
- ~~(m) seizure disorders;~~
- ~~(n) (j) juvenile rheumatoid arthritis, or similar arthritic disorders;~~
- ~~(o) cerebral palsy;~~
- ~~(p) broncho pulmonary dysplasia;~~
- ~~(q) gastrointestinal reflux; and~~
- ~~(r) neurofibromatosis~~
- (k) cardiovascular disorders;
- (l) chronic infectious disease;
- (m) hematologic disorders; and
- (n) dermatologic disorders.

(3) The following are covered benefits that may be provided to a CSHS eligible child or youth:

- (a) through (c) remain as proposed.
- (d) dietary supplement foods for management medical foods for the treatment of a metabolic disorder, including ~~non~~-prescriptive supplements for a child with inborn errors of metabolism;
- (e) remains as proposed.
- (f) occupational, physical, nutrition and speech therapy for rehabilitation related to a covered service;
- (g) remains as proposed.
- (h) hearing aids, up to a maximum of \$1,500 per ear per year;
- (i) through (k) remain as proposed.
- (l) eyeglasses for a child with a syndrome medical disorder-related condition, limited to a single pair of frames per eligibility year up to a maximum of \$175 for frames, lenses and evaluation, plus an additional prescription lens change in six months as needed;
- (m) and (n) remain as proposed.
- (o) case management and care coordination; ~~and~~
- (p) tonsillectomy and adenoidectomy in cases of obstructive sleep apnea or to protect hearing; ~~and~~
- (q) prescription medications related to the covered condition.

(4) No benefits are available for the following:

- (a) through (j) remain as proposed.
  - (k) growth hormone therapy, except for medically established hypothalamic/pituitary insufficiency;
  - (l) and (m) remain as proposed.
  - (n) speech, occupational, nutritional, physical or respiratory therapy for a condition that is not CSHS-eligible;
  - (o) remains as proposed.
- (5) Conditions that are ineligible for financial assistance are:
- (a) remains as proposed.
  - (b) behavioral, emotional, and learning disabilities ~~and developmental delays;~~
  - (c) remains as proposed.

~~(d) blood dyscrasias;~~

(e) and (f) remain as proposed but are renumbered (d) and (e).

(6) Standards for services that may be provided by CSHS are the following:

(a) through (a)(ii) remain as proposed.

(iii) nutritional counseling and management, medical formula or foods, and/or prescriptive ~~or non-prescriptive~~ medications not funded by other sources for a person identified with an inborn error of metabolism.

(b) through (c)(ii) remain as proposed.

AUTH: Sec. 50-1-202, MCA

IMP: Sec. 50-1-202, MCA

37.57.111 PAYMENT LIMITS AND REQUIREMENTS (1) The department will provide benefits for a CSHS-eligible child or youth with a covered condition:

(a) through (c) remain as proposed.

(d) up to a maximum of \$1,500 each for speech, physical, nutritional, occupational, or respiratory therapy related to a covered condition. For children under age three, CSHS will pay after the early intervention program, part C, of the disabilities services division; and

(e) through (5) remain as proposed.

(6) The department will pay up to the following limits for orthodontia care:

(a) Payment for orthodontia for CSHS clients who have cleft or craniofacial conditions requiring orthodontia due to a medical condition with orthodontic implications will be subject to the maximum allowable charge published in the department's orthodontic coverage and reimbursement guidelines updated through ~~December 1999~~ July, 2001.

(b) through (c)(ii) remain as proposed.

(d) Maximum allowable charges for each phase of orthodontic treatment, time lines for orthodontic phases of care, and the services included in each phase of orthodontic care are listed in the department's orthodontic coverage and reimbursement guidelines. The department hereby adopts and incorporates by reference the department's orthodontic coverage and reimbursement guidelines updated through ~~December 1999~~ July, 2001. The guidelines, issued by the department to all providers of orthodontic services, inform providers of the requirements applicable to the delivery of services under the medicaid program. A copy of the department's orthodontic coverage and reimbursement guidelines is available from the Department of Public Health and Human Services, Health Policy and Services Division, Medicaid Services Bureau, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

(7) through (10) remain as proposed.

(11) In addition to the above, the department will pay:

(a) the lesser of either the actual charge for drugs and other prescribed supplies, or the price cited in the 2002 Drug Topics Redbook Pharmacy's Fundamental Reference, less 15%, plus

a \$4.70 dispensing fee and any minor adjustments deemed reasonable by the department to reflect market changes-;i

(b) 85% of the cost of orthotics and prosthetic devices (orthopedic only)-;i

(c) 100% of the cost of specialized formula and foods and prescriptive or non-prescriptive medications prescribed by a physician for inborn errors of metabolism-;i

(d) 100% of the cost of syringes and disposable medical equipment for the treatment of covered conditions-; and

(e) and (12) remain as proposed.

(13) The department hereby adopts and incorporates by reference the 2002 Drug Topics Redbook Pharmacy's Fundamental Reference, which suggests prices for drugs. Anyone wishing to examine any of the above references may do so by contacting the department's CSHS Program, 1218 East Sixth Avenue, Helena, Montana 59601, phone: (406) 444-~~3620~~ 3617.

AUTH: Sec. 50-1-202, MCA

IMP: Sec. 50-1-202, MCA

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

ARM 37.57.102

COMMENT #1: The reference to "medical care" in the definition of "benefits" is sufficient to include and cover corrective or surgical treatment and evaluation.

RESPONSE: The Department agrees and has deleted "corrective, or surgical treatment, including evaluation" as redundant language.

COMMENT #2: Since the federal poverty guidelines were updated since the original notice of rulemaking was filed, the definition should incorporate by reference the most current guidelines.

RESPONSE: The Department agrees and has incorporated the 2003 federal poverty guidelines.

COMMENT #3: The definition of "provider" should include a supplier of prescribed medications or foods, because CSHS reimburses such suppliers.

RESPONSE: The Department agrees and has added the language.

COMMENT #4: In the definition of "third party", CHAMPUS is now called Tri-Care.

RESPONSE: The Department has made the correction.

ARM 37.57.106

COMMENT #5: For rule consistency, the reference in ARM 37.57.106(1)(c) to "qualified alien" should parallel that in the rules for the CHIP program.

RESPONSE: The Department agrees and has made the change.

COMMENT #6: Concerning ARM 37.57.106(1)(d) and (5)(b), if a family is paying a premium for family health insurance, it is impossible to break the premium down to a per member rate and be consistent among plans due to the varying plan pricing structures. Therefore, the Department should drop the requirement that only the health insurance expenses attributable to the CSHS youth applicant can be deducted from income for eligibility purposes.

RESPONSE: The Department agrees and has made the changes in order to ensure adequate coverage consistent with facilitating access to CSHS and ease of its administration.

ARM 37.57.110

COMMENT #7: The list of eligible conditions in ARM 37.57.110(2) is too restrictive and should be changed to refer to general disorders of major body systems. In addition, cardiovascular conditions were not mentioned and should be.

RESPONSE: The Department agrees and has revised the list accordingly.

COMMENT #8: In ARM 37.57.110(3)(d), the reference to "dietary supplement foods for management" is incorrect terminology, "medical food for treatment" should be substituted.

RESPONSE: The Department agrees and has made the change.

COMMENT #9: The benefits included in ARM 37.57.110(3)(f) should include nutritional therapy.

RESPONSE: The Department agrees and has made the addition.

COMMENT #10: Since families may need assistance in procuring additional hearing aids for their children as their hearing changes over the course of their condition, the monetary limit in ARM 37.57.110(3)(h) for hearing aids should apply per year.

RESPONSE: The Department agrees and has added "per year" to the monetary limit.

COMMENT #11: In ARM 37.57.110(3)(1), the word "syndrome" should be changed to "medical disorder", which is the preferred medical term.

RESPONSE: The Department agrees and has made the change.

COMMENT #12: The benefits included in ARM 37.57.110(3) should include prescription medications as CSHS currently provides reimbursement for prescription medications.

RESPONSE: The Department has noted the oversight and has made the correction.

COMMENT #13: ARM 37.57.110(4)(k), of the excluded benefits list, should contain an exception that allows growth hormone therapy to be covered if it is for medically established hypothalamic/pituitary insufficiency.

RESPONSE: The Department agrees and has added the exception.

COMMENT #14: In the list of exclusions from coverage, nutritional therapy for a condition that is not CSHS-eligible should be included.

RESPONSE: The Department agrees and has made the change.

COMMENT #15: The list in ARM 37.57.110(4) of conditions ineligible for CSHS assistance should not include developmental delays or blood dyscrasias, the first because developmental delays are associated with other conditions that are CSHS-covered and the second because some blood dyscrasias are not neoplasms and need to be covered by CSHS.

RESPONSE: The Department agrees and has deleted both from the ineligible list.

COMMENT #16: ARM 37.57.110(6)(a)(iii) should be deleted because the arbitrary amount of \$5,000 per year is less than what it reasonably costs to treat an inborn error of metabolism and creates a situation where a family must choose between medical foods and the professional service to direct their use. State law for coverage of individuals with inborn errors of metabolism does not allow private health insurance to do this, nor should CSHS.

RESPONSE: The Department inserted this section to allow CSHS to assist any individual with a covered condition who meets income standards in a limited manner when the financial stability of the program allows it. It is not intended to direct the department to cover the cost of any condition. Rather, it is intended to allow some support in the event that CSHS has funds available. CSHS is not an insurance program and is not bound by the same regulations as applied to private health insurance plans. Therefore, the requested change has not been made.

COMMENT #17: In ARM 37.57.110(6)(a)(iii), the reference to non-prescriptive medications should be deleted since CSHS requires all medications to be ordered by a physician to be eligible for reimbursement, regardless of its classification as over-the-counter or by prescription only.

RESPONSE: The Department agrees and has made the change.

ARM 37.57.111

COMMENT #18: ARM 37.57.111(1)(d)'s payment limit should also apply to nutrition therapy.

RESPONSE: The Department agrees and has made the change.

COMMENT #19: Because the orthodontia coverage and reimbursement guidelines have been updated, the dates in ARM 37.57.111(6)(a) and (6)(d) should be changed to July, 2001.

RESPONSE: The Department agrees and has made the change.

COMMENT #20: The current pricing structure for prescription medications in ARM 37.57.111(11) results in much higher medication costs than those in any other publicly funded program. Given the limited funding available and the increasing price of drugs, and in order to allow CSHS to assist more individuals with the same amount of money, the amount paid by CSHS should be reduced 15% below the price currently allowed by the rule, although the dispensing fee should be slightly increased.

RESPONSE: The Department agrees such action is necessary and has made the changes.

Russ Cater  
Rule Reviewer

John Chappuis for  
Director, Public Health and  
Human Services

Certified to the Secretary of State July 21, 2003.

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

In the matter of the amendment ) NOTICE OF AMENDMENT  
of ARM 37.78.420 pertaining to )  
Temporary Assistance for Needy )  
Families (TANF) )  
)

TO: All Interested Persons

1. On May 22, 2003, the Department of Public Health and Human Services published MAR Notice No. 37-291 regarding the public hearing on the proposed amendment of the above-stated rule at page 1048 of the 2003 Montana Administrative Register, issue number 10.

2. The Department has amended ARM 37.78.420 as proposed.

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

COMMENT #1: Several people, including legislators, commented that American Indian families would be disproportionately affected by the proposed reduction in TANF benefits because American Indians constitute a higher percentage of the TANF caseload than the percentage of the State's population as a whole. One commentator noted that American Indians represent approximately 44% of the TANF caseload while they comprise only 7% of the State's population. These commentators suggested that the proposed reductions would discriminate against American Indians in view of the disproportionate impact on them.

RESPONSE: Although it is true that American Indian families will be disproportionately affected by the proposed reductions due to the large percentage of the TANF caseload which they comprise, the Department does not agree that the reduction of TANF benefits is discriminatory. The United States Supreme Court has indicated in numerous decisions that a neutral law, that is, one which treats all members of a class the same, does not violate the constitutional guarantee of equal protection even though the law has a disproportionate adverse impact on a racial minority. The Supreme Court has held that such a neutral law violates the requirements of equal protection only if the adverse impact on a racial minority can be traced to a discriminatory purpose.

The policy of reducing TANF benefits is a neutral one, as it will apply to all families who apply for and/or receive TANF benefits. American Indian families will not be treated differently than any other families. Although there will be a disproportionate adverse impact on American Indian families

because of the large percentage of such families receiving TANF benefits, the Department's purpose in cutting benefits is not discriminatory. As explained in the notice of public hearing of the proposed amendment of ARM 37.78.420, the Department is making the cuts in benefits solely because there is not enough TANF money available to continue paying benefits at the current levels, in light of the fact that the TANF block grant is a fixed amount and TANF caseloads are increasing.

COMMENT #2: Several legislators commented that child care should not have been funded with TANF money.

RESPONSE: The Department does not have control over the actions of the Montana Legislature and must abide by their decisions. However, the Department understands that the Legislature allocated TANF money to fund the child care program in an effort to prevent further TANF caseload growth.

COMMENT #3: Numerous commentors suggested that the proposed benefit reductions would not be necessary if a portion of the federal relief money appropriated by Congress to help states fund essential government services was used to fund TANF cash assistance for fiscal year 2004. Many commentors urged the Department to use some of the money to fund TANF cash assistance. Some commented that the Department should ask the Governor for federal money to fund TANF.

RESPONSE: The Department has no control over the federal relief money and cannot use it to fund TANF without approval by the Governor or the Legislature. The Department has had discussions with the Governor's Office about ways to help low income families using the federal money, but the decision has been made not to use the federal funds for this purpose. Although there is always the possibility that things will change and federal money might be available for TANF in the future, the Department cannot wait to make this cut in the hopes that additional money will be available. The longer the Department waits to make the cut, the greater the necessary cut would be. There is an estimated savings of \$1.4 million dollars in state fiscal year (SFY) 04 that will carryover to SFY 05 to help maintain the solvency through the biennium. Delaying the cut would decrease the estimated savings in SFY 04 and would necessitate a greater cut to keep the budget solvent.

COMMENT #4: Numerous comments were received that the cuts would force people to make hard choices. It was suggested that some people would not be able to afford housing costs and would become homeless and others would have to give up food and health care for their children.

RESPONSE: The Department acknowledges that the reduced benefits will be less than some people are currently paying for their rent. However, the alternative remains to completely exhaust the block grant and not pay benefits to anyone for several

months after the money runs out. The Department does not believe that this is a better alternative. Approximately 30% of the TANF cash assistance households currently receive rental assistance based on their income. The rent paid by these families will be reduced when their TANF benefits are reduced. TANF participants are being advised when they are notified of the reduction of their benefits to contact their housing assistance agencies right away to have their housing assistance recalculated if they receive rental assistance.

Most TANF cash assistance households also receive food stamp benefits. Some households may see a small increase in their food stamp benefits, although households which are already receiving the maximum food stamp allotment for a household of their size will not receive additional food stamps as a result of their decreased TANF benefit. Most TANF cash households also receive Medicaid for both the adults and the children in the home. They should not experience any changes in their Medicaid coverage.

COMMENT #5: Several people commented that Northwestern Energy is proposing a 45% increase in energy costs and that this would be an additional hit to the lowest income population.

RESPONSE: The Department has no control over the actions of Northwestern Energy. Individuals who are eligible for TANF cash assistance are typically eligible for the Low Income Energy Assistance Program (LIEAP).

COMMENT #6: Several people commented that local communities would be forced to assist with the expenses that were previously covered by TANF cash assistance. For example, food banks will see an increase in usage, and community assistance groups will see an increased demand for rental and utility assistance.

RESPONSE: The Department recognizes that local community groups will bear the burden of increased requests for assistance as a result of the TANF benefit cuts. The Department has scheduled community meetings around the State to mobilize and help prepare local community groups to handle the additional needs of TANF participants.

COMMENT #7: Numerous comments were received that projecting a 9% increase for the next two years is unrealistic and that the Department doesn't know that this growth will continue, especially since the caseload decreased in the month of May 2003.

RESPONSE: The Department acknowledges that the caseload decreased in the months of May and June 2003. This was expected because the caseload typically decreases during the summer months. However, the caseload is still approximately 6% to 7% greater than the same months in the previous year. The growth

may be smaller in some months than it is in others but the average growth is still 9%.

COMMENT #8: Several people commented that Senator Cobb believed that taking TANF cash assistance funds to fund child care would cause a decrease in the TANF cash assistance caseload. They suggested that the Department should wait to see whether increasing funds for child care does decrease the TANF caseload before implementing the proposed benefit cuts.

RESPONSE: The Department does not believe that taking a wait and see approach is the most prudent course of action. Caseloads started increasing in December of 2000 when child care was fully funded and there were no child care waiting lists. The child care waiting list was not implemented until September of 2002. While child care waiting lists may have been a contributing factor to the TANF cash assistance caseload growth, it is not the only factor. There is an estimated savings of \$1.4 million dollars in state fiscal year (SFY) 04 that will carry over to state fiscal year 05 to help maintain the solvency through the biennium. Delaying the cut would decrease the estimated savings in SFY 04 and would necessitate a greater cut to keep the budget solvent.

COMMENT #9: The comment was made that the Department should look for a triggering mechanism that would signal the need to decrease benefits other than the caseload growth.

RESPONSE: The Department has seen a triggering mechanism. The trigger is that even if the expenditures remain the same as the May 2003 expenditures, the projected expenditures exceed the budgeted amount by approximately \$3 million per fiscal year.

COMMENT #10: The comment was made that if the Department feels that they must make a cut right now, they should look at cutting benefit levels to a level midway between the current benefit level (40.5% of poverty) and the proposed benefit level (30% of poverty), namely 35% of poverty.

RESPONSE: Making a partial cut now would only delay and possibly deepen the cuts needed to keep the budget solvent for the biennium. If any additional savings are realized because caseload growth does not continue at the projected rate of 9%, the savings can be used to help maintain the solvency of the block grant in SFY 06 and 07 without further cuts.

COMMENT #11: The comment was made to create a pool of funds with the federal relief money that can be used as needed for human services programs or housing assistance for TANF participants affected by the benefit cuts.

RESPONSE: The Department has no control over the federal relief money and cannot use it to fund TANF or any other program without approval by the Governor or the Legislature.

COMMENT #12: The comment was made that the TANF block grant should be increased and that the Department should contact the United States Congress to ask for an increase in the TANF block grant.

RESPONSE: The Department has worked closely with members of Congress to obtain additional TANF block grant funds, but the Department cannot wait until TANF is reauthorized before taking action to avoid the projected TANF budget deficit. If the Department does not reduce benefits now and Congress does not appropriate additional TANF funds, even greater reductions than those currently proposed will be necessary in order to keep the TANF program from running out of funds before the end of the biennium.

COMMENT #13: The comment was made that participants were not aware of the proposed changes to the TANF grant and that the Department should go talk to the people who are being affected.

RESPONSE: The Department inserted a card in the July TANF checks alerting recipients of the decrease in benefits. A notice is also being sent to each household during the month of July advising the household of the action being taken in regard to the household's benefits due to the proposed reductions in the TANF income and benefit standards. Additionally, the Department is holding meetings in communities throughout the state to discuss the benefit reductions.

COMMENT #14: The proposed reductions will reduce the income in Glacier County by approximately \$1.25 million dollars per year.

RESPONSE: The Department acknowledges that the reduction in benefits will have an adverse economic impact on Glacier County and other areas of the State which have significant numbers of TANF recipients. Unfortunately, this adverse impact is unavoidable because the funds available to pay TANF benefits is not expected to change and the Department cannot pay out more than it has. If the Department does not cut benefits now it will have to make even larger cuts later, so the negative economic impact on Glacier and other counties would merely be postponed.

COMMENT #15: The comment was made that maybe the Department should choose the alternative of continuing to pay benefits at the current level; then when the money runs out it will force a crisis that would require legislative action.

RESPONSE: The Department does not believe that this alternative would be acceptable. Any action taken by the Legislature would not happen until after the crisis had occurred and families were left without any income for one or more months. This is too harsh an impact on Montana's lowest income children.

COMMENT #16: Several comments were made that the proposed cuts would force women to stay in unsafe domestic violence situations because they cannot afford to leave.

RESPONSE: The Department acknowledges that some people may stay in unsafe domestic situations because they believe they cannot afford to leave. However, the alternative of keeping benefits at the current level until the block grant funds have been completely exhausted would mean that there may be no money to pay benefits to anyone for several months at the end of the biennium. This alternative could also have the effect of encouraging individuals to stay in unsafe situations because, once the block grant funds run out, there would be no TANF benefits whatsoever available to help them should they make the decision to leave.

COMMENT #17: One individual commented that she would have to leave school and obtain a full time job if her TANF benefit was reduced. She stated she has one semester of school left and if she cannot complete her degree, she will be stuck in a low paying job with no benefits.

RESPONSE: The Department hopes that this individual and others in similar situations will be able to complete their schooling by utilizing educational financial aid packages, including work study programs.

COMMENT #18: Several comments were made that the cuts made by the legislature were 10% across the board for all state agencies and programs but the proposed cuts to TANF are greater than 10%.

RESPONSE: The cuts to TANF are being made because of the limited Federal funding of the TANF block grant, not because of the State general fund cuts made by the Legislature.

COMMENT #19: The comment was made by a legislator that "it is unconscionable for the Governor to say that this money should be put into a savings account".

RESPONSE: The Department has no control over the federal relief money and cannot use it to fund TANF without approval by the Governor or the Legislature.

COMMENT #20: Several comments were made that tax relief is being given to the richest in the state while benefits for the poorest in the state are being cut.

RESPONSE: The Department has no control over tax relief, which is the province of the Legislature.

COMMENT #21: The comment was made that the reductions will have a negative impact on children in school because of a lack of funds for clothes, school supplies, and other necessities.

RESPONSE: The Department acknowledges that there may be some negative impact on children in school. However, the alternative remains to completely exhaust the block grant and not pay benefits to anyone for several months at the end of the biennium. This would create a greater negative impact at a later date.

COMMENT #22: One individual commented that when she became employed she lost her child care assistance and was forced to return to TANF cash assistance.

RESPONSE: Part of the TANF funding was transferred to the child care program. Funding is now available for child care for individuals up to 125% of federal poverty level. It is hoped that this will prevent families who find employment from returning to TANF cash assistance because they cannot pay for child care.

4. This rule amendment will be effective August 1, 2003.

Dawn Sliva  
Rule Reviewer

/s/ Gail Gray  
Director, Public Health and  
Human Services

Certified to the Secretary of State July 21, 2003.

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

In the matter of the adoption	)	NOTICE OF ADOPTION,
of Rule I and the amendment of	)	AMENDMENT AND REPEAL
ARM 37.85.406, 37.86.2605,	)	
37.86.2801, 37.86.2901,	)	
37.86.2905, 37.86.3001,	)	
37.86.3002, 37.86.3005,	)	
37.86.3007, 37.86.3009,	)	
37.86.3014, 37.86.3016,	)	
37.86.3018 and 37.86.3020 and	)	
repeal of 37.86.3011	)	
pertaining to medicaid	)	
hospital reimbursement	)	

TO: All Interested Persons

1. On May 22, 2003, the Department of Public Health and Human Services published MAR Notice No. 37-292 regarding the public hearing on the proposed amendment, adoption and repeal of the above-stated rules at page 1054 of the 2003 Montana Administrative Register, issue number 10.

2. The Department has amended ARM 37.86.2605, 37.86.2801, 37.86.2901, 37.86.3001, 37.86.3002, 37.86.3007, 37.86.3014 and repealed ARM 37.86.3011 as proposed.

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

RULE I [37.86.3025] OUTPATIENT HOSPITAL SERVICES, REIMBURSEMENT FOR SERVICES NOT PAID UNDER THE AMBULATORY PAYMENT CLASSIFICATION SYSTEM (1) through (4)(b) remain as proposed.

(5) Professional services, except as in (6) and (7), must bill separately on a professional billing form according to applicable rules governing billing for professional services.

~~(a) Medicaid covered services provided at a site where professional services of the kind ordinarily provided in physician offices or urgent cares, regardless of hospital ownership or CMS provider based designations, shall bill as in (5).~~

~~(b) Billing for a facility component of a visit for medicaid covered services provided at sites in (5)(a) is not reimbursable.~~

(6) For services provided on or after August 1, 2003, hospitals receiving a provider-based status from CMS must send a copy of the CMS letter granting provider-based status to the department's hospital program officer at Department of Public Health and Human Services, Child and Adult Health Resources, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951 and must

receive department approval prior to billing as a provider-based clinic.

(a) Physicians, mid-levels and other professionals billing for services on a professional billing form for services provided in a provider-based clinic must show hospital outpatient as the place of service on the claim and will receive payment as in ARM 37.86.105(2).

(b) Physicians, mid-levels and other professionals providing services that have both a professional and technical component in a provider-based clinic may bill only for the professional component of the service. The technical component shall be billed under the hospital's provider number using the appropriate coding and modifiers.

(c) Hospitals granted a provider-based status by the department may not restrict access to medicaid clients.

(6) remains as proposed but is renumbered (7).

~~(7)~~ (8) The department hereby adopts the outpatient hospital fee schedule dated August 1, 2003. A copy may be obtained through the Department of Public Health and Human Services, ~~Health Policy and Services Division~~ Child and Adult Health Resources Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

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

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

4. 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.

37.85.406 BILLING, REIMBURSEMENT, CLAIMS PROCESSING, AND PAYMENT (1) through (17) remain the same.

(18) Except as otherwise provided in the rules of the department which pertain to the method of determining payment rates for claims of recipients who have medicare and medicaid coverage (cross-over claims), the medicaid allowed amount for medicare covered services is:

(a) for facility based providers ~~of inpatient services~~ who generally bill on the UB-92 billing form, for covered medical services the full medicare co-insurance and deductible as defined by the medicare carrier;

(i) remains the same.

(b) for medical providers who generally bill on the HCFA-1500 billing form ~~and for facility based providers of outpatient services~~, for covered medical services the lower of:

(i) through (23) remain the same.

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

IMP: Sec. 53-2-201, 53-6-101, 53-6-111, 53-6-113, 53-6-131 and 53-6-141, MCA

37.86.2905 INPATIENT HOSPITAL SERVICES, REIMBURSEMENT

(1) For inpatient hospital services, the Montana medicaid

program will reimburse providers as follows:

(a) through (b) remain as proposed.

(c) Inpatient hospital services provided in hospitals located more than 100 miles outside the borders of the state of Montana will be reimbursed 50% of usual and customary billed charges for medically necessary services.

(i) Medicaid reimbursement for inpatient services shall not be made to hospitals located more than 100 miles outside the borders of Montana unless the provider has obtained authorization from the department or its designated review organization prior to providing services. All inpatient services provided in an emergent situation must be authorized within 48 hours.

(2) The department's DRG prospective payment rate for inpatient hospital services is based on the classification of inpatient hospital discharges to DRGs. The procedure for determining the DRG prospective payment rate is as follows:

(a) through (b) remain the same.

(c) The department computes a Montana average base price per case. This average base price per case is ~~\$2125~~ \$1980 excluding capital expenses, effective for services provided on or after ~~July~~ August 1, 2003.

(d) through (3) remain the same.

(4) The department will reimburse inpatient hospital service providers located in the state of Montana for capital-related costs that are allowable under medicare cost reimbursement principles as set forth at 42 CFR 412.113(a), as amended through October 1, 1992. The department adopts and incorporates by reference 42 CFR 412.113(a) and (b), as amended through October 1, 1992, which set forth medicare cost reimbursement principles. Copies of the cited regulation may be obtained from the Department of Public Health and Human Services, ~~Health Policy and Services Division~~ Child and Adult Health Resources Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

(a) through (16) remain as proposed.

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

IMP: Sec. 53-2-201, 53-6-101, 53-6-111, 53-6-113 and 53-6-141, MCA

37.86.3005 OUTPATIENT HOSPITAL SERVICES, REIMBURSEMENT AND QUALIFIED RATE ADJUSTMENT PAYMENT (1) and (2) remain as proposed.

(3) For critical access hospitals and exempt hospitals, interim reimbursement for outpatient hospital services is based on hospital specific medicaid outpatient cost to charge ratio, not to exceed 100%, ~~except as in ARM 37.86.3009~~. Critical access hospitals and exempt hospitals will be reimbursed their actual allowable costs determined according to ARM 37.86.2801(2). If a provider fails or refuses to submit the financial information, including the medicare cost report, necessary to determine the cost to charge ratio, the provider's interim rate will be 50% of its usual and customary charges

(billed charges).

(4) remains as proposed.

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

IMP: Sec. 53-2-201, 53-6-101, 53-6-111, 53-6-113 and 53-6-141, MCA

37.86.3009 OUTPATIENT HOSPITAL SERVICES, PAYMENT METHODOLOGY, EMERGENCY VISIT SERVICES (1) Emergency visits are emergency room services for which the ICD-9-CM presenting diagnosis code (admitting diagnosis code) or the diagnosis code (primary or secondary diagnosis code) chiefly responsible for the services provided is a diagnosis designated by the department as an emergency diagnosis in the medicaid emergency diagnosis list or the claim includes a level 4 or level 5 emergency CPT code. PASSPORT provider authorization is not required for these visits. For purposes of this rule, the department adopts and incorporates by reference the emergency diagnosis list effective ~~July~~ August 1, 2003. The emergency diagnosis list is available upon request from the Department of Public Health and Human Services, ~~Health Policy and Services Division~~ Child and Adult Health Resources Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

(2) Emergency visit services provided by hospitals will be reimbursed as follows:

~~(a) for emergency visits meeting ARM 37.86.3009(1), critical access hospitals and exempt hospitals interim reimbursement will be based on hospital specific medicaid outpatient cost to charge ratio, not to exceed 100%. Critical access hospitals and exempt hospitals will be reimbursed their actual allowable costs determined according to ARM 37.86.2801(2); or~~

(b) through (d) remain as proposed but are renumbered (a) through (c).

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

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

37.86.3016 OUTPATIENT HOSPITAL SERVICES, PROSPECTIVE PAYMENT METHODOLOGY, IMAGING SERVICES (1) Imaging services will be reimbursed as in ARM 37.86.3020 with the exception of hospitals reimbursed under ARM 37.86.3005(3) and except as follows:

(a) through (c) remain as proposed.

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

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

37.86.3018 OUTPATIENT HOSPITAL SERVICES, PROSPECTIVE PAYMENT METHODOLOGY, OTHER DIAGNOSTIC SERVICES (1) Other diagnostic services will be reimbursed as follows with the exception of hospitals reimbursed under ARM 37.86.3005(3):

(a) through (c) remain as proposed.

AUTH: Sec. 53-2-201 and 53-6-113, MCA  
IMP: Sec. 53-2-201, 53-6-101, 53-6-111 and 53-6-113, MCA

37.86.3020 OUTPATIENT HOSPITAL SERVICES, OUTPATIENT PROSPECTIVE PAYMENT SYSTEM (OPPS) METHODOLOGY, AMBULATORY PAYMENT CLASSIFICATION (1) Outpatient hospital services that are not provided by exempt hospitals or critical access hospitals as defined in ARM 37.86.2901(4) and (8) will be reimbursed on a rate-per-service basis using the outpatient prospective payment system (OPPS). Under this system, medicaid payment for hospital outpatient services included in the OPPS is made at a predetermined, specific rate. These outpatient services are classified according to a list of APCs published annually in the Code of Federal Regulations (CFR). The rates for OPPS are determined as follows:

(a) through (d) remain as proposed.

(e) If the OPPS does not assign a fee for a particular APC, the service will be reimbursed at hospital specific outpatient cost to charge ratio.

(i) If a provider fails or refuses to submit the financial information, including the medicare cost report, necessary to determine the cost to charge ratio, the provider's reimbursement will be 50% of its usual and customary charges (billed charges).

(f) through (h) remain as proposed.

AUTH: Sec. 53-2-201 and 53-6-113, MCA  
IMP: Sec. 53-2-201, 53-6-101, 53-6-111 and 53-6-113, MCA

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

COMMENT #1: We oppose the \$2.1 million reduction to the inpatient DRG base rate and the smaller \$700,000 cut to outpatient reimbursement for state fiscal year (SFY) 2004 to make up for the required legislative cuts. This opposition is based on the recent increase to the Federal Medical Assistance Percentage (FMAP).

RESPONSE: The federal FMAP increase announced by the Centers for Medicare and Medicaid Services (CMS) in June 2003 pertains to a change in the matching percentage that the State claims for benefits. The matching percentage changes from 72.88% to 75.91% in SFY 2004 and from 72.93% to 75.91% the last quarter of SFY 2003. Therefore, it will take less general fund money from the budget to cover the overall projected budget for the upcoming year. As directed by the Governor's office, the Department has no plans for changes to the Medicaid program to rescind legislative cuts for the hospital budget or other programs within the Department. The Governor's budget office has not authorized the Department to utilize this funding change to make up the legislative cut. The State is going to wait and see what happens with the budget in 2004 before making decisions on how to utilize this additional funding in the Medicaid program. In

addition, the cut to outpatient services is reduced to \$396,000 with the rule change allowing for the billing of the technical portion of a provider-based facility clinic visit.

COMMENT #2: We are concerned about the use of 2601 claims in the model and request the Department make adjustments to the proposed outpatient prospective payment system (OPPS) to assure budget neutrality as the system is updated and policy is changed.

RESPONSE: In March 2003 the Department originally modeled the OPPS on 2001 paid claims (the most recent complete year of paid claims). Based on the findings from this modeling of claims and meetings with providers, substantial changes were made to the original proposed rule. In addition, some 2001 claims could not be processed through the new payment system due to coding changes as recognized by the new OP grouper. After changes to the reimbursement method were made to the grouper by the Department, it was decided to run current claims through since those claims would have been properly coded and recognized by the grouper. The Department believes this information would provide the best estimate of budget impact. Based on previous models and tests the Department is not anticipating any substantial change in the overall impact using current claims. As with any new payment system, the Department will make adjustments on an ongoing basis.

COMMENT #3: We oppose the 40 hour limit for physical therapy, occupational therapy and speech-language therapy in the outpatient setting.

RESPONSE: The Department has asked for evidence from hospitals to determine that they are treating a more acutely ill patient than a community therapist. To date, the Department has not received any information from hospitals. The Department would welcome the opportunity to investigate this matter further and will work with hospitals and the MHA to determine if a difference exists.

The Department has consulted with CMS representatives on the issue of limits to hospital services. CMS has concluded that the Department may limit therapy services for adults age 21 and older to 40 hours for each type of therapy in a state fiscal year. Services for children age 20 and under are also limited to 40 hours for each type of therapy, however, children may qualify for more than 40 hours if medically necessary. The Department will have the utilization review contractor prior authorize medically necessary services over 40 hours for children. Review criteria for medical necessity is based on guidelines from InterQual Level of Care which are produced by McKesson Health Solutions.

COMMENT #4: Rule I(4)(a) [ARM 37.86.3025] should be clarified regarding billing for children's immunizations.

RESPONSE: Immunization vaccines that the hospital receives for free are not to be billed. The administration of the vaccines may be billed.

COMMENT #5: We support the Department's decision to allow both the professional and technical component to be billed by CMS-designated provider-based facility clinics. However, language in Rule I [ARM 37.86.3025] that states provider-based facility clinics "may not restrict access to Medicaid patients" is vague, conflicts with other Department initiatives and should be removed.

RESPONSE: As proposed, Rule I [ARM 37.86.3025] would have required physicians and hospitals to submit separate bills for professional services and the technical component of services rendered in a hospital owned clinic. As part of this rulemaking process, the Department sent a team of Medicaid program specialists and managers to Billings, Missoula, Great Falls and Bozeman to meet with hospital representatives. Based on conversations with those representatives, the Department is amending the final rule to allow CMS-designated provider-based facilities to bill for professional services and the technical component of clinic visits under the hospital's outpatient provider number. This will simplify billing procedures and will facilitate Medicaid claims handling and reimbursement. Of course, when a hospital acquires an existing clinic, the hospital must comply with state hospital outpatient clinic licensing rules in addition to a CMS provider-based facility designation.

CMS designated provider-based facility clinics may not restrict access based on Medicaid payment or administrative burden. This rule is not intended to give Medicaid clients preference over the facility clinic's other clientele. If the facility clinic has no appointment slots to offer, none has to be made available to Medicaid patients.

COMMENT #6: If future budget problems occur the Department should not look to limiting Medicaid payments on Medicare crossover claims to the lower of what the Department would have paid less the Medicare payment or the Medicare co-insurance and deductible amount.

RESPONSE: In times of budget shortfalls, the Department has an obligation to look at any and all methods of reducing expenditures to stay within the appropriated budget. A lower of cost or charge methodology for outpatient hospital services could be an option to address any budget shortfall.

COMMENT #7: The decision to pay for neonate air ambulance services at regular air ambulance rates may result in the reemergence of transportation problems including air ambulance providers refusing to provide services.

RESPONSE: The Department believes the rates proposed for air ambulance services are reasonable and adequate to assure access for this service. Should a provider of air ambulance services for neonates refuse to provide services, the Department has the ability to negotiate a reimbursement agreement with the provider if there is no other provider of this same service available in that area.

COMMENT #8: We support the Department's decision to remove the requirement for PASSPORT authorization from emergency room services and removing CAHs and Exempt facilities from the requirements of ARM 37.86.3009. However, we oppose the balance of the emergency department section of the rule. We suggest adding other diagnosis codes to the Emergency diagnosis list and adding age ranges to the system to allow claims for children (particularly infants) to bypass the emergency diagnosis flags. Better still, the list should be abolished and the Department should follow the same APC guidelines for emergency department visits as Medicare. The emergency diagnosis list is not using the "prudent layperson" standard to define an emergency medical condition.

The proposed rates may not provide adequate reimbursement for patients after hours and on weekends in rural communities where there is no urgent care or other alternatives or patients who are referred by their PASSPORT provider to the emergency department after hours and on weekends.

We oppose the application of cost sharing to emergency department visits that turn out to not meet the Department's definition of an emergency. It would be too great a burden to expect the professional rendering the service to collect cost sharing from the client after the screening when it is determined the service is not an emergency. It would be too cumbersome and "impractical" to have the emergency department professional refer to the Department's emergency diagnosis list after the screening of each Medicaid client to determine if cost share is due. Trying to collect after the fact is more expensive than the collection of cost share.

While we agree that discouraging inappropriate emergency department use for non-emergent services should be encouraged, cutting payments to the hospital will not provide the patient any incentive to modify their behavior and will only serve to "punish" the hospitals.

RESPONSE: The "prudent layperson" definition of the Emergency Medical Treatment and Active Labor Act (EMTALA) only applies to the medical screening examination. If a prudent layperson would believe it is an emergency, then the medical screening exam must be done and paid for. The Department will always pay a screening fee for the screening and evaluation as required by EMTALA. Emergency services are:

Medical screening examination to determine if an emergency medical condition exists. If a person comes to the emergency room seeking emergency medical services, this screening examination is performed to determine if an emergency exists.

If an emergency medical condition does indeed exist, emergency medical services are those services required to treat and stabilize the emergency medical condition.

For purposes of claims processing and reimbursement above the screening fee, a service is reimbursed as an emergency if one of the following criteria is met:

The claim has a procedure code of 99284 or 99285 on the emergency department revenue code line;

The admitting, primary or secondary diagnosis code is on the Department's emergency diagnosis list; or

The medical professional rendering the medical screening evaluation determines an emergency medical condition did exist. In this situation the claim and documentation supporting the emergent nature of the service must be mailed into the Department's UR contractor.

The emergency diagnosis list was developed for the Department by an emergency department physician to reflect diagnosis codes that would always be considered an emergency. The Department is reviewing the emergency diagnosis list and has modified the list based upon comments provided by hospitals. The Department will continually review and update this list. The Department considered adding age ranges to certain codes; however, our emergency department physician consultant determined that age is not a deciding criterion in many cases.

The Department shares the concerns about access to health care in rural areas after hours and on weekends. This is why the Department will reimburse for a screening fee and associated diagnostic services for non-emergent emergency department visits after hours and on weekends.

Hospitals collect for cost share (coinsurance, copayment, deductibles) in the emergency department for Blue Cross/Blue Shield of Montana and numerous other insurers in Montana. The Department would expect that hospitals would use the same methods to collect Medicaid cost share, with the exception that a provider cannot deny services to a Medicaid client because of the client's inability to pay cost sharing fees at the time services are rendered. Cost sharing for emergencies remains exempt.

The Department believes it is the responsibility of both health

care providers and payers of services to educate clients in the appropriate use of services. With current budget deficits it is imperative that the Department wisely use tax dollars to pay for services that are delivered in the most appropriate and cost effective manner. The Department is currently looking at several methods of assisting clients with referrals to the service appropriate for the situation. In addition, the Department is engaged in ongoing discussions with CMS as to actions that may be taken under federal law to discourage clients who "abuse" or "over-utilize" services. Health care providers must also take steps to discourage clients from using the emergency department for services that could have been performed in a less expensive setting.

6. This rule adoption, amendments and repeal will be effective August 1, 2003.

Russ Cater  
Rule Reviewer

John Chappuis for  
Director, Public Health and  
Human Services

Certified to the Secretary of State July 21, 2003.

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

In the matter of the amendment ) NOTICE OF AMENDMENT  
of ARM 37.108.301, 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 June 12, 2003, the Department of Public Health and Human Services published MAR Notice No. 37-293 regarding the public hearing on the proposed amendment of the above-stated rules at page 1161 of the 2003 Montana Administrative Register, issue number 11.

2. The Department has amended ARM 37.108.301, 37.108.305, 37.108.315 and 37.108.507 as proposed.

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

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:

(a) within 10 calendar days from the date the decision is made if the decision involves routine medical care; ~~or~~

~~(b) 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) through (c) remain as proposed.

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

~~(c) if the health carrier or managed care entity maintains an internal review process, state the enrollee's right to appeal the adverse determination 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) (d) provide the enrollee with instructions on the process necessary to initiate an appeal or independent review; and~~

~~(h) (3) if If an internal appeal process exists, the notice shall:~~

~~(i) (a) 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) (b) 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) (4) if If an internal appeal process does not exist, the notice shall 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.~~

AUTH: Sec. 33-37-105, MCA

IMP: Sec. 33-37-102, MCA

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

ARM 37.108.310

COMMENT #1: ARM 37.108.310(2)(e), (f) and (h) are duplicative and in part contradictory of one another. It is recommended that these rules be combined in such a way that one section pertains to procedures for internal review and another section pertains to procedures when an internal review process does not exist.

RESPONSE: The Department agrees and has made changes to remove any duplication or contradiction.

COMMENT #2: ARM 37.108.310(2)(e) appears to require the health carrier or managed care entity to reference the enrollee's right to appeal the adverse determination and the right to request an independent review after the internal process is complete. The respondent objects to the requirement that would require the health carrier or managed care entity to notify the enrollee of his or her right to seek independent review on the initial Notice of Adverse Determination.

RESPONSE: The changes made as a result of Comment #1 will correct this concern. The Department's intent is that the enrollee be appropriately notified at each step of the appeal process and be clearly advised on subsequent notices what his or her rights are if the claim continues to be denied.

COMMENT #3: Concern was expressed over the limited amount of space on the explanation of benefits (EOB) form to notify enrollees of the disposition of their claim.

RESPONSE: The Department sympathizes with this problem. However, enrollees must be notified of their rights and how to initiate an appeal during the different steps of the appeal process.

Russ Cater  
Rule Reviewer

Gail Gray  
Director, Public Health and  
Human Services

Certified to the Secretary of State July 21, 2003.

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

In the matter of the repeal            ) NOTICE OF REPEAL  
of ARM 42.31.702 relating to        )  
the reporting requirements         )  
for Montana tobacco wholesalers    )  
and retailers                         )

TO: All Concerned Persons

1. On June 12, 2003, the department published MAR Notice No. 42-2-716 regarding the proposed repeal of ARM 42.31.702 relating to the reporting requirements for Montana tobacco wholesalers and retailers at page 1168 of the 2003 Montana Administrative Register, issue no. 11.

2. No comments were received. Therefore, the department repeals the rule as proposed.

3. An electronic copy of this Adoption Notice is available through the Department's site on the World Wide Web at [http://www.state.mt.us/revenue/rules\\_home\\_page.htm](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 Adoption Notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the Department strives to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems.

/s/ Cleo Anderson  
CLEO ANDERSON  
Rule Reviewer

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

Certified to Secretary of State July 21, 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<br>Subject                    | 1. Consult ARM topical index.<br>Update the rule by checking the accumulative table and the table of contents in the last Montana Administrative Register issued. |
| Statute<br>Number and<br>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.

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

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## BOARD APPOINTEES AND VACANCIES

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

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

In this issue, appointments effective in June 2003, appear. Vacancies scheduled to appear from August 1, 2003, through October 31, 2003, are listed, as are current vacancies due to resignations or other reasons. Individuals interested in serving on a board should refer to the bill that created the board for details about the number of members to be appointed and necessary qualifications.

Each month, the previous month's appointees are printed, and current and upcoming vacancies for the next three months are published.

### IMPORTANT

Membership on boards and commissions changes constantly. The following lists are current as of July 10, 2003.

For the most up-to-date information of the status of membership, or for more detailed information on the qualifications and requirements to serve on a board, contact the appointing authority.

BOARD AND COUNCIL APPOINTEES FROM JUNE 2003

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Board of Private Security Patrol Officers and Investigators (Labor and Industry)			
Mr. Charles Geary	Governor	Vegge	6/20/2003
Belt			8/1/2004
Qualifications (if required): representative of a proprietary security organization			
Board of Radiologic Technologists (Labor and Industry)			
Ms. Anne Delaney	Governor	Lindsey	6/21/2003
Missoula			7/1/2006
Qualifications (if required): radiologic technologist			
Historical Records Advisory Council (Historical Society)			
Ms. Donna McCrea	Governor	Scott	6/12/2003
Missoula			9/24/2004
Qualifications (if required): public member			
Montana State University-Billings Executive Board (Education)			
Ms. Michelle Hood	Governor	Ennis	6/3/2003
Billings			4/15/2006
Qualifications (if required): public member			
Montana State University-Great Falls College of Technology (Education)			
Dr. Clay Gehring	Governor	reappointed	6/3/2003
Great Falls			4/15/2006
Qualifications (if required): public member			
Montana State University-Northern Executive Board (Education)			
Ms. Judy Greenwood	Governor	reappointed	6/3/2003
Havre			4/15/2006
Qualifications (if required): public member			

BOARD AND COUNCIL APPOINTEES FROM JUNE 2003

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Montana State University Executive Board (Education)			
Ms. Sue Leigland Bozeman	Governor	reappointed	6/3/2003 4/15/2006
Qualifications (if required): public member			
Montana Tech of the University of Montana (Education)			
Ms. Carol Vega Butte	Governor	reappointed	6/3/2003 4/15/2006
Qualifications (if required): public member			
Montana Vocational Rehabilitation Council (Public Health and Human Services)			
Mr. Haley Beaudry Butte	Director	not listed	6/18/2003 6/18/2005
Qualifications (if required): State Workforce Investment Board position			
Mr. Ronald Mills Miles City	Director	Deckert	6/3/2003 6/3/2005
Qualifications (if required): vocational rehabilitation consumer			
Montana-Alberta Bilateral Advisory Council (Commerce)			
Mr. Lynn Cornwell Glasgow	Governor	not listed	6/6/2003 5/12/2005
Qualifications (if required): representative of the private sector			
Property Tax Exemption Study Committee (Revenue)			
Sen. Mack Cole Hysham	Governor	not listed	6/20/2003 12/31/2004
Qualifications (if required): representative of local government			
Mr. Gary Hickle Billings	Governor	not listed	6/20/2003 12/31/2004
Qualifications (if required): representative of a property tax-exempt organization			

BOARD AND COUNCIL APPOINTEES FROM JUNE 2003

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Property Tax Exemption Study Committee (Revenue) cont. Mr. Dwaine J. Iverson Shelby Qualifications (if required): representative of business	Governor	not listed	6/20/2003 12/31/2004
Mr. Jim Oliverson Kalispell Qualifications (if required): representative of a property tax-exempt organization	Governor	not listed	6/20/2003 12/31/2004
Mr. William Parker Malta Qualifications (if required): representative of K-12 public schools	Governor	not listed	6/20/2003 12/31/2004
Mr. Randy Wilke Helena Qualifications (if required): representative of the executive branch	Governor	not listed	6/20/2003 12/31/2004
Reserved Water Rights Compact Commission (Natural Resources and Conservation) Ms. Tara DePuy Livingston Qualifications (if required): public member	Governor	reappointed	6/10/2003 6/1/2007
Mr. Gene Etchart Glasgow Qualifications (if required): public member	Governor	reappointed	6/10/2003 6/1/2007
Sen. Lorents Grosfield Big Timber Qualifications (if required): public member	Governor	Thoft	6/10/2003 6/1/2007
Mr. Steve Hughes Polson Qualifications (if required): public member	Governor	Salmond	6/10/2003 6/1/2007

BOARD AND COUNCIL APPOINTEES FROM JUNE 2003

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Reserved Water Rights Compact Commission (Natural Resources and Conservation) cont. Mr. Chris D. Tweeten Helena Qualifications (if required): none specified	Attorney General	reappointed	6/1/2003 5/31/2007
Risk Management Advisory Council (Administration) Mr. Scott Darkenwald Helena Qualifications (if required): director of the Department of Administration	Governor	not listed	6/20/2003 6/20/2005
Ms. Jacquie Duhamel Missoula Qualifications (if required): public member	Governor	not listed	6/20/2003 6/20/2005
Mr. Allen Hulse Helena Qualifications (if required): public member	Governor	not listed	6/20/2003 6/20/2005
Mr. Greg Jackson Helena Qualifications (if required): public member	Governor	not listed	6/20/2003 6/20/2005
Mr. Hal Luttschwager Missoula Qualifications (if required): public member	Governor	not listed	6/20/2003 6/20/2005
Mr. Randy Penton Billings Qualifications (if required): public member	Governor	not listed	6/20/2003 6/20/2005
Ms. Tana Wilcox Butte Qualifications (if required): public member	Governor	not listed	6/20/2003 6/20/2005

BOARD AND COUNCIL APPOINTEES FROM JUNE 2003

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
State-Tribal Economic Development Commission (Governor)			
Mr. Lawrence Big Hair, Jr. Crow Agency	Governor	reappointed	6/30/2003 6/30/2006
Qualifications (if required): representative of the Crow Tribe			
Ms. Caroline Brown Harlem	Governor	Healy	6/30/2003 6/30/2006
Qualifications (if required): representative of the Fort Belknap Tribe			
Mr. Tim Zimmerman Billings	Governor	reappointed	6/30/2003 6/30/2006
Qualifications (if required): representative of the Little Shell Tribe			
Tax Reform Study Committee (Revenue)			
Mr. Jerry Driscoll Helena	Governor	not listed	6/3/2003 12/31/2004
Qualifications (if required): representative of labor			
Mr. Ken Morrison Helena	Governor	not listed	6/3/2003 12/31/2004
Qualifications (if required): representative of large industry			
Mr. Myles Watts Bozeman	Governor	not listed	6/3/2003 12/31/2004
Qualifications (if required): representative of agriculture			
Ms. Mary Whittinghill Helena	Governor	not listed	6/3/2003 12/31/2004
Qualifications (if required): representative of small business			

BOARD AND COUNCIL APPOINTEES FROM JUNE 2003

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
University of Montana Executive Board (Education) Mr. Leonard Landa Missoula Qualifications (if required): public member	Governor	reappointed	6/3/2003 4/15/2006
University of Montana-Helena College of Technology (Education) Mr. Rick Hays Helena Qualifications (if required): public member	Governor	reappointed	6/3/2003 4/15/2006
Western Montana College of the University of Montana (Education) Ms. Evelyn Ann Lohman Dillon Qualifications (if required): public member	Governor	reappointed	6/3/2003 4/15/2006
Youth Justice Council (Justice) Mr. Marc Aune Missoula Qualifications (if required): public member	Governor	not listed	6/20/2003 6/20/2005
Ms. Peggy Beltrone Great Falls Qualifications (if required): public member	Governor	not listed	6/20/2003 6/20/2005
Ms. Karin Billings Helena Qualifications (if required): public member	Governor	not listed	6/20/2003 6/20/2005
Ms. Beverley Boyd Helena Qualifications (if required): public member	Governor	not listed	6/20/2003 6/20/2005

BOARD AND COUNCIL APPOINTEES FROM JUNE 2003

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Youth Justice Council (Justice) cont. Ms. Shanna Bulik-Chism Great Falls Qualifications (if required): public member	Governor	not listed	6/20/2003 6/20/2005
Mr. John Chappius Helena Qualifications (if required): public member	Governor	not listed	6/20/2003 6/20/2005
Mr. Michael Donahoe Helena Qualifications (if required): public member	Governor	not listed	6/20/2003 6/20/2005
Mr. Steve Gibson Helena Qualifications (if required): designee of the director of the Department of Corrections	Governor	not listed	6/20/2003 6/20/2005
Dr. Pedro Hernandez Billings Qualifications (if required): public member	Governor	not listed	6/20/2003 6/20/2005
Mr. Joe Johnson Butte Qualifications (if required): public member	Governor	not listed	6/20/2003 6/20/2005
Ms. Cathy Kendall Helena Qualifications (if required): public member	Governor	not listed	6/20/2003 6/20/2005
Mr. Tracy King Harlem Qualifications (if required): public member	Governor	not listed	6/20/2003 6/20/2005

BOARD AND COUNCIL APPOINTEES FROM JUNE 2003

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Youth Justice Council (Justice) cont. Mr. Marko Lucich Butte Qualifications (if required): public member	Governor	not listed	6/20/2003 6/20/2005
Sen. Jeff Mangan Great Falls Qualifications (if required): public member	Governor	not listed	6/20/2003 6/20/2005
Mr. Roland Mena Helena Qualifications (if required): public member	Governor	not listed	6/20/2003 6/20/2005
Rev. Steven Rice Miles City Qualifications (if required): public member	Governor	not listed	6/20/2003 6/20/2005
Ms. Sally K. Stansberry Missoula Qualifications (if required): public member	Governor	not listed	6/20/2003 6/20/2005
Mr. Tony Wagner Browning Qualifications (if required): public member	Governor	not listed	6/20/2003 6/20/2005
Ms. Nancy Wikle Helena Qualifications (if required): public member	Governor	not listed	6/20/2003 6/20/2005
Ms. Katie Yother Bozeman Qualifications (if required): public member	Governor	not listed	6/20/2003 6/20/2005

VACANCIES ON BOARDS AND COUNCILS -- AUGUST 1, 2003 through OCTOBER 31, 2003

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Board of Medical Examiners (Commerce) Dr. Faust Alvarez, Helena Qualifications (if required): doctor of medicine	Governor	9/1/2003
Board of Outfitters (Commerce) Mr. Raymond Rugg, Superior Qualifications (if required): hunting and fishing outfitter	Governor	10/1/2003
Mr. Richard Pasquale, Cascade Qualifications (if required): fishing outfitter	Governor	10/1/2003
Board of Private Security Patrol Officers and Investigators (Commerce) Mr. Jeffrey Patterson, Missoula Qualifications (if required): private investigator	Governor	8/1/2003
Mr. Gary Dent, Conrad Qualifications (if required): representative of a city police department	Governor	8/1/2003
Sheriff Ronald Rowton, Lewistown Qualifications (if required): representative of a county sheriff's department	Governor	8/1/2003
Board of Psychologists (Commerce) Dr. Marian Martin, Billings Qualifications (if required): psychologist	Governor	9/1/2003
Board of Veterans' Affairs (Military Affairs) Ms. Karen Furu, Bozeman Qualifications (if required): veteran	Governor	8/1/2003
Burial Preservation Board (Indian Affairs) Mr. Carl Fourstar, Poplar Qualifications (if required): representative of the Assiniboine Tribe	Governor	8/22/2003

VACANCIES ON BOARDS AND COUNCILS -- AUGUST 1, 2003 through OCTOBER 31, 2003

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Burial Preservation Board (Indian Affairs) cont. Dr. Randall Skelton, Missoula Qualifications (if required): physical anthropologist	Governor	8/22/2003
Ms. Jennie Parker, Ashland Qualifications (if required): representative of the Northern Cheyenne Tribe	Governor	8/22/2003
Mr. Melbert Eaglefeathers, Butte Qualifications (if required): public member	Governor	8/22/2003
Mr. Tony Incashola, Pablo Qualifications (if required): representative of the Salish and Kootenai Tribes	Governor	8/22/2003
Mr. Stephen S.K. Platt, Helena Qualifications (if required): representative of the State Historic Preservation Office	Governor	8/22/2003
Mr. Ken Talksabout, Browning Qualifications (if required): representative of the Blackfeet Tribe	Governor	8/22/2003
Historical Preservation Review Board (Montana Historical Society) Ms. Kathy Doeden, Miles City Qualifications (if required): public member	Governor	10/1/2003
Mr. Chris King, Winnett Qualifications (if required): public member	Governor	10/1/2003
Ms. Germaine White, St. Ignatius Qualifications (if required): public member	Governor	10/1/2003
Lewis and Clark Bicentennial Commission (Historical Society) Mr. John G. Lepley, Fort Benton Qualifications (if required): public member	Governor	10/1/2003

VACANCIES ON BOARDS AND COUNCILS -- AUGUST 1, 2003 through OCTOBER 31, 2003

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Lewis and Clark Bicentennial Commission (Historical Society) cont. Ms. Kathy Doeden, Miles City Qualifications (if required): public member	Governor	10/1/2003
Mr. Darrell Martin, Hays Qualifications (if required): representative of a Montana Indian tribe	Governor	10/1/2003
Mental Health Managed Care Ombudsman (Legislature) Ms. Bonnie Adee, Helena Qualifications (if required): none specified	Governor	8/2/2003
Montana Vocational Rehabilitation Council (Public Health and Human Services) Mr. David E. Boyd, Sr., Poplar Qualifications (if required): federally mandated business industry and labor position	Director	10/1/2003
Mr. Mike Hermanson, Billings Qualifications (if required): federally mandated advocate position	Director	10/1/2003
Montana Wheat and Barley Committee (Agriculture) Mr. Dan DeBuff, Shawmut Qualifications (if required): representing District V and being a Republican	Governor	8/20/2003
Mr. Franklin Mosdal, Broadview Qualifications (if required): representing District VI and being a Democrat	Governor	8/20/2003
Mr. Brian Kaae, Dagmar Qualifications (if required): representing District I and being a Democrat	Governor	8/20/2003
Noxious Weed Management Advisory Council (Agriculture) Rep. Bob Gilbert, Sidney Qualifications (if required): Montana Weed Control Association	Director	10/12/2003

VACANCIES ON BOARDS AND COUNCILS -- AUGUST 1, 2003 through OCTOBER 31, 2003

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Noxious Weed Management Advisory Council (Agriculture) cont. Mr. Bob Marks, Clancy Qualifications (if required): consumer group	Director	10/12/2003
Mr. Charles M. Jarecki, Polson Qualifications (if required): at-large member	Director	10/12/2003
Mr. W. Ralph Peck, Helena Qualifications (if required): Director	Director	10/12/2003
Mr. Bob Ullom, Billings Qualifications (if required): herbicide dealer and applicator	Director	10/12/2003
Ms. Carol Sparks, Pleva Qualifications (if required): livestock production	Director	10/12/2003
Ms. Josie Dahlberg, Brockton Qualifications (if required): agriculture crop production	Director	10/12/2003
Ms. Ramona Ehnes, Great Falls Qualifications (if required): sportsman/wildlife group	Director	10/12/2003
Mr. Jerry Marks, Missoula Qualifications (if required): biological research and control	Director	10/12/2003
Mr. Jack Eddie, Dillon Qualifications (if required): western county representative	Director	10/12/2003
Mr. Jerry Weber, Joliet Qualifications (if required): eastern county representative	Director	10/12/2003

VACANCIES ON BOARDS AND COUNCILS -- AUGUST 1, 2003 through OCTOBER 31, 2003

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
State Emergency Response Commission (Military Affairs) Mr. Craig B. Palmer, Helena Qualifications (if required): representing the Department of Justice	Governor	10/1/2003
Mr. Paul Spengler, Helena Qualifications (if required): representing local emergency medical responders	Governor	10/1/2003
Sen. Barry "Spook" Stang, Helena Qualifications (if required): public member	Governor	10/1/2003
Sen. Thomas Beck, Helena Qualifications (if required): representative of the Governor's Office	Governor	10/1/2003
Mr. Thomas Ellerhoff, Helena Qualifications (if required): representing the Department of Environmental Quality	Governor	10/1/2003
Mr. William T. Rhoads, Butte Qualifications (if required): representing a Montana utility company	Governor	10/1/2003
Sheriff Clifford Brophy, Columbus Qualifications (if required): representing local law enforcement agencies	Governor	10/1/2003
Mr. Seldon Weedon, Great Falls Qualifications (if required): representing state fire organizations	Governor	10/1/2003
Mr. Tim Murphy, Missoula Qualifications (if required): representing the Department of Natural Resources and Conservation	Governor	10/1/2003
Mr. Donald Skaar, Helena Qualifications (if required): representing the Department of Fish, Wildlife, and Parks	Governor	10/1/2003

VACANCIES ON BOARDS AND COUNCILS -- AUGUST 1, 2003 through OCTOBER 31, 2003

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
State Emergency Response Commission (Military Affairs) cont. Mr. Terry Phillips, Helena Qualifications (if required): representing state fire organizations	Governor	10/1/2003
Ms. Carole Raymond, Forsyth Qualifications (if required): representing local emergency medical responders	Governor	10/1/2003
Mr. Jim Greene, Helena Qualifications (if required): representing the National Guard	Governor	10/1/2003
Mr. Royce A. Shipley, Great Falls Qualificatins (if required): representing Malmstrom Air Force Base	Governor	10/1/2003
Ms. Lorrie Leighton-Boster, Helena Qualifications (if required): representative of Department of Public Health and Human Services	Governor	10/1/2003
Mr. Jim Hyatt, Helena Qualifications (if required): Department of Transportation representative	Governor	10/1/2003
Mr. Steve Larson, Helena Qualifications (if required): representative of local fire departments	Governor	10/1/2003
Mr. Frank Tobel, Helena Qualifications (if required): representative of the National Guard	Governor	10/1/2003
Mr. Jim Johnson, Missoula Qualifications (if required): representative of a railroad company	Governor	10/1/2003
Ms. Jolene Jacobson, Pablo Qualifications (if required): representative of the Tribal Emergency Response Committee	Governor	10/1/2003

VACANCIES ON BOARDS AND COUNCILS -- AUGUST 1, 2003 through OCTOBER 31, 2003

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Tow Truck Dispute Resolution Advisory Council (Attorney General) Col. Bert Obert, Helena Qualifications (if required): highway patrol	Attorney General	10/1/2003
Mr. Maurice W. Quanbeck, Bozeman Qualifications (if required): tow truck industry	Attorney General	10/1/2003
Mr. Dennis Eddelmon, Helena Qualifications (if required): motor carrier services division	Attorney General	10/1/2003
Water and Wastewater Operators Advisory Council (Environmental Quality) Mr. Robert Cottom, Dillon Qualifications (if required): wastewater treatment plant operator holding a valid certificate	Governor	10/16/2003
Yellowstone River Task Force (Fish, Wildlife, and Parks) Mr. John Bailey, Livingston Qualifications (if required): representing local business	Governor	8/21/2003
Mr. Joel Marshik, Helena Qualifications (if required): representing the Department of Transportation and being an ex-officio member	Governor	8/21/2003
Mr. Bob Wiltshire, Livingston Qualifications (if required): representing the angling community	Governor	8/21/2003
Ms. Michelle Goodwine, Livingston Qualifications (if required): representing local business	Governor	8/21/2003
Mr. Jerry O'Haire, Livingston Qualifications (if required): representing ranchers living by the river	Governor	8/21/2003

VACANCIES ON BOARDS AND COUNCILS -- AUGUST 1, 2003 through OCTOBER 31, 2003

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Yellowstone River Task Force (Fish, Wildlife, and Parks) cont. Mr. Roy Aserlind, Livingston Qualifications (if required): representing property owners	Governor	8/21/2003
Mr. Rod Siring, Livingston Qualifications (if required): representing property owners	Governor	8/21/2003
Mr. Brant Oswald, Livingston Qualifications (if required): representing conservation groups	Governor	8/21/2003
Ms. Ellen Woodbury, Livingston Qualifications (if required): representing Park County	Governor	8/21/2003
Mr. Doug McDonald, Helena Qualifications (if required): representing the Corps of Engineers and being an ex-officio member	Governor	8/21/2003
Mr. Laurence Siroky, Helena Qualifications (if required): representing the Department of Natural Resources and Conservation and an ex-officio member	Governor	8/21/2003
Mr. Stuart Lehman, Helena Qualifications (if required): representing the Department of Environmental Quality and being an ex-officio member	Governor	8/21/2003
Mr. Joel Tohtz, Helena Qualifications (if required): representing the Department of Fish, Wildlife, and Parks and being an ex-officio member	Governor	8/21/2003
Mr. Jim Woodhull, Livingston Qualifications (if required): representing the city of Livingston	Governor	8/21/2003

VACANCIES ON BOARDS AND COUNCILS -- AUGUST 1, 2003 through OCTOBER 31, 2003

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Yellowstone River Task Force (Fish, Wildlife, and Parks) cont. Mr. David Haug, Livingston Qualifications (if required): representing Park County Conservation District	Governor	8/21/2003
Mr. G. Douglas Ensign, Livingston Qualifications (if required): representing ranchers living by the river	Governor	8/21/2003
Mr. Andy Dana, Bozeman Qualifications (if required): representing property owners	Governor	8/21/2003
Youth Justice Advisory Council (Commerce) Dr. Marshall White, Jr., Hamilton Qualifications (if required): physician whose practice includes obstetrics	Governor	9/1/2003